Chapter One

The Psychology of Suspects’ Decision-Making during Interrogation

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Introduction

A number of studies carried out in the social sciences show that human behaviour can be significantly influenced by a multitude of factors. Publicity is a good example. To influence people’s consumer practices, advertisement agencies will study the name of a product, a slogan, etc. to make sure that the consumer will choose this product rather than another one. This works very well and is influential, as shown in numerous research studies on the subject (see Gouldner, 1960; Cialdini, Vincent, Lewis, Catalan, Wheeler & Darby, 1975; Ury, 1991).

The parallel with police interrogation is fairly easy to make. With different strategies, the investigator tries to influence the suspect’s decision, first to get the suspect to collaborate and then to confess, in spite of the stakes involved and the consequences related to a confession.
In this chapter, we shall describe the major factors – individual, criminal, contextual – that can influence a suspect’s decision whether or not to confess to his or her crime. We shall examine more closely the influence of contextual factors, since recent research suggests that these are the most influential regarding the decision-making process. Amongst those contextual factors are the caution (the right to remain silent and to have an attorney), the perception of the strength of the available evidence and the interrogation/interview techniques. We shall conclude with a reflection on some of the interrogation methods currently used in North America, particularly on their effectiveness and on the controversy related to the use of such techniques.

The decision-making process

Every person interrogated by the police for a crime they have committed will find themselves in a very complex decision-making process: Should I talk or remain silent? Tell the truth or lie? Will a confession help or harm my defence? This decision-making process, which begins even before the interrogation, will be influenced by a variety of factors. Some authors have contended that the decision to confess or not is taken as soon as or before the interrogation begins and that persuasive methods have little influence on the decision, with some even concluding that such methods are pretty much useless, or at least not essential to obtain a confession (Irving & McKenzie, 1989; Moston, Stephenson & Williamson, 1992; Baldwin, 1993; Evans, 1993; Pearse & Gudjonsson, 1996; Pearse, Gudjonsson, Clare & Rutter, 1998; Bull, 2006).

Inbau, Reid, Buckley & Jayne (2001) contend that the vast majority of suspects initially intend to deny their involvement in the crime but, during the interrogation, thanks to the techniques used by the investigators, a high percentage of them change their mind and confess. In a recent study, we found that 25% of convicted people admitted that they changed their initial position during the interrogation. However, among these, almost half (46%) said they initially intended to confess but later changed their mind (Deslauriers-Varin & St-Yves, 2006). This shows that the decision-making process can be influenced either way. Deslauriers-Varin (2006) also noted that 43.5% of people who confessed their crime to the police said that they were ready to do so at the beginning of the interrogation. As for the others who confessed, 31.5% clearly stated that they were not ready to do so at the beginning of the interrogation. Why did they change their mind? Was it the influence of their attorney? The quality of the evidence? The attitude of the investigator?

Influencing factors on the decision-making process

In the following section, we describe the major factors that are likely to influence the decision to confess or not to the police. The few studies that have
been carried out regarding factors associated with confessions can be classified in three categories: (i) individual factors; (ii) criminal factors; (iii) contextual factors (Gudjonsson, 2003; Kassin & Gudjonsson, 2004; St-Yves & Landry, 2004). First, we briefly describe individual and criminal factors, and then focus on contextual factors, given that these are the only factors on which police officers can have an influence during the interrogation.

**Individual factors**

A number of individual factors have been examined in relation to confessing during police interrogations. Although most studies carried out on the factors influencing the decision-making process of a confession obtain contradictory results, it is possible to establish general trends.

**Age.** Suspects under the age of 21 confess more often than do older suspects (Baldwin & McConville, 1980; Softley, 1980; Pearse et al., 1998; Phillips & Brown, 1998). This may be explained by the fact that the younger ones do not understand their rights as well as older suspects and thus are less likely to invoke them (Baldwin & McConville, 1980). Other studies emphasize the significant influence that the pressure associated with the interrogation can have on young suspects. Being less mature, they probably have more difficulties facing such a situation and understanding all its implications (Singh & Gudjonsson, 1992). However, when included in a logistic regression model, age of suspect does not seem to have a significant impact on their decision-making process (Pearse et al., 1998; Deslauriers-Varin, 2006). Also, some studies have not found a significant relationship between age of suspect and tendency to confess (Neubauer, 1974; Mitchell, 1983; Leo, 1996; St-Yves, 2002).

