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Interrogation Gone Bad: Juvenile False Confessions in the post-DNA Age

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Some statistics re juvenile false confessions

- False confessions make up approximately 16% of all known wrongful convictions (251 DNA exonerations)
- Most documented false confessions are in murder cases (80%)
- Juveniles are overrepresented in documented cases of false confessions. In Drizin and Leo' s study of 125 proven false confessions (2004), juveniles made up 1/3 of the sample
- Gross et al's study of 340 exonerations since 1989 showed that 13% of adults in study falsely confessed but 42% of all juvenile wrongful convictions involved false confessions.
- The younger the defendant, the greater likelihood there is of a false confession. Gross et al found that of all juvenile wrongful convictions, 69% of the juveniles aged 12-15 falsely confessed compared to 25% of the 20 juveniles aged 16 and 17.
- Laboratory studies of juvenile compliance rates show that the younger the juvenile, the more likely he or she is willing to accept responsibility for an act not committed (Redlich and Goodman).

What do juveniles tell us about why they falsely confess

LAGATTUTA: why wouldn’t you just stick to your guns and say, I didn't do this, I didn't do this, there's no way in the world I'm going to confess to something I didn't do?

M. CROWE: Eventually, they wear you down to where you don't even trust yourself. You can't trust your memory anymore.

Why Confess? Josh Treadway

LAGATTUTA: Why in the world an innocent person would ever confess to a crime as serious as murder?

TREADWAY: I had a lot of pressure on me at the time. And, again, you'd have to just be there

Why confess? Marty Tankleff

- Marty Tankleff, now age 33, reflecting on his interrogation after spending 14 years of a 50 years to life sentence in prison for murdering his parents.

- *It's like having an 18- wheeler driving on your chest and you believe that the only way to get that weight off your chest is to tell the police whatever they want to hear … even admitting to a murder."*

Why Confess? Calvin Ollins

"They told me that, you know, 'You just go ahead and cooperate, and we'll let you go home.' I thought I was going home, but it turns out I was--I've been here ever since then."

STAFFORD: And you think if you confess to the crime you can--you don't go to prison for that?

OLLINS: At the same, I didn't underst--I didn't understand the--the seriousness of what was going on. I didn't understand exactly what I was getting myself into once I signed that statement.

Drizin, S. & R. Leo. 2004.

Pathways to False Confession

- 1st: The Misclassification Error
  - "Behavioral analysis"
- 2nd: The Coercion Error
  - Psychological interrogation methods
  - Individual vulnerabilities
- 3rd: The Contamination Error
  - Scripting, misleading specialized knowledge, and the problem of deception

Behavior Symptom Analysis: Mistaking Normal Adolescent Behavior and Responses for Deception?

- Human Lie Detection
- Theory:
  - Deception = Anxiety
  - Manifested involuntarily in physiological responses
  - Properly trained detective can "read" the signs
- Three applications
  - **Verbal behavior** (e.g., word choice)
  - **Non-verbal behavior** (e.g., posture, eye contact, facial expressions, arm and leg movements)
  - **Paralinguistic behavior** (e.g., response length, response delivery, continuity of response)

Nonverbal Behavior Symptoms

- Truthful Suspect
  - Upright
  - Open and relaxed
  - Lean forward on occasion
  - Frontally aligned with the interviewer
  - Casual posture changes
- Deceptive suspect
  - Retreating from investigator
  - Slouching
  - Frozen
  - Non-frontal alignment
  - Barriered posture
  - Erratic and rapid posture changes
  - Head and body slump

Typical Behavioral Attitudes During an Interview

- Truthful Suspect
  - Composed
  - Concerned/Realistic
  - Cooperative
  - Direct/Spontaneous
  - Open/Helpful
  - Sincere
  - Confident
- Deceptive Suspect
  - Overly anxious
  - Unconcerned/Unrealistic
  - Uncooperative/Defensive
  - Guarded/Evasive/Hesitant
  - Rationalizing/Unhelpful
  - Insincere
  - Defeated

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RESPONDING TO DENIALS THAT ARE VOICED

