

put it, that “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 serve as a recurring source of controversy, with questions often arising about whether a statement is authentic, voluntary, reliable, the product of a competent waiver of rights, and in accord with the law. For these reasons, confessions to crime have been described as “troubling” (Brooks, 2000).

To guard the integrity of the criminal justice system, to protect citizens against violations of their constitutional rights, and to minimize the risk that innocent people are induced to confess to crimes they did not commit, American courts have set guidelines for the admission of confession evidence at trial. According to Wigmore’s (1970) historical overview, the modern treatment of confession evidence in law has evolved through a series of stages. In England, during the 16th and 17th centuries, no restrictions were placed on the use of confessions; all avowals of guilt were accepted at face value. At least to the middle of the 17th century, physical torture was used to extract confessions. By the 19th century, however, the courts had become more skeptical of confessions and were quick to reject them for a lack of reliability. Now, as in much of the 20th century, confessions are not accepted or rejected outright. Instead, they are considered on a case-by-case basis, evaluated by a “totality of the circumstances” and the requirement that they be voluntary. Hence, confessions are supposed to be excluded if elicited by brute force; by deprivation of food, sleep, or other biological needs; by threats of punishment or harm; by promises of immunity or leniency in prosecution; or without apprising a suspect of his or her legal rights (as we discuss shortly, however, some egregious tactics are permitted; in the United States, for example, it is common practice for police to lie to suspects about the evidence). Typically, in any case involving a disputed confession, a preliminary hearing is held so that a judge can determine whether the confession was voluntary and, hence, admissible as evidence. In American courts, the judge will then admit confessions deemed voluntary either without special instruction or with directions to the jury to make an independent judgment of voluntariness and disregard statements they find to be coerced (for a review of American case law, see Kamisar, LaFave, Israel, & King, 2003).

In recent years, social scientists and psychologists from the clinical, personality, developmental, cognitive, and social areas have brought their theories and research methods to bear on an analysis of confession evidence. Some of this work has been conducted in North America, primarily the United States, where the conduct of police interrogations is highly confrontational, involving a great deal of trickery and deceit, and where the presentation of confession evidence at trial is highly adversarial. Other work described in this monograph was conducted in England, Ireland, Iceland, and other countries of

Western Europe, where interrogations are less aggressive (e.g., English courts do not permit police to lie to suspects about the evidence; they require that interrogations be tape-recorded), and where confessions are treated with greater caution at trial (e.g., they are more likely to be suppressed; experts are more readily admitted to testify). For a more detailed review of the differences between American and English law, see Gudjonsson (2003b).

Drawing on individual case studies, archival reports, and laboratory and field experiments, we scrutinize the following chain of events: (a) the preinterrogation interview, a process through which police target suspects for interrogation by judging whether they are being truthful or deceptive; (b) the *Miranda* warning waiver, a process by which police apprise suspects of their constitutional rights to silence and to counsel and elicit a waiver of these rights; (c) the interrogation, a process of social influence in which police use various techniques to elicit admissions of guilt; (d) the full narrative confession, and how and why it is given, sometimes by people who are innocent; and (e) the consequences of confession evidence as evaluated by police, prosecutors, judges, juries, and other people. Within this framework, we address a number of specific issues, such as the unique vulnerability of juveniles and other high-risk populations, the role of psychological experts at trial, proposed reforms designed to protect the innocent during police interrogation, and the need for a policy that mandates the videotaping of all interviews and interrogations.

THE PREINTERROGATION INTERVIEW

At a conference on police interviewing that the two of us recently attended, Joseph Buckley (2004)—president of John E. Reid and Associates (a Chicago-based organization that has trained tens of thousands of law-enforcement professionals) and coauthor of the widely cited manual *Criminal Interrogation and Confessions* (Inbau, Reid, Buckley, & Jayne, 2001)—presented the influential Reid technique of interviewing and interrogation (described later). Afterward, an audience member asked if his persuasive methods did not at times cause innocent people to confess. His reply was, “No, because we don’t interrogate innocent people.”

