

The Unbelievable Lightness of False Confessions

Smadar Ben Natan¹

Every few months the entire country is scandalized by the discovery of another investigation in the course of which the persons being interrogated confessed to a crime they did not commit. The memory of the indictment several months ago of the three Palestinian citizens of Israel from Kufr Kana – Tarek Nujeidat, Sharif Eid and Yusuf Sbih – is still fresh in our minds. The three were indicted for the abduction and murder of an Israeli soldier, Oleg Shaichet. While being interrogated by the General Security Service (GSS), Nujeidat confessed to murdering Shaichet, together with Eid and Sbih. He retracted his confession during a later stage of the interrogation. The three suspects were released from detention and acquitted after new evidence was discovered, and the State Attorney's Office dismissed the indictment. In the past few days, Mohammed Anabtawi of Kufr Kana was indicted for the same murder, after confessing during a GSS investigation.

Similar cases include the conviction of Amos Baranes for the murder of Rahel Heler, which was cancelled after Baranes' third request for a re-trial; the case of the "Ma'atz Gang," whose members were acquitted during a re-trial after one of the police officers who had participated in the original interrogations confessed years later that several methods of torture had been used during the interrogation; and the most famous case – that of the murder of Danny Katz – for which Ahmed Kuzli, Samir Janama, Fathi Janama, Ali Janim and A'atef Sabihi have been accused. An appeal against their conviction is currently pending before the Supreme Court of Israel. The murder of Dafna Karmon, for which indictments were issued against Ahmed Kuzli, A'atef Sabihi, Mohammed Sabihi and Kabal Sabihi, whose request for a re-trial was rejected, provides a further example, as does the conviction of Suleiman al-Ubaid, who is mentally retarded, for the murder of Hanit Kikus and Moshe Azaria. His request for a re-trial was turned down, though he was later pardoned.

Nor are these the only such cases; the report of the Committee for Convictions Based Solely on Confessions and for Issues Regarding the Grounds for Re-Trials ('The Goldberg Commission') catalogs several other cases which made less of an impression on the public's memory.

¹ Smadar Ben Natan is an independent human rights attorney. She represented Tarek Nujeidat, and worked alongside attorney Avigdor Feldman with the five defendants charged with the murder of Danny Katz, as well as on the case of Suleiman al-Ubaid.

The common denominator in all of these cases is the suspects' confessions to crimes which they probably did not commit, and that their indictments were based solely on their confessions, as well as “additional evidence,” which was seldom found to be material.

The subject of false confessions within various legal systems has been researched and investigated in the light of the discovery of such cases. In Israel, the Goldberg Commission was established almost a decade ago by then Minister of Justice, David Libai, to examine the issue of convictions based solely on confessions, as well as the basis for re-trials. The Commission adopted a realistic and bold attitude, relying, among other things, on lessons learnt by the British after several Irish Republican Army (IRA) members were convicted on the basis of confessions made after they were tortured by the police. The Commission's recommendations, issued in 1994, were ground breaking. The Commission recommended, *inter alia*, amendments to legislation to stipulate that attorneys must be present during the interrogation of a suspect if the suspect so requests, in order to prevent the suspect from feeling pressured, and the audio and video recording of interrogations. Few of the recommendations, however, were actually adopted. Eliezer Goldberg, then chairperson of the Commission, and currently State Comptroller, recently called for the implementation of the Commission's recommendations during a meeting of the State Comptroller Committee held in the aftermath of the Oleg Shaichet affair.

In some of the cases, confessions are extracted after physical abuse of the suspect, by means of physical blows or torture. In other cases, confessions are achieved without recourse to violence. While making false confessions after physical abuse tends to be perceived as more understandable, false confessions made in the absence of physical abuse are generally met with greater surprise. Many are unable to comprehend how a person can confess to an act they did not commit without being literally forced – with a gun to the head or a fist to the face.

In some cases, similar to the case of Tarek Nujeidat or the five Danny Katz defendants, following or in between confessions, the defendants retract their statements. Tarek Nujeidat retracted his statement shortly after confessing to a collaborator who was placed in his detention cell. He publicly retracted his confession two weeks after giving it in court and before the police investigators, all prior to being allowed to consult with an attorney. Several of the suspects accused of the murder of Danny Katz stated throughout their interrogation that they were innocent and that their confessions were false. Samir Janama made a similar statement during the police re-enactment of the crime of which he had

been accused. However, retracting a confession, even if made during the investigation, is futile; once a confession is made, its retraction is deemed worthless. Despite retracting their confessions, Nujeidat, Janama and the other suspects were indicted. What, then, makes these confessions so powerful, and their retraction so powerless?

