

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).

How Police Overcome *Miranda*

The second reason that *Miranda* warnings may not afford much protection is that police have learned to use methods that overcome the requirement by eliciting waivers. Given the inherently persuasive nature of a police interrogation, one would surmise that a vast majority of adult suspects would exercise their constitutional rights to silence and to counsel and avoid the perils of interrogation. However, research suggests the opposite tendency. Examining live and videotaped police interrogations, Leo (1996c) found that roughly four out of five suspects waive their rights and submit to questioning (see also Leo & White, 1999). Over the years, archival studies in Great Britain have revealed a similar or somewhat higher rate at which rights are waived (Baldwin, 1993; Moston, Stephenson, & Williamson, 1993; Softley, 1980).

Focusing on the warning-and-waiver process, Leo (1996c) observed that detectives often overcome *Miranda* by offering sympathy and presenting themselves as an ally, and by minimizing the importance of the process by describing it as a mere formality, thus increasing perceived benefits of a waiver relative to costs. He also noted that detectives often begin by making small talk and strategically establishing rapport with the suspect—a social influence tactic that tends to increase compliance with later requests (Nawrat, 2001). Indeed, in some jurisdictions, police are specifically trained to get suspects to talk “outside *Miranda*” even after they invoke their rights. The state cannot use statements taken in this manner as evidence at trial. But such “off the record” disclosures may be used both to generate other admissible evidence and to impeach the defendant if he or she chooses to testify (Philipsborn, 2001; Weisselberg, 2001).

Why the Innocent Waive Their Rights

As the gateway to police interrogation and the production of confessions, which can have far-reaching and rippling effects on the disposition of cases (Leo & Ofshe, 1998), a suspect’s decision to invoke or waive *Miranda* rights becomes a pivotal choice in the disposition of his or her case. Yet on the question of which suspects waive their rights and under what circumstances, an interesting and somewhat disturbing signal has emerged from empirical research. Leo (1996b) found that individuals who have no prior felony record are more likely to waive their rights than are those with a history of criminal justice “experience.” In light of known recidivism rates in criminal behavior and the corresponding fact that people without a criminal past are less prone to commit crimes than are those who have a criminal past, this demographic difference suggests that innocent people in particular are at risk to waive their rights.

Kassin and Norwick (2004) tested this hypothesis in a controlled laboratory setting. Seventy-two participants who were guilty or innocent of a mock theft of \$100 were appre-

hended for investigation. Motivated to avoid further commitments of time without compensation, they were confronted by a neutral, sympathetic, or hostile male “detective” who sought a waiver of their *Miranda* rights. Overall, 58% of suspects waived their rights. Although the detective’s approach had no effect on the waiver rate, participants who were innocent were substantially more likely to sign a waiver than those who were guilty—by a margin of 81% to 36%. This decision-making tendency emerged in all conditions and was so strong that 67% of innocents signed the waiver even when paired with a hostile, closed-minded detective who barked, “I know you did this, and I don’t want to hear any lies!” (see Table 2). Kassin and Norwick asked participants afterward to explain the reasons for their decisions. With one exception, all guilty suspects who waived their rights stated strategic self-presentation reasons for that decision (e.g., “If I didn’t, he’d think I was guilty,” “I would’ve looked suspicious if I chose not to talk”). Some innocent suspects gave similar strategic explanations, but the vast majority also or solely explained that they waived their rights precisely because they were innocent (e.g., “I did nothing wrong,” “I didn’t have anything to hide”). From a range of cases and research studies, it appears that people have a naive faith in the power of their own innocence to set them free (for a review, see Kassin, 2005).

The feeling of reassurance that accompanies innocence may be rooted in a generalized and perhaps motivated belief in a just world in which human beings get what they deserve and deserve what they get (Lerner, 1980). It may also be symptomatic of an “illusion of transparency,” a tendency for people to overestimate the extent to which their true thoughts, emotions, and other inner states can be seen by others (Gilovich, Savitsky, & Medvec, 1998; Miller & McFarland, 1987). This illusion was evident in a study in which mock suspects erroneously assumed that their guilt or innocence would be judged correctly both by their questioner and by other people who would observe their denials (Kassin & Fong, 1999). Whatever the reason for this effect may be, Kassin and Norwick’s (2004) results are consistent with naturalistic observations (e.g., Leo, 1996b) in suggesting that *Miranda* warnings may not adequately protect the citizens who need it most, those accused of crimes they did not commit.

