

Deceptive Use of False Evidence¹

Research on the dynamic of true and false confessions has also focused on the impact of the perception of the strength of evidence against the suspect. The interrogator's references to that evidence during interrogation and suspects' perceptions of the strength of evidence against them are strong predictors of confession for both innocent and guilty suspects. False confessions, however, are particularly promoted when interrogators falsely claim to have evidence they do not: for example, claiming to have witnesses, fingerprints, DNA, video, or failed (but actually passed) polygraphs or computerized voice stress analyses (CVSA; Kassir et al., 2010; see Stewart et al., 2018 for a meta-analysis of effects of false evidence),

Hopelessness and the Sexual Assault Suspect

Sexual assault and sexual abuse suspects are particularly vulnerable to the sense of hopelessness (Davis & Leo, 2016). The evidentiary situation of many such suspects tends to be unique in that there might be no evidence other than the accounts of each party. The incident could be far in the past and/or there might be no physical evidence or other witnesses. As a result, the suspect cannot envision what evidence might become available to show his innocence. In a "he-said"- "she-said" contest of credibility the suspect might well expect to lose to a child or alleged adult victim of rape: particularly in the #MeToo era and in the context of widespread cultural and professional dictates to "believe the victim" (e.g., Beck, 2015; Ferraro, 2020; Gerstmann, 2019). If the suspect falls into a social category stereotypically associated with sexual abuse, such as "step-father" or "gay male" and others (Livingston et al., 2020; McCoy & Gray, 2007; Smalarz et al., 2016), his sense that he is someone that others will believe can be further compromised.

Interrogators often offer sexual assault suspects the "opportunity" to clear themselves by taking a polygraph or CVSA (computerized voice stress analyzer) lie detection test. But instead, the attempt to clear oneself often results in an (allegedly) failed test, and even greater hopelessness. Both tests are highly prone to error and suspects are often misclassified as deceptive. Polygraph proponents claim that the comparison question technique (CQT) central to the polygraph and CVSA has 90% or better accuracy. However, a 2003 report of the National Research Council of the National Academy of Sciences concluded that the scientific basis of the technique was weak, relevant research was of low quality, and the error rate unknown. A recent review of research since that time has likewise concluded the conclusions of the NAS report still stand (Iacono & Ben-Shakhar, 2019). Though the polygraph does perform at better than chance accuracy, the CVSA has been subject to almost no empirical tests, and those that have been published show it to detect deception at no better than chance levels (Hollien et al., 2008; Hopkins et al., 2005).

Either polygraph or CVSA may result in false positives, classifying innocents as deceptive. But this may be particularly likely for some suspects. The National Academy of Sciences noted that groups subject to criminal stereotypes are likely to experience identity or "stereotype" threat (Steele & Aronson, 1995) during interrogation or polygraph testing. Since the polygraph relies on indices of arousal and anxiety, such groups may have a greater rate of false positives due to the anxiety produced by this identity threat and the expectation of being viewed (in line with group-based stereotypes) as deceptive or criminal (National Research Council of the National Academies, 2003; see Davis & Leo, 2012, 2016; Najdowski, 2011 for further discussion of these issues). Whether a suspect does fail the polygraph or CVSA, or he is merely falsely told he did so, the "failed" result will further cement his sense of hopelessness, and interrogators will likely refer to

¹ Deborah Davis, Richard A. Leo, Tyler Livingston, and Peter Retrick. *Interrogation and the Sexual Assault Suspect: On the Synergy between Pretext Caller and Police Interrogator*. Univ. of San Francisco Law Research Paper No. 2021-07. Last revised: 30 Jun 2021. pp.17-18.

it throughout the rest of the interrogation as evidence of the suspect's guilt. This situation poses a particularly difficult choice for the defense if the suspect goes to trial after confessing. Whereas polygraph results might be inadmissible if challenged by the defense, the defense ability to explain why the suspect might have falsely confessed is compromised by the inability to explain how the polygraph contributed to the sense of hopelessness for the suspect. If the defense refers to the use of the polygraph to explain why the suspect might falsely confess, the jury will likely be prejudiced by the allegedly failed result.

