3. Use of Physical and Psychological Force in Criminal and Military Interrogations

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Abstract

Interrogation is a process in which the interrogator must induce the person being interrogated to provide statements against his or her own best interest. The goal of a military interrogator is to elicit intelligence from enemy combatants; the goal of a police interrogator is to obtain confessions from suspected criminals. Because of these goals, the interrogation process is inherently adversarial and to some, coercive. In the present chapter, we will discuss the physical and psychological force used in military and police interrogations. In the United States, physical force has been disallowed from police interrogations for more than seventy years. We will discuss the history and rationale behind the abolition of torture and other harsh methods in police interrogations, and discuss modern-day interrogation techniques involving psychological persuasion. We will also address the use of torture in military interrogations. Finally, we will demonstrate how both physical and psychological coercion can result in false confessions or inaccurate information, thereby impeding the goals and ultimate efficacy of the interrogation process.
In 2008, the city of Chicago agreed to pay nearly $20 million to settle a lawsuit against several police officers who had used torture to secure criminal confessions. Ninety criminal suspects had complained of physical abuse at the hands of a “police torture ring” that forced confessions in a series of cases beginning in the 1970s and extending into the 1990s. The abuse tactics described by the suspects included plastic bags placed over the head for the purpose of suffocation, electric shocks to the face and genitals, severe beatings, burning with cigarettes and curling irons, and putting the barrel of a gun in the mouth or against the head. The coerced confessions were used to send eleven men to death row. Four of those men were later pardoned, and seven had their sentences commuted to life in prison (Conroy 2003; Washburn 2007). Although it is still possible to find instances of physically abusive police interrogations in the United States, the direct use of physical force in interrogation is now quite rare (and illegal). Over the past seventy years, police have developed a cadre of psychological techniques to replace the physical techniques that were once a prominent feature of interrogations. To some, these tactics constitute a kind of “psychological force” that is used to induce suspects to confess to crimes.

In this chapter, we discuss the physical and psychological force that can be used in criminal and military interrogations. We address the history and rationale behind the abolition of torture and other harsh methods in police interrogations, and discuss modern-day interrogation techniques involving psychological persuasion - techniques that can lead and have led to false confessions and wrongful convictions of innocents. Finally, we provide an overview of police interrogation policies in countries other than the United States.

**Physical Force in Interrogations**
The interrogative techniques of law enforcement in criminal investigations and military personnel in educing intelligence have some shared aspects, particularly in the tactics themselves (Redlich 2007). However, one crucial difference between the two is the permissible use of physical force and even torture as methods of obtaining information. Criminal confessions shown to be obtained via physical force are considered coerced and cannot be used against defendants in court proceedings. In contrast, though highly controversial, torture has been sanctioned by the U.S. government in some military situations.

In 2003, Americans were astonished by photographs of prisoner abuse at Abu Ghraib prison in Iraq. Those photos depicted helpless prisoners subjected to a variety of cruel and humiliating practices by U.S. military personnel. One explanation offered for these abuses was that soldiers had been instructed to “soften up” prisoners for interrogation (Hersh 2004; Scherer and Benjamin 2003). Soon after, allegations of torture surfaced at the U.S. detention facility at Guantanamo Bay, Cuba and at detention facilities in Afghanistan (Amnesty International). By 2005, information had also surfaced about the practice of “extraordinary rendition” whereby prisoners in U.S. custody were transported to “black sites” in countries (e.g., Egypt, Jordan, Morocco, Syria) known to use torture.

In addition to the profound moral and legal issues raised by the use of torture, there is no compelling evidence that abusive interrogations are an effective or reliable method for gaining actionable intelligence. Prisoners may reveal some accurate information in response to the pain of torture, but that information is often conflated with inaccurate or deliberately misleading information (Harbury 2005). For obvious ethical reasons, there is no systematic research on the effectiveness of torture. However, one of the clearest findings from decades of research on the criminal justice system is that the more coercive the interrogation, the greater the risk of a false
confession (Drizin and Leo 2004). The very conditions found to raise the risk of false confession in criminal interrogations – long interrogations, physical deprivation (food, sleep, and water), suspect disorientation and extended isolation, physical pain, explicit threats and promises – are the exact conditions torturers seek to create. Other problems include the difficulty of knowing whether the person being tortured actually possesses useful information, the associated problem of torturing many people who have no information, the enduring negative mental health of torture on victims and perpetrators, and the complication that those with the most critical information are the least likely to succumb to torture (Costanzo and Gerrity 2009). There are also political consequences. The use of torture by the American military undermines the credibility and authority of the U.S. when advocating human rights abroad, lends credibility to the claims of terrorists, creates a recruiting tool for organizations that seek to attack U.S. soldiers and citizens, and may endanger the lives of soldiers who take action based on faulty intelligence gained through the use of torture (Costanzo, Gerrity and Lykes 2006).

