CONFESSION EVIDENCE

Commonsense Myths and Misconceptions

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Confession evidence is powerful but flawed, often in nonintuitive ways. Contradicting widely held beliefs, research reviewed in this article suggests the following: Despite special training in how to conduct interviews, police cannot distinguish better than the lay person whether suspects are lying or telling the truth. Suspects in custody routinely waive their self-protective rights to silence and to counsel—especially if they are innocent. Certain legal but deceptive interrogation tactics increase the risk that innocents will confess to crimes they did not commit. Judges and juries are easily fooled, unable to distinguish between true and false confessions. Appellate courts cannot be expected to reasonably determine whether the error of admitting a coerced confession at trial was harmless or prejudicial.

Keywords: police interrogation; lie detection; confessions; wrongful conviction

In criminal law, confession evidence is common, potent, and highly regarded. Hence, it is said, "The introduction of a confession makes the other aspects of a trial in court superfluous" (McCormick, 1972, p. 316). Yet confessions are fallible. Contrary to the widespread belief that normal people do not confess to crimes they did not commit, the pages of American history, reaching back to the Salem witch trials of 1692, betray large numbers of men and women who were wrongfully prosecuted, convicted, imprisoned, and sometimes sentenced to death, on the basis of false confessions (for reviews, see Drizin & Leo, 2004; Gudjonsson, 1992, 2003; Kassin, 1997, 2005, in press; Kassin & Gudjonsson, 2004; Kassin & Wrightsman, 1985; Lassiter, 2004).

Confessions have been proven false in a numbers of ways, for instance, when it turns out that no crime was committed, the real perpetrator is found, or the confessor's involvement was physically impossible. Whatever the mechanism, although the prevalence rate is unknown, false confessions occur with some degree of regularity. In Europe, 12% of prisoners, 3% to4% of college students, and 1% to 2% of older university students reported that they have confessed to crimes they did not commit (Gudjonsson, 2003). In North America, police investigators recently estimated that 4.78% of innocent people confess during interrogation (Kassin et al., 2007). Within the recent population of postconviction DNA cases, roughly 25% contained confessions in evidence—a sample that represents the tip of a much larger iceberg (Drizin & Leo, 2004; Gross, Jacoby, Matheson, Montgomery, & Patel, 2005; Scheck, Neufeld, & Dwyer, 2000).

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Throughout the criminal justice system, confession evidence is met with naïve and uncritical acceptance. Often, however, this complacency is unfounded and—I would argue—buttressed by five myths: (a) Police can identify guilty suspects for interrogation, and exclude innocents, through an interview process that alleges to distinguish between truth tellers and liars. (b) People facing interrogation are protected by their constitutional rights to silence and to counsel. (c) Innocent people cannot be induced to confess by the use of legal and noncoercive interrogation tactics. (d) Relying on some combination of intuition and corroboration, police, prosecutors, judges, and juries can distinguish true and false confessions. (e) For coerced confessions that are erroneously admitted at trial, appellate courts can reasonably determine whether the error was harmless.

MYTH 1: TRAINED INTERVIEWERS CAN DETECT TRUTH AND DECEPTION

During the course of an investigation, detectives identify suspects for interrogation. Sometimes, their identification is reasonably based on witnesses, informants, or other extrinsic evidence. Often, however, it is based on a clinical hunch formed during a preinterrogation interview. In *Criminal Interrogations and Confessions*, an influential manual on interrogation first published in 1962 and now in its fourth edition, Inbau, Reid, Buckley, and Jayne (2001) advised police to ask 16 special behavior-provoking questions (e.g., "Do you know who did take the money?" "What do you think should happen to the person who took the money?") and to observe changes in the suspect's verbal and nonverbal behavior (e.g., gaze, posture, fidgety movements) to divine truth and deception. For a person under suspicion, an investigator's first impression is critical because it determines whether he or she is interrogated or sent home.

Based on a single published study, Inbau et al. (2001) claimed that training in the Reid technique produces an exceedingly high level (85%) of accuracy. Yet the data cited are limited and grossly out of step with basic science. In that study, Horvath, Jayne, and Buckley (1994) selected 60 interview tapes from the Reid collection, the ground truths of which could not be established with certainty. They edited the tapes, showed these edited tapes to four experienced in-house staff members of John E. Reid and Associates, and concluded from their judgments that the Reid technique produced high levels of accuracy (no comparison group of untrained evaluators was included). Yet in laboratories all over the world, research has consistently shown that most commonsense behavioral cues touted by the Reid technique—such as gaze aversion, frozen posture, slouching, and fidgeting—are not empirically diagnostic of truth and deception (DePaulo et al., 2003). Therefore, it is not terribly surprising that laypeople on average are only 54% accurate; that training produces little improvement compared with naïve control groups; and that police investigators, judges, psychiatrists, customs inspectors, and other so-called experts perform only slightly better, if at all (for recent reviews, see Bond & DePaulo, 2006; Vrij, 2008).