**Ethnic origin.** Caucasian suspects are, according to some studies, more inclined to confess than are other ethnic groups living in the same country (Leo, 1996; Phillips & Brown, 1998). The difference between Caucasians and other ethnic groups seems even more significant for sexual crimes (St-Yves, 2002; 2006b). Two factors could explain such differences: (i) cultural and religious differences; and (ii) in most studies the police interviewers were predominately white. However, other studies have not shown a significant relationship between ethnic origin and confession rates (Wald et al., 1967; Pearse et al., 1998). Phillips & Brown (1998) have suggested that the relationship between ethnic group and confession may be modulated by other factors such as age, criminal background and strength of evidence.

**Feeling guilty.** According to Berggren (1975), confessing can provide suspects with sense of liberation which has a cathartic effect. Indeed, studies have found that feeling guilty leads to confessing during police interrogation (Gudjonsson & Petursson, 1991; Gudjonsson, 1992; Sigurdsson & Gudjonsson,
According to the final prediction model of a recent study, from all the individual factors included, only feelings of guilt significantly predicted confession during a police interrogation (Deslauriers-Varin, 2006). According to the same study, suspects reporting feelings of guilt regarding the crime were 50% more likely to confess than those not reporting such feelings. The first explanatory models of confession have in fact emphasized the role of the feelings of guilt in the decision-making process of confession, arguing that the internal pressures often pushed the suspect to confess to ease their guilt (Horowitz, 1956; Reik, 1973; Gudjonsson, 1992). This significant relationship between feelings of guilt and confession probably explains why some police officers use tactics such as appealing to the suspect’s conscience and offering him or her moral justifications and excuses (Leo, 1996). Indeed, shouldn’t we consider the feeling of guilt as a contextual rather than an individual factor?

**Personality profile.** Extroverts, such as the antisocial and narcissistic, are less likely to collaborate and tend to resist more during police interrogation than do introverts (Gudjonsson & Petursson, 1991; Gudjonsson & Sigurdsson, 1999; Bernard & Proulx, 2002; St-Yves, 2002; 2004c). This could be explained by the notion that introvert personality profiles are more likely to experience remorse and feelings of guilt with regard to their crime (St-Yves, 2004d). In addition, people with an extrovert personality profile do not seem to confess their crime for the same reasons that introverts do. The former group, having none or little remorse, have a greater tendency to give way to external pressure – interrogation techniques and strength of the evidence – while the latter are more likely to give way to internal pressure, especially guilt and remorse (Eysenck & Gudjonsson, 1989; Gudjonsson & Sigurdsson, 1999; St-Yves, 2002; 2004b).

**Criminal background.** Some authors have suggested that people without a prior criminal background are more inclined to confess their crime than those who have been arrested in the past (Neubauer, 1974; Pearse et al., 1998). Leo (1996) explains this relationship by suggesting that people more familiar with the police environment and interrogation techniques are more inclined to invoke their legal rights and, therefore, not to collaborate with the police. On the other hand, some researchers found a positive relationship between having a criminal background and the rate of confession (Baldwin & McConville, 1980; Mitchell, 1983), while yet others did not find any significant relationship (Moston et al., 1992; Phillips & Brown, 1998; St-Yves, 2002; Deslauriers-Varin, 2006; Deslauriers-Varin et al., 2009). A study by Moston and colleagues (1992) demonstrated that the connection between criminal background and confession might be modulated by the quality of evidence possessed by the police at interrogation. When evidence was strong, suspects without a
criminal background were more likely to confess their crime (78% vs. 59%) than were those with criminal backgrounds.

**Criminal factors**

Two criminal factors especially have attracted researchers’ attention: the nature and the seriousness of the crime.