Police interrogations have a checkered history in the U.S. At least through the early 1930s, police routinely employed what was called the “third degree” – beating, threatening, and abusing criminal suspects in the pursuit of confessions (Hopkins 1931). It was only after the Wickersham Commission Report in 1931 (National Commission on Law Enforcement and Observance 1931) and several Supreme Court decisions (beginning with Brown v. Mississippi, 297 U.S. 278 (1936)) banning harsh interrogation practices that physical abuse of suspects began to decline. By the 1960s, such abuse appeared to be rare in the United States (Leo 1996). In 1940, W.R. Kidd’s book – Police Interrogation – was published. It became the first police interrogation manual to instruct police in the new, more psychological science of interrogation. By 1942, Fred Inbau had published the first edition of his influential interrogation manual, Lie Detection and
Criminal Interrogation. That manual (now titled Criminal Interrogation and Confessions by Inbau et al. 2001) has been revised and expanded over the course of more than sixty years. The Chicago-based firm, Reid and Associates, transformed these manuals into a training program and, in 1974, began offering seminars to police and security professionals in several countries. More than a quarter million police have now been trained in the “Reid Method” of interrogation. Even interrogators who have not read the manual or taken the training have likely learned components of the Reid Method by observing or working with other interrogators. Research confirms that the Reid tactics, which rely heavily on psychological manipulation, are widely used by detectives in the United States (Kassin et. al. 2007; Leo 1996).

“Psychological Force” in Interrogations

It is an undisputed fact that contemporary interrogation techniques—either police or military—utilize psychological ploys to obtain confessions. Whether standard interrogation techniques constitute “psychological force” is debatable, and in the eye of the beholder. We describe interrogations methods used today, highlighting those methods identified as contributors to false confessions. Our focus is on police rather than military interrogations, because criminal interrogations have been studied to a much greater extent.

In criminal settings, police must inform custodial suspect of their Miranda rights: the right to remain silent, the right to appointed counsel, and a warning that anything they say can be used against them in court (Miranda v. Arizona 384 U.S. 436 (1966)). These warnings, intended to blunt police use of coercion, have much less impact than is commonly assumed. The overwhelming majority of suspects (roughly eighty percent) waive their Miranda rights and submit to interrogation (Leo 2001). Police use a variety of strategies to encourage suspects to waive their rights, including reading the Miranda warnings in a rushed, confusing or perfunctory
manner. These strategies minimize the significance of the warnings and disguise the adversarial nature of interrogation (Leo 2008). In this opening phase, police often present the interrogation as an opportunity for the suspect to “tell his side of the story.” Military interrogations also often begin with an open-ended, “tell us your side”-type question. Specifically, human intelligence collectors, as they are sometimes called, begin with the Direct Approach, which they claim to be effective in eliciting information ninety to ninety-five percent of the time (Redlich 2007).

Skilled interrogators (police or military) are able to reshape a suspect’s perception of the nature of his situation, the choices available to him, and the consequences that follow from each choice. To create the preconditions necessary for this perceptual reshaping, police interview suspects alone, in a room where they control all aspects of the immediate situation. This combination of social isolation and control removes the comfort of familiar surroundings, leaves the suspect without an ally in the room, allows police to make claims that are difficult for the suspect to challenge, and creates anxiety and disorientation in the suspect (Costanzo and Leo 2007). In this isolated, tightly controlled surreal situation, interrogators work to convince the suspect that admitting guilt, or providing coveted information, is the best, most beneficial course of action.

Perhaps the most potent tool that police interrogators have at their disposal is the ability to lie to suspects. Law enforcement is permitted to confront suspects with seemingly objective and irrefutable evidence of guilt -- whether or not such evidence actually exists. Police may pretend to have eyewitnesses, fingerprints, DNA, or videotapes that establish guilt. They may even falsely inform the suspect that he failed a polygraph test. These interrogation tactics are likely to make the distressed suspect believe that he now bears the burden of proving his innocence. After describing the evidence against him, the interrogators typically argue that any
reasonable judge or jury will find him guilty. Military interrogators can also lie, although they have a few specific constraints on what falsehoods are allowed. Although they are allowed to “use the ruses of war” to build rapport, including posing as someone other than him or herself, they cannot pose as (1) medical personnel, (2) a member of the International Committee of the Red Cross or its affiliates, (3) a chaplain or clergyman, (4) a journalist, or (5) a member of the U.S. Congress. These constraints are placed to protect the reputations of the professions listed and not to protect the rights of the source or to guard against obtaining false information (Redlich 2007).

