The Effects of Evidence on the Outcome of Interviews with Criminal Suspects

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Research suggests just over half of all suspects interviewed inside the police station will either confess or make damaging admissions. Surprisingly, police interviewing tactics appear to have only a limited effect on the decision making of suspects. Instead, the strongest predictor of a confession is the strength of evidence against the accused. This paper examines the links between strength of evidence and the outcome of interviews. Data is drawn from previously published studies of police interviewing practices in the USA, UK and Australia. This review shows how when evidence is strong prior to questioning, such as a suspect having being found in possession of stolen goods, then confessions are the most likely outcome. However, some apparently strong forms of evidence, such as testimony from police officers, can be used inappropriately making confessions less likely. The findings are discussed in relation to training in investigative interviewing skills and investigative practices. The paper also identifies a need for research into the conditions which give rise to true confessions, as opposed to a contemporary focus on the conditions that can result in false confessions.

Keywords: interrogation, interviewing, confession, evidence

Introduction

The purpose of this paper is to examine how strength of evidence against a suspect in a criminal investigation influences the outcome of interviews with police officers. It will show how different strengths and types of evidence impact on confession rates, highlighting some of the problems police officers face in using evidence in questioning. The focus here is on the use of evidence that has been collected during investigations and excludes the use of false 'evidence' that has been manufactured for the purposes of obtaining a confession. While the use of such deceit is permissible in some countries (including most parts of the USA and Canada), it is strictly forbidden in other countries (including The UK, Australia, New Zealand).

This review brings together data from several countries, including the USA, UK and Australia. Surprisingly, most of the available data is now over a decade old and where more recent data exists, the scale of the studies (sample sizes) and research aims are markedly different from earlier studies. For example, contemporary research on confessions has largely come to focus on how police questioning tactics can generate false confessions (e.g., Kassin, 2008; Kassin, et al., 2010; Kassin & Gudjonsson, 2004). While this is an extremely important topic, it should be recognised that most confessions are (in all probability) true confessions.

Confession Rates

A successful interview is often defined as one in which the end result is a confession (Blair, 2005). Given the apparent importance of confessions in the preparation of cases for court, it is surprising to learn how little information is currently available on how many suspects confess. Further, there is a relatively limited body of empirical

data to explain the factors that impact on the decision making of suspects during police questioning.

The importance of a confession during an investigation is illustrated by the fact that a confession will typically guarantee that a suspect will be found guilty in court, even when that statement is contradicted by forensic evidence such as DNA analysis. For example, Westchester County District Attorney Janet DiFiore (2007) released a report detailing the miscarriage of justice which saw 16 year old New Yorker Jeffrey Deskovic imprisoned for 16 years for a murder he did not commit. In this remarkable report, which bluntly addresses many failings of the criminal justice system, the power of a confession, even in the face of contradictory forensic evidence was highlighted.

‘Detectives testified at trial that Deskovic confessed to committing the crime. But the crime scene DNA evidence introduced at trial proved that the semen recovered from the victim's body was not his. You would expect that DNA would trump a “confession.” But it didn't. The jury gave more weight to an immature and distraught youngster's unrecorded ‘confession’ than to the DNA and other forensic evidence (e.g., microscopic hair comparison).’ (DiFiore, 2007; p.30-31)

Estimating the frequency of confessions can be conducted at either of two key points in the criminal justice system: inside the police station or the courtroom. Estimates based on data from inside the courtroom essentially tell us how frequently prosecutors rely on confession evidence (a key indicator of the importance of confessions). However, cases that reach a court are often those with the strongest evidence, and so the data obtained may over-estimate the actual incidence of confessions.

Consequently, most estimates of the frequency of confessions rely on data from inside the police station.