**Nature of crime.** Some authors have noted a difference in the rate of confession depending on the type of crime, especially when comparing non-violent and violent crimes. Neubauer (1974) observed that those who committed a non-violent crime were twice as likely to confess than those who committed a violent crime (56% vs. 32%). For some, the most difficult type of crime to confess to is sexual crime (Holmberg & Christianson, 2002; St-Yves, 2002; 2006b). This could be explained by the negative perception (e.g., shame, rejection, humiliation) associated with this type of crime. However, other studies have found no significant relationship between the type of crime and confession rate (Moston et al., 1992; Deslauriers-Varin, 2006, Deslauriers-Varin et al., 2009). Moston et al. (1992) contended that prior research looking at the possible link between the type of crime committed and confession and finding a significant connection used inappropriate methodology. They argued that prior studies had not taken into account the possible interactions between the type of crime committed and situational factors, such as access to legal advice and the quality and/or strength of evidence.

**Seriousness of crime.** It would be logical to think that the more serious the crime, the fewer people will confess because they fear the consequences; more serious crime usually leading to heavier penalties. That is the finding of empirical studies that have examined police interrogations held in various police departments (Neubauer, 1974; Moston et al., 1992; Phillips & Brown, 1998; St-Yves, 2002). However, Moston et al. (1992) stress that the influence of other relevant variables, such as the more frequent use of an attorney in cases of serious crime, should not be ignored.

In the studies mentioned above, the majority of the individual and criminological factors have not received unanimous support regarding their role in the confession process during police interrogation. Confessing is a complex process which cannot be explained by one factor alone but, rather, by a series of factors that interact. To date, only a few studies have analysed or considered these interactions (Deslauriers-Varin et al., 2009). Studies need to carry out multivariate, rather than bivariate, statistical analyses to check not only the unique effect of each variable but also their interaction with the other factors included in the model, thus helping to get an overall picture of the direct and indirect relationships explaining the decision-making process of confession of a crime.
Contextual factors

Recent studies show that contextual factors have most impact in the confession process of a suspect (Deslauriers-Varin & St-Yves, 2006; Deslauriers-Varin et al., 2009; St-Yves & Tanguay, 2009). The main contextual factors are: the quality/strength of the evidence (real or perceived); access to legal advice; and strategies and techniques of interrogation.

**Quality/strength of the evidence.** Even if the decision-making process of the confession is often affected by a combination of factors (Gudjonsson, 2003; St-Yves, 2004a), the suspect’s perception of the strength of the evidence against him or her is a determining factor in the process of confession. Two-thirds of suspects (66.7%) admitted their crime when the evidence against them appeared strong to them, compared to a third (36.4%) when the strength of the evidence seemed modest, and one in ten (9.9%) when there was little or no evidence (Williamson, 1990). Gudjonsson et al. observed that nearly 70% of people interrogated by police admitted that they would not have confessed if they had not been suspected by police. Of those, between 55% and 60% said that they confessed because they were convinced that police had enough evidence against them (Gudjonsson & Petursson, 1991; Gudjonsson & Bownes, 1992; Sigurdsson & Gudjonsson, 1994). In a study of adult offenders sentenced to a federal term (two years or more), we observed that the rate of confession almost doubled (from 31.4% to 55.6%) when the evidence was perceived by the suspect as being relatively strong (Deslauriers-Varin, 2006; Deslauriers-Varin & St-Yves, 2006). In a logistic regression model, the suspects perceiving the strength of the evidence against them as good were three time more likely to confess during police interrogation (Deslauriers-Varin et al., 2009). The explanation is simple: in the face of overwhelming evidence, denial is useless. For the suspect, there are only two possible choices: to remain silent or to give a version that will give him or her an opportunity to explain (while minimizing) his behaviour and/or ‘save face’.

