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The Case against Confrontation

David E. Zulawski, CFI, CFE, and Shane G. Sturman, CFI, CPP • January 1, 2017

Almost nothing ever turns out well when you call someone a name. Maybe if they accept the term, it works out. But usually it leads to conflict. With conflict come a multitude of other problems: denials, resistance, recriminations, insults, and a total loss of rapport. Sounds like a fun time for all, doesn't it?

The confrontational approach to interviewing has been around in one form or another for thousands of years. Accuse. Deny. Then probably die as the inquisitors suffered a lack of patience. Enter the third degree fraught with trickery, threats, and physical intimidation. Again, the suspect was guilty until proven innocent with the conversation being decidedly confrontational, regardless of the protests of innocence. The US Supreme Court denounced the use of the third degree, warning that any use of those techniques would create an involuntary confession that would not be admitted in trial.

The first real, formalized interrogation training was an extension of the polygraph test borrowing heavily from the pre-test interview, the examination, and the post-test interrogation. This was a perfect fit for the times—an interrogation that was as confrontational as the management style and parenting of the 1950s and 1960s. The interrogator would directly accuse the suspect of his crime and cut off denials much like the parents of a Baby Boomer broaching no excuse from a child. The confrontational interrogation comes from a place of power and control rather than rapport and mediation.

Changing Times

Today, the times are very different in terms of management style and the later generations. Collaboration and a common vision are more important than power in reaching the ultimate goal. Resistance is reduced when people make the decision of their own free will to take a course of action. The end result is achieved by controlling the probable outcome without exercising power, which is a more elegant solution than ordering and confronting.

So what has become of the confrontational approach? It's still around but under attack from almost every corner. The academics point to the techniques as being the cause of false confessions. Police departments are being challenged for continuing to use it. Federal agencies are asking that it be dropped and not even mentioned during training. The courts are rejecting confessions obtained from using the technique, and experts are testifying against it. And entire countries prohibit its use.

Much of the criticism focused on the confrontational method is the result of its improper use mixed with threats, promises, and revealing evidence by investigators who have modified the technique to their own styles. Mix in the interrogation of juvenile suspects, as well as long interrogations, and there you have a path to disaster. In fact, in defense of the technique, Reid points to these very aspects as reasons why the technique should not be prohibited.

In the second edition of our book *Practical Aspects of Interview and Interrogation* (CRC Press, 2001), we put it this way: "There are a variety of common denominators among false confessors. In general, they are younger, less intelligent, or mentally handicapped. In many of the known cases, there were the additional factors of a lengthy interrogation and the use of threats, promises, or the use of coercive tactics by the interviewers."

A common misconception is that strong confrontation is a means of gaining compliance from difficult subjects. This supposedly increases the subject's level of stress while holding him in absolute control. In this strategy, the interviewer is all-knowing and all-powerful, and the subject is a victim who is powerless to change circumstances. This is supposed to provide the interviewer the leverage he needs to overcome the subject's resistance. What this does in actuality is to force the "victim" to resort to the only power he has—resistance.

When you consider Reid's direct accusation (step one of the technique), it almost always produces a denial to begin the nine-step interrogation. This typically generates conflict and resistance immediately.

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With a direct statement accusing the suspect, it is easy to see how the emotional situation can easily become adversarial. Generally, forcing the suspect to defend the denial assures continued denials, frustrating the investigator's efforts to obtain a confession. This lengthens the conversation, which is a key characteristic present in many false confessions. Unlike the private sector, which by policy often limits the length of the encounter, law enforcement has no apparent line in the sand being limited only by the totality of circumstances.

Again from our 2001 book, "The court will take into consideration the age of the individual, his intelligence, the length of the conversation, his experience with police or loss prevention, and whether threats or promises were used to obtain the statement. If there was coercive conduct on the part of the interviewer who obtained the admission using promises of leniency or threats, the statement will be considered involuntary and suppressed."

The Connection to Exoneration

With the Reid technique, the confrontational nature of controlling denials, and the directness of the accusation, the process ensures a longer, more contentious pathway to the confession. The danger becomes obvious when one looks at the characteristics of false confessions in a sampling of DNA-exonerated cases.

WZ recently coauthored a "friend of the court" brief in the Brendan Dassey case made famous by Netflix program *Making of a Murderer*. Much of the detectives' strategy was drawn from the confrontational Reid model of interrogation with much more being improvised. This is not at standalone, unique type of case. According to the Michigan School of Law's *National Registry of Exonerations: Exonerations in 2015* executive summary (published February 3, 2016), in the last year alone, 27 of the 149 reported exonerations involved false confessions. Of those twenty-seven cases, most involved confessions by youth under age eighteen, individuals who were mentally handicapped, or both.

It was clear to us over thirty years ago that the private sector was not the place for the confrontational approach for a multitude of reasons. Just a few of the problems are:

- The length of the conversation is increased because the interviewer has to handle denials, which creates difficulty in adhering to company policy limiting the length of the interview.
- Interviewers are put into hostile emotional situations where losing control of tempers can create additional conflicts.
- The directness of the interviewer's statements can create morale problems with company workers.
- The interviewer reveals evidence of the investigation, which can contaminate or limit the admissions made by the suspect.
- The directness of the statements and emotions involved do nothing to enhance the reputation of the interviewer amongst other employees.

These are but a few of the reasons to avoid the confrontational style of interrogation. While we have been licensed to teach the Reid method since 1984, we stopped teaching the nine-step interrogation in the private sector years ago because of the reasons listed above and others.

Characteristics of False Confessions in DNA Exoneration Cases

	Contaminated with Inside Information	Interrogations More than 3 Hours	Guilty Pleas
40 False Confessions, 1989–2009	38	36	10
26 False Confessions, 2009–2014	24	25	8
Total Number of Cases by Percent	62 (94%)	61 (92%)	18 (27%)