Interrogators work hard to create the impression that confessing or disclosing information will actually improve the suspect’s otherwise hopeless situation. In criminal cases, interrogators may suggest that they will use their discretionary power to favorably influence the suspect’s case. Without making explicit promises, it may be implied that the suspect will be charged with a less serious crime and receive a shorter prison sentence if he accepts responsibility, admits guilt, and expresses remorse (Leo, Costanzo, and Shaked 2009). Interrogators often misrepresent themselves as the suspect’s allies and suggest that they can help the suspect by writing a sympathetic report, by their testimony at trial, by favorable communications to prosecutors, or through their ability to arrange for social services. The “catch,” of course, is that these benefits can only be obtained if the suspect confesses (Ofshe and Leo 1997).

Finally, to further enhance the appeal of a confession, police interrogators suggest honorable or sympathetic reasons why the suspect might have committed the crime. For example, instead of committing a premeditated murder, perhaps the suspect was acting in self-defense, or perhaps he accidentally killed the victim. These “exculpating scenarios” serve to psychologically, morally, or legally justify the crime. Such scenarios are offered to make a
suspect more comfortable with admitting guilt and to demonstrate that interrogators can help him control how his admission is framed for prosecutors, judges, juries, and others. Scenarios help to entice an admission by shifting blame to others, by redefining the circumstances that caused the act, or by redefining the act itself (Leo 2008). Suspects are led to believe that they can mitigate their potential punishment by accepting the exculpatory scenario offered by interrogators.

Modern interrogation is designed to break the resistance of a rational person who knows he is guilty by persuading him that the benefits of confessing outweigh the costs. The presumption is that the suspect under interrogation is guilty and will, at least initially, steadfastly deny guilt. This presumption of guilt should be based on solid evidence. Unfortunately, it is sometimes based on little more than a detective’s intuition. Interrogators may mistakenly evaluate the suspect’s verbal and non-verbal behaviors as indicative of guilt. Once an innocent person has been misclassified as guilty, he is likely to be subjected to psychologically coercive interrogation techniques (Meissner and Kassin 2004). And, because no credible evidence is likely to exist against an innocent suspect, getting a confession may become even more important than usual because police desperately need a confession to build a successful case (Gross 1996).

Most manuals, interrogators, and police trainers claim that their methods only elicit confessions from the guilty (Kassin and Gudjonsson 2004). This is not true. According to the Innocence Project (2007), false confessions/admissions are responsible for about a quarter of wrongful convictions. Also, in recent years, researchers have identified more than 300 proven false confessions that have occurred since the 1970s (Drizin and Leo 2004; Gross et al. 2005). All of these false confession cases involved DNA exonerations or other indisputable evidence of innocence (e.g., the alleged murder victim turns up alive). The central question is not whether
police-induced false confessions occur, but why the confessions occur and how they can be prevented.

False confessions usually occur due to a combination of situational and dispositional factors (Costanzo and Leo 2007; Kassin and Gudjonsson 2004). The situational factors are typically the interrogation techniques themselves: bluffing or lying about evidence, implied threats of punishment or implied promises of leniency, and isolating suspects from friends and family for long periods. A large part of the problem is that the same interrogation tactics that are effective on guilty suspects in generating true confessions can be equally effective on innocent suspects in generating false confessions. This problem is exacerbated by the fact that there is no reliable method to distinguish between guilty and innocent suspects, and that the police tend to be overconfident in their ability to discriminate between the two. In addition, lying to suspects and overly long interrogations have been singled out as particularly egregious tactics that have a higher likelihood of leading to false confessions than other interrogation techniques.

The two most oft-cited dispositional factors identified as contributing to false confessions are juvenile status and mental impairment. Both groups are overrepresented among proven false confessors (Drizin and Leo 2004; Gross et al. 2005). For juveniles, the characteristics that typically define childhood and adolescence, such as impulsivity, inability to consider long-term consequences, and immature development, are the same characteristics that can lead to false confessions (Owen-Kostelnik, Reppucci, and Meyer 2006; Redlich and Drizin 2007). Similarly, persons with mental illness and mental retardation may have deficits in legal knowledge and understanding or may be overly compliant and suggestible, all of which increase their risk for false confessions (Perske 2008; Redlich 2004).
Several reforms have been proposed to reduce false confessions without reducing the number of true confessions. Videotaping of interrogations may be the single most important policy reform available. Videotaping creates an objective, comprehensive, reviewable record of what occurred in the interrogation room, and exposes interrogation practices. Because interrogators know they may be scrutinized, they are less likely to use psychologically coercive or improper interrogation techniques that lead to false confessions (Leo 2008). It is imperative that the entire interrogation should be videotaped; both the suspect and the interrogator should be visible, and the video should carry a time/date stamp (Lassiter and Geers 2004; Leo, Costanzo, and Shaked 2009). At present in the United States, only six states have laws requiring police to record interrogations in their entirety in some or all criminal cases (Sullivan 2004).