Functions of the Preinterrogation Interview

To understand the basis of this remark, it is important to know that the highly confrontational, accusatory process of *interrogation* is preceded by a neutral, information-gathering *interview*, the main purpose of which is to help determine if the suspect is guilty or innocent. Sometimes, an initial judgment is reasonably based on information provided by witnesses or informants or on other extrinsic evidence. At other times, it may be based on crime-related schemas or “profiles” about likely perpetrators and motives (Davis & Follette, 2002)—such as the

belief that marital infidelity is probative of a husband's involvement in his wife's murder (Wells, 2003). At still other times, the judgment is based on nothing more than a hunch, a behavioral impression that investigators form during a preinterrogation interview. For example, Inbau et al. (2001) advise investigators to use the "Behavior Analysis Interview" to look for behavioral symptoms or indicators of truth and deception in the form of verbal cues (e.g., long pauses before responding, qualified or rehearsed responses), nonverbal cues (e.g., gaze aversion, frozen posture, slouching, grooming), and behavioral attitudes (e.g., anxious, unconcerned, guarded). They also recommend using specific "behavior provoking questions" designed to elicit responses that are presumed diagnostic of guilt and innocence (e.g., "What do you think should happen to the person who committed this crime?" "Under any circumstances, do you think the person who committed this crime should be given a second chance?"). In these ways, they claim, investigators can be trained to judge truth and deception at an 85% level of accuracy (Inbau et al., 2001)—an average that substantially exceeds human lie-detection performance obtained in any of the world's laboratories. For the person who stands falsely accused, this preliminary judgment is a pivotal choice point, determining whether he or she is interrogated or sent home. Hence, it is important to know how—and how well—this judgment is made.

The risk of error at this stage is illustrated by the case of Tom Sawyer, in Florida. Accused of sexual assault and murder, Sawyer was interrogated for 16 hours, and eventually confessed. His statement was ultimately suppressed by the judge, and the charges were dropped. Sawyer had become a prime suspect because his face flushed and he appeared embarrassed during an initial interview, a reaction interpreted as a sign of deception. Investigators did not know that Sawyer was a recovering alcoholic with a social anxiety disorder that caused him to sweat profusely and blush in evaluative social situations (Leo & Ofshe, 1998). In another case, 14-year-old Michael Crowe and his friend Joshua Treadway were coerced, during lengthy and suggestive interrogations, into confessing to the stabbing death of Michael's sister Stephanie. The charges against the boys were later dropped when a drifter seen in the area that night was found with the victim's blood on his clothing. These boys were targeted in the first place, it seems, because the detectives assigned to the case believed that Crowe had reacted to his sister's death with inappropriately little emotion (Johnson, 2003; Sauer, 2004).

After spending a year with homicide detectives in Baltimore, Simon (1991) may have captured the essence of the problem:

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)

Distinguishing Truth and Deception

Despite popular conceptions, psychological research conducted throughout the Western world has failed to support the claim that groups of individuals can attain high average levels of accuracy in judging truth and deception. Most experiments have shown that people perform at no better than chance levels (Memon, Vrij, & Bull, 2003; Vrij, 2000; Zuckerman, DePaulo, & Rosenthal, 1981); that training programs produce, at best, small and inconsistent improvements (Bull, 1989; Kassin & Fong, 1999; Porter, Woodworth, & Birt, 2000; Vrij, 1994; Zuckerman, Koestner, & Alton, 1984); and that police investigators, judges, psychiatrists, customs inspectors, polygraph examiners, and others with relevant job experience perform only slightly better than chance, if at all (Bull, 1989; DePaulo, 1994; DePaulo & Pfeifer, 1986; Ekman & O'Sullivan, 1991; Eyal, 2003; Garrido & Masip, 1999; Garrido, Masip, & Herrero, 2004; Koehnken, 1987; Leach, Talwar, Lee, Bala, & Lindsay, 2004; Porter et al., 2000). In general, professional lie catchers exhibit accuracy rates in the range from 45% to 60%, with a mean of 54% (Vrij, 2000).

One might argue that performance in the laboratory is poor because participating investigators are asked to detect truths and lies told by people who are in relatively low-involvement situations. Indeed, research shows that low-stakes situations can weaken deception cues and make the statements more difficult to judge (DePaulo et al., 2003). But forensic research on the detection of high-stakes lies has thus far produced mixed results. In one study, Vrij and Mann (2001) showed police officers videotaped press conferences of family members pleading for help in finding their missing relatives. It turned out that these family members had killed their own relatives, yet even in this high-stakes situation, the officers who participated in the study often failed to identify the deception. In another study, Mann, Vrij, and Bull (2004) found that police did distinguish high-stakes truths and lies in videotaped police interviews at modestly high levels of accuracy. However, these researchers tested subjects on a per-statement basis, rather than assessing global judgments of guilt or innocence. They also did not independently vary the stakes or test a comparison group of laypersons. Hence, the elevated accuracy rates, relative to those found in prior research, may say more about the particular task that was used than about the relative transparency of high-stakes lies or the accuracy of police officers.

