

Preventing False Confessions in Internal Investigations

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Introduction

Wrongful convictions and false confessions have come into the spotlight of late as fresh DNA evidence has exonerated rape and murder convicts in the United States and in the UK.¹ Indeed, of the 3,475 post-conviction DNA and non-DNA exonerations logged in the National Registry of Exonerations at the University of Michigan from 1989 to the end of 2024, approximately 13 percent of these wrongful convictions were due to false confessions, and virtually all of these occurred in either homicide or rape cases. Needless to say, false convictions have devastating consequences for the wrongly convicted, the communities they live in, and their law enforcement agencies and courts.

Equally, the problem of false confessions and inaccurate misconduct findings in the corporate world can wreak havoc, eroding the trust in the integrity and fairness of an organisation's management. However, the statistics in this regard are hard to obtain since corporate investigations are often unpublished, private and confidential.²

For companies, the consequences of false confessions include the following:

- 1. Legal and Financial Risks:** False confessions can lead to wrongful actions against employees, including dismissals, which may trigger legal actions and financial liabilities.
- 2. Reputational Damage:** The integrity of the company's investigative processes may be questioned, damaging its reputation among stakeholders.
- 3. Employee Morale:** Unjust outcomes from investigations can demoralize the workforce, leading to a decline in productivity and a toxic work environment.
- 4. Obstruction of Justice:** False confessions can prevent the identification and accountability of the actual wrongdoers, allowing unethical or illegal behaviour to persist.

Strong and fair internal investigations are thus not only pivotal for maintaining integrity, compliance, and ethical standards, but will also help an organisation avoid serious damage. This article examines how false confessions can occur in the workplace and how they may be avoided.

1. <https://www.theguardian.com/us-news/article/2024/may/24/california-fontana-payment-man-tortured-police>

2. <https://www.nytimes.com/2014/03/09/business/when-employees-confess-sometimes-falsely.html>

The Psychology of False Confessions

It is instructive to ask why an individual would confess to wrongdoing in a civilian interview if he has not committed the wrong.

Undue pressure and stress

It has been suggested false confessions in corporate settings often stem from the intense pressure and stress of internal investigations.

Many companies now employ strategies in interviews which incorporate a keen understanding of psychology and behavioural science such as the Reid Technique (which emphasises reading and analysing behaviour and coaxing the interviewee to tell the truth) in their internal investigations. The Reid Technique, along other similar techniques, is rooted in psychology and has been shown to be very effective in rooting out bad actors. Yet even the founder of the technique, Mr John E. Reid himself gained a confession of murder later determined to be wrongful.³

While the technique does not endorse the use of unlawful pressure tactics (such as the promise of a lenient sentence upon conviction, or threats of violence or other harm or unduly long interrogations), it is difficult to police how private companies and individuals interview or interrogate their co-workers.

For instance, in Singapore, a restaurant manager was interrogated from dusk to dawn while being threatened with criminal prosecution, eventually confessing to a theft of restaurant monies he did not commit. He was subsequently handed over to the police and, after a gruelling 14 day trial, was acquitted because the court found the confession had been obtained under pressure.⁴

Vulnerable individuals

Some employees may be highly suggestible, especially if they have a history of adverse life experiences or possess certain personality traits that make them more vulnerable to suggestion and compliance. This vulnerability can lead to the acceptance of misleading suggestions and the production of false statements and confessions, even without any intent to deceive.

There have been psychological studies⁵ which suggest a link between the reported experience of intense negative life events and interrogative suggestibility. Many of these interviewees, for example, have been seen to change their initial responses to interview questions when negative feedback has been given by the interviewer.

Studies within this area suggest that both the urge to confess, as well as actual confessions, stem from anxiety and stress-reactivity within the suspect in response to perceived social pressure.⁶

An important implication is that, even if there are no obvious signs of pressure during interview, vulnerable suspects may still feel that they are not given the chance to tell the truth through sensitivity to perceived negativity. A vulnerable person may perceive pressure from the interviewer due to hypersensitivity, and that perception of pressure alone could be enough to elicit false statements during the interview.

3. <https://www.newyorker.com/magazine/2013/12/09/the-interview-7>

4. Our Terence Seah acted *pro bono* for the acquitted accused. See [Manager acquitted of siphoning \\$10,734 due to "severely flawed" accounting system | The Straits Times](#)

5. <https://www.bps.org.uk/psychologist/why-might-innocents-make-false-confessions>

6. Evolutionary Psychology and False Confession ; December 2005; American Psychologist 60(9):1037-8

How to prevent false confessions

To mitigate the risk of false confessions, there are several strategies that companies can adopt:

1. Ethical Investigation Practices

Adhering to ethical investigation practices involves establishing a clear and transparent process that respects the rights of all employees. This includes creating guidelines that detail the steps of the investigation, ensuring confidentiality, and maintaining impartiality. Investigations should be conducted with the presumption of innocence until proven otherwise, and any form of coercion or leading questions should be strictly avoided.

