

2007

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Recommended Citation

Effects of expert testimony and interrogation tactics on perceptions of confessions. *Psychological Reports*, 100(2), 563-570.

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EFFECTS OF EXPERT TESTIMONY AND INTERROGATION TACTICS ON PERCEPTIONS OF CONFESSIONS¹

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Summary.—Evidence obtained through the process of interrogation is frequently undermined by what can be perceived as overzealous interrogation tactics. Although the majority of psychologically oriented tactics are legally permissible, they nonetheless contribute to innocent suspects confessing to crimes they did not commit. The present study examined the effect of expert testimony and interrogation tactics on perceptions of a confession. 182 undergraduates read a transcript of a homicide trial that varied based on interrogation tactic: implicit threat of punishment (maximization) or leniency (minimization) and expert witness testimony (presence or absence of expert testimony). Analysis indicated that the type of interrogation tactic used in obtaining the confession affected participants' perceptions of the coerciveness of the interrogation process.

The process of interrogation to elicit a confession is an essential process in our system of jurisprudence. The conventional wisdom has been and continues in part to be that an innocent person would never confess to a crime he did not commit (Kassin & Wrightsman, 1981). Such self-incrimination is typically considered irrational (*Colorado v. Connelly*, 1986) or perhaps an attempt to gain notoriety, as in the infamous kidnapping case of the Lindbergh baby in which 200 people falsely confessed (Bernstein, 2006). Not only are confessions sometimes unrelated to guilt, at times they have been obtained through bargaining or negotiating with a suspect. Considering the variable nature of the interrogation process, as many as 20% of all confessions are recanted (Wrightsmen & Fulero, 2005). Regardless of whether a confession is voluntary or coerced, confession evidence can be so persuasive to a jury that its presence during trial renders all other trial aspects meaningless (McCormick, 1972).

There are several legal protections that apply to confessions, some involving case law and some evolving out of the United States Constitution. The cause and remedy for obviously coerced confessions is illustrated in *Brown v. Mississippi* (1936). As a result of interrogators' use of physical torture or "third-degree" tactics, the *Brown* court vacated the defendants' conviction. This decision was based on the Constitution's provision of due process, as codified in the Fifth and Fourteenth Amendments. The Fifth

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Amendment also protects every defendant from acting as a witness against himself. No government agent can lawfully compel a suspect to make any involuntary statement at any time during interrogations. In *Miranda v. Arizona* (1966), the court interpreted and applied the Fifth Amendment to provide a fundamental right to all suspects to remain silent. These safeguards exist to protect the suspect's rights, as well as to ensure the validity of the confessions.

Social science research in the area of confessions is necessary to evaluate the psychological implications of legally permissible practices used in interrogations (Royal & Schutt, 1976; O'Hara & O'Hara, 1980; Macdonald & Michaud, 1987; Walkley, 1987; Inbau, Reid, Buckley, & Jayne, 2001). One term with much significance for social psychology in the evaluation of a Miranda waiver is "voluntariness." In order for a valid law enforcement application of Miranda protections, a suspect's waiver must be "knowing, voluntary, and intelligent" (Melton, Petrila, Poythress, & Slobogin, 1997, p. 158). The court is required to evaluate the context of the waiver in terms of the "totality of the circumstances" (*Columbe v. Connecticut*, 1961; *Samaha*, 2002, p. 385). The 1991 decision in *Arizona v. Fulminante* created a *per se* rule for confessions and a limitation on the exclusionary rule of evidence. If sufficient evidence existed to convict a defendant in addition to a disputed confession, the confession itself was considered to be harmless error, and thus admissible. Before this case, a coerced confession was grounds for automatic reversal.

Suspects waive their Miranda rights at an alarming rate of approximately 80% (Grisso & Pomicter, 1977). Given this, researchers need to understand the details of when Miranda rights are invoked and the value of examining the many factors that affect the interrogation process. According to Leo (1996b), 4 out of 5 suspects waived their rights and submitted to questioning. Kassin, Meissner, and Norwick (2005) found college students performed significantly better than police investigators when evaluating confessions as either true or false. In a series of experiments, undergraduates and detectives viewed or heard prisoners confess to either fabricated or factual crimes. College students were more accurate than detectives in evaluating the truthfulness of the confession. This study provides empirical support for addressing the consequences of waiving Miranda rights.