Though the proposition that sexual assault suspects will experience greater hopelessness in interrogation has not been tested directly, Davis and colleagues (2008, 2010) conducted a series of studies testing the extent to which uninvolved persons might view the situation as hopeless. Research participants first read a police interrogation of a child sexual abuse suspect incorporating common Reid techniques. They then indicated whether the suspect should confess to deliberate molestation, confess to accidental molestation (while sleeping, as suggested by the interrogator), continue talking without confessing, or invoke Miranda rights (and why).

Participants were either asked to assume the suspect was actually guilty or actually innocent. Across studies, 16 to 29% recommended that innocent suspects should falsely confess to have the greatest chance to avoid criminal charges at all or conviction if charged; and up to 57% recommended false confession to get the least serious charges. Most of these recommended falsely confessing to accidental molestation: and, reflecting the proposed sense of hopelessness, the majority suggested the suspect should do so because no one would believe him innocent and it was best to tell the most favorable story about why it happened.

Conceptual priming and context reinstatement: A test of direct and indirect interview techniques.

Dianiska, Rachel E., et al.

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Abstract (English):

Recent findings suggest that priming may be useful for facilitating disclosure in investigative interviews; however, the effects of priming on behavioral outcomes have been mixed. The current studies attempted to replicate the increase in information disclosure when the concept of 'openness' is primed. We assessed the separate and combined influence of context reinstatement instructions and activation of the concept of openness (via lexical primes in Experiment 1, via contextual and embodiment primes in Experiment 2) on information disclosure. In doing so, we introduced a novel paradigm to investigate factors contributing to the elicitation of sensitive personal information that participants provided in written (Experiment 1) or verbal (Experiment 2) form. Participants (Experiment 1: N = 173; Experiment 2: N = 194) completed a checklist of illegal behaviors and misdeeds, then engaged in an unrelated task that was used to administer the priming manipulation (either the concept of 'open' or 'closed,' or a neutral prime). Participants then described a life event related to the most serious illegal behavior to which they had admitted, following either a direct request for information or a context reinstatement instruction. Across both experiments, context reinstatement led to robust increases in information disclosure. Although we failed to replicate prior effects of priming on disclosure, our observed effect sizes fell within the confidence intervals of previous studies. A meta-analytic assessment of priming across the two studies suggested a small but significant increase in information elicitation, suggesting that investigators are best served using evidence-based interviewing tactics during investigative interviews.

Impact Statement:

Public Significance Statement—We examined the separate and combined influence of an interview tactic and a subtle elicitation tactic on the amount of information disclosed during an investigative interview. Subtle tactics, such as displaying a poster in a room or showing words related to the concept of openness, were less effective at facilitating information disclosure than explicitly requiring interviewees to mentally recreate the context of the event (an interviewing tactic known as context reinstatement) prior to providing a statement. Our results suggest that interviewers should prioritize the use of techniques such as context reinstatement that have been shown to be effective in laboratory settings.

Facts only the perpetrator could have known? A study of contamination in mock crime interrogations.

Alceste, Fabiana, et al.

Law and Human Behavior, Vol 44(2), Apr, 2020. pp. 128-142.

Abstract (English):

Objective: This paper examines contamination in interrogations: the process by which an interrogator divulges privileged information to a suspect. Hypotheses: In Experiment 1, we predicted that mock investigators would communicate critical crime details when they interview mock suspects about a crime—and that innocent and guilty suspects alike would later produce confessions that contained these details. In Experiment 2, we hypothesized that observers who listened only to the confessions would exhibit a greater guilt bias than those who also had exposure to the eliciting interview. Method: Experiment 1 (N = 59) used student participants in a mock crime scenario to test whether contamination is natural to communication even in the absence of external incentives. In Experiment 2, MTurk participants (N = 499) listened to audio-clips from Experiment 1 to test whether presenting observers with the full interview decreases guilt ratings for false confessors. Results: Investigators divulged crime information to both innocent and guilty suspects, and even false confessions later included accurate details. Although Experiment 2 observers exhibited a guilt bias, exposure to the interview (not just the confession) attenuated this effect for innocent confessors. Conclusions: The information disclosure associated with contamination is a normal cognitive process that occurs even without external incentives to secure a confession. Experiment 2 showed that seeing contamination in action may decrease judgments of guilt for innocent suspects. Interrogations should be recorded in their entirety to provide fact finders with an objective record of the source of crime details contained within narrative confessions.