

Biases in Judging Victims and Suspects Whose Statements Are Inconsistent

Lindsay C. Malloy · Michael E. Lamb

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Abstract In this commentary, we point to similarities in characteristics of suspect and victim/witness statements and the underlying motivations of these individuals. Despite the similarities, there are differences in how such statements are evaluated by fact-finders and investigators. Retractions, for example, cast serious doubt on the credibility of victims/witnesses but appear not to diminish the power of confessions. Investigators need to recognize the wide range of motivations behind statements made to the authorities and be mindful of biased dispositions to doubt victims and believe confessors, especially when their statements are inconsistent or retracted. An investigative process that was entirely transparent would help ensure that inconsistencies and retractions, whether in statements from victims, witnesses, or suspects, are viewed in the context of other statements and eliciting circumstances.

Keywords Confessions · Juvenile justice · Recantation

To lay people, false confessions rank alongside “man bites dog” stories as uncommon events sorely in need of explanation. In fact, as Kassin et al. (2009) argue in their White Paper, false confessions may be surprisingly common, but no less worthy of explanation. In this commentary, first, we highlight a few ways in which suspect and victim/witness statements are similar despite their typically distinctive treatment in empirical investigation and practice. Second, we draw attention to differences in

the ways in which inconsistent and retracted statements are evaluated by fact-finders depending on whether the statements are made by victims/witnesses or suspects.

Similarities in Victim/Witness and Suspect Statements

As the White Paper highlights, confessions, like victim and witness statements, often emerge in the course of interviews during which investigators mentally reconstruct the alleged incidents with interviewees. There are other similarities in the statements of victims/witnesses and suspects and the underlying motivations of such individuals. First, an unwillingness to talk honestly with investigators is not limited to suspects. It is well known that most victims of child abuse delay disclosure, often indefinitely, making clear that witness motivation is much more complex than the simplistic assumption that suspects are disposed to deny while victims are disposed to disclose (Pipe, Lamb, Orbach, & Cederborg, 2007). Second, victims, witnesses, and suspects may all change their stories, with complete retractions representing the most significant type of inconsistency. Although such inconsistencies may characterize statements provided by both victims/witnesses and suspects, they appear to be evaluated quite differently.

Differences in How Victim/Witness and Suspect Statements Are Evaluated

For fact-finders and investigators, the power of confession evidence is typically undiminished by inconsistencies, retractions, or the ways in which the confessions were obtained (e.g., Kassin & Sukel, 1997; *People of the State of New York v. Kharey Wise et al.*, 2002) whereas these

L. C. Malloy (✉) · M. E. Lamb
Department of Social and Developmental Psychology,
University of Cambridge, Free School Lane,
Cambridge CB2 3RQ, UK
e-mail: lcm44@cam.ac.uk

factors are accorded the utmost importance when victims/witnesses are the sources of information.

Fact-finders and investigators thus scrutinize investigative interviews of alleged victims skeptically, especially when they are young, their reports occur after lengthy delays, and/or their reports are incomplete, inconsistent, or retracted (Myers, 1992; Quas, Thompson, & Clarke-Stewart, 2005). When potential child victims are interviewed in a suggestive manner, interviewed multiple times, or asked the same questions repeatedly, lawyers, investigators, judges, and mock jurors question the veracity and credibility of their statements (e.g., La Rooy, Lamb, & Pipe, 2009; Tubb, Wood, & Hosch, 1999). Most professional guidelines therefore discourage repeated interviews with child victims/witnesses on the grounds that repeated interviews are inherently suggestive (e.g., Home Office, 2007). In Quas et al.'s (2005, p. 437) study of jurors and jury-eligible adults, 46% agreed that "Repeatedly asking children general open-ended questions, such as 'What happened? What else happened?'" often leads them into making false claims of sexual abuse." By contrast, proponents of Reid-like interrogation techniques recommend that youth should be interviewed in the same manner as adults, without avoidance of suggestion, manipulation, or lengthy and repetitive interrogations (Kassin et al., 2009). In one study (Redlich, Quas, & Ghetti, 2008), jurors read about an actual case in which a teenager denied murder over 40 times before finally confessing but jurors did not consider the repeated questioning and its possibly coercive implications when adjudicating guilt. Given that professional guidance and legal decision making tend to frown on the practice of repeated interviewing (e.g., *Commonwealth v. Baran*, 2009; Home Office, 2007; *Kennedy v. Louisiana*, 2008; Law Commission, 1997; Scottish Executive, 2003, 2007), it is inconceivable that juvenile victims asked 40 times whether they had been abused before acquiescing would be deemed credible prosecution witnesses in any court of law.