The use of interrogation tactics by police is intended to lawfully communicate a threat (maximization) or a promise (minimization) to a suspect to elicit a confession. Explicit threats and promises are not always avoided; the nature of the confession and how it is obtained must be within certain legal boundaries in order to be admissible at trial. The communication of a threat or promise in the interrogation process lends itself to empirical investigation, and therefore is one focus of the present investigation. Jurors' perceptions of

the fairness of these interrogation tactics are salient for many reasons before, during, and after a criminal prosecution. In order for a disputed confession to be introduced as admissible evidence, a judge must evaluate the facts material to acquiring the confession. In fact, in *Columbe*, the court asserted that there is “no simple litmus-paper test” (p. 641) to determine with certainty agreed-upon criteria for excluding confession evidence. Thus, if a disputed confession is determined to be admissible, its validity will be questioned by the defense. The empirical question is how a jury evaluates evidence about how a confession was obtained.

The coercive quality of implicit threats, i.e., maximization, is an important area for psychological research on confessions. Kassin and McNall (1991) found a main effect for maximization on juror perceptions, in that it communicated a threat of punishment. In a series of three studies, 176 undergraduate students read an interrogation transcript utilizing different interrogation tactics, including maximization and minimization. Results indicated that jurors perceived the implicit threat to communicate as “if you don’t confess, you will face harsher punishment” (p. 248). These researchers also found an effect for minimization. In the same study, 47% of participants in the minimization group evaluated the implicit promise of leniency as coercive; however, they also responded “guilty” when deciding the defendant’s fate. It was reasoned that jurors perceive a lack of fabricated evidence, lack of implicit or explicit threats, and empathic response to indicate the presence of actual evidence of guilt. This assumption is intuitively reasonable but lacks clear empirical support as to the definitive operating factors that moderate guilty or not guilty judgments.

Although many excellent articles have been written on the topic of interrogations and coerced confessions (Leo, 1996a, 1996b; Leo & Ofshe, 1996; Kassin, 1997, 2005; Gudjonsson, 2003; Kassin & Gudjonsson, 2004; Russano, Meissner, Narchet, & Kassin, 2005), none have investigated the possible effect of expert witness testimony in criminal trials involving disputed or coerced confessions. With the *Columbe* decision in mind, the efficacy of expert testimony concerning disputed confessions was hypothesized to affect jurors’ attitudes towards potentially coerced and actually disputed confessions. Specifically, the introduction of expert testimony should result in increased ratings of “pressure on the defendant to confess” and decreased ratings of “fairness of the interrogation process.” These measures formed the operational definition of coercion for this study.

Regardless of the implicit nature of the communication from interrogator to suspect, the indication of lenience or punishment is understood by both suspects in the interrogation room and jurors in the courtroom. The current study was designed to expand this concept, i.e., “functional equivalence” (Kassin & McNall, 1991), and evaluate the extent to which jurors rely

on their own perceptions of maximization and minimization as well as testimony provided by an expert regarding confessions when evaluating coercion. In addition, verdict preference was examined as a function of each of the independent variables. Finally, there is a question of the moderating effect (if any) of expert testimony on the dependent variables. In order to allow meaningful comparisons, a no-coercion condition was included as a control condition.

Hypothesis 1: Jurors' perceptions of "pressure on defendant to confess" and "fairness of the police interrogation" would be a function of interrogation tactic (maximization vs minimization) and the presence or absence of testimony by an expert. Maximization would be associated with increased ratings of pressure and decreased ratings of fairness. These effects should be moderated by the presence or absence of testimony by an expert.

Hypothesis 2: There would be a significant interaction of expert testimony and interrogation tactic on jurors' decisions of voluntary vs coerced confessions, and verdict.

Hypothesis 3: There would be a significant interaction of expert testimony and interrogation tactic on perceptions of accuracy of the testimony by the interrogator.

