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# The Psychology of Confession Evidence

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*Basic questions are raised concerning police interrogations, the risk of false confessions, and the impact that such evidence has on a jury. On the basis of available research, it was concluded that the criminal justice system currently does not afford adequate protection to innocent people branded as suspects and that there are serious dangers associated with confession evidence. The specific problems are threefold: (a) The police routinely use deception, trickery, and psychologically coercive methods of interrogation; (b) these methods may, at times, cause innocent people to confess to crimes they did not commit; and (c) when coerced self-incriminating statements are presented in the courtroom, juries do not sufficiently discount the evidence in reaching a verdict. It is argued that the topic of confession evidence has largely been overlooked by the scientific community and that further research is needed to build a useful empirical foundation.*

In criminal law, confession evidence is a prosecutor's most potent weapon—so potent that, in the words of one legal scholar, “the introduction of a confession makes the other aspects of a trial in court superfluous” (McCormick, 1972, p. 316). On the one hand, confessions play a vital role in law enforcement and crime control. On the other hand, they provide a source of recurring controversy. Is the suspect's statement authentic, or is there reason to distrust the testimony of paid informers and overzealous police officers? Was the defendant's statement voluntary, or was he or she coerced during interrogation? Was the suspect intellectually competent and of sound mind or anxious, fatigued, and in a state of heightened suggestibility? These questions illustrate the complexity of the issues surrounding confession evidence and the kinds of decisions judges and juries must make on a routine basis.

To guard the integrity of the criminal justice system, to protect citizens against violations of due process, and to minimize the risk that innocent people will confess to crimes they did not commit, the federal and state courts have established guidelines for the admission of confession evidence. Although there is no simple “litmus test” (*Culombe v. Connecticut*, 1961, p. 601), a confession is typically excluded if it was elicited by brute force; prolonged isolation; deprivation of food or sleep; threats of harm or punishment; promises of immunity or leniency; or, barring excep-

tional circumstances, without notifying the suspect of his or her constitutional rights (*Miranda v. Arizona*, 1966; for reviews of case law, see Grano, 1993; Kamisar, LaFave, & Israel, 1994; Mueller & Kirkpatrick, 1995; Wigmore, 1970).

For one to understand fully the psychology of criminal confessions, three sets of questions must be addressed: (a) How do police interrogators get people to confess; that is, what techniques of social influence do they use? (b) What are the effects of these methods on behavior; that is, do they elicit confessions only from suspects who are guilty, or do innocent people sometimes confess to crimes they did not commit? (c) When an involuntary confession is introduced in court, does the jury discount that evidence, as necessary, in accordance with the law? This article defines the critical research questions and reviews the recent research of relevance to these issues (portions of this work were summarized by Wrightsman & Kassin, 1993).

## Police Interrogations

For law enforcement officials, the purpose of interrogation is twofold: to obtain a full or partial confession and to elicit information on other evidence relevant to a case. At this point, I begin by describing the processes of interrogation and the techniques used by trained detectives. Gone are the days when the police would shine bright light on suspects, grill them for 24 hours at a time, or beat them with a rubber hose, but observational studies have shown that the use of physical force has given way to more psychologically oriented techniques, such as feigned sympathy and friendship, appeals to God and religion, the use of informants, the presentation of false evidence, and other forms of trickery and deception (Leo, 1992). After spending a year shadowing homicide detectives in Baltimore, Simon (1991) described the police interrogator as:

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**Saul M. Kassin**  
Photo by Heather  
Clemow.

a salesman, a huckster as thieving and silver-tongued as any man who ever moved used cars or aluminum siding, more so, in fact, when you consider that he's selling long prison terms to customers who have no genuine need for the product. (p. 213)

Today, a number of manuals are available to advise and train police detectives in how to get confessions from recalcitrant criminal suspects (Aubry & Caputo, 1980; Macdonald & Michaud, 1987; O'Hara & O'Hara, 1981). The most popular such manual is Inbau, Reid, and Buckley's (1986) *Criminal Interrogation and Confessions*, which was first published in 1962 and is now in its third edition.<sup>1</sup> The methods recommended by Inbau et al. inspired Walkley's (1987) *Police Interrogation: Handbook for Investigators*, the first police interrogation manual ever published in England.

### ***The Inbau et al. (1986) Manual***

To begin with, Inbau et al. (1986) advised interrogators to dress in civilian clothing and to set aside a small, completely bare, soundproof room far removed from familiar sights and sounds—without people, telephones, ornaments, or other sources of distraction. To heighten the tension and diminish the suspect's sense of control, the interrogator is advised to furnish the room with two or three armless, straight-backed chairs and a desk; to keep all light switches, thermostats, and other control devices out of reach; and to invade the suspect's personal space. If possible, the room should contain a one-way mirror, enabling a fellow detective to observe the suspect for signs of fatigue, weakness, anxiety, and withdrawal. By design, the interrogation room is the most private space in an American police station (see Figure 1).

Against the backdrop of a physical environment that promotes feelings of social isolation, sensory deprivation,

and a lack of control, Inbau et al. (1986) described in vivid detail a nine-step procedure designed to overcome the resistance of reluctant suspects. Using this procedure, the interrogator begins by confronting the suspect with his or her guilt (Step 1); develops psychological "themes" that justify or excuse the crime (Step 2); interrupts all statements of denial (Step 3); overcomes the suspect's factual, moral, and emotional objections to the charges (Step 4); ensures that the increasingly passive suspect does not tune out (Step 5); shows sympathy and understanding and urges the suspect to tell the truth (Step 6); offers the suspect a face-saving alternative explanation for his or her guilty action (Step 7); gets the suspect to recount the details of the crime (Step 8); and converts that statement into a full written confession (Step 9). According to Jayne (1986), this technique leads many suspects to incriminate themselves by reducing the perceived negative consequences of confessing while increasing the anxiety associated with deception.