The great weight attributed to confessing a crime relates to the fact that the confession is counterproductive for the person who makes it. We tend to accept that people will lie when it is in their interest to do so, and therefore do not concede a great value of truth to statements of benefit to the person making them. In this situation, we accept that the suspect is motivated to lie, and thus distrusting such a statement is more reasonable. Is the defendant denying his involvement? Naturally, he will deny the charges against him in an attempt to evade punishment; that is the way of the world. Conversely, if the defendant confesses, the accepted wisdom is that, as this action is detrimental to a person's interests, there is a consequent lack of motivation for lying. Why should a suspect confess to a crime when the implications of the confession are taking the blame for the crime, long years of incarceration and negative stigmatization? It is for these reasons that, once a confession is made, it is common to view the suspect as lacking any reason to lie, and thus to be speaking truthfully. The motive for confessing is understood as an internal feeling of guilt, which further increases conviction of the suspects' culpability.

However, this assumption is inherently erroneous. During the investigation, which takes place with the defendant completely isolated from his familiar surroundings and from any possible source of support, the interrogators actually create a reversal of the self-interest of the person being interrogated. The confession becomes an act which promotes his self-interest, rather than one opposed to it. For the person being interrogated, the primary interest is for the interrogation to end, by appeasing the investigators, and providing a convincing confession. Since they already believe he is guilty, the confession achieves all of these ends.

In cases similar to that of Nujeidat, the investigators repeatedly tell the suspect that they do not believe he did not commit the murder, and that they are certain he is the killer. Repeatedly asserting his innocence will only prolong the interrogation, with no end in sight, as he will never succeed to persuade them of his innocence. Moreover, since the investigators present the suspect with a depiction of reality in which they know that he is guilty and they are in possession of evidence which reveals this fact, they impose upon him the belief that he will be convicted of murder regardless of whether he confesses or not. Thus, in his eyes, the negative repercussions of confessing - being found

guilty – are eliminated: we know and are convinced of your guilt; you will be convicted whether you confess or not, however, if you confess, your situation will improve, because the court will take your confession into consideration; we will testify on your behalf and ask the court to take your confession into consideration. Confessing will bring an end to the exhausting and torturous interrogation for the immediate future. In cases of two or more suspects being interrogated, who are suspected of performing the crime together, the investigators use the threat that the other suspect will incriminate the person under interrogation. Thus, they create a type of fictitious confession-race, during which they convince the suspect that he is better off confessing before the second suspect confesses, since he will then be able to convince them that his part in the crime is smaller than that of his partner, whereas, should his partner confess first, they might be persuaded that he is the prime suspect. Thus, once again, confessing is portrayed as serving the interests of the person under interrogation.

Thus, the truth is that a false confession is much easier to obtain than is commonly held. Reversing the self-interest of the person being interrogated is possible primarily in cases where the suspect is naïve and lacking in experience, undergoing his first experience of a criminal or security investigation, where the interrogators can engineer the total isolation of the suspect from the outside world and any possible sources of support. Tarek Nujeidat was not beaten. He confessed after just two days of being detained. Following his confession, he agreed to reconstruct on camera how the crime was supposedly executed. It was the first time that he had been arrested. He had no idea how to handle the investigation or legal proceedings. He was prevented from meeting an attorney for 21 days, and hence was completely detached from the outside world. During the first days of interrogation he was allowed very little sleep. He was interrogated in rooms without windows or doors, lit artificially to prevent him from distinguishing between night and day. He was led blindfolded from his holding cell to the interrogation cell, and served identical food for every meal. As a result of these measures, he was in a state of total disorientation towards time and space, and completely disconnected from any outside support and from anything familiar. The investigators were in absolute control of his life, and succeeded in disorienting him to the extent that he was not to tell night from day, or one day from the next.

In this state, it is not surprising that Nujeidat believed his interrogators when they told him that confessing would improve his situation, and accordingly made every attempt to provide them with a confession filled with as many accurate details as he was able to pick up prior to and during his arrest.

However, a confession made under these circumstances loses the value usually accorded to confessions, since it is in conflict with the interests of the person being interrogated. In this situation, the confession is a lie like any other, driven by a false sense of self-interest constructed by the interrogators, that the confession will result in an improvement in the suspect's situation, bringing an end to the incessant questioning and interrogation.

Ironically, the magistrate judge who heard the state's request to detain Nujeidat until the end of proceedings decided to detain him on the grounds that the argument that "a lie has no legs;" that is, if the confession made by Nujeidat was a lie, it would have been self-evident. In the case of Nujeidat, the truth was uncovered, but as a result of a coincidence rather than because his lie had no legs. The lie indeed had legs to stand on, legs that could have walked Nujeidat, Eid and Sbih to life imprisonment.