METHOD

Participants

One hundred eighty-two undergraduates participated in this study as part of a research requirement or for extra credit. Fifty-one percent were women ($n=92$) and 49% were men ($n=90$). All participants were between the ages of 18 and 24 years. Ninety-five percent were Euro-American, unmarried, and reported no prior jury experience. All participants were treated in accordance with APA's ethical principles (2002).² In all instances, participation took place during a class period, in a group setting.

Materials

Participants read a 10-page transcript of a homicide trial. After reading the transcript, they responded to a 45-item questionnaire measuring demographics and attitudes toward the trial scenario. Seventeen items measuring attitudes toward the trial scenario had internal consistency of Cronbach $\alpha=.92$. All judgments were made on a scale of 0: Not at all important/accurate, etc. to 6: Very important/accurate, etc. See Appendix (p. 570) for examples of key attitudinal items. The entire study took 30 to 45 minutes to complete.

²American Psychological Association. (2002) Ethical principles of psychologists and code of conduct. Retrieved January 8, 2007 from <http://www.apa.org/ethics/code2002.pdf>.

Design and Procedure

All participants who agreed to participate gave their consent and were administered a homicide trial transcript to read. In this case, the State alleged that the victim was stabbed to death outside of a bar by her ex-boyfriend. Transcripts varied based on the type of interrogation tactic used with the ex-boyfriend in order to elicit a confession (maximization or minimization) and testimony by an expert (presence or absence of expert testimony) only; all other trial aspects remained constant, i.e., opening and closing statements of the defense and prosecution and general judge's instructions.

Both types of interrogation tactic were based on researchers' descriptions (Inbau, *et al.*, 2001; Costanzo, 2004; Wrightsman & Fulero, 2005). For example, for Maximization the following statements were used: "We have an eyewitness that says you did this," and "Your prints are on the murder weapon." For Minimization the following statements were used: "Look, you did this in the heat of passion, so you're not in that bad of shape," and "Morally, you're practically justified." Transcripts represented a 2 (Expert Testimony: expert, no expert) \times 3 (Interrogation Tactic: maximization, minimization, control) between-subjects factorial design. At the completion of the study, participants were verbally debriefed and thanked.

RESULTS

Manipulation Check

A one-way analysis of variance was conducted to assess if participants were aware of the presence of expert testimony (expert vs no expert). Results indicated the manipulation was effective ($F_{1,180} = 41.62$, $p < .001$; $M_s = 3.61$ and 1.88 , respectively).

A 2 (Expert Testimony: expert, no expert) \times 3 (Interrogation Tactic: maximization, minimization, control) analysis of variance on jurors' perceptions of the amount of pressure placed on the defendant to confess indicated a significant main effect of interrogation tactic ($F_{2,176} = 7.55$, $p = .001$; $\eta^2 = .08$). Scheffé's test of multiple comparisons indicated Maximization differed significantly from Minimization ($p < .001$; $M_s = 5.10$ and 4.15 , respectively). Participants exposed to implicit communication of threats or harsh punishment (maximization) were significantly more likely to perceive greater pressure to confess compared to those exposed to implied communications of lenience or justification (minimization). No significant effect of expert testimony was found and no significant Expert Testimony \times Interrogation Tactic interaction. A 2 (Expert Testimony: expert, no expert) \times 3 (Interrogation Tactic: maximization, minimization, control) analysis of variance on jurors' perceptions of the fairness of the police interrogation did not indicate significant main effects or interaction.

Hypothesis 2 was not supported. Results of separate log-linear analyses found no significant associations between expert testimony and interrogation tactic as independent variables and perceptions of confession (coerced vs not coerced) or verdict (guilty vs not guilty) as dependent variables.

With respect to Hypothesis 3, univariate analysis of variance indicated a significant effect of interrogation tactic on jurors' perceptions of accuracy of the interrogator's testimony ($F_{2,176} = 6.07, p = .003; \eta^2 = .07$). Scheffé's test of multiple comparisons indicated Maximization differed significantly from Minimization ($p < .01$); $M_s = 3.21$ and 4.07 , respectively. Participants exposed to Maximization interrogation tactics evaluated the detective's testimony as significantly less accurate compared to those exposed to Minimization. No significant Expert Testimony \times Interrogation Tactic interaction was found, and there was no significant main effect of Expert Testimony. See Table 1 for significant main effects for interrogation tactic on the dependent variables.

