Selling Confession[1]

The second broad purpose of interrogation is to sell confession as the way to achieve the best legal and non-legal outcomes. The interrogator misleads the suspect in at least three ways (in addition to exaggerating the strength of evidence): (1) to falsely cast the interrogation as a negotiation in which the interrogator will have significant influence on whether and what charges are filed against the suspect, (2) to minimize resistance to the interrogator by falsely casting him as a benevolent ally, and (3) to offer misleading or wholly false arguments regarding the relative advantages of confession versus denial (Davis, 2010).

To accomplish the first two of these, interrogators are trained to use what we have called the "*sympathetic detective with the time-limited offer*" set of strategies (Davis et al., 2010; Davis & O'Donohue, 2004). These include flattering the suspect, behaving in a very friendly and apparently supportive manner, and telling the suspect that the interrogator would like to help him, but can only do so if the suspect confesses before he leaves the interrogation. Such behaviors are effective in causing the suspect to believe the interrogator can affect the charges against him, and that the interrogator actually wants to help the suspect get the best outcomes (e.g., Davis et al., 2010). These beliefs render the detective more credible and effective when he offers arguments for confession. Building on suspect's perceptions that the interrogator is attempting to sincerely advise the suspect of the best choice, the interrogator then offers information or arguments designed to lower the perceived costs of confession and to raise perceived costs of denial (Kassin & McNall, 1991; Leo, 2020).

To facilitate this process, interrogators are likely to make many suggestions that the consequences of the situation are flexible, that they depend upon whether the suspect confesses, and that worse outcomes will result if he refuses to do so (though this must be done without explicitly threatening harsher outcomes in response to denial or promising more lenient outcomes in response to confession). They might ask the suspect how it will look to the judge and jury if he lies to their face (versus "stands up like a man" and takes responsibility). They might suggest that there are "many ways this can go" or "you are at a crossroads here that will affect the rest of your life."

To lower perceived costs of confession, the interrogator directly states or implies that the interrogator is offering the suspect an opportunity to "help himself" or "*tell his side of the story*." This is accomplished, of course, by confessing. And, this opportunity will increasingly disappear if he continues to deny. The interrogator further states or implies that the incident is not that serious, and that it might not result in any (or very serious) charges: perhaps counseling instead of jail. There are often references to getting the situation "cleared up" and getting the suspect some "help" or counseling. The most common of these strategies is called "minimization" (Kassin et al., 2010) or "theme development" (Inbau et al., 2013). This refers to the practice of suggesting scenarios for how and why the incident occurred that seem to be relatively understandable and appear to "minimize" its seriousness (for example, shooting someone who started a fight versus doing so unprovoked; touching a child's genitals while asleep thinking it was your wife versus doing so knowingly and deliberately).

Interrogation manuals include a large number of suggestions for "themes" to use with suspects for a number of specific crimes, including child and adult sexual assault (Senese, 2005). Use of such minimization themes has been shown to lower perceived consequences of confession (Luke & Alceste, 2020), and to increase the rate of both true and false confession, as well as decreasing

[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.18-19.

their "diagnosticity" (i.e., the ratio of true to false confessions; Horgan et al., 2012; Russano et al., 2005). Pretext callers are also instructed regarding how to use minimization, and can do so quite effectively . . . Both pretext callers and interrogators can also refer to other benefits of confession: such as "getting it off your chest," "doing the right thing," preserving the relationship with the alleged victim or other family members, taking responsibility and looking good to judges, juries, family, friends or others.

Building on theme development and other minimizing messages, the interrogator might use what is called the "alternative question" (Step 7 of the Reid method) when he senses the suspect might be approaching willingness to make an admission. Such a question contrasts a more serious and morally unjustifiable scenario with one that is seemingly less serious and more understandable: "Did you commit this burglary just so you would have enough drug money for you and your buddies, or did you do it to take care of your family and give them the food and shelter they need?" Such contrasts can be effective in eliciting an initial admission (Reid et al., 2013).

Pretext callers and interrogators alike might also use "maximization" - or scare tactics designed to raise the perceived costs of denial (Kassin & McNall, 1991; Leo, 2020). For the pretext caller this often entails threats to terminate the relationship with the suspect, or to inform other friends and family (Livingston et al., 2019). Police interrogators should not make explicit threats of legal consequences, though they sometimes do. Instead, they are trained to imply that the suspect will experience harsher outcomes if he refuses to confess (such as unfavorable judge or jury reactions to lying). The interrogator might also threaten to withdraw his "help" from the suspect.

Together, the many tactics of the interrogator or the pretext caller are often effective in eliciting some form of incriminating statements, admissions, or full confessions. While the pretext caller is limited in ability to cause the suspect to make a coherent, detailed, full confession, the next goal of the interrogator is to elicit a final complete account that includes all elements of the ideal confession.

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The mechanisms of minimization: How interrogation tactics suggest lenient sentencing through pragmatic implication.

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Abstract:

Objective: Minimization is a legal interrogation tactic in which an interrogator attempts to decrease a suspect's resistance to confessing by, for example, downplaying the seriousness of the crime. These studies examined the extent to which minimization pragmatically implies that a suspect will receive a more lenient sentence in exchange for a confession. Hypotheses: Generally, we predicted that participants who read an interrogation with a minimization theme or a direct promise of leniency would mistakenly expect more lenient sentences compared with a control condition if the suspect confessed to the crime. Hypotheses were preregistered prior to conducting each experiment. Method: In 6 experiments (Ns = 413, 574, 496, 552, 489, 839), MTurkers read an interrogation transcript in which the suspect was (a) promised leniency, (b) subjected to minimization, or (c) questioned about the evidence (control). We tested whether warnings about direct promises and minimization induced people to adjust their expectations of sentence severity and also whether a warning could help people better calibrate their sentencing expectations. Results: Moral minimization techniques decreased sentencing expectations after a confession (d =

0.34), by influencing the perceived severity of the crime (d = 0.40). Honesty themes, similar to illegal direct promises, led participants to infer that leniency would be forthcoming in exchange for a confession (d = 0.60). Warnings about leniency repaired sentencing expectations when participants read an interrogation with a direct promise, but were ineffective when an interrogator used minimization. Conclusions: Contrary to the beliefs of American courts, which have allowed minimization but not direct promises to be used in interrogations, minimization does indeed impact sentencing expectations. There may be cause to review the legality of such tactics.