VI. EVALUATE THE SUSPECT'S DENIAL

→ Seldom interrupt
initial response if follow
guilt/innocence

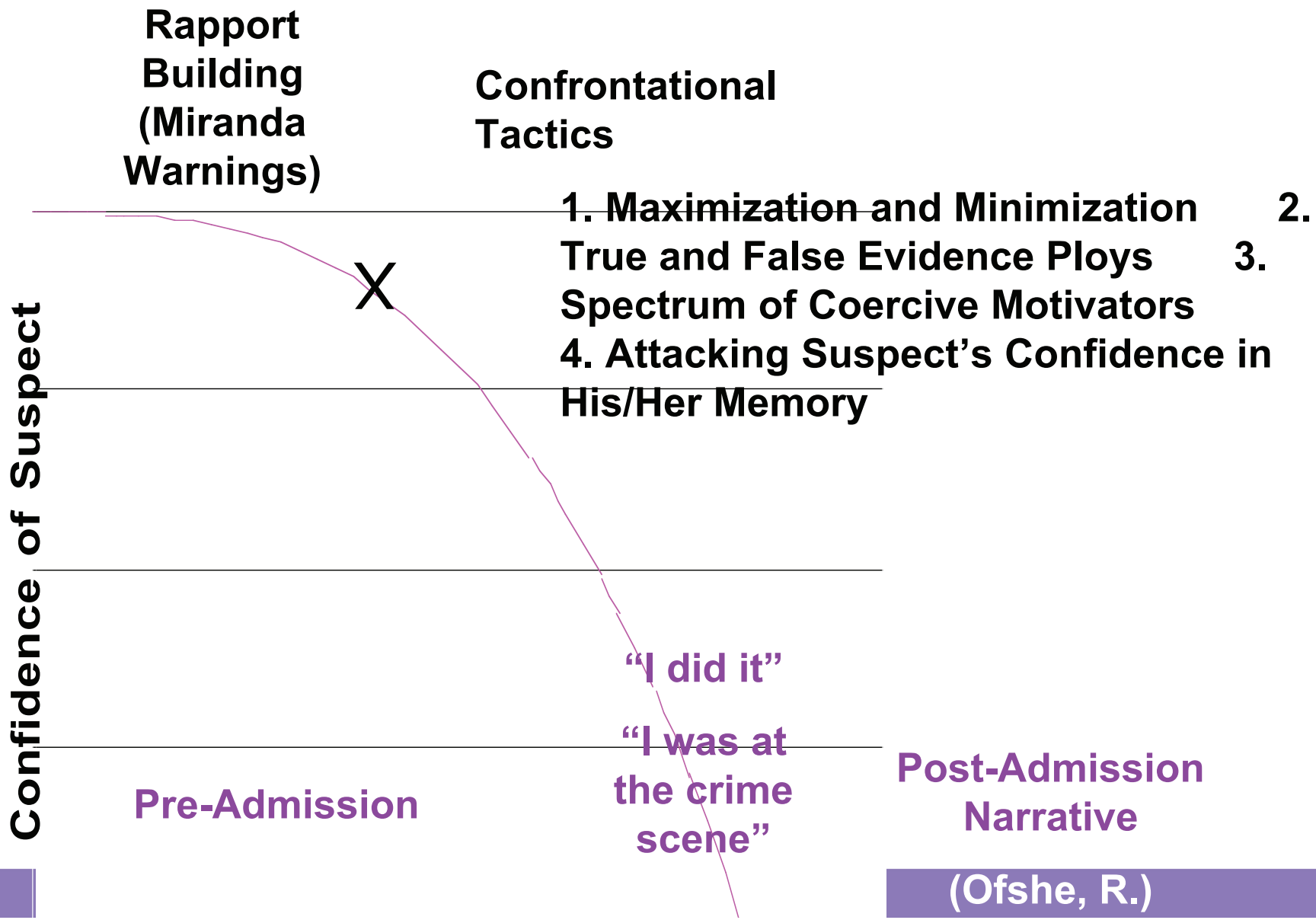
DECEPTIVE DENIALS	TRUTHFUL DENIALS
Avoid Descriptive Language	Use Descriptive Language
"I didn't take that money"	"I did not rob anyone!"
"I didn't do that to her"	"I did not rape her!"
Qualifying Phrases	Definitive Statement
"I honestly wouldn't do that."	"I don't care what your investigation shows -- I had nothing to do with this!"
"I swear I didn't do this."	
Specific Denials	Broad Denials
"I did not take $517.82"	"I've never had sexual contact with that student or any other!"
"I don't own a gun!"	
Theme Acceptance	Theme Rejection
"I understand what you're saying, but..."	"Listen, even though I was drinking that night I was in control and I know I was never at that gas station!"
"I believe what you're telling me, but..."	
Weak Verbal	Firm, Strong, Forceful
Strong Verbal / Weak Nonverbal	Persistent