TABLE 1
PERCEPTIONS OF PRESSURE AND ACCURACY AS A FUNCTION OF INTERROGATION TACTIC

| Perception | Interrogation Tactic | | |
|----------------------------------|------------------------------|------------------------------|-------------------------|
| | Maximization ($n = 61$) | Minimization ($n = 55$) | Control ($n = 66$) |
| Pressure of defendant to confess | 5.10 ^a | 4.15 ^b | 4.52 ^{ab} |
| Accuracy of detective testimony | 3.21 ^a | 4.07 ^b | 3.53 ^{ab} |

Note.—Means in the same row that do not share superscripts differ at $p < .05$ using Scheffé's test of multiple comparison.

DISCUSSION

Overall, partial support for the hypotheses was found. Jurors' perceptions of pressure were associated with interrogation tactic. In general, maximization was perceived as more coercive than minimization. The results supported Kassin and McNall's hypothesis (1991) regarding jurors' assumption that "scare tactic" interrogations are not necessary when there is the belief that law enforcement officials possess tangible evidence of guilt. Participants' ratings of pressure were consistent with Kassin and McNall's functional equivalence statement concerning the psychological effect and coercive equivalence of maximization and minimization. In their study, minimization was characterized as a promise of leniency and not as pressure *per se*. The present measures assessed minimization as pressure to confess, an evaluation different from the definitional evaluation of "implied promise." The results supported the finding that, although legally permissible, interrogator's use of maximization and minimization was perceived by jurors as psychologically coercive.

The present study opened the door to examining the role of specific types of evidence on jury decisions. Open-ended responses to inquiries con-

cerning the most important factors in reaching a verdict pointed to the importance of evidence either directly or indirectly, i.e., “no murder weapon”; “no physical evidence”; and “only circumstantial evidence of guilt.” Participants consistently referred to the absence of this type of forensic evidence in the trial transcript, suggesting a possible moderating effect of evidence on decision-making. The inclusion and manipulation of testimony regarding forensic evidence may improve understanding the effects of testimony by expert witnesses. Subsequent research on the effects of interrogations, confessions, and expert testimony should examine their associations with other types of forensic evidence.

Although the expert testimony condition alone did not show significant effects, there is the possibility that it had some effect on decision-making. Based on the present results, it seems that expert testimony by itself is necessary but not sufficient to modify jurors’ perceptions. Conversely, perceptions of interrogator were not a function of the combined effects of expert testimony and interrogation tactic, unexpectedly. Although a moderating effect was not found, there was a main effect of Interrogation Tactics on perception of the accuracy of the interrogator. Participants exposed to maximization interrogation tactics evaluated the detective’s testimony as less accurate compared to those exposed to minimization. Forensic-type evidence may have a moderating effect on perceptions of the interrogator’s testimony as well.

One limitation of the study was the written presentation of the stimulus materials. Video stimulus materials are the most favorable experimental method to approximate actual courtroom experience. Enhanced presentation of expert testimony, either via video or *in vivo* exposure, would probably facilitate a more accurate and complex perceptual process for participants, leading to more ecologically and externally valid results. In addition, it is important to stress the issue of generalizing from simulation-type research with undergraduate students to the behavior of actual jurors. This is particularly important considering how infrequently students serve as jurors compared with community members. The value of this study, however, is the insight offered into factors affecting perceptions of interrogation tactics in a confession scenario. Researchers should examine the relation between perceptions and expectations of forensic-type evidence and expert testimony on jurors’ decision-making in criminal trials.

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Accepted February 20, 2007.

APPENDIX

SAMPLE ATTITUDINAL ITEMS FROM 45-ITEM QUESTIONNAIRE

1. Please rate the importance of the confession expert's testimony to your verdict.
2. How accurate was Detective Fuller's testimony?
3. Please rate the fairness of the police interrogation process described in the trial.
4. How much pressure was the defendant under to confess?

Note.— Judgments were made on 7-point scales (0: Not at all important/accurate to 6: Very important/accurate).