One might also argue that professionals would be more accurate if they were to personally conduct the interviews instead of merely observing the sessions. But research does not support this notion. Buller, Strzyzewski, and Hunsaker (1991) had observers watch videotaped conversations between participants, one of whom was instructed to lie or tell the truth. The observers were more accurate in assessing the target than were the subjects who were engaged in the conversation. Hartwig, Granhag, Strömwall, and Vrij (2004) instructed some college students but not others to commit a mock crime. Police officers then either

interviewed the guilty and innocent students or observed videotapes of the interviews. Overall levels of accuracy did not exceed chance-level performance, and the officers who conducted the interviews were not more accurate than those who merely observed them. In short, although many law-enforcement professionals assume that they can make accurate judgments of truth and deception from verbal and nonverbal behavioral cues, there is little scientific evidence to support this claim.

The “Investigator Response Bias”

In a series of studies, Kassin and his colleagues examined the extent to which special training increases people’s accuracy in judging suspects’ truth and deception during interviews. In one study, Kassin and Fong (1999) trained college students in the detection of truth and deception before obtaining their judgments of mock suspects. The study was unique in two ways. First, some participants but not others were randomly assigned to receive training in the Reid technique using the manual and videotape training materials. Second, judgments were made for a set of videotapes depicting brief interviews and denials by individuals who were truly guilty or innocent of committing one of four mock crimes (shoplifting, breaking and entering, vandalism, and computer break-in). As in studies in nonforensic settings, observers were generally unable to differentiate between the guilty and innocent suspects better than would be expected by chance. In fact, those who underwent training were significantly less accurate than those who did not—though they were more confident in their judgments (on a scale from 1 to 10) and cited more reasons as a basis for these judgments. Closer inspection of the data indicated that the training procedure itself biased observers toward seeing deception, and hence guilt. This experiment suggests the disturbing hypothesis that special training in deception detection may lead investigators to make prejudgments of guilt, with high confidence, that are frequently in error (see Table 1, left and middle columns).

From a practical standpoint, this study was limited by the use of student observers, not experienced detectives, whose training was condensed, and not offered as part of professional development. To address this issue, Meissner and Kassin (2002) conducted a meta-analysis (a statistical analysis combining the results of multiple studies) and a follow-up study examining the performance of real, experienced investigators.

TABLE 1
Truth and Deception Detection Among Students and Police Investigators (Kassin & Fong, 1999; Meissner & Kassin, 2002)

	Naive students (<i>n</i> = 20)	Trained students (<i>n</i> = 20)	Police investigators (<i>n</i> = 44)
Performance			
Total accuracy	56%	46%	50%
Confidence	5.91	6.55	7.05

First, they used signal detection theory to examine the research literature and separate discrimination accuracy and response bias. As the detection of lies, or any other stimulus for that matter, is jointly determined by the strength of a signal and an observer’s tendency to report it, signal detection theory compares the extent to which a person “hits” or “misses” seeing a stimulus (like deception) with his or her tendency to commit “false alarms” by detecting the stimulus when it is not present. In this way, researchers can mathematically determine from detection performance the extent to which a person has a general response bias, as well as an ability to make accurate discriminations (Green & Swets, 1966; Swets, 1996).

Meissner and Kassin (2002) identified six relevant studies: four that compared investigators and naive participants and two that manipulated training. Across studies, they found that investigators and trained participants, relative to naive control participants, exhibited a proclivity to judge targets as deceptive, a tendency they termed the “investigator response bias.” In the follow-up study, Meissner and Kassin used Kassin and Fong’s (1999) tapes to test police officers from the United States and Canada and found that federal, state, and local investigators—compared with untrained college students—exhibited lower, chance-level accuracy and significantly higher confidence (see Table 1, right column). They also exhibited a strong response bias toward deception. Among the investigators, both years of experience and special training correlated significantly with response bias, but not with accuracy. Evidence of an investigator response bias is now supported by other types of research. Using a standardized self-report instrument, for example, Masip, Alonso, Garrido, and Anton (in press) found that experienced police officers are more likely than laypersons and police recruits to harbor a “generalized communicative suspicion”—a tendency to disbelieve what others have to say.

Although some individuals are intuitively and consistently better than others at lie detection (Ekman, O’Sullivan, & Frank, 1999), high mean levels of performance are rare. Indeed after testing more than 13,000 people from all walks of life, using parallel tasks, O’Sullivan and Ekman (2004) have thus far identified only 15 “wizards” of lie detection who can consistently achieve at least an 80% level of accuracy. Still, it is conceivable in theory that people could be trained to become more accurate judges of truth and deception. It is clear that lying leaves certain behavioral traces (DePaulo et al., 2003). For example, Newman, Pennebaker, Berry, and Richards (2003) asked subjects to lie or tell the truth about various topics—including, in one study, the commission of a mock crime—and found that when people lie, they use fewer first-person pronouns and fewer “exclusive” words (e.g., *except*, *but*, *without*), words that indicate cognitive complexity, which requires effort. Similarly, Walczyk, Roper, Seemann, and Humphrey (2003) instructed subjects to answer various personal questions truthfully or deceptively and found, both

within and between subjects, that constructing spontaneous lies—which requires more cognitive effort than telling the truth—increases response time. Perhaps because lying is effortful, observers are more accurate when asked to make judgments that are indirect but diagnostic. Hence, Vrij, Edward, and Bull (2001) found that subjects made more accurate discriminations of truths and lies when asked, “How hard is the person thinking?” than when asked, “Is the person lying?”