clipped/quiet
more frustrated

VII. HANDLING TRUTHFUL DENIALS

Interrogation: The Coercion Error

- Based on presumption of guilt which is often based on behavioral analysis not evidence
- Accusatorial, suggestive
- Interrogator dominates interaction
- Interrogators uses deceptive, manipulative & sometimes coercive methods
- Purpose = To get incriminating statements, not necessarily the truth


Rapport Building (Miranda Warnings)
Confrontational Tactics
1. Maximization and Minimization
2. True and False Evidence Ploys
3. Spectrum of Coercive Motivators
4. Attacking Suspect's Confidence in His/Her Memory
X
Confidence of Suspect
"I did it"
"I was at the crime scene"
Pre-Admission
Post-Admission Narrative

(Ofshe, R.)

Psychology of Police Interogations: The Pre-Admission Phase

- Rapport Building Phase
  - Non-confrontational interview (20-45 minutes)
  - Miranda warning is issued
    - Miranda warning does not provide much more than a speed bump
    - Many people do not understand the concept of the Miranda warning
      - Waiver rates for adults is 80-85%,
      - Juvenile suspects is 95-100%
  - Police officers are taught to read visual cues of suspects as evidence that they are lying

Pre-Admission Phase

- Use of Bait Questions – Is there any reason why witnesses would be telling us you were at the crime scene? What do you think should happen to the person who committed this crime?
- Confrontation Mode
  - Shift from rapport-building to confrontation mode occurs quickly, all-of-a-sudden
  - "We're not here to talk about whether you committed the crime but why you did it."
  - MESSAGE CONVEYED: "We think you're guilty, we have evidence that you're guilty, and confession would give you some benefit later."

Maximization and Minimization

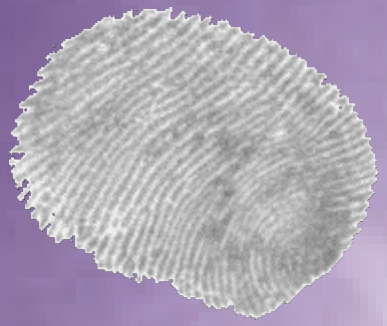
- Techniques to motivate the suspect into confessing by conveying the interrogator's absolute certainty of the suspect's guilt
  - Maximization (overstating strength of case against suspect, interrupting denials, accusing suspect of

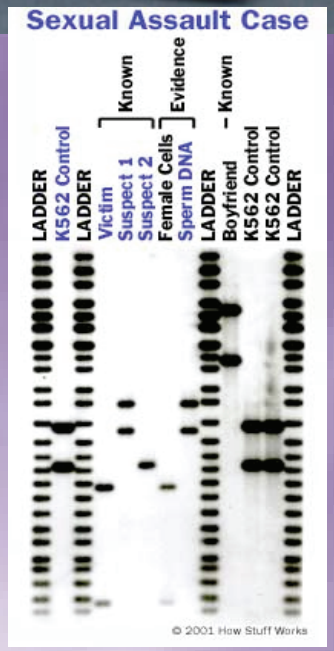
    lying, false evidence ploys)
    - "We have talked to numerous witnesses who place you at the crime"
    - "Your co-defendant is laying this on you"

True and False Evidence Ploys

- "We found your hair, blood, semen, in the room. We've sent materials to the lab that quite frankly will screw you."

- Redlich and Goodman study suggests f/e ploys may trigger false confessions





Maximization and Minimization

- Minimization - “psychological themes” that allow the suspect to save face
  - Moral excuse:
    - “You stole the money to feed your children”
  - Legal excuse:
    - “You shot the victim in self defense”
    - “The sex you had was consensual”
    - “The crime was impulsive rather than pre-meditated”

Spectrum of Coercive Motivators

- Low end – appeals to conscience, decency, religion, morality
- High end – promises of leniency / threats of harm
- Middle-end motivators: Systemic inducements
  - "Put yourself in the shoes of the prosecutor or judge. Who would you rather have in front of you, someone who cooperates or someone who doesn't?"

