

Classifying False Confessions

The custodial interrogation process is inherently coercive and designed to produce a confession. We do not take the position that all confessions are the product of coercion or that anyone who confesses is mentally disturbed. Yet, criminal defendants' claims of false confessions are, by nature, counterintuitive. That is, a judge or jury must consider the strange occurrence of an individual's having made a statement against liberty interest. Despite this apparent oddity, the literature supports not only the existence of the false confession phenomenon, but identifies a confluence of factors that may produce them. For a variety of reasons, ranging from police coercion to a guilt-ridden mind to mental illness or retardation, false or unreliable confessions find their way into criminal cases.

Kassin and Keichel categorized false confessions into three types: voluntary, coerced-compliant, and coerced-internalized.

- *Voluntary false* confessions come about in the absence of overwhelming external stressors by law enforcement. Instead, observes Gudjonsson, an individual may be seeking notoriety, may have guilty feelings about some other transgression, may have an inability to distinguish reality from fantasy, or may be attempting to protect another person.
- *Coerced-compliant* false confessions are offered in an attempt to avoid external pressure or to obtain a reward. However, within this framework, the confessor subjectively does not accept the confession as true.
- *Coerced-internalized* false confessions involve an innocent person who, because of confusion and the stress of the interrogation, begins to accept criminal responsibility.

Ofshe and Leo propose that the improper use of interrogation techniques can result in four types of false confessions:

- *Stress-compliant*, in which the suspect is overwhelmed by the anxiety of the situation, is physically exhausted, or both, and confesses to bring an end to the stress.
- *Coerced-compliant*, in which the suspect responds to overt or covert threats of harm, to promises of leniency, or to both, believing that by confessing, punishment will be reduced or eliminated.
- *Persuaded false-noncoerced and -coerced*, in which the suspect is persuaded by the interrogator of the probability of guilt, even though the suspect has no memory of the crime. The distinction between the noncoerced and coerced types is the extent to which threats, promises, or other coercive techniques are used.

To bridge the cognitive dissonance of guilt in the face of amnesia, interrogators supply theories such as alcohol-or drug-induced blackout, momentary lapse in consciousness, a repressed memory, or multiple personality. Ofshe and Leo also illustrate multiple dynamics by which skilled interrogators obtain confessions from innocent suspects—for example, the rhetorical minimization of the recited Miranda warnings, which can induce hopelessness; interpreting the suspect's demeanor ("*I'm a human lie detector*"); and fabricating eyewitness corroboration, co-perpetrator confession, or scientific evidence (polygraphy, fingerprints, DNA). From the suspect's side, a variety of mental conditions may contribute to the susceptibility to confessing falsely or to confessing without full understanding of the waiver of rights. These conditions include mental illness (e.g., psychosis, depression), mental retardation, and drug intoxication or withdrawal.

False Confessions, Expert Testimony, and Admissibility.

Watson et al. 2010. *The Journal of the American Academy of Psychiatry and the Law*, pp. 178-179.