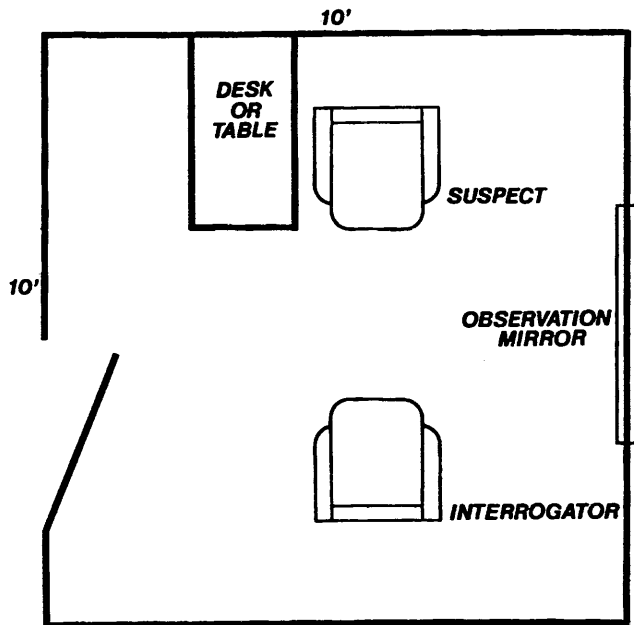
On the basis of Inbau et al.'s (1986) experience, they claimed that it is possible, using various verbal and nonverbal cues, to distinguish between denials made by guilty and innocent suspects and that making this distinction is necessary to formulate an effective strategy. They maintained, for example, that the innocent suspect will "give concise answers because he has no fear of being trapped" (p. 48) and will "sit upright, but not rigid, directly positioned in front of the interrogator" (p. 53). In contrast, Inbau et al. stated that the guilty suspect "does not make direct eye contact" (p. 51) and "will be overly polite" (p. 47). Inbau et al. may well be correct in this diagnostic advice. It is important to realize, however, that there is currently no hard empirical support for their propositions. Research has consistently shown that people are poor intuitive judges of truth and deception (Zuckerman, DePaulo, & Rosenthal, 1981). In fact, even so-called experts who make such judgments for a living—police investigators; judges; psychiatrists; and polygraphers for the Central Intelligence Agency, the Federal Bureau of Investigation, and the military—are highly prone to error (Ekman & O'Sullivan, 1991). As Simon (1991) put it,

Nervousness, fear, confusion, hostility, a story that changes or contradicts itself—all are signs that the man in an interrogation room is lying, particularly in the eyes of someone as naturally suspicious as a detective. Unfortunately, these are also signs of a human being in a state of high stress. (p. 219)

Reflecting a common and cynical belief that all suspects are guilty, one detective was quoted as saying, "You can tell if a suspect is lying by whether he is moving his lips" (Leo, 1996c, p. 23).

<sup>1</sup> The Chicago-based firm of John E. Reid and Associates offers training programs, seminars, and videotapes on how to use the techniques described in this manual.

**Figure 1**  
*The Physical Layout of a Police Interrogation Room, as Recommended by Inbau et al. (1986)*



Note. Reprinted from *Criminal Interrogation and Confessions* (3rd ed., p. 31), by F. E. Inbau, J. E. Reid, and J. P. Buckley, 1986, Baltimore: Williams & Wilkins. Copyright 1986 by Williams & Wilkins. Reprinted with permission.

### **Maximization and Minimization Techniques**

Kassin and McNall (1991) analyzed the specific ploys described by Inbau et al. (1986) and observed that they fall into two general categories. In one approach, which Kassin and McNall termed *maximization*, the interrogator uses “scare tactics” designed to intimidate a suspect believed to be guilty. This intimidation is achieved by overstating the seriousness of the offense and the magnitude of the charges and even by making false or exaggerated claims about the evidence (e.g., by staging an eyewitness identification or a rigged lie-detector test, by claiming to have fingerprints or other types of forensic evidence, or by citing admissions that were supposedly made by an accomplice). This strategy, and the dangers that it poses, will be discussed later in greater detail.

The second approach, referred to as *minimization*, is a “soft sell” technique in which the detective tries to lull the suspect into a false sense of security by offering sympathy, tolerance, face-saving excuses, and moral justification; by blaming the victim or an accomplice; and by underplaying the seriousness or magnitude of the charges. The detective may thus try to convince an accused rapist that he was only attempting to show his love for the victim or try to reassure an accused embezzler that his or her actions were justified by low pay and poor working conditions.<sup>2</sup>

It is difficult to know the frequency with which these methods of interrogation are used or what effects they have on guilty and innocent criminal suspects. Simon (1991) informally observed that such ploys were routine in the Baltimore Police Department, “limited only by a detective’s imagination and his ability to sustain the fraud” (p. 217). More systematic observations have confirmed that these techniques are common (e.g., Wald, Ayres, Hess, Schantz, & Whitebread, 1967) and that the confessions they produce are generally admissible in court (J. G. Thomas, 1979; White, 1979). In an article entitled “Inside the Interrogation Room,” Leo (1996b) described his own recent observations of 182 live and videotaped interrogations conducted in the state of California. According to Leo, detectives used a mean of 5.62 tactics per interrogation, and these tactics involved using both negative incentives (e.g., confronting the suspect with true or false incriminating evidence, refusing to accept denials, noting contradictions in the suspect’s story) and positive incentives (e.g., appealing to the suspect’s self-interest or conscience, praising the suspect, minimizing the moral seriousness of the offense). Leo (1996c) thus likened what he saw to a confidence game that involves “the systematic use of deception, manipulation, and the betrayal of trust in the process of eliciting a suspect’s confession (p. 3).

### **Communicating Promises and Threats by Pragmatic Implication**

To minimize the risk that people will confess to crimes they did not commit, the courts consistently reject confessions that are elicited by threats of harsh punishment or by promises of leniency in sentencing. Recent case law suggests, however, that although trial judges routinely exclude confessions elicited by “direct” promises and threats, they often do not exclude those for which positive and negative contingencies are merely “implied” (Ayling, 1984; Sasaki, 1988; J. G. Thomas, 1979; White, 1979). In *State v. Jackson* (1983), for example, murder suspect James Jackson was misled by the police into thinking that the victim’s blood was on his pants, that his shoes matched footprints found at the crime scene, that his fingerprints were on the murder weapon, and that he was seen by an eyewitness. Jackson was also led to believe that if he told the truth (i.e., confessed), the court would view his case in a favorable light. Thus, as one commentator put it, “The case the detectives presented to Jackson, built on false evidence, secured him as effectively as a pair of handcuffs” (Heavner, 1984, p. 268). Jackson confessed, but then he retracted the confession, saying he was coerced. On appeal, the North Carolina Supreme Court ruled that the statement was voluntary

<sup>2</sup> As drawn from Inbau et al.’s (1986) manual, the following excerpt illustrates this technique: “Joe, no woman should be on the street alone at night looking as sexy as she did. . . . It’s too much a temptation for any normal man. If she hadn’t gone around dressed like that you wouldn’t be in this room now” (p. 108).

despite the use of deception because Jackson was not physically restrained, offered leniency, or threatened.

