

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.

Although more research is needed, the existing literature does suggest that certain interrogation practices diminish diagnosticity by posing a risk to the innocent. One such factor concerns time in custody and interrogation. The human needs for belonging, affiliation, and social support, especially in times of stress, are a fundamental human motive (Baumeister & Leary, 1996). Prolonged isolation from significant others thus constitutes a form of deprivation that can heighten a suspect's distress and incentive to remove himself or herself from the situation. Excessive time in custody is also likely to be accompanied by fatigue and feelings of helplessness, as well as the deprivation of sleep, food, and other biological needs. Yet although most interrogations last for less than 2 hours (Leo, 1996b), and although Inbau et al. (2001) suggested that 3 or 4 hours is generally sufficient, research shows that in proven false-confession cases in which records were available, the interrogations lasted for an average of 16.3 hours (Drizin & Leo, 2004). In the Central Park jogger case, the five boys had been in custody and under some constancy of interrogation for 14 to 30 hours by the time they confessed (*New York v. Wise et al.*, 2002). Following the Police and Criminal Evidence Act of 1984 (PACE) in Great Britain (Home Office, 1985), policy discussions should begin with a proposal for the imposition of time limits, or at least flexible guidelines, when it comes to detention and interrogation, as well as periodic breaks from questioning for rest and meals.

A second problem concerns the tactic of presenting false evidence, which often takes the form of outright lying to suspects—for example, about an eyewitness identification that was not actually made; fingerprints, hair, or blood that was not found; or polygraph tests they did not really fail. The decision to confess is influenced by a suspect's expectations about the relative consequences of confession and denial, and research shows that people capitulate when they believe that the authorities have strong evidence against them (Moston et al., 1992). Because police are more likely in general to have direct and circumstantial proof of guilt against perpetrators and credible alibis on behalf of those who are falsely accused, the practice of confronting suspects with real evidence, or even their own inconsistent statements, should increase the diagnosticity of the confessions that are ultimately elicited. To the extent that police are permitted to misrepresent the evidence, however, guilty and innocent suspects become equally trapped and similarly treated, reducing diagnosticity.

In *Frazier v. Cupp* (1969), the U.S. Supreme Court considered a case in which police falsely told the defendant that his cousin, who was to provide his alibi, had confessed. The court tacitly sanctioned use of this type of deception—seeing it as relevant to voluntariness but not disqualifying. Since then, the court has repeatedly declined the opportunity to reconsider the issue (Magid, 2001). Since that time, however, controlled studies have shown that the presentation of false evidence substantially increases false confessions (Horselenberg et al.,

2003; Kassin & Kiechel, 1996; Redlich & Goodman, 2003). In light of this research, as well as the numerous proven false-confession cases in which this tactic was used, the court should revisit the wisdom of its prior ruling and declare: “Thou shalt not lie.”

A third risk factor concerns the use of minimization. Over the years, the courts have generally rejected as involuntary confessions that are extracted by direct threats or promises, acknowledging that they may cause innocent people to confess. But the courts have not similarly excluded confessions drawn with threats and promises that were merely implied—as when police suggest to a suspect that the conduct in question was provoked, an accident, or otherwise morally justified (White, 2003). Research shows that minimization tactics lead people to infer that they will be treated with leniency if they confess, as if explicit promises had been made (Kassin & McNall, 1991), and that these tactics significantly reduce diagnosticity by eliciting more false confessions (Russano et al., in press). Although more work is needed to isolate the active ingredients of minimization and compare the effects of the different possible scripts (e.g., that the suspect was provoked, pressured, or under the influence of drugs; that the crime was spontaneous or accidental), it appears that this tactic as practiced circumvents the exclusion in principle of promise-elicited confessions by enabling police to communicate leniency by covert implication.

### Videotaping Interrogations: A Policy Whose Time Has Come

To accurately assess a confession, police, judges, lawyers, and juries should have access to a videotape recording of all interviews and interrogations in their entirety. In Great Britain, PACE mandated that all sessions be fully taped (Home Office, 1985). In the United States, only four states—Minnesota, Alaska, Illinois, and Maine—presently have mandatory videotaping requirements. In many other jurisdictions, police record their interviews and interrogations on a voluntary basis (for an excellent historical overview of this practice, see Drizin & Reich, 2004). In a recent development that raises interesting empirical questions, the Supreme Judicial Court of Massachusetts stopped short of a mandatory videotaping requirement but ruled that any confession resulting from an unrecorded interrogation will entitle the defendant upon request to a jury instruction that urges caution in the use of that confession (*Commonwealth of Massachusetts v. DiGiambattista*, 2004).

There are numerous advantages to a videotaping policy, which should create a more effective safety net. First, the presence of a camera will deter police from conducting overly lengthy interrogations and using the most egregious tactics. Second, videotaping will deter frivolous defense claims of coercion. Third, a videotaped record provides an objective and accurate record of all that transpired, thus avoiding the

disputes that often arise from some combination of forgetting and self-serving distortions in memory. In a study that illustrates this need for an accurate record, Morgan et al. (2004) randomly assigned trainees in a military survival school to undergo a realistic high-stress or low-stress mock interrogation and found, 24 hours later, that those in the high-stress condition had more difficulty identifying their interrogators in a lineup. In real criminal cases, questions about whether rights were administered and waived, whether detectives shouted or physically intimidated the suspect, whether promises or threats were made or implied, and whether the details in a confession emanated from the police or suspect are also among the issues that need to be recalled. Videotaping should thus increase the fact-finding accuracy of judges and juries. For all these reasons, a mandatory videotaping requirement has many advocates (Cassell, 1996b; Drizin & Colgan, 2001; Drizin & Leo, 2004; Gudjonsson, 2003b; Kassin, 2004b; Shuy, 1998; Slobogin, 2003).

In the United States, a National Institute of Justice study revealed that many police and sheriff's departments on their own have videotaped interrogations—and the vast majority found the practice useful (Geller, 1993). More recently, T.P. Sullivan (2004) interviewed officials from 238 police and sheriff's departments in 38 states who voluntarily recorded custodial interrogations and found that they enthusiastically favored the practice. Among the reasons cited were that recording permits detectives to focus on the suspect rather than take copious notes, increases accountability, provides an instant replay of the suspect's statement that reveals information initially overlooked, and reduces the amount of time detectives spend in court defending their interrogation conduct. Countering the most common criticisms, the respondents in this study said that videotaping interrogations is not costly and does not inhibit suspects from talking to police and confessing.

As a matter of policy, it is important not only that entire sessions be recorded, but also that the camera adopt a neutral "equal focus" perspective that shows both the accused and his or her interrogators. In an important program of research, Lassiter and his colleagues taped mock interrogations from three different camera angles so that the suspect, the interrogator, or both were visible to mock jurors. Those who saw only the suspect judged the situation as less coercive than those focused on the interrogator. By directing visual attention toward the accused, the camera can lead jurors to underestimate the amount of pressure actually exerted by the "hidden" detective (Lassiter & Irvine, 1986; Lassiter, Slaw, Briggs, & Scanlan, 1992). Additional studies have confirmed that people are more attuned to the situational factors that elicit confessions when the interrogator is visible on camera than when the focus is solely on the suspect (Lassiter & Geers, 2004; Lassiter, Geers, Munhall, Handley, & Beers, 2001). Under these neutral or balanced circumstances, juries make more informed attributions of voluntariness and guilt when they see not only the

final confession but also the conditions under which it was elicited (Lassiter, Geers, Handley, Weiland, & Munhall, 2002).

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