Attacking Suspect's Confidence in His/Her Memory

- Suspects will begin to doubt their own memory
  - "I must have done these awful things, but why can't I remember it?"
- Detectives suggest that the suspect may have "blacked out" or been in a "dream state" and that these states "happen all the time"
- Essential step in coerced internalized false confessions

Causes of False Confession: Police Interrogation: The Coercion Error

- Psychologically coercive police methods interact with Individual Vulnerabilities
- Vulnerabilities include youth, low intelligence, mental illness, suggestibility, compliance, etc.
  - Suspect made to feel hopeless & perceives confessing as only way to improve situation (e.g., receive help, avoid prosecution, minimize punishment, etc)
  - To stop interrogation, escape custody, go home (coerced compliant)
  - Failure to understand implications of confession
  - Interrogator persuades suspect that he committed the crime, despite no memory of it. (coerced internalized)

The Contamination Error

One police officers obtain an admission from a suspect, their job is not yet finished. In order to persuade a jury to convict a defendant, they need to elicit details of the crime from the defendant. The standard test for law enforcement of a reliable confession is:

Was the Suspect Able to Provide Information About the Crime That Only Could Have Been Known by The True Perpetrator and Can that Information be Independently Verified and/or Corroborated by Police Investigation?

Contamination Occurs When Police Officers Either Accidentally or Deliberately Feed or Suggest These Details to a Suspect Who Then Adopts Them in His or Her Statement. Without a Videotape of the Process, it is impossible to Detect Contamination

Sources of Contamination include leading questions, showing crime scene photos, taking suspect to crime scene, suspect's own innocent knowledge, facts released to media, etc.

Characteristics of Unreliable Confession Evidence": Post-Admission Narrative

- Assuming no contamination by interrogator(s):
- Confessor's post-admission narrative (PAN) does not fit with the crime scene facts;
- Instead, PAN is replete with errors, guesses and impossibilities (I.e., factually inaccurate)
- This lack of fit demonstrates confessor's lack of independent knowledge about:
  - Unique crime facts
  - Non-public information about crime
  - Both dramatic and mundane details
- PAN does not lead police to new, derivative, or missing evidence

Indicia of Reliability: Contamination

Brandon Garrett, in a soon to be released study in Stanford Law Review, analyzed all cases of proven false confessions among the DNA exonerations, many of which were highly detailed:

Out of 238 DNA exonerations (now 251), 38 or 16% involved false confessions.

In 35 of the 36 cases which were litigated at trial, police claimed that suspects were guilty because their confessions contained "facts" that only the true perpetrator would have known;

In 20 cases, detectives testified that the information was non-public information;

In 22 cases, detectives claimed to have avoided contaminating the confessions by not asking leading questions;

In 19 cases, prosecutors emphasized in closing arguments that the facts in the defendant's confessions were "non-public" or corroborated by crime scene evidence;

In 17 cases, prosecutors emphasized that facts were non-public and could only have been known by the perpetrator;

in 10 exonerees' trials, prosecutors specifically denied law enforcement had disclosed any facts.

Contamination Produces Wrongful Convictions

- Whose statement is it?
- US Supreme Court has questioned police tactics that are designed to get a suspect to agree to the police officer's "pre-conceived" theory of the case (Miranda)
- Involuntary statements are those which are the products of tactics designed to force the suspect to provide specific answers sought by the interrogators – even if the suspect does not believe them to be true.
- Interrogator's tactics are designed to get "specific answers" to questions – to get the suspect to agree to "the composition of a statement that was not even cast in his own words." (Culombe v. Conn.)(1961)

GOOD NEWS: Eliminating Contamination is Something That Police Officers and Defenders Can Agree On

Center on Wrongful Convictions of Youth

- **Mission Statement**
- The Center on Wrongful Convictions of Youth identifies, investigates, and litigates credible innocence claims of wrongfully convicted young people, provides resources and support for actors in the juvenile and criminal justice systems, and advocates for policy reforms that will decrease the likelihood that any youth will be wrongfully convicted.
- www.cwcy.org