Or was he? Perhaps Jackson reasonably inferred from his interrogation that he would be convicted despite his denials and that a confession might draw leniency in sentencing. Over the years, cognitive researchers have found that when people read text or listen to speech, they tend to process information "between the lines" and recall not what was said or written, necessarily, but what was pragmatically implied (Harris & Monaco, 1978; Hilton, 1995). Thus, after reading "the burglar goes to the house," many participants later recalled that the burglar broke into the house. With this phenomenon in mind, Kassin and McNall (1991) speculated that the use of minimization pragmatically implies leniency whereas maximization implies a threat of severe punishment. To test this hypothesis, they had participants read a transcript of an interrogation of a murder suspect (the text was taken from an actual interrogation in New York City). Depending on the experimental condition, the detective made an explicit promise of leniency, threatened the suspect with a harsh sentence, used the technique of minimization by blaming the victim, or used maximization by claiming to have found fingerprints. In a fifth version, none of these techniques were used. Participants read one version and then estimated the sentence that they thought would be imposed on the suspect. There were two key results: (a) The use of maximization raised sentencing expectations, leading participants to expect a harsh sentence, as in the explicit threat group, and (b) minimization lowered sentencing expectations, which led participants to anticipate leniency, as in the explicit promise group.

To summarize, maximization communicates an implicit threat of punishment, whereas minimization implies an offer of leniency. Yet, although trial judges exclude confessions elicited by *explicit* threats and promises, they often admit into evidence those prompted by *implicit* threats and promises. For all intents and purposes, these commonly used techniques circumvent laws designed to prohibit the use of coerced confessions. Indeed, Inbau et al. (1986) were quick to reassure their readers that "although recent Supreme Court opinions have contained derogatory statements about 'trickery' and 'deceit' as interrogation devices, no case has prohibited their usage" (p. 320).

### **The Miranda Controversy**

Arguing that modern criminal interrogations are inherently coercive and that procedural safeguards are necessary to protect the accused, the U.S. Supreme Court ruled in the landmark case of *Miranda v. Arizona* (1966) that police must advise suspects in custody of their constitutional rights to silence and counsel. Immediately, law enforcement advocates protested that this ruling would handcuff the police in their efforts to elicit confessions. On the basis of a dozen or so early impact studies, however, legal scholars soon concluded that the

Supreme Court's ruling was not having this effect. In fact, research suggested that many juvenile suspects did not fully comprehend the rights they were given (Grisso, 1981).

Today, the issue is alive again and in dispute. On the one hand, *Miranda's* critics maintain (on the basis of pre-post studies as well as international comparisons) that the confession and conviction rates have dropped significantly as a direct result of the warning and waiver requirements, thus triggering the release of dangerous criminals (Cassell, 1996a, 1996b; Cassell & Hayman, 1996). On the other hand, defenders of *Miranda* argue that the actual declines are insubstantial (Schulhofer, 1996), that four out of five suspects waive their rights and submit to questioning (Leo, 1996c), and that the costs to law enforcement are outweighed by social benefits—for example, *Miranda* has had a civilizing effect on police practices and has increased public awareness of constitutional rights (Leo, 1996a). Inevitably, debate on this issue is influenced by political and ideological points of view. On this point, however, all sides agree: The existing empirical foundation is weak, and more and better research is needed (G. C. Thomas, 1996).

### **Validity of Confession Evidence**

To measure the actual validity of confession evidence, one would have to assess the combined frequency with which truly guilty people confess and truly innocent people do not. Two types of erroneous outcomes are thus possible: false negatives (when guilty suspects fail to confess) and false positives (when suspects who are innocent confess). In the context of a legal system founded on the ideal that it is better to acquit 10 guilty people than to convict 1 person who is innocent, and in light of the Fifth Amendment right against self-incrimination, the false positive error—although less frequent than the false negative—presents the more serious problem. Thus, it is important to know what factors increase the risk of a false confession.

It could be argued that the use of trickery and deception does not pose a serious problem because innocent people never confess to crimes they did not commit. This assumption is incorrect. To be sure, nobody knows the rate of false confessions or has devised an adequate method for calculating their prevalence. Thus, estimates range from less than 35 per year (Cassell, 1996a) to 600 per year in the United States alone (Huff, Rattner, & Sagarin, 1986). Identifying such cases is difficult for two reasons: (a) A confession may be true even if it is coerced and even if the accused retracts the statement and proceeds to trial, and (b) a confession may be false even if the defendant is convicted, imprisoned, and never heard from again. Therefore, it is necessary to adopt a criterion by which a confession is deemed false only if independent evidence suggests that the accused is innocent. With this criterion in mind, it is clear that there are many documented false confessions on the record (e.g., Borchard, 1932; Gudjonsson, 1992; Munsterberg, 1908; Par-

loff, 1993; Radelet, Bedau, & Putnam, 1992; Rattner, 1988; Zimbardo, 1967).

Regardless of the precise number of such cases, which is currently in dispute (see Bedau & Radelet, 1987; Markman & Cassell, 1988), Kassin and Wrightsman (1985) derived from the various cases and historical anecdotes a distinction among three different types of false confessions: voluntary, coerced-compliant, and coerced-internalized. This categorization scheme has provided a useful framework for the study of false confessions and has been adopted by many researchers in the field (e.g., Gudjonsson, 1992; Leo, 1992; Ofshe & Watters, 1994).