In the United Kingdom (UK), where by far the largest number of studies on confessions have been conducted, studies show that the percentage of suspects who confess ranges from a low of 55% (Moston, Stephenson & Williamson, 1992; Phillips & Brown, 1998) to a high of 62% (Baldwin, 1993). Data from several other studies have fallen within this narrow range (including, Bucke & Brown, 1997; Moston & Stephenson, 1993a; Evans, 1993; and Pearce & Gudjonsson, 1996). In the USA there have only been two attempts to quantify confession rates. Cassell and Hayman (1996) reported that 42% of suspects made confessions or admissions (the terms are sometimes used interchangeably, but an 'admission' involves typically involves admitting to certain facts, without acknowledging guilt), while comparable data from Leo (1996) suggested a confession/admission rate of 64%. In Australia, Dixon and Travis (2007) provide data on two separate samples of cases (taken from 1997 and 1998-1990 respectively), with one sample giving a confession/admission rate of 76%, while in the second sample the rate was lower, at 46 %. These authors attribute the considerable variation in confession rates to marked differences in offence types (and corresponding severity levels) between the two samples.

Given that some confessions may be false, and also that some denials are truthful, it would be highly problematic to use confession incidence data as a metric of successful interviewing. Further, while police officers might like to believe that the high confession rates reflect some core level of skill in questioning, there is little evidence beyond anecdotal claims to support such a belief. One exception is the study by Leo (1996) in the USA, which found that some interviewing tactics (such as appealing to the suspect's conscience and identifying contradictions in the suspect's

story) were linked to higher rates of damaging admissions. However, other studies (all in the UK) point to quite a different conclusion. Baldwin (1993) examined over 600 recordings of police interviews, finding that persuasive interviewing tactics were rare and when suspects denied the offence nearly 40 percent of those denials went unchallenged. Baldwin reported that suspects maintained their initial position (admission, denial or neither) regardless of how the interview was conducted and that only nine of 20 cases in which suspects changed their story could be attributed to the skill of the interviewer. Similarly, Pearce and Gudjonsson (1996) examined 161 suspect interviews, again finding only a limited range of interviewing skills and that the most frequent police tactic was to rely on evidence in interviewing. More recently, Soukara, Bull, Vrij, Turner and Cherryman, (2009), examined 80 interviews with suspects and they also found that changes from denial to admission were rare and that police interviewing tactics had little impact on the decision making of suspects.

This suggests that while interviews in the USA are characterised by the use of interviewing tactics, and interviews in the UK are characterised by an absence of such tactics, there are only minimal differences in confession rates between the countries. In fact, if we take the confession/admission rate of 42 per cent from Cassell and Hayman (1996) as representative, then the confession rate in the USA is far lower than that in the UK where it is at least 55 per cent. However, inferences based on these data would be quite spurious given that different sampling techniques and data collection methods (such as how to define a confession) differed widely across all the studies mentioned above.

Strength of evidence and the Outcome of Interviews

The suspect's decision to confess during questioning by police may be influenced by a range of factors, including the characteristics of the suspect (e.g., age, previous

criminal history), the offence (e.g., type of offence, severity), and contextual factors (e.g., provision of legal advice, presence of support person). While each of these factors may have a bearing on whether or not a suspect confesses, by far the strongest single predictor of a confession is the strength of evidence against the suspect (a contextual factor), a fact that has been demonstrated in studies employing a diverse range of methodologies. For example, in an observational study of 218 cases featuring UK police officers, Softley, Brown, Forde, Mair and Moxon (1980), found that of 37 suspects who were seen taking goods from a store without paying, 28 made a confession. Similarly, from 9 burglary suspects who were detained at the scene of the crime, 7 made a confession Softley et al. wrote that,

‘The usefulness of a confession or an admission to the police depends on the strength of other evidence against the suspect. Where the other evidence is weak, a confession or an admission would enable the police to clear up a crime which would otherwise remain unsolved, but, where the other evidence is strong, the main value of a confession or an admission would simply be to strengthen the case for the prosecution.’ (p.40)

When police officers were asked what they would have done if the suspect had refused to answer questions, officers said that in 56% of cases they would have relied on the evidence already available and in 32% of the cases they said that they would have tried to obtain additional evidence. In only in 8% of cases did officers say they would have dropped the case. Softley et al. thus raised the question of why did police officers question suspects if they had been prepared to rely on the existing evidence? They found that in the majority of cases, the purpose of questioning was, firstly, to decide whether there was sufficient evidence to prosecute and, secondly, to put

together as strong a case as possible for the prosecution. In over 70% of cases police officers believed that the information obtained during questioning would help to secure a conviction if the case went to court.

