

**TABLE 6**  
*Percentage of True and False Confessions and Resulting Diagnosticity Ratio as a Function of Interrogation Condition (Russano, Meissner, Kassin, & Narchet, in press)*

Condition	True confessions (%)	False confessions (%)	Diagnosticity ratio
No tactic (control)	46	6	7.67
Explicit leniency	72	14	5.14
Minimization	81	18	4.50
Both	87	43	2.02

Gudjonsson (2002) reviewed 23 leading murder cases in Great Britain in which convictions were quashed between 1989 and 2002 because of unreliable confession evidence and found that 14 of the convictions (61%) were overturned on the basis of psychological or psychiatric evidence of the defendants' personal vulnerability and 9 (39%) because of situational factors involving police impropriety or malpractice.

The multifaceted nature of false confessions raises an important point. At times, an individual may be so dispositionally naive, compliant, suggestible, delusional, anxious, or otherwise impaired that little interrogative pressure is required to produce a false confession. Hence, investigators must seek external corroboration for voluntary confessions in order to determine that the confessor's knowledge of the crime is accurate, not erroneous, and that it results from personal experience, not secondhand sources. In these cases, clinical testing and assessment may be useful in determining whether an individual suspect is prone to confess. At other times, however, normal adults, not overly naive or impaired, confess to crimes they did not commit as a way of coping with the stress of police interrogation. Decades of social-psychology research have shown that human beings are profoundly influenced by figures of authority and other aspects of their social surroundings—and can be induced to behave in ways that are detrimental to themselves and others. In short, both personal and situational risk factors may be sufficient, and neither is necessary, to increase the risk of a false confession.

### CONFESSION EVIDENCE IN COURT

An important problem revealed by confession-based wrongful convictions is that juries routinely believe false confessions, as do the police and prosecutors who precede them. This section examines the way people perceive confessions and the question of what advisory role, if any, psychological experts can play.

In cases involving a disputed confession, a preliminary hearing is held for a judge to determine its voluntariness and admissibility. In American courts, confessions deemed voluntary are then either admitted without special instruction or presented to the jury with the instruction that they should make

an independent judgment of voluntariness before using the evidence toward a verdict. Until recently, convictions were supposed to be routinely reversed when it was determined upon appeal that a judge had erroneously admitted a coerced confession into evidence. In *Arizona v. Fulminante* (1991), however, the U.S. Supreme Court ruled that the error of a wrongly admitted confession may, under certain conditions (e.g., when the confession is cumulative with other sufficient evidence), be “harmless,” not “prejudicial”—and hence, not grounds for a new trial. Some legal scholars have criticized the *Fulminante* ruling on constitutional grounds (Ogletree, 1991), on the pragmatic argument that it will encourage police coercion (Kamisar, 1995), and on the belief that appeals court judges are cognitively ill equipped to project the strength of the state's case without the inadmissible confession that is already known to them (Mueller & Kirkpatrick, 1995). Regardless of the soundness of *Fulminante*, one point is clear: Juries are expected, implicitly or explicitly, in light of the totality of the circumstances, to consider the voluntariness of confessions and discount those they see as coerced.

### Confessions and the Jury

Most wrongful convictions in which false confessions are in evidence are the product of two sources of error. The first is that certain police interrogation techniques lead innocent people to confess; the second is that trial juries, like other parties in the criminal justice system who precede them, are influenced by these confessions. Archival analyses of actual cases containing confessions later proved false tell a horrific tale. When the false confessors pled not guilty and proceeded to trial, the jury conviction rates ranged from 73% (Leo & Ofshe, 1998) to 81% (Drizin & Leo, 2004). These figures led Drizin and Leo (2004) to describe confession evidence as “inherently prejudicial and highly damaging to a defendant, even if it is the product of coercive interrogation, even if it is supported by no other evidence, and even if it is ultimately proven false beyond any reasonable doubt” (p. 959).

Are juries uncritically accepting of confessions despite the circumstances under which they were given? Common sense leads people to expect self-serving behavior in others—and hence, to trust confessions. Across a range of settings, research shows that jurors may not discount (i.e., attach zero weight to) confessions elicited by high-pressure methods of interrogation. Over the years, studies have shown that people frequently fall prey to what Ross (1977) called the *fundamental attribution error*—that is, they tend to make dispositional attributions for a person's actions (i.e., to see behavior as arising from the person's nature), while underestimating the role of situational factors (Jones, 1990). 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, taking behavior at face value,

but then because of a lack of motivation or cognitive capacity fail to adjust or correct for situational influences.