### **Voluntary False Confessions**

A voluntary false confession is a self-incriminating statement that is offered without external pressure from the police. When Charles Lindbergh's baby was kidnapped more than 60 years ago, 200 people confessed (Note, 1953). Why would anyone volunteer a false confession? There are several possible reasons. Sometimes the goal is to protect a friend or a relative—a problem that is often revealed in interviews with juvenile offenders (Gudjonsson, 1992). Other possible motives, perhaps more familiar to the clinical psychologist than to the experimental psychologist, include a pathological need for fame, acceptance, recognition, or self-punishment. Radelet et al. (1992), for example, described one case in which an innocent man confessed to murder to impress his girlfriend and another case in which a woman pleaded guilty just to cover up the fact that she was actually having extramarital sex at the time. In a case I was involved in, a young Wisconsin woman had falsely implicated herself and a group of motorcyclists in a local murder. She later explained in a long, heart-wrenching letter to the police sergeant that she lied for the same reason she had previously used drugs and attempted suicide—she craved attention (the letter is reprinted in Wrightsman & Kassin, 1993, pp. 87–88).

### **Coerced-Compliant False Confessions**

In contrast to voluntary false confessions are those in which suspects confess after intense interrogation pressures. Within the category of coerced false confessions, it is necessary to further distinguish between two forms of social influence: compliance and internalization (Kelman, 1958). In the common language of social psychology, *compliance* refers to a change in one's public behavior for instrumental purposes. This form of influence was observed in Asch's (1956) initial studies of conformity and Milgram's (1974) research on obedience to authority. In contrast, *internalization* refers to a private acceptance of the beliefs espoused by others. This deeper form of influence was exhibited in Sherif's (1936) early autokinetic studies on the formation of group norms and in Moscovici's (1985) more recent research on minority influence.

Coerced-compliant confessions occur when a suspect confesses in order to escape or avoid an aversive interrogation or to gain a promised reward. In these cases, the confession is merely an act of compliance, and the suspect privately knows that he or she is truly innocent. From a psychological point of view, coerced-compliant false confessions are the easiest to understand, as they arise when a suspect comes to believe that the short-term benefits of confessing (e.g., being left alone, fed, or released) outweigh the long-term costs (e.g., prosecution, loss of reputation, incarceration). It is generally believed that the decision to confess stems in large part from a suspect's expectations concerning the relative consequences of confession and denial (Hilgendorf & Irving, 1981). This notion is supported by role-playing studies in which participants who role-play an innocent suspect often plead guilty in order to cut their losses (Bordens, 1984) and interviews with real suspects who pleaded guilty in exchange for penalty reductions (Bordens & Bassett, 1985). Research has shown that a suspect's perception of the strength of the evidence is a highly significant predictor of whether he or she will confess (Moston, Stephenson, & Williamson, 1992; see also Cassell & Hayman, 1996).

Individuals who are characteristically predisposed to exhibit compliance in social influence situations may be particularly vulnerable in this regard. To test this hypothesis, Gudjonsson (1989) constructed a self-report instrument to measure individual differences in compliance (e.g., "I give in easily to people when I am pressured" and "I tend to go along with what people tell me even when I know that they are wrong"). He then administered the test to 20 criminal suspects who refused to confess and 20 who confessed to the police but later retracted their statements. He found that "confessors" had higher scores on this measure than did those who refused to capitulate (Gudjonsson, 1991).

The pages of legal history are filled with stories of coerced-compliant confessions. In the landmark case of *Brown v. Mississippi* (1936), three Black tenant farmers confessed to murder after they were brutally whipped with a steel-studded leather belt—beatings that would continue, the men were told, unless they confessed. All three were found guilty and sentenced to death, but the convictions were reversed on appeal by the U.S. Supreme Court. However, coerced-compliant confessions continue to occur, even today. In Great Britain, a 17-year-old boy was arrested for theft, sexual assault, and murder. Although there was no physical evidence linking this boy to the crime, five police officers took turns interrogating him for 14 hours, during which time they claimed to have eyewitnesses. Sobbing, exhausted, sleep-deprived, and feeling powerless to bring the session to an end, the boy eventually confessed. He retracted his statement the next day, however, and the confession was later proved to be false (Gudjonsson & MacKeith, 1990). Even more remarkable is a recent case in which four innocent young men confessed independently to the shooting massacre

of six Thai Buddhist monks in a Phoenix, Arizona, temple. In that case, a psychiatric inpatient called the police, volunteered a confession, and implicated three other men. His "accomplices" were then immediately seized and put under intense late-night pressure. One was interrogated nonstop for 21 hours; another was told that his brothers would be arrested. All of the men eventually confessed and spent 70 days in jail—until the real murderers were discovered (Parloff, 1993).<sup>3</sup>

### **Coerced-Internalized False Confessions**

The third type of false confession is the most interesting, psychologically speaking. Coerced-internalized confessions are those in which an innocent person—nervous, tired, confused, and subjected to highly suggestive methods of interrogation—actually comes to believe that he or she committed the crime. This type of false confession is particularly frightening because the suspect's memory of his or her own actions may be altered, rendering the original contents potentially irretrievable. This phenomenon is closely related to recent laboratory and field studies involving the creation of false memories (Hyman, Husband, & Billings, in press; Loftus, 1993; Read, 1996; Roediger & McDermott, 1995).

In the criminal justice arena, Gudjonsson (1984) devised a memory-related instrument to assess individual differences in interrogative suggestibility. The test involves reading a narrative paragraph to a participant, who then free recalls the story and answers 20 memory questions, including 15 that are subtly misleading. After being told that he or she made several errors, the participant is then retested, presumably for the purpose of obtaining a higher level of accuracy. Through this test-retest paradigm, one can measure the extent to which participants exhibit a general *shift* in memory as well as the tendency to *yield* to the misleading questions in the first and second tests. As summarized by Gudjonsson (1992), research has shown that individuals with high scores on interrogative suggestibility also tend to exhibit poor memories, high levels of anxiety, low self-esteem, and a lack of assertiveness. Among criminal suspects, "alleged false confessors" (i.e., those who confessed to the police but later retracted their statements) obtained higher scores, whereas resisters (i.e., those who maintained their innocence throughout interrogation) obtained lower scores relative to the general population (Gudjonsson, 1991). Not surprisingly, research also has shown that interrogative suggestibility scores increase as a function of prolonged sleep deprivation, a state that often plagues suspects who are interrogated late at night (Blagrove, 1996).