Softley et al. (1980) concluded that interrogations were not usually crucial in the detection of crime. This assertion was supported by Baldwin and McConville (1980) who looked at the importance of confessions in Crown Court cases heard in Birmingham and London. Baldwin and McConville (1980) asked two independent assessors to evaluate the strength of the prosecution case in some 1000 cases. The assessors felt that in just under a half of all cases the accused's statement had no real bearing on the strength of the case as a whole. However, in about 30% of cases the suspect's confession was seen as crucial. Generally, the assessors thought that in most instances evidence obtained from interrogation either did not strengthen the prosecution case or merely added to an already overwhelming body of evidence.

In another observational study, Moston et al. (1992) collected data on 1067 interviews with suspects conducted by Metropolitan Police officers. This study found that when evidence against a suspect was classified as "weak", confessions were made in only about 10% of cases, with "moderately strong" evidence 36% confessed, and with "strong" evidence 67% made confessions. A similar pattern of admissions was found by Evans (1993) and Cassell and Hayman (1996). Evans found that with weak, moderate and strong evidence, the admission rates were 30.6%, 51.4% and 77.9% respectively. The higher percentage of confessions in cases with weak evidence, relative to the Moston et al. (1992) findings, may reflect a greater tendency towards admissions amongst juveniles, a finding borne out in examinations of cases that reached court (e.g., Baldwin & McConville, 1980) and studies of interviews inside the police station (e.g., Softley et al., 1980).

In both the Moston et al. (1992) and Evans (1993) studies a three level evidence classification system (weak, moderate, strong) was employed, with the interviewing officers recording these data onto survey instruments attached to custody records. Cassell and Hayman (1996) used a four part classification (weak, moderate, strong and overwhelming).

One limitation of these systems is that the assessments are essentially subjective and not reflective of the dichotomous decision of whether or not there is sufficient evidence to charge. Consequently, in a large scale observational study featuring over 4,000 suspects in the UK, Phillips and Brown (1998) adopted a two category assessment of strength of evidence. In this study police officers were asked: “Did you consider the evidence on arrest was sufficient to charge?” Despite the problems inherent in such a question (any response other than “Yes” might be legally problematic since under the Police and Criminal Evidence Act police officers may only arrest a person when they have reasonable grounds for suspicion that an offence has been committed), which the authors fully recognised, 30% of arresting officers said that they felt there was insufficient evidence to charge.

Interestingly, there were marked variations in responses to this question by type of offence. For example, percentages of cases in which arresting officers said there was sufficient evidence to charge, ranged from high of 100% in cases of prostitution, to a low of 32% in cases of robbery. Data for other offences includes: sufficient evidence to charge in 84% of shoplifting and public order offences, 62% for criminal damage, 49% for sexual offences, and 42% for burglary. Phillips and Brown suggest that cases involving eyewitnesses “tended to be seen as providing strong evidence of guilt” (p.44). While their data did not permit drawing any definitive conclusions, Phillips and Brown speculated,

‘The reason why the proportion of burglary and robbery cases in which there was felt to be sufficient evidence to charge was relatively low may also be related to the kind of evidence typically available in such cases. In particular, there may be problems with the quality of identification evidence from independent witnesses. There may also be difficulties in linking suspects to offences where the evidence consists of the possession of items such as suspected stolen goods or tools for use in the course of burglary, for which there may be innocent explanations.’ (p.44)

This observation raises an interesting and important question: are certain forms of evidence more closely linked with confessions than other forms of evidence? For example, is evidence from an independent eyewitness more likely to result in a confession than say, evidence from another suspect?

Form of Evidence and the Outcome of Interviews

In the study by Moston and Stephenson (1993a), at several key points in the investigative process police officers were asked to complete a questionnaire about the case, including the types of evidence against the suspect at the time of arrest and at the time of charging. Forms of evidence included ‘direct evidence’ (such as being found in possession of stolen goods), and statements from several different sources, including victims, independent witnesses, police witnesses, informants and other suspects. The results showed that the most common forms of evidence against suspects at the time of arrest were direct evidence (37% of cases) and eyewitness statements (29% of cases). On average, there were approximately 1.5 different types of evidence against each person. In a large number of cases (54%), there was only one form of evidence against the suspect.