Controlled research corroborates the apparent impact of confession evidence. Mock-jury studies have shown that confessions have more impact than eyewitness and character testimony, other powerful forms of evidence (Kassin & Neumann, 1997). This result is not surprising. The problem is that people do not fully discount confession evidence even when it is logically and legally appropriate to do so. In an early series of studies, for example, Kassin and Wrightsman (1980) examined the persuasive impact of confessions elicited by explicit promises and threats. After reading trial transcripts, their subjects rendered verdicts of guilt or innocence. If the defendant had confessed in response to a threat of harm or punishment, they fully rejected the confession in their verdicts. When the defendant confessed after a promise of leniency, however, subjects did not fully reject the information. In this condition, they conceded that the confession was involuntary by law but voted “guilty” anyway. Subsequent research showed that this bias persists even when subjects are specifically admonished to discount an involuntary confession (Kassin & Wrightsman, 1981) and even when they deliberate to a verdict in six-person groups (see Kassin & Wrightsman, 1985).

More recent studies as well have shown that juries may be corrupted by confessions whether they judge them to be voluntary or coerced. Kassin and Sukel (1997) presented subjects with one of three versions of a murder trial. In a low-pressure version, the defendant was said to have confessed to police immediately upon questioning. In a high-pressure version, subjects read that the suspect was in pain and interrogated aggressively by a detective who waved his gun in a menacing manner. In a control version, there was no confession in evidence. Confronted with the high-pressure confession, subjects appeared to respond in the legally prescribed manner, at least as assessed by two measures: They judged the statement to be involuntary and said it did not influence their decisions. Yet when it came to the all-important measure of verdicts, this confession significantly boosted the conviction rate (see Table 7). This pattern appeared even in a condition (not shown) in which subjects were specifically admonished by the judge to disregard confessions they found to be coerced.

### The Myth That “I’d Know a False Confession if I Saw One”

The problem of the impact of false confessions is not limited to the jury. Archival analyses reveal that confessions tend to overwhelm other information, such as alibis and other evidence of innocence, resulting in a chain of adverse legal consequences—from arrest through guilty pleas, prosecution, conviction, and incarceration (Drizin & Leo, 2004; Leo & Ofshe, 1998). Sometimes, district attorneys stubbornly refuse to admit the innocence of a suspect who confessed even after DNA tests

**TABLE 7**

*Percentage of Mock Jurors in Each Condition Who Judged the Confession Voluntary, Said That It Influenced Their Verdicts, and Voted for Conviction (Kassin & Sukel, 1997)*

Juror response	Confession condition		
	Low pressure	High pressure	No confession
Voluntariness	88	44	—
Self-influence	68	56	—
Guilty votes	63	50	19

unequivocally exonerate him or her. In one case, Bruce Godschalk was exonerated of two rape convictions after 15 years in prison when laboratories for both the state and the defendant tested the semen and found that he was not the rapist. Yet the district attorney whose office had convicted Godschalk argued that the DNA tests were flawed and refused at first to release him. When asked what basis he had for this decision, this district attorney asserted, “I have no scientific basis. I know because I trust my detective and his tape-recorded confession. Therefore the results must be flawed until someone proves to me otherwise” (Rimer, 2002, p. A14).

To safeguard against the adverse consequences that occur when police detectives, attorneys, and judges believe false confessions, it is vitally important that confessions be accurately assessed prior to the onset of court proceedings. Earlier, we discussed research showing that human beings cannot readily distinguish true from false denials. But can people in general, and law-enforcement professionals in particular, distinguish true from false confessions?

There are several reasons to expect that people might not be very good at detecting a false confession. First, research on the fundamental attribution error indicates that people tend to make dispositional attributions for a person’s actions, taking behavior at face value, while overlooking the role of situational factors, so that they are biased to perceive confessions as being true. Second, common sense compels the more specific belief that people do not engage in self-destructive behaviors—like confessing to a crime they did not commit. Third, people are generally not proficient at deception detection—they are unable, for example, to distinguish true and false denials. Fourth, police-induced confessions are uniquely corrupted by the guilt-presumptive process of interrogation, which can make suspects appear guilty through various cognitive and behavioral confirmation biases.

On the question of whether people can recognize false confessions, recent research has yielded sobering results. In one study, Lassiter, Clark, Daniels, and Soinski (2004) modified Kassin and Kiechel’s (1996) computer-crash paradigm to elicit both true and false oral confessions in the laboratory, confessions that were videotaped for other people to judge. Overall, student observers were not better than chance at

differentiating the confessions of guilty and innocent participants.