**Access to legal advice.** The official caution can influence the decision to confess or not to the police. In Canada, the caution is made to any person in custody, arrested or not, and interrogated for a crime he or she is likely to be implicated in. And contrary to the practice in the USA and the UK, Canadian law does not recognize the moral necessity for the attorney to be present in the interrogation room; it only recognizes the right to inform the suspect of his or her right to remain silent and to contact an attorney immediately, usually by telephone. However, in accordance with the law on judicial procedures for teenagers, there is an exception when the person interrogated is aged between 12 and 18. However, it is left to the discretion of the police officer whether to allow the attorney to be present during the interrogation. In such a case, the attorney would become a witness and could be summoned as such if the statement is disputed and a *voir dire* becomes necessary. Beyond the caution,
police officers will generally insist that the suspect contacts an attorney and will make sure that this strictly confidential conversation is entirely satisfactory to the suspect. Usually, the attorney will recommend that his/her client remains silent during the police interrogation. Sometimes, the attorney will even describe to the client the usual process of police interrogation and the most frequent strategies used by police officers to persuade suspects to confess.

If the perception of the strength of the evidence is a major determining factor in the decision to confess, availing oneself of the right to contact an attorney seems to be the factor that might best explain why some suspects do not confess or refuse to cooperate with the police (Moston, Stephenson & Williamson, 1992; Leo, 1996; Phillips & Brown, 1998; Deslauriers-Varin et al., 2009). Moston et al. (1992) found in their study that one suspect in two (50%) who did not consult an attorney confessed compared to 30% of those who did. Pearse et al. (1998) and Phillips & Brown (1998) found that suspects who used their legal right to contact an attorney were four times less likely to confess to the police. The results recently obtained in a predictive model of confession make it possible to quantify the actual impact of this factor: access to legal advice reduced by 83% the odds of confessing (Deslauriers-Varin, 2006). This seems to confirm the perception of some police officers, who believe that suspects’ access to an attorney is an impediment to their cooperation (Leiken, 1970; Walsh, 1982). However, Moston et al. (1992) observed that those choosing to remain silent are more likely to be sentenced than those who deny their crime during interrogation. Thus, remaining silent is not always an advantage.

Interrogation strategies and techniques. The literature promoting various interrogation techniques is abundant. Kalbfleisch (1994) reviewed more than 80 books on the subject, the majority of them from the USA. Most of these, written by experienced investigators (see Macdonald & Michaud, 1987; Zulawski & Wicklander, 1992; Walters, 1995; Inbau et al., 2001; Gordon & Fleisher, 2002), aspire to give techniques to police officers to obtain confessions. The most popular interrogation technique, not without controversy, is the Reid technique (see www.reid.com). According to the Reid Institute, this method, developed in the 1950s and first published in the 1960s, would be effective 80% of the time. However, Gudjonsson (2003) doubts this high success rate. In fact, confession rates found in North American studies, where most of the investigators were trained in the Reid (or related) technique, normally range between 42% and 57% (Neubauer, 1974; Leo, 1996; Cassell & Hayman, 1998; St-Yves & Lavallée, 2002; Deslauriers-Varin & St-Yves, 2006). Moreover, the mean confession rate (50%) has been relatively stable for the last 40 years (Gudjonsson, 2003).

The actual effectiveness of various interrogation techniques is difficult to measure. In a North American study, Leo (1996) demonstrated that the quantity and the nature of strategies used by police officers during interrogation influenced the rate of confession. Other than the use of a variety of
interrogation strategies, appealing to the suspect’s conscience is the technique that seems to have the greater influence on the confession process (Leo, 1996). Other strategies, such as identification of the contradictions in the suspect’s denial and statement, using praise and flattery, then allowing the suspect to ease his guilt and justify himself, while giving him moral justifications or psychological excuses, have also shown their effectiveness (Leo, 1996). This is not surprising since those methods are inspired by factors – especially contextual ones – that favour confession.

Everyone interrogated by police for a crime that they have actually committed lives with fear with regard to the consequences of their actions. These stakes can become major obstacles that can hinder the confession process. The role of the police officer will thus be to overcome these obstacles by stressing the main facilitating factors, such as the quality/strength of the evidence (which police officers do not always have) and internal pressures (guilt, remorse). Despite all the efforts to obtain a confession and in spite of (sometimes) overpowering evidence, some people continue to deny or do not confess. The major reason is probably fear of the consequences. Two major types of consequences inhibit confession: real consequences and personal consequences (Gudjonsson & Petursson, 1991; Gudjonsson & Bownes, 1992; Sigurdsson & Gudjonsson, 1994). These inhibiting factors can obstruct the confession process and help explain why, even though they have remorse and think that police have enough or strong evidence against them, suspects can still decide to deny their crime or to remain silent.