Coerced-internalized false confessions seem highly unlikely, but several cases of this sort have appeared in recent years. To illustrate, consider the story of 18-year-old Peter Reilly, who returned home one night to find that his mother had been murdered. Reilly immediately called the police who, while interrogating the boy with the aid of a polygraph, suspected him of matricide. The

police told Reilly that he failed an infallible lie-detector test, thus indicating that he was guilty even though he had no memory of the incident. Transcripts of the interrogation sessions revealed that Reilly underwent a remarkable transformation from denial to confusion, self-doubt, conversion ("Well, it really looks like I did it"), and the signing of a full written confession. Two years later, independent evidence revealed that Reilly could not have committed the murder, that the confession that even he came to believe was false (Barthel, 1976).

In a similar case, Thomas Sawyer, a golf-course groundskeeper in Florida, was accused of raping and murdering his neighbor. At first, Sawyer was invited to the police station to "assist" in the investigation. Once there, he was subjected to a grueling 16-hour interrogation in which he was led to believe that he had committed the brutal crime but lost his memory of the event as a result of an alcoholic blackout. During the interrogation, the police shaped Sawyer like they would a rat in a Skinner box by getting him to imagine how the murder might have occurred and then alter details of his story until they matched the crime scene. They even led him to think that his hair was found on the victim's body—a claim that was not supported by the physical evidence. At first, Sawyer vehemently denied the charge. Then after several hours, he became confused about his memory. Finally, he capitulated: "I guess all the evidence is in, I guess I must have done it" (Jerome, 1995, p. 30).

In a third case, a 19-year-old Berkeley, California, student named Bradley Page confessed to the murder of his girlfriend. There was not a shred of evidence against Page, who seemed to have solid alibis and no motive. But the detective—who befriended Page, put his arms around him, and called him "son," and whose trust he desperately wanted—told Page that he had flunked a lie-detector test, that he was seen near the body, and that his fingerprints were found as well. None of this was true. During the course of 16 hours of interrogation, Page wondered aloud if he could have killed his girlfriend without even realizing it. The detective said it happens often and proceeded to assist Page in the recovery of his lost "memory." On the basis of the resulting statement, Page was convicted by a jury and sentenced to nine years in prison (Pratkanis & Aronson, 1991).

Finally, in a recent case that drew national attention, Paul Ingram—a deeply religious man and a deputy sheriff in Olympia, Washington—was accused of raping his daughter, sexual abuse, and satanic cult crimes that included the slaughter of newborn babies. After 23 interrogations, which extended for five months, Ingram was detained, hypnotized, provided with graphic crime details, told by a police psychologist that sex offenders

<sup>3</sup> After the real killers were found through ballistics evidence, they were pressured by interrogators to implicate the four men who had initially confessed. Then, it turned out that one of the killers was also responsible for an unrelated murder to which an innocent man had confessed 14 months earlier.

typically repress their offenses, and urged by the minister of his church to confess. Ingram eventually "recalled" his crimes, pleaded guilty, and was sentenced to 20 years in prison. Yet, there was no physical evidence to suggest that the crimes had even occurred. Indeed, sociologist Richard Ofshe, who was called by the state to evaluate the case, concluded that Ingram was "brainwashed" into thinking that he was part of a satanic cult. To demonstrate the process, Ofshe concocted a phony crime. At first, Ingram denied the new charge. But by the next day, he confessed and embellished the story. This case is more fully described in three recent books: *Remembering Satan* (Wright, 1994); *Making Monsters: False Memories, Psychotherapy, and Sexual Hysteria* (Ofshe & Watters, 1994); and *Satan's Silence: Ritual Abuse and the Making of a Modern American Witch Hunt* (Nathan & Snedeker, 1995).

There are other remarkable cases as well that involve coerced-internalized confessions. The names, places, and dates may change, but they all have two factors in common: (a) a suspect who is "vulnerable"—that is, one whose memory is malleable by virtue of his or her youth, interpersonal trust, naiveté, suggestibility, lack of intelligence, stress, fatigue, alcohol, or drug use and (b) the presentation of false evidence such as a rigged polygraph or forensic tests (e.g., bloodstains, semen, hair, fingerprints), statements supposedly made by an accomplice, or a staged eyewitness identification as a way to convince the beleaguered suspect that he or she is guilty.

Until recently, there was no empirical evidence for this phenomenon. To be sure, eyewitness testimony researchers have found that misleading postevent information alters actual or reported memories of observed events (Loftus, Miller, & Burns, 1978; McCloskey & Zaragoza, 1985; Weingardt, Loftus, & Lindsay, 1995), an effect that is particularly potent among preschool children (Ceci & Bruck, 1993; Ceci, Ross, & Toglia, 1987) and adults under hypnosis (Dinges et al., 1992; Dywan & Bowers, 1983; McConkey & Sheehan, 1995; Sheehan, Statham, & Jamieson, 1991). Recent studies suggest that it is even possible to implant false "recollections" of words in a list (Read, 1996; Roediger & McDermott, 1995) and isolated childhood experiences (Hyman et al., in press), such as being lost in a shopping mall, that supposedly had been forgotten or buried in the unconscious (Loftus, 1993). The question is: Can memory for one's own actions be similarly altered? Can people be induced to accept guilt for outcomes they did not produce? Is it, contrary to popular belief, possible?

### **Eliciting False Confessions in the Laboratory**

In a recent experiment, Kassin and Kiechel (1996) tested the two-factor hypothesis that the presentation of false evidence can lead individuals who are vulnerable to confess to an act they did not commit, internalize that confession, and confabulate details consistent with that belief. Seventy-five college students took part in what was supposed to be a reaction time study. Per session, two partici-

pants came in (actually one was a confederate). The confederate was to read a list of letters, and the participant was to type these letters as quickly as possible on the keyboard of a personal computer. Before the session began, participants were warned not to press the "ALT" key positioned near the space bar or else the computer would malfunction and data would be lost. Lo and behold, after 60 seconds, the computer supposedly crashed, and a frantic experimenter accused the participant of hitting the key (in fact, all were innocent).