Moving from laypeople and laboratory confessions to police and confessions to actual crimes, Kassin, Meissner, and Norwick (2005) conducted a study in which they recruited male prison inmates to take part in a pair of videotaped interviews. For one interview, each inmate was instructed to give a full confession to the crime for which he was incarcerated, a narrative that was followed by his answers to a standardized list of questions. In a second interview, each inmate received a skeletal, one-sentence description of a crime committed by another inmate and was asked to concoct a false confession and reply to the same questions. The study used a yoked design in which the inmates were paired such that each inmate's true confession served as the basis of his paired inmate's false confession. Using five of the true confessions and their false counterparts, the researchers created a videotape that depicted 10 different inmates confessing to aggravated assault, armed robbery, burglary, breaking and entering, or automobile theft. In light of research showing that people are better lie detectors when they use auditory cues rather than visual cues, which are often misleading (Anderson, DePaulo, Anfield, Tickle, & Green, 1999; DePaulo, Lassiter, & Stone, 1982), audiotapes of the same confessions were also created. In both media, the statements were judged by college students and police investigators.

The results paralleled those found for judgments of denials (see Table 8). Neither group exhibited high levels of accuracy, though the police were significantly more confident than the students in their performance. Accuracy rates were higher when subjects listened to audiotaped confessions than when they watched the videotapes. Students, but not police, exceeded chance-level performance in this condition—though the police were more confident. A signal detection analysis further revealed that police did not differ from students in their hit rate, but they committed significantly more false-positive errors. This response bias was most evident among those with extensive law-enforcement experience and those specially trained in interviewing and interrogation. Note that this response bias did not predispose police to see deception per se, but rather to infer guilt—an inference that rested upon a tendency to believe false confessions.

There are two possible explanations for why police did not better distinguish true and false confessions and why they were less accurate than naive college students. The first is that law-enforcement work may introduce a systematic bias that reduces overall judgment accuracy (Meissner & Kassin, 2004). This hypothesis is consistent with the finding that police as a group are generally suspicious and primed to see deception in other people (Masip et al., in press). It is also not surprising in light of the behavioral deception cues that many police are trained to use (Vrij, 2000). For example, Inbau et al. (2001) advocate the use of such visual cues as gaze aversion, nonfrontal posture, slouching, and grooming gestures that are not, as an empirical matter, diagnostic of truth or deception (DePaulo et al., 2003). Another possibility is that investigators' judgment accuracy was compromised by an experimental paradigm in which half the stimulus confessions were false. To the extent that law-enforcement work reasonably leads police to presume that most confessions are true, the response bias they import from the police station to the laboratory may mislead them.

To test the hypothesis that the investigators' judgment accuracy was depressed because of these expectations, Kassin et al. (2005) conducted a second study in which they neutralized the response bias by instructing subjects prior to the task that half the statements were true and half were false. This manipulation did reduce the overall number of "true" judgments, and it did reduce the number of false-positive errors. Overall, however, the police maintained a pattern of low accuracy and high confidence relative to the students (see Table 8).

### Psychologists as Expert Witnesses

In the absence of an adequate safety net in law or in practice, clinical and research psychologists have often intervened as consultants in cases involving disputed confessions, at times testifying as experts in suppression hearings and at trials. Psychologists—through their research and expert testimony—have had a substantial impact in recent years on law, police practice, trial verdicts, and appellate decisions in Great Britain (Gudjonsson, 2003a). In the United States, however—where judges serve as active gatekeepers of scientific evidence by ascertaining whether an expert proffers information that is

**TABLE 8**  
*Truth-Lie Detection of Students and Police Investigators in the Prisoner-Confession Study (Kassin, Meissner, & Norwick, 2005)*

Performance	Students ( <i>n</i> = 82)			Investigators ( <i>n</i> = 77)		
	Videotape	Audiotape	50-50	Videotape	Audiotape	50-50
Accuracy	53.4%	64.1%	53.8%	42.1%	54.5%	48.5%
Confidence	6.18	6.25	5.74	7.65	7.06	7.03

**Note.** Subjects in the 50-50 condition were shown the videotapes and instructed that half the confessions were true and half were false.

scientific (e.g., testable, peer reviewed, reliable, valid, and generally accepted) and useful to the trier of fact (*Daubert v. Merrell Dow Pharmaceuticals*, 1993; *Kumho Tire Co., Ltd. v. Carmichael et al.*, 1999)—psychology’s impact is more difficult to gauge.