In preparation for conducting an interview, investigators involved should carefully plan what they might want to speak to the individual in question about. Thorough interview plans should be prepared and detailed interview notes taken to provide a documentary trail should evidence of a fair and ethical procedure be required. It is very important that investigators remember the purpose of conducting the interview as a general fact-finding tool. The interview should not, therefore, be framed as purely intending to pinpoint a culprit and pin the blame of them, and there should never be any incentive (whether actively positive, or threatening) to make a false confession.

False confessions made under duress or as a result of incentives have been (and continue to be) highly publicised in the UK media in recent years. The ongoing Post Office Horizon IT scandal saw more than 900 UK-based subpostmasters convicted of theft, fraud and false accounting between 1999 and 2015 due to faulty IT systems and inaccurate data. Around 700 of these prosecutions were carried out by the Post Office itself, involving what the Horizon Compensation Advisory Board describes as “*egregious systemic Post Office behaviour in interviews and pursuing prosecutions*”.⁷

Noted as ‘*the most widespread miscarriage of justice*’ in British legal history by the Criminal Cases Review Commission⁸, many of the dangerous convictions involved false confessions⁹ provided for the ostensible reason of protecting their families¹⁰ and avoiding custodial sentences.¹¹

It may also be considered if a corporate version of the Miranda rights may be given to the subject of the internal interview. In other words, the interviewee may be informed that he has the right to silence and to consult his own legal advisors. The approach taken should be carefully considered, however, if there are suspicions that the person being interviewed has potentially been involved in criminal conduct. For example, in a UK context there are rules and guidelines that must be followed if interviewing a criminal suspect under caution, and that suspect has various legal rights.

7. <https://www.bbc.co.uk/news/business-67719051>

8. <https://ccrc.gov.uk/news/the-ccrc-and-post-office-horizon-cases/#:~:text=The%20Post%20Office%20Horizon%20scandal,convictions%20in%20British%20legal%20history.>

9. <https://evidencebasedjustice.exeter.ac.uk/false-guilty-pleas-and-the-post-office-scandal/>

10. <https://www.itv.com/news/meridian/2024-01-08/your-family-is-gone-sub-postmaster-threatened-into-giving-false-confession>

11. <https://www.postofficehorizoninquiry.org.uk/sites/default/files/2022-02/WITN00400100%20-%20Josephine%20Hamilton%20-%20First%20Statement.pdf>

2. Training and Awareness

Investigators should receive comprehensive training that not only covers the legal aspects of internal investigations, but also emphasizes the psychological dynamics at play.

This training should include understanding the factors that can lead to false confessions, such as stress, fear, and the desire to please authority figures. Awareness programs can also be extended to employees, educating them about their rights during investigations and the importance of seeking legal or union representation if they feel uncomfortable or pressured.

Further, given the fact some employees may be particularly vulnerable by reason of earlier life experiences such as trauma, Human Resource departments should be enlisted to provide vital information as to any historical, medical or familial records of trauma or other psychologically impactful events in the employee's past.

3. Supportive Environment

Creating a supportive environment means fostering a culture where employees feel valued and heard. This can be achieved by implementing open-door policies, encouraging feedback, and ensuring that HR practices are approachable and non-intimidating. During investigations, it's crucial to communicate clearly with the involved parties, explaining the process, their rights, and the support available to them, such as access to counselling services if needed.

4. External Oversight

Involving external experts, such as forensic psychologists or independent legal advisors, can add a layer of impartiality and expertise to the investigation. These experts can provide an unbiased perspective, help identify when an individual may be vulnerable to making a false confession, and ensure that interviews are conducted in a manner that minimizes psychological stress. External oversight can also include periodic audits of the company's investigation processes to ensure they meet ethical and legal standards.

5. Documenting Evidence

A reliance on hard evidence rather than solely on confessions ensures the investigation's findings are based on concrete information. This involves meticulous documentation of all aspects of the investigation, including interviews, electronic communications, and any physical evidence. Technology can play a crucial role here, with digital forensics being used to gather and analyse evidence. Ensuring that all evidence is collected and reviewed objectively can help prevent the undue influence of confessions, particularly those that may be false.

6. Continuous Improvement

Finally, companies should commit to a process of continuous improvement in their investigation procedures. This involves regularly reviewing past investigations to identify any issues or areas for improvement, staying updated with the latest best practices in investigation techniques, and being open to feedback from employees and external advisors. Continuous learning and adaptation can help organizations refine their approaches to investigations, making them more resilient against the risks of false confessions. By implementing these expanded strategies, companies can significantly reduce the risk of false confessions during internal investigations, thereby protecting their employees and their own integrity.

Conclusion

By understanding the institutional and psychological underpinnings of false confessions and implementing strategies to prevent them, companies can protect their employees from unjust outcomes, maintain their ethical standards, and safeguard their reputation. This approach not only ensures justice but also fosters a culture of trust and integrity within the corporate environment.

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