Moston and Stephenson (1993a) statistically examined the effects of a variety of case characteristics (including form of evidence, age of suspect, criminal history, etc) on the outcome of interviews. This showed that confessions were linked to the presence of direct evidence (75% of suspects confessed when such evidence was available). The high confession rate associated with direct evidence is unsurprising since, for example, being found in possession of stolen goods, would typically constitute 'strong' evidence against the suspect. Confessions are then quite likely because (a) the suspect is aware of the evidence against them, and (b) the police interviewer is in a good position with evidence to support their questioning of the suspect. This may allow a greater range of interviewing techniques and strategies, which may have a bearing on the outcome of the interview. However, as suggested earlier, there is surprisingly little research to support the view that confessions arise as a result of the adoption of interviewing strategies (e.g., Baldwin, 1993; Moston and Stephenson, 1993b; Soukara et al, 2009), with confessions typically being made at the outset of an interview and denials rarely ever withdrawn. Consequently, it seems more likely that the suspect's perception of the evidence against them is the strongest predictor of the outcome of an interview. With direct evidence the suspect will know that their denial will lack credibility, but with statements from witnesses or victims, there is always scope to suggest that the person could be mistaken (Moston and Stephenson, 1993b).

Moston and Stephenson (1993b) noted that in their total sample, 14% of suspects exercised their right to silence at some stage. With one exception, there was no link between form of evidence and silence. With the evidence of a police officer as the only form of evidence, 22% of suspects used their right to silence. This result suggests that with the evidence of police officers, suspects may be reluctant to suggest

that this type of witness could be wrong. Instead, they use their right to silence to avoid the potential problems that might arise from suggesting that a police officer might be either mistaken, or lying.

In a relatively rare study, Skolnick & Shaw (2001) compared the effectiveness of two different types of evidence (eyewitness testimony and physical evidence) on mock-juror decision making. The mock-jurors were more strongly influenced by the physical than the eyewitness evidence, and also more by strong as opposed to weak evidence. Interestingly, combining two forms of 'strong' evidence was no more effective than strong evidence of either type. The authors suggest that "prosecutors need only concentrate on their strongest type of evidence, whereas defense attorneys must be concerned about refuting both" (p.629). Future research looking at how jurors respond to different forms of evidence would thus appear to be an interesting line of inquiry.

The Use of Evidence in Interviews

Moston et al. (1992) suggested that the objective amount of evidence against a suspect is possibly of less importance than the suspect's perception of that evidence. That is, if evidence is strong (such as a video recording of a theft) but the suspect believes that it is weak (the suspect believes they were not seen), a confession is probably unlikely. Conversely, if the evidence is weak but the suspect perceives it as strong, then a confession may be more likely. This point has subsequently been borne out in several studies using a diverse range of methodologies. For example, in an interview study, Gudjonsson and Petursson (1991), asked 74 prisoners about their reasons for confessing. The most commonly stated reason was a belief that the police would be able to prove that person's guilt. In a simulated interrogation by Kassin and Kiechel (1996), suspects (university students) were more likely to falsely confess when

confronted with evidence of a transgression that had not in fact occurred (a witness stated that she seen the suspect commit a forbidden act – hitting the ALT key on a computer), as compared to a condition in which the witness stated that she had not seen what had happened. Similarly, in a mock-suspect study by Kebbell, Hurren and Roberts (2006) suspects were less likely to confess when confronted with a statement containing some inaccurate eyewitness evidence, compared to another comparable statement without any such inaccuracies.

Form of evidence is closely associated with strength of evidence. It appears that in terms of its links to the outcome of interrogations, direct evidence would generally constitute ‘strong’ evidence, statements from witnesses and victims, as well from other suspects, would be ‘moderately strong’ evidence and circumstantial evidence ‘weak’. As suggested earlier, objective strength of evidence is less important than the suspect’s perception of the evidence. With direct and circumstantial forms of evidence as the only evidence against the suspect, the outcome of interrogation is generally highly predictable, with confessions and denials being most closely associated with each respective form of evidence.