To date, psychologists have testified in hundreds of criminal and civil trials that generated no written opinions. Yet in other cases they have been excluded on various grounds. For example, one appeals court stated that the phenomena associated with false confessions are already known to juries as a matter of common sense (*State v. Free*, 2002). This rationale for the exclusion of expert testimony is wholly without merit and overlooks the fact that all confession-based wrongful convictions represent tales not only of suspects who give false confessions, but also of lawyers, judges, and juries who erroneously trusted those confessions. This commonsense argument also contradicts a broad and varied range of research findings. As noted earlier, a voluminous body of research indicates that people tend to accept the dispositional implications of another person’s behavior without sufficiently accounting for the impact of situational factors (Gilbert & Malone, 1995; Jones, 1990). The fact that this bias has been dubbed the fundamental attribution error is an indication of how pervasive and potentially misleading it is (Ross, 1977). In the realm of social influence, Milgram (1974) observed a profound form of this bias in finding that laypeople vastly underpredicted the percentage of subjects who would exhibit total obedience in his experiment. In mock-jury studies, Kassin and Sukel (1997) found that the presence of a confession significantly increased the conviction rate—even when it was seen as coerced, and even when jurors said it had no influence. In archival studies of actual cases containing confessions later proved false, the jury conviction rates at trial ranged from 73% (Leo & Ofshe, 1998) to 81% (Drizin & Leo, 2004).

Although case law continues to evolve in state, federal, and military courts, it appears that expert testimony is often, though not always, permitted for the purpose of informing a jury about police interrogations, false confessions, personal and situational risk factors, and other relevant general principles—but not for the purpose of rendering an opinion about the veracity of a particular confession, a judgment that juries are supposed to make (*United States v. Hall*, 1997; for a review, see Fulero, 2004). Several years ago, Kassin (1997b) suggested that “the current empirical foundation may be too meager to support recommendations for reform or qualify as a subject of scientific knowledge” (p. 231). In this new era of DNA exonerations, however, it is now clear that such testimony is amply supported not only by anecdotes and case studies of wrongful convictions, but also by a long history of basic psychology and an extensive forensic science literature, as summarized not only in this monograph but also in several recently published books (e.g., Gudjonsson, 2003b; Lassiter, 2004; Memon et al., 2003).

## FUTURE PROSPECTS

The Central Park jogger case and others like it demonstrate that confessions present the following series of problems: Police often see innocent people as deceptive, targeting them for interrogation; modern police interrogations involve the use of high-impact social influence techniques; sometimes people under the influence of certain techniques can be induced to confess to crimes they did not commit; people cannot readily distinguish between true and false confessions and do not fully discount confession evidence even when it is logically and legally appropriate to do so. When it comes to judges, juries, and others who must assess a defendant’s statements, part of the problem is that police-induced false confessions often contain vivid and accurate sensory details about the crime scene and victim acquired through secondhand sources; they often contain self-reports of revenge, jealousy, desperation, peer pressure, and other prototypical motives; and they even at times include apologies and expressions of remorse (Kharey Wise, a defendant in the Central Park jogger case, promised in his false confession that he would not rape again). To naive observers, the statements appear to be voluntary, accurate, and the product of personal experience. It is all too easy, however, to mistake illusion for reality and not realize that a police-induced confession is like a Hollywood drama: scripted by the interrogator’s theory of the case, shaped through questioning and rehearsal, directed by the questioner, and enacted by the suspect (see Kassin, 2004a).

### Toward the Reform of Interrogation Practices

In light of the recent high-profile wrongful convictions involving false confessions, as well as advances in psychological research in this area, the time is ripe for a true collaborative effort among law-enforcement professionals, district attorneys, defense lawyers, judges, social scientists, and policymakers to evaluate the methods of interrogation that are commonly deployed. All of these parties would agree that the surgical objective of interrogation is to secure confessions from suspects who are guilty, but not from those, misjudged, who are innocent. Hence, the process should be structured in theory and in practice to produce outcomes that are diagnostic, as measured by the observed ratio of true to false confessions. Yet except for physical brutality or deprivation, explicit threats of harm or punishment, explicit promises of leniency or immunity, and flagrant violations of *Miranda*, no objective criteria or limits are currently placed on this process. Instead, American courts historically have taken a “totality of the circumstances” approach to judging voluntariness and admissibility, as articulated in *Culombe v. Connecticut* (1961), in which Justice Frankfurter asserted that “there is no simple litmus-paper test” (p. 601). With all that is now known about the existence and psychology of false confessions, perhaps the time has come to revisit this previously eschewed concept of a litmus test.