In short, it remains a reasonable goal to seek future improvements in training—to make police better interviewers and lie detectors (Bull & Milne, 2004; Granhag & Stromwall, 2004; Vrij, 2004). At present, however, the decision by police to interrogate suspects on the basis of their observable interview behavior is a decision that is fraught with error, bias, and overconfidence. Expressing a particularly cynical but telling point of view, one detective said, “You can tell if a suspect is lying by whether he is moving his lips” (Leo, 1996c, p. 281).

MIRANDA: “YOU HAVE THE RIGHT TO REMAIN SILENT. . .”

With suspects judged deceptive from their interview behavior, the police shift into a highly confrontational process of interrogation characterized by the use of social influence tactics (described in the section on interrogation). There is, however, an important procedural safeguard in place to protect the accused from this transition. In the landmark case of *Miranda v. Arizona* (1966), the U.S. Supreme Court ruled that police must inform all suspects in custody of their constitutional rights to silence (e.g., “You have the right to remain silent; anything you say can and will be held against you in a court of law”) and to counsel (e.g., “You are entitled to consult with an attorney; if you cannot afford an attorney, one will be appointed for you”).¹ Only if suspects waive these rights “voluntarily, knowingly, and intelligently” as determined in law by consideration of “a totality of the circumstances” can the statements they produce be admitted into evidence.

A number of later rulings narrowed the scope of *Miranda*, carved out exceptions to the rule, and limited the consequences for noncompliance (*Colorado v. Connelly*, 1986; *Harris v. New York*, 1971; *Michigan v. Harvey*, 1990; *New York v. Quarles*, 1984)—developments that have led some legal scholars to question the extent to which police are free to disregard *Miranda* (Clymer, 2002; White, 2003). In one important recent decision, the Supreme Court upheld the basic warning-and-waiver requirement (*Dickerson v. United States*, 2000). In another decision, the court refused to accept con-

fessions that were given after a warning that was tactically delayed to produce an earlier, albeit inadmissible, statement (*Missouri v. Seibert*, 2004).

Miranda issues are a constant source of dispute. On the one hand, critics of *Miranda* maintain that the confession and conviction rates have declined significantly over time as a direct result of the warning-and-waiver requirement, 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) and that the costs to law enforcement are outweighed by social benefits—for example, that *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).

The Capacity to Waive *Miranda* Rights

There are two reasons why *Miranda*’s warning-and-waiver requirement may not have the protective effect for which it was designed. First and foremost is that some number of suspects—because of their youth, intelligence, lack of education, or mental health status—lack the capacity to understand and apply the rights they are given.

On the basis of case law, Grisso (1981) reasoned that a person’s capacity to make an informed waiver of the rights to silence and to counsel rests on three abilities: an understanding of the words and phrases contained within the warnings, an accurate perception of the intended functions of the *Miranda* rights (e.g., that interrogation is adversarial, that an attorney is an advocate, that these rights trump police powers), and a capacity to reason about the likely consequences of the decision to waive or invoke these rights. For assessment purposes, Grisso developed four instruments for measuring *Miranda*-related comprehension. Using these instruments, research has shown that juvenile suspects under age 14 do not comprehend their rights as fully or know how to apply them as well as older juveniles and adults (Grisso, 1998; Oberlander & Goldstein, 2001). As performance on these measures is correlated with IQ, the same is true of adults who are mentally retarded (Fulero & Everington, 1995, 2004). At this point, however, it is clear that a suspect’s intellectual capacity as measured in these instruments cannot be used alone to assess the quality of his or her decision making in an actual police interrogation, where other factors are at work as well (Grisso, 2004; Rogers, Jordan, & Harrison, 2004). For purposes of clinical application, it is also difficult to rule out the possibility that low scores on these tests may reflect malingering motivated by a desire to avoid prosecution (for a review, see Grisso, 2003).

¹The precise wording of *Miranda* warnings can vary substantially from one state to the next (Helms, 2003). For example, many jurisdictions have added a fifth warning, which states: “If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time until you talk to a lawyer” (see Oberlander & Goldstein, 2001).