With witness statements (witness, victim, police officer, or other suspect), the outcome of interrogation is harder to predict. In such cases the suspect who denies the accusation must refute the testimony against them by discrediting the witness’s testimony. In the case of independent witnesses and victims this is relatively easy to attempt, with suspects typically suggesting that the witness is simply mistaken, or in the case of other suspects, that the other person is lying (Moston & Stephenson, 2009). With evidence from police officers, the suspect is placed in an altogether more awkward position. The suspect has to suggest to one police officer (the interviewer) that another officer (the officer who witnessed the crime and presumably made the

arrest) was mistaken. This challenge to police authority is unlikely to boost the credibility of the suspect.

Suspects are generally reluctant to directly accuse anyone of lying, resulting in statements that inevitably reduce the credibility of the accused. For example, if the suspect disputes the statement of another person, interviewers typically ask “Then is this person lying?” to which the suspect typically replies, “Well, I’m not saying that”. Given that police officers generally start interviews with the presumption that the suspect is guilty (Stephenson and Moston, 1993; Weber, 2007), the interviewing officer will typically categorise the witness’s statement as truth, the suspect’s denial as deceit.

While some research suggests that the importance of evidence obtained through questioning is often overstated (Baldwin and McConville, 1980; Softley et al., 1980), it is nevertheless a core aspect of case construction. Evidence obtained through questioning is the most commonly used form of evidence when charging suspects, highlighting issues concerning the need for interviewing techniques that elicit accurate information. An issue for further investigation is the way in which different forms of evidence shape the expectations and assumptions of interviewing officers. With an initial presumption of guilt being made by most interviewing officers, it is probably the case that statements (from any source) may be being treated as relatively objective and unambiguous. If an interview with a witness is unreliable, this will inevitably distort the investigative process. There is thus a need to ensure the accuracy of information obtained from witnesses, just as with suspects.

Conclusions

Confessions by suspects have long been a key component in the successful prosecution of criminal suspects. Given this undoubted importance, it is extremely

surprising to learn how little we currently know about how often suspects confess and the factors that influence this decision. There are two probable explanations for this situation.

First, research and policy on police interviewing largely centres on the problem of false confessions, rather than that of true confessions. This is considerably more than an issue of semantics, with a focus on one (or the other) of these topics being associated with widely divergent world views, research methodologies and social agendas.

Second, determining why a suspect has confessed requires an understanding of the interplay of a wide range of interacting variables. However, training in interviewing skills is largely based around the core belief that police interviewing tactics are the primary driver of confessions, a view supported by case studies and anecdotes. While such data can be highly compelling, it is highly misleading. In the vast majority of cases police officers have only a limited bearing on the outcome of an interview. However, this is not to suggest that training in interviewing skills is futile. Training is required to counter the many myths of interviewing that pervade police culture (such as the ability to detect deception), and to ensure that correct interviewing protocols are adhered to. Further, skilled questioning need not necessarily involve psychological coercion or manipulation. It may be that organised and systematic questioning, covering all necessary legal requirements to establish guilt, are included in an interview. A confession should include details that show that the suspect is clearly the person who committed the offence, displaying knowledge that only the offender should logically possess, and not merely a statement such as “I did it”, accompanied by placid agreement with the interviewing officers assertions about how and why the offence occurred.

Despite considerable initial reluctance by many police officers, the video recording of police interviews is now mandatory in many countries (such as the UK and Australia), and has been for many years. Surprisingly, initial resistance quickly faded as the many benefits of the use of such technology became evident, such as a reduction in complaints of police coercion or ‘verballing’ (Dixon & Travis, 2007). Video records of interviews with suspects, coupled with core case information, can be a powerful source of data on how and why suspects confess. That such research is now relatively rare is a poor indictment on modern policing research. Systematic data analysis is needed to replace an over-reliance on anecdotes and tradition. Further, such data can inform new training initiatives and investigative practices. To facilitate such initiatives policing researchers (and practitioners) need to adopt a consistent set of definitions and protocols for data collection, including clear definitions of key terms such as ‘strength of evidence’.

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