We call *real* consequences all concrete consequences that can happen or worry a suspect while being interrogated for a crime he or she has committed. Amongst the most usual real consequences, there is the fear of penal sanction (Gudjonsson, 2003). Among people with no prior involvement with the criminal justice system, there is the fear of getting a criminal record and, especially, facing the consequences of this, such as losing a job or having difficulty finding employment. The fear of legal sanctions is associated with loss of freedom (imprisonment) and, in certain countries, with the death penalty. By confessing their crime, certain suspects also fear the consequences they will have to undergo if their statement incriminates others. Such consequences can become more undesirable for the suspect than the penal sanction.

Amongst other probable consequences, there is the fear of losing loved ones (spouse, children, family, friends). This fear is greater for individuals suspected of a sexual crime, as well as the fear of losing their job, especially if the crime has been committed at the place of employment. There are also financial losses, in particular regarding arson or major fraud. These consequences are potentially real – this is the reason why they can inhibit the confession process – but they are never immediate. Suspects can hope that their spouse will understand, that the boss still needs them, that the judge will show clemency. Sometimes, while discussing these fears with the suspect, the investigator can moderate their inhibiting influence. However, the investigator cannot use promises or
threats to reduce these inhibiting factors. The illusion of promises/advantages or threats raises reasonable doubt regarding the free and voluntary nature of the subsequent statement and the true culpability of the accused (see St-Yves, in press).

Personal consequences are often feared more than judicial consequences because they are immediate and touch on integrity and self-esteem. As soon as suspects confess, they lose dignity and respect, initially from the self and then from people whom they care about. This is particularly true with sexual crimes (Holmberg & Christianson, 2002). To mitigate the influence of these inhibitors, the investigator often uses valorization or focuses on certain defence mechanisms, such as minimization, projection and rationalization. However, sometimes the investigator becomes an inhibiting factor because of his or her attitude (St-Yves, 2004b; 2006a).

Some recent studies have shown the importance of the quality of the interviewer–interviewee relationship for the outcome of an investigative interview, including the one made with the suspect. The preliminary steps that we can find in most interrogations conducted in North America are used not only to evaluate the conscious state of mind of the subject (‘operating mind’), in particular his aptitude to be interrogated by police, but also to establish a trustful relationship with the suspect thus facilitating his or her confession. Indeed, active listening, empathy, openness, respect and the desire to discover the truth, rather than to try at all costs to obtain a confession, are, we contend, the essential qualities for carrying out investigative interviews (Shepherd, 1991; Williamson, 1993; St-Yves, Tanguay & Crépault, 2004; St-Yves, 2006a).

Are all interrogation techniques and strategies acceptable?

Although strong evidence is a determining factor in the confession process, police officers often do not have strong enough evidence. Certain studies have revealed that technical evidence (fingerprints, DNA, etc.) is only available in 10% of cases (Bottomley & Coleman, 1980; Horvath & Meesig, 1996). Instead, much of the available evidence usually rests on statements, including that given by the suspect.

Is it acceptable to use strategies and ruses to obtain a confession? This question raises legal considerations (e.g., what is allowed by law in various countries?) and ethical considerations (i.e., what is morally acceptable?). This is a subjective question that cannot be disassociated from the cultural and judicial context in which the interrogation is conducted. In certain countries, torture is common and legal. Furthermore, the perception and tolerance that the population can have towards certain interrogation methods is probably closely associated with the nature of the crime. The context can also influence the
way interrogations are conducted. The war on terrorism has militarized crimi-
nal justice systems and changed the rules: ‘Suspects are interrogated by military
in ways that would never be accepted by the ordinary courts with criminal
suspects’ (Williamson, 2006: 5).