Another proposed reform is changing from a guilt-presumed interrogative model to one that is more inquisitorial, and information seeking. As described below, England and Wales have adopted such models. Although this chapter focuses on interrogations in the United States, it is useful to summarize the rules governing interrogations in a few other countries to help contextualize American practices.

**Police Interrogation outside the United States**

In most countries, physical abuse and psychological torture remain standard interrogation techniques (Amnesty International; Conroy 2000). There is, of course, enormous cross-national variation in both interrogation practices and laws governing the conduct of interrogations. Some countries place few restraints on police interrogators while others have established strict procedures for the treatment of criminal suspects. Unfortunately, reliable data on interrogation techniques and criminal confessions are scarce for many countries.
In China, in 1996, it became illegal to use physical coercion to obtain confessions and defendants now have a right to counsel. Research has demonstrated that although confessions are still present in about sixty-six percent of criminal cases, the rate of confessions has decreased since the 1996 rulings (Lu and Miethe 2003). In 1997, Chinese courts ruled that voluntary and sincere confessions made prior to any criminal investigation could serve as a mitigating factor in sentencing decisions. Although torture had already been ruled illegal, it was not until 2005 that courts decided that confessions extracted through the use of torture or coercion should not be admissible as evidence. It was also held that suspects must be questioned by prosecutors to assure they were not ill treated by authorities. Finally in 2006, China ruled that all interrogations for job-related crimes must be videotaped to protect against coercion and corruption. Although coercion persists, these legal changes indicate strong moves toward protecting defendant rights (Russ 2005).

In Japan, torture is rarely reported, with figures decreasing yearly (U.S. Department of State 2005a). Nonetheless, some criminal justice practices exert psychological pressure on suspects that likely elicit false confessions (Johnson 2002; Leo 2002). For example, suspects may be held for up to twenty-three days prior to indictment and are unlikely to receive bail if they maintain their innocence or remain silent (Foote 1992). Further, although the law offers suspects the right to counsel, prosecutors can limit access to an attorney prior to indictment (U.S. Department of State 2005a). If suspects are unable to afford a lawyer, they may not receive one until after their indictment, although the relatively new “duty lawyer” system is increasingly giving suspects access to attorneys. Finally, the right to remain silent carries with it a duty to endure questioning. Concerns have been raised, because approximately ninety percent of suspects in Japan offer confessions of guilt (compared to around sixty-five percent in the U.S.)
(Ramseyer and Rasmusen 2001). This high rate of confessions probably results from a combination of cultural expectations, police pressure, and/or a tendency to prosecute only cases where there is already strong evidence against the defendant (Johnson 2002).

In Mexico in 1991, amid several scandals involving torture-induced confessions, laws were changed to prohibit the use of torture and to prevent confessions obtained through the use of torture from being admissible in federal court. However, these laws did not appear to curb the use of torture during interrogations, and confessions remained the primary evidence in most cases (U.S. Department of State 2005b). In 1995, the Supreme Court of Mexico held that confessions had to be corroborated by additional evidence to prove guilt. Unfortunately, judges did not always obey this ruling and, in many cases, the corroborating evidence was the testimony of the arresting officer. It was not until 2005 that Mexican law allowed suspects the right to counsel from the time they come into contact with the prosecutor. However, police can still hold people accused of “serious” crimes in jail until trial. Judges do not have the discretion to release suspects prior to trial even if they pose little to no risk. As a result, forty percent of prisoners being held in Mexico have yet to be convicted (Human Rights Watch 2006).

In contrast to the countries described above, the interrogations procedures adopted in England and Wales can be seen as models of humane treatment. In 1986, in the wake of several high-profile false confessions, the Police and Criminal Evidence Act (PACE) became law (Home Office 2005). PACE prohibits police from lying to suspects about the existence of incriminating evidence, forbids threats of physical harm, or the use of torture or other forms of cruel, inhuman, or degrading treatment. When vulnerable suspects – for example, juveniles or people with mental disorders – are interrogated, an “appropriate adult” (e.g., independent and responsible) must be present. Finally, all interviews occurring at a police station must be audio-taped and made
accessible to lawyers, judges, juries, and experts. Such procedures minimize police coercion, protect suspects from abusive interrogations, and protect police from false accusations of misconduct during interrogations. Encouragingly, research suggests that the number of confessions has not fallen significantly since the introduction of the PACE reforms, and the use of coercive tactics in interrogations has dropped substantially (Gudjonsson 2003). Australia and New Zealand have similar interrogation models in place.

Interrogation will remain an essential investigative tool in military and criminal settings. However, interrogation room behaviors and practices must be carefully monitored if we are to trust the reliability of admissions produced by this psychologically manipulative process. The use of force – both physical and psychological – in the interrogation room is likely to remain controversial. We must be careful to give interrogators the tools they need to help obtain accurate and reliable information while simultaneously putting safeguards in place to help protect the innocent.
References