Indeed, prosecutors regularly dismiss or screen out cases in which recantations or inconsistencies occur because young alleged victims are unlikely to make persuasive witnesses (Goodman et al., 1992; London, Bruck, Ceci, & Shuman, 2005). Furthermore, jurors may enter the courtroom with biases against inconsistent children (Quas et al., 2005). Although children may be more suggestible than adults (Ceci & Bruck, 1995), domestic violence cases are also often dropped because alleged adult victims retract their statements (e.g., Robinson & Cook, 2006). Thus, where victims' statements are concerned, recantations cast doubt on credibility, and these cases fail to progress.

Cases with confession evidence often move forward to conviction despite inconsistencies, retractions, and possibly exculpatory evidence, perhaps because fact-finders are

seldom as attentive to the ways in which suspects are questioned, with vast portions of the interviews left unrecorded, literally, or proverbially. In the "Central Park Jogger" case, instead of re-evaluating the veracity of the boys' immediately retracted statements in light of DNA evidence that did not match any of the five teenagers, detectives and prosecutors concluded that one assailant had evaded capture, unlike his hapless accomplices (Kassin, 2005). Although most studies have shown that jurors tend to believe confessions, even from juveniles who later retract their statements (Redlich, Ghetti, & Quas, 2008), Najdowski, Bottoms, and Vargas (2009) found that jurors discounted confessions when rendering verdicts only when the confessions were coerced from intellectually disabled juveniles. Retracted confessions, whether coerced or voluntary from non-disabled juveniles, or voluntary from disabled juveniles, tended to elicit guilty verdicts.

Why do we tend to believe confessions regardless of inconsistencies or retractions, while being reluctant to believe statements made by victims when these statements contain similar inconsistencies or retractions? Perhaps because children who retract allegations are assumed to have been speaking falsely in the first place (London et al., 2005). Malloy, Lyon, and Quas (2007) found that children recanted their statements in 23% of child sexual abuse cases filed in dependency court, however, and that retraction was not related to factors indicating truthfulness (e.g., perpetrator admission) or falsity (e.g., custody battle). Thus, alleged child victims do not always recant their statements simply because they were false in the first place.

Fact-finders and investigators tend to believe confessions, even retracted ones, on the grounds that witnesses are unlikely to make statements contrary to their own interests, especially when those statements are false. Of course, this presumes both that individuals accurately understand the consequences of falsely confessing even when interviewers deliberately minimize the seriousness of the incidents (e.g., Kassin et al., 2007) and that the possible punishments associated with confession indeed reflect the worst-case scenario. If young suspects expect light punishment because of their age or harsh retaliation for revealing the true perpetrator's identity, then confessing, even falsely, may seem more desirable than prolonging an unpleasant interrogation.

The facts remain: sometimes victims retract true allegations; sometimes suspects retract false confessions. Investigators need to recognize the wide range of reasons why youths make statements to the authorities and be mindful of biases to doubt victims and believe confessors, especially when their statements are inconsistent or retracted. Videotaping both interrogations of suspects and investigative interviews with victims/witnesses would document early disclosures and help ensure that retractions

and inconsistencies are evaluated in the context of the interview/interrogation itself and the overall investigation.

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