In Canada and the USA, tribunals accept the use of certain strategies and
persuasive methods (see R v Oickle [2000]). The Supreme Court of Canada
offers support for the investigator’s need to be less than truthful during an
interrogation. It referenced the often cited decision of Justice Lamer, who
wrote that a criminal investigation and the search for criminals is not a game
that has to follow the Queensbury rules (introduced in the nineteenth century
to govern the rules of boxing and make it safer):

The investigation of crime and the detection of criminals is not a game to be
governed by the Marquis of Queensbury rules. The authorities, in dealing with
shrewd and often sophisticated criminals, must sometimes out of necessity resort
to tricks or other forms of deceit and should not, through the rule, be hampered
in their work. What should be repressed vigorously is conduct on their part that
shocks the community. (R v Rothman [1981])

To free guilty suspects because there is insufficient evidence or because the
confession is inadmissible in court may be shocking to the community.
However, the former is the outcome in almost a third of investigations (Irving
& McKenzie, 1989; Moston et al., 1992; Leo, 1996).

The Reid technique has been criticized by many over the decades, especially
because it is said to be responsible for false confessions which can lead to
miscarriages of justice. However, in Canada, where most police departments
use the Reid (or a related) technique, miscarriages of justice linked to inter-
rogations are few. Furthermore, when they do happen, they are often linked
to other factors such as misidentification, insufficient expertise and police
misconduct. The rare recorded miscarriages seem to be attributed to long
interrogations where the questions were repetitive and very suggestive. Most
of the time, a confession is deemed inadmissible because it has been obtained
in an illegal or unethical manner rather than because it is false (St-Yves, in
press). Sometimes, however, the method of questioning can be too suggestive
and can corrupt the truth and lead to false a confession. The lack of objectivity
– commonly known as tunnel vision – and an unprofessional attitude are other
factors that we often find when such mistakes occur (FPT Heads of Prosecutions
Committee Working Group, 2004).

One of the best ways to control abuses and misconduct is, without doubt,
the audiovisual recording of the interrogations and the sensitization of police
officers to the potential risks – especially the risk of obtaining a false confession
– associated with certain strategies and interrogation techniques; more
specifically, when the person being interrogated is mentally vulnerable (mental
health problems, limited intellectual ability) (see Kassin & Wrightsman, 1985;
Gudjonsson, 2003).
In Canada, the audiovisual recording of interrogations is not limited to the suspect’s final statement (recapitulation of the confession on video), but includes the whole interrogation, from the caution to the end of the interrogation. In addition, to preserve a verbatim record of the interrogation, the use of the audiovisual recording stimulates investigators to produce better quality interrogations while protecting them from unjustified accusations (Pitt, Spiers, Dietz & Dvoskin, 1999). The audiovisual recording provides an objective file the judge can use to decide on the free and voluntary character of a confession and the circumstances in which it was obtained, as well as its contents, instead of relying on the subjective and interested claims made by the protagonists. It thus acts as an excellent way of preventing miscarriages of justice. It also acts as the most faithful witness of the interrogation process (St-Yves, 2004c).

Conclusion

The decision-making process during police interrogations can be influenced by numerous factors. But it is the contextual factors that seem to have the most impact on the suspects’ decision-making process and, moreover, on which police officers have a potential influence. Amongst these contextual factors, we find the caution (the right to remain silent and to have access to legal advice), the quality/strength of evidence and the strategies and interrogation techniques. It is those interrogation methods that cause much of the controversy, either because they appear coercive, raise doubts with regard to the ‘voluntary’ nature of the confession, or can lead to false confessions and, ultimately, to miscarriages of justice. However, in spite of the risk of miscarriages of justice associated with interviews with witnesses and victims, there is no apparent opposition to the interview methods used to facilitate the mnemonic recall of witnesses. However, training police officers on interrogation techniques and the risks that some of these present, as well as recording the entire interrogation process, are conditions that can considerably reduce the risks and doubts associated with police interrogation. Police training in investigative interviewing is essential to ensure that the techniques used are in conformity with the law and that they exert a positive influence on the result of the investigation. It is also through training that we can recommend rules (see St-Yves, 2006a) and ethical principles (see Home Office circular 22/1992), as well as a philosophy centred on the search for truth instead of the quest for confession. Nevertheless, it is often through confession that we can reconstruct part of this truth.

References


Cases