Two factors were independently varied. First, the participant's *vulnerability* (i.e., level of certainty concerning his or her own actions) was manipulated by varying the pace of the task. Using a metronome, the confederate read the letters at a slow pace of 43 letters per minute or at a fast pace of 67 letters per minute. The second factor was the presentation of *false incriminating evidence*—a tactic often used by the police. As anticipated, all participants denied the charge at first, at which point the experimenter turned to the confederate. In half the cases, the confederate said she did not see what happened. In the other half, she said that she saw the participant hit the forbidden key.

Three levels of social influence were assessed. To elicit compliance, the experimenter handwrote a standardized confession and prodded the participants to sign it. To measure internalization, Kassin and Kiechel (1996) recorded the way participants privately described the experience when they were away from the experimenter. As participants left the lab, they met a waiting participant (actually a second confederate) who presumably overheard the commotion. This confederate asked what had happened. The participant's reply was then coded for whether he or she accepted the blame for what had happened (e.g., "I hit a key I wasn't supposed to and ruined the program"). Finally, although the session appeared to be over, the experimenter brought the participants back into the lab, reread the letters they typed, and asked if they could reconstruct how and when they hit the "ALT" key. This procedure was used to probe for evidence of confabulation, to see if participants would manufacture details to fit the allegation (e.g., "Yes, here, I hit it with the side of my hand right after you called out the 'A' "). Afterward, the participants were carefully debriefed about the study—its purpose, the hypothesis, and the need for the use of deception.

Overall, 69% of all participants signed the confession, 28% internalized guilt, and 9% confabulated details to support their false beliefs (Kassin & Kiechel, 1996). More important, however, was the joint effect of the two independent variables. In the slow pace—no witness group, 35% of participants signed the note, but not a single one exhibited internalization or confabulated a memory. Yet, out of 17 participants in the fast pace—witness group, all signed the confession, 65% came to believe they were guilty, and 35% confabulated details to fit that newly created belief. The results of this study support the provocative hypothesis that people can be

induced to internalize guilt for an outcome they did not produce and that the risk is increased by the presentation of false evidence—a trick often used by the police and sanctioned by the U.S. Supreme Court (e.g., *Frazier v. Cupp*, 1969).<sup>4</sup>

## Impact on the Jury

Because confessions elicited by underhanded ploys are often admitted into evidence, it is important to understand what impact they have on the jury. It could be argued, after all, that even if the police use coercive interrogation techniques, and even if they were to extract false confessions from innocent people, juries can use their collective common sense to render accurate verdicts.

## Relevant Case Law and Trial Procedures

In all cases involving a disputed confession, a preliminary hearing is held in which a judge determines the voluntariness and admissibility of the confession. At trial, the courts then follow one of two procedures. In some states, confessions deemed voluntary are admitted with other evidence without special instruction. In other states, the jury is directed to make an independent judgment of voluntariness and to disregard statements found to be coerced.

With judges making pretrial determinations of voluntariness and admissibility, it has long been the case that convictions routinely have been reversed whenever an appeals court has found that the judge erroneously admitted a coerced confession into evidence. In the recent case of *Arizona v. Fulminante* (1991), however, the U.S. Supreme Court broke new ground. In this case, Oreste Fulminante was convicted, at least in part, on the basis of a confession. The defendant claimed the confession was coerced, but it was presented at trial, and he was found guilty and sentenced to death. On appeal, the Supreme Court agreed that Fulminante's confession was coerced and that its admission was prejudicial error. By a five to four margin, however, the Court stated that in certain situations (e.g., when a confession is cumulative or when there is other evidence), a wrongly admitted confession may constitute a mere "harmless error." To determine if such a confession was harmless, an appellate court would review the evidence and examine the error in the context of the trial as a whole. The state would then have to prove beyond a reasonable doubt that the confession was voluntary and that its admission was harmless. In essence, the Supreme Court argued that the "admission of an involuntary confession is a 'trial error' similar in both degree and kind to the erroneous admission of other types of evidence" (*Arizona v. Fulminante*, 1991, p. 1265).

Many legal scholars have criticized the *Fulminante* ruling on constitutional grounds (Ogletree, 1991), in the belief that it will encourage the police to use more coercive methods of interrogation (Kamisar, 1995), and on the argument that appeals court judges are ill-equipped by intuition to gauge the strength of the prosecutor's case

and the cumulative or harmless nature of the confession in dispute (Mueller & Kirkpatrick, 1995). The *Fulminante* ruling, as with others of recent vintage (e.g., *Lego v. Twomey*, 1972; *Mu'Min v. Virginia*, 1991), also requires a certain degree of faith in the jury. But is this faith justified? Are jurors sensitive to the pressures of an interrogation situation? And, if so, will they correctly evaluate, let alone ignore in their decision making, evidence of a coerced confession?

## Perceptions of Voluntariness and Coercion

Recent efforts to catalog the circumstances that give rise to laypeople's perceptions of voluntariness and coercion indicate that people are reasonably sensitive to personal and situational aspects of interrogations. Skolnick and Leo (1992) had police officers and college students respond to a brief vignette describing a suspect who was confronted with false forensic evidence. The result was that 94% of police officers, compared with only 36% of students, thought the tactic was fair. When the ploy was supplemented by the presentation of a fabricated scientific report, the officers continued to see the situation as fair, but the student endorsement rate decreased to 17% in response to this variation.