TABLE 2
Percentage of Participants Who Agreed to Waive Their Rights as a Function of Guilt or Innocence and Interrogation Condition (Kassin & Norwick, 2004)

Suspect	Interrogation condition			Total
	Neutral	Sympathetic	Hostile	
Guilty	33	33	42	36
Innocent	83	92	67	81
Total	58	63	54	59

With tragic results, this problem was evident in the classic case of Peter Reilly, an 18-year-old who confessed and internalized guilt for the murder of his mother. Solely on the basis of his confession, Reilly was prosecuted, convicted, and imprisoned until independent evidence revealed that he could not have committed the murder. When asked years later why he did not invoke his *Miranda* rights, Reilly said, “My state of mind was that I hadn’t done anything wrong and I felt that only a criminal really needed an attorney, and this was all going to come out in the wash” (Connery, 1996, p. 93). In England, another young and innocent false confessor admitted afterward that he was not sufficiently concerned about confessing to police because he believed, naively and wrongly, that his alibi witnesses would prove his innocence (Gudjonsson & MacKeith, 1990).

MODERN POLICE INTERROGATION

In the past, American police routinely practiced “third degree” methods of custodial interrogation—inflicting physical or mental pain and suffering to extract confessions and other types of information from crime suspects. Among the commonly used coercive methods were prolonged confinement and isolation; explicit threats of harm or punishment; deprivation of sleep, food, and other needs; extreme sensory discomfort (e.g., shining a bright, blinding strobe light on the suspect’s face); and assorted forms of physical violence and torture (e.g., suspects were tied to a chair and smacked repeatedly to the side of the head or beaten with a rubber hose, which seldom left visible marks). The use of third-degree methods declined precipitously from the 1930s through the 1960s, to be replaced by a more professional, scientific approach to policing and by interrogation techniques that are psychological (for a review, see Leo, 2004). Still, as the U.S. Supreme Court recognized in *Miranda v. Arizona* (1966), the modern American police interrogation is inherently coercive, relying heavily on a great deal of trickery and deception. After shadowing homicide detectives in Baltimore for a year, Simon (1991) described the modern police interrogator as “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). A notable exception to this historical trend away from physical brutality is found in the use of “smacky-face” and other torturelike techniques that are sometimes used by interrogators gathering intelligence from suspected terrorists (Bowden, 2003).

Interrogation as a Guilt-Presumptive Process

Third-degree tactics may have faded into the annals of criminal justice history, but modern police interrogations are still powerful enough to elicit confessions, sometimes from innocent

people. At the most general level, it is clear that the two-step approach employed by Reid-trained investigators and others—in which an interview generates a judgment of truth or deception, which, in turn, determines whether or not to proceed to interrogation—is inherently flawed. Inbau et al. (2001) thus advise: “The successful interrogator must possess a great deal of inner confidence in his ability to detect truth or deception, elicit confessions from the guilty, and stand behind decisions of truthfulness” (p. 78).

By definition, interrogation is a guilt-presumptive process, a theory-driven social interaction led by an authority figure who holds a strong a priori belief about the target and who measures success by the ability to extract an admission from that target. Clearly, this frame of mind can influence an investigator’s interaction with suspected offenders (Mortimer & Shepherd, 1999). For innocent people initially misjudged, one would hope that investigators would remain open-minded and re-evaluate their beliefs over the course of the interrogation. However, a warehouse of psychology research suggests that once people form a belief, they selectively seek and interpret new data in ways that verify the belief. This distorting cognitive confirmation bias makes beliefs resistant to change, even in the face of contradictory evidence (Nickerson, 1998). It also contributes to the errors committed by forensic examiners, whose judgments of handwriting samples, bite marks, tire marks, ballistics, fingerprints, and other “scientific” evidence are often corrupted by a priori beliefs and expectations, a problem uncovered in many cases in which individuals have been exonerated by DNA (Risinger, Saks, Thompson, & Rosenthal, 2002). To further complicate matters, research shows that once people form a belief, they also unwittingly create behavioral support for that belief. This latter phenomenon—variously referred to by the terms self-fulfilling prophecy, interpersonal expectancy effect, and behavioral confirmation bias—was first demonstrated by Rosenthal and Jacobson (1968) in their classic field study of the effects of teachers’ expectancies on students’ performance; similar results have also been obtained in military, business, and other organizational settings (McNatt, 2000).

This behavioral confirmation process was demonstrated in an early laboratory experiment by Snyder and Swann (1978), who brought together pairs of participants for a getting-acquainted interview. The interviewers were led to believe that their partners were introverted or extraverted and then selected interview questions from a list. Two key results were obtained. First, interviewers adopted a confirmatory hypothesis-testing strategy, selecting introvert-oriented questions for an introverted partner (e.g., “Have you ever felt left out of a social group?”) and extravert-oriented questions for an extraverted partner (“How do you live up a party?”). Second, interviewers unwittingly manufactured support for their beliefs through the questions they asked, which led neutral observers to infer that the interviewees truly were introverted or extraverted,