To examine people's reactions to a wide range of situations, I recently presented 35 college students with 22 interrogation situations, each culminating in a confession. For each situation, they rated on a 10-point scale how much pressure the police had put on the suspect. In addition, they were asked for each situation to estimate the percentages of truly guilty and truly innocent suspects who would confess. Three results emerged from these measures. First, participants discriminated between the various situations in reasonable and predictable ways. Except for confessions that were spontaneous or were elicited in brief questioning at the suspect's home, the methods seen as least coercive involved the use of an informant, minimization, the questioning of a suspect who was drunk, and a three-day detention. Seen as moderately coercive were depriving a suspect of telephone contact with others, awakening the suspect from sleep, having a minister urge the suspect to confess, and promising immunity or leniency. Seen as most coercive were the use of maximization; deprivation of basic needs for food, water, and sleep; a threat of harm or punishment; and, lastly, physical pain and discomfort.<sup>5</sup> A second result, as anticipated, was that participants predicted higher confession rates from suspects who were truly guilty than

<sup>4</sup> With regard to the external validity of these results, it is important to note that for ethical reasons Kassin and Kiechel (1996) devised a method in which participants were accused merely of an act of negligence, not one involving criminal intent (e.g., stealing equipment, cheating on a test). It is also important to realize, however, that the effects were exhibited by college students who were intelligent, self-assured, and under relatively little stress as compared with criminal suspects held in custody, often in isolation.

<sup>5</sup> Using different items and a 7-point response scale, Wrightsman and Kassin (1993) obtained similar results.

from those who were innocent (across items, the mean estimates were 55.48 and 21.62, respectively). Third, the more pressure participants perceived in an interrogative situation, the higher were their predicted confession rates for both guilty and innocent suspects. In the situation rated the least pressure-filled, for example, participants predicted that confessions would be given by 25% of guilty suspects and less than 1% of innocent suspects; in contrast, they predicted confession rates of 82% and 62% for guilty and innocent suspects, respectively, in the highest pressure situation on the list (across items, mean  $r_s = .41$  and  $.33$ , respectively).

### **Discounting of Coerced Confessions**

The foregoing research suggests that people are reasonably sensitive to variations in the interrogation situation and have causal theories about the extent to which suspects will confess as a function of these situations. But does the perception of police pressure necessarily imply that jurors will discount (i.e., attach zero weight to) confessions elicited in high-pressure situations? Attribution theory and research suggest a negative answer to this critical question. Over the years, studies have shown that people frequently fall prey to the "fundamental attribution error"; that is, they tend to make dispositional attributions for a person's actions while neglecting the role of situational factors (Jones, 1990). In a recent analysis, Gilbert and Malone (1995) offered several possible explanations for this bias, the most compelling of which is that people tend to draw quick and relatively automatic dispositional inferences but then, because of a lack of motivation or cognitive capacity, they fail to adjust or correct for situational influences.

Does the fundamental attribution error have relevance for the effect of confessions on a jury's decision making? In a series of mock-juror studies, Kassin and Wrightsman (1980) examined the persuasive impact of station house confessions made by defendants in response to explicit promises and threats. They had participants read criminal trial transcripts and found that when a defendant had confessed in interrogation after a threat of harm or punishment, participants fully rejected the information: They judged the confession to be involuntary by law and were not significantly influenced by that evidence in their verdicts. Yet, when the defendant was said to have confessed after a promise of leniency, participants did not fully reject the information. In this condition, they conceded that the confession was involuntary but voted guilty anyway (compared with a no-confession control group). This pattern of results illustrates what was termed the *positive coercion bias*. Subsequent research showed that this bias persisted even when participants were specifically told to discount an involuntary confession (Kassin & Wrightsman, 1981); even when they deliberated to a verdict in six-person groups (Kassin & Wrightsman, 1985); and even when the defendant was said to have confessed in response to implied leniency,

as communicated through the minimization technique described earlier (Kassin & McNall, 1991).

Motivated by the Supreme Court's landmark ruling in *Arizona v. Fulminante* (1991), Kassin and Sukel (1997) explicitly tested the hypothesis that the admission of coerced confession evidence can be considered a harmless error. In one study, participants read one of three versions of a murder trial transcript. In a low-pressure version, the defendant was said to have confessed to the police immediately during questioning. In a high-pressure version, participants read that he was interrogated with his hands cuffed behind his back, that he was in pain, and that the detective had waved his gun in a menacing manner. There was also a control group in which there was no confession. The results offered illusory support for the Supreme Court's harmless error analysis. Confronted with a confession elicited through high-pressure interrogation tactics, participants responded in a legally prescribed manner: They judged the statement to be involuntary and said that it did not affect their decisions. On the all-important measure of verdicts, however, the mere presence of a confession significantly boosted the conviction rate. This result was obtained even among participants in the high-pressure group, most of whom judged the confession involuntary and claimed it had no impact on their verdicts (percentages of guilty votes were 62% under low pressure and 50% under high pressure as compared with 19% in the no-confession control group).<sup>6</sup> Similar results were obtained in a follow-up study of local residents who had been summoned to court for jury duty but were dismissed. In addition, Kassin and Neumann (in press) found that confessions raised the conviction rate more than do eyewitness identifications and character testimony—two other common and potent forms of evidence.

Taken together, various mock-jury studies, bolstered by nonlegal research on the fundamental attribution error, challenge the Supreme Court's application of harmless error to the admission of coerced confessions. Clearly, people can distinguish between voluntary and coerced confessions and say that they are influenced by the former, not the latter. Yet, at the same time, the presence of a confession powerfully boosts the conviction rate and does so more than other forms of proof. In short, confession evidence is so inherently prejudicial that people do not fully discount the information even when it is logically and legally appropriate to do so.

### **Videotaped Confessions in the Courtroom**

On the basis of a national survey, it is estimated that one third of all large police and sheriffs' departments in the United States now videotape at least some interrogations—a practice that is most common in cases of homicide, rape, and aggravated assault (Geller, 1993). Al-

<sup>6</sup> Underscoring the power of confession evidence, there was also a significant boost in the conviction rate when the confession was ruled inadmissible and participants were admonished to disregard it.

though Inbau et al. (1986) opposed the videotaping of police interrogations, the practice has many advocates (Cassell, 1996b; Gudjonsson, 1992; Leo, 1996a). Indeed, videotaping can deter coercive police conduct and provide a more complete audiovisual record for the judge and jury to evaluate the voluntariness and veracity of the defendant's statement. In Great Britain, the Police and Criminal Evidence Act of 1986 built certain protections into the questioning process, including the requirement that all suspect interviews be taped.<sup>7</sup> In the United States, 97% of the police departments that have videotaped at least some confessions have found them useful (Geller, 1993).

**The point-of-view bias.** For evidentiary purposes, videotaped interrogations should provide a complete and objective record of the police-suspect interaction. But what constitutes a complete and objective record? Several years ago, I received interrogation tapes from the district attorney in Bronx County, New York. I was told that the sessions were taped from a "neutral" camera angle. In fact, the camera was stationed behind the interrogator and focused squarely on the suspect. This may seem innocent enough, but research suggests it is not. On the basis of studies showing that people make causal attributions to factors that are visually salient (see Taylor & Fiske, 1978), Lassiter and his colleagues (Lassiter & Irvine, 1986; Lassiter, Slaw, Briggs, & Scanlan, 1992) taped mock interrogations from three different camera angles so that the suspect, the interrogator, or both were visible to mock jurors. The result was that those who saw only the suspect judged the situation as less coercive than did those focused on the interrogator. By directing visual attention toward the accused suspect, the camera can lead jurors to underestimate the amount of pressure actually exerted by the "hidden" detective.

**The recap bias.** An important related issue concerns whether jurors are shown a tape of the entire interrogation or merely a recap consisting of only the suspect's final confession. Recaps are common and take an average of 15-45 minutes (Geller, 1993). On the question of whether they should be admitted into evidence, there are two possible bases for concern. First, the jury sees a final self-incriminating statement but not the circumstances that led up to it, thus perhaps increasing perceptions of voluntariness. Second, after recounting a story over and over again, a suspect is likely to show less emotion and appear unusually callous. In light of the fact that people are more forgiving of others who express remorse and apologize for their wrongdoings (Robinson, Smith-Lovin, & Tsoudis, 1994; Weiner, Graham, Peter, & Zmuidinas, 1991), recaps may bias the jury against the defendant. At this point, empirical research is needed to examine these possible effects.

**Framing the tapes.** A suspect often provides the police with a statement that is not a confession but is instead ambiguous (e.g., denying the charges but telling an implausible story). What is the persuasive impact of an interrogation tape when the suspect maintains his or

her innocence and goes to trial? One possibility is for the state to introduce the tape into evidence to highlight inconsistencies in the defendant's story. But another possibility is for the defense to show the tape and focus the jury's attention on the defendant's denials in the face of pressure.

To examine this question, Kassir, Reddy, and Tulloch (1990) had mock jurors watch a 45-minute interrogation of an actual murder suspect who asserted her innocence but told an implausible story. For some participants, the tape was introduced by the prosecution, who harped on the inconsistencies in the story; for others, it was shown by the defense lawyer, who noted that the defendant maintained her innocence despite pressure to confess (the tape was always followed by the opposing lawyer's argument). Results showed that among participants high in the need for cognition (a state of cognitive involvement similar to that activated in jurors in actual trials), those who saw the tape being introduced by the prosecution rather than the defense were more likely to vote guilty. With statements that are ambiguous enough to accommodate opposing interpretations, the adversarial advantage goes to the party that introduces the tape and frames it for the jury.

## Prospects for the Future

At the onset of this article, three basic questions were raised concerning the elicitation and impact of confessions. Although the empirical foundation for evaluating this powerful form of evidence is limited, available research suggests that the criminal justice system currently does not afford adequate protection to people branded as suspects and that there are serious dangers associated with the use of confession evidence. Referring back to the questions on which this article was structured, it appears that the problems are threefold: (a) The police often use deception, trickery, and psychologically coercive methods of interrogation; (b) these methods, at times, cause innocent people to confess to crimes they did not commit; and (c) when coerced confessions are presented in the courtroom, juries do not sufficiently discount the information in reaching a verdict.

The problems raised by confession evidence are fundamental to criminal justice, substantial, and important.<sup>8</sup> As such, there is a great deal about this aspect of the legal system that warrants the intervention of psychologists for educational and research purposes. For example, police detectives, trial judges, juries, and appeals courts should know what types of interrogation methods may put an innocent person at risk. Moreover, the courts should be

<sup>7</sup> Ironically, this requirement may have increased the risk that suspects are pressured to talk outside the interrogation room—in police cars, jail cells, and other settings (Gudjonsson, 1994).

<sup>8</sup> Confirming the obvious, criminal suspects are significantly more likely to be prosecuted, convicted, and sentenced harshly if they incriminate themselves in the interrogation room than if they do not (Cassell & Hayman, 1996; Leo, 1996b).

better informed about the impact of confession evidence on the jury, the biasing effects of camera angles in the production of videotaped interrogations, and other related matters.

It is important to note that intervention in this regard may take several forms, including but not limited to in-court testimony from "confession experts." In recent years, a small but growing number of psychologists have testified on behalf of criminal defendants who confessed but then retracted their statements, pleaded not guilty, and went to trial. In some cases, the experts testified in general terms about social influence, suggestibility effects on memory, psychopathology, and other relevant phenomena; in other cases, they offered specific opinions concerning the truth or falsity of the disputed confession on the basis of interviews with the defendant, demonstrations, and test results. In light of Monahan and Walker's (1991) "social frameworks" perspective (i.e., certain bodies of social science research can be used both to resolve general questions of law and to address factual issues in a specific case), it could be argued that oral testimony from confession experts at trials is less desirable as a means of intervention than the presentation of research to the courts in written briefs. On a case-by-case basis, relevant findings could then be communicated to the jury in the judge's instructions.

I want to close with an observation concerning psychology's role in this arena. Legal scholars have long speculated that confession evidence is the most potent weapon for the prosecution, even more so than eyewitness testimony. Yet, despite hundreds of eyewitness studies conducted over the years, which have contributed a body of knowledge about which there is a consensus among the experts (Kassin, Ellsworth, & Smith, 1989), the topic of confession evidence has largely been overlooked by the scientific community. As a result of this neglect, the current empirical foundation may be too meager to support recommendations for reform or qualify as a subject of "scientific knowledge" according to the criteria recently articulated by the U.S. Supreme Court (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 1993). To provide better guidance in these regards, further research is sorely needed. Whether the focus is on police-suspect interactions in the interrogation room, false confessions, or the jury's reaction to this evidence when presented in court, the topic deserves far more attention and scrutiny than it has previously received.

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