In studies specifically designed to test the Reid technique, the results are no more encouraging. Vrij, Mann, and Fisher (2006) had some subjects, but not others, commit a mock crime they were motivated to deny. All subjects were then interviewed using Inbau et al.'s (2001) interview protocol. The results showed that responses to the behavior-provoking questions did not significantly distinguish the liars and truth tellers in the predicted manner (e.g., the liars were not more anxious). In principle, it is reasonable to expect

that special questions can be developed that would discriminate between truthful and deceptive suspects. Of potential relevance is recent research indicating that innocent people are more likely than perpetrators to waive their rights to silence, to counsel, and to a lineup of cooperative acts, such as a willingness to undergo a polygraph, physical examination, or house search, that may betray a naïve phenomenology of innocence (Kassin, 2005). At present, however, there is no empirical support for the diagnostic value of the questions that are currently used.

There is also no evidence to support the behavioral symptoms that investigators are trained to use. For example, Kassin and Fong (1999) randomly trained some college students, but not others, in the use of behavioral cues cited by the aforementioned Reid technique. All students then watched videotaped interviews of mock suspects: some of whom committed one of four mock crimes and of others who did not. On questioning, all suspects denied their involvement. As in the typical nonforensic laboratory experiment, observers were generally unable to differentiate between the two groups of suspects. Moreover, those who underwent training were significantly less accurate, more confident, and more biased toward seeing deception. Using these same taped interviews, Meissner and Kassin (2002) next tested samples of experienced police detectives and found that they exhibited these same tendencies. Other research as well suggests that police tend to make prejudgments of guilt, with confidence, that are frequently in error (e.g., Elaad, 2003; Garrido, Masip, & Herrero, 2004; Leach, Talwar, Lee, Bala, & Lindsay, 2004).

Let me be clear the myth that is exposed by this research. Studies show that current approaches to lie detection—which presume that lying arouses stress that leaks out in observable behavioral symptoms—do not work. However, it may be possible to improve human lie detection through other approaches. For example, Hartwig, Granhag, Strömwall, and Vrij (2005) found that interviewers make more accurate judgments by withholding crime details while questioning suspects, a strategy that traps guilty liars in discernible inconsistencies when these facts are later disclosed. Interviewers who are trained in this Strategic Disclosure technique thus become more accurate in their judgments (Hartwig, Granhag, Strömwall, & Kronkvist, 2006). In a second line of research, Vrij, Fisher, Mann, and Leal (2006) theorized that lying is more effortful than telling the truth, so interviewers should tax a suspect's cognitive load and attend to cues that betray effort. Hence, when interviewers had respondents recount their stories in reverse chronological order, they became more accurate in their ability to distinguish between truthful and deceptive accounts (Vrij et al., in press).

MYTH 2: *MIRANDA* PROTECTS THE ACCUSED FROM INTERROGATION

Suspects who are targeted for interrogation can invoke a powerful safeguard designed to protect all citizens. In *Miranda v. Arizona* (1966), the U.S. Supreme Court ruled that police must inform all suspects in custody of their Constitutional rights to silence and to counsel. Statements taken without this warning—and a waiver that is made voluntarily, knowingly, and intelligently—are not admissible in court. A number of subsequent rulings carved out exceptions to this rule and limited the consequences for noncompliance, leading some legal scholars to question whether police are free to disregard *Miranda* (Clymer, 2002; White, 2003). In two decisions, however, the Supreme Court has affirmed the basic requirement (*Dickerson v. United States,* 2000; *Missouri v. Seibert*, 2004).

Over the years, the *Miranda* ritual has served law enforcement interests well. Assuming that suspects comprehend their rights (often an issue among juveniles and those who are mentally retarded; see Oberlander & Goldstein, 2001), the warning and waiver requirement serves as a measure of voluntariness, a criterion for the admissibility of a confession. Interestingly, it appears that approximately four out of five suspects waive their rights and submit to questioning—both in the United States (Leo, 1996a; see Leo & White, 1999) and in Great Britain (Baldwin, 1993; Moston, Stephenson, & Williamson, 1992; Softley, 1980). There are many possible reasons for the high waiver rate. For example, some suspects do not fully comprehend their rights; others believe, accurately or erroneously, that a waiver serves their interests; and police have learned strategically how to elicit waivers.

As to the assumption that *Miranda* protects the accused, it is instructive that some people (quite likely the wrong suspects from a crime control perspective) utilize the benefits of that protection more than others. Paralleling a result previously observed in Great Britain, Leo (1996a) found that individuals with no prior felony record are more likely to waive their rights than those with a history of criminal justice experience. As recidivism tendencies suggest the base rate proposition that first timers are less likely to commit crimes, this difference suggests the hypothesis that innocent people in particular tend 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 US$100 were apprehended 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 all participants signed an agreement to waive their rights. Notably, those who were innocent did so far more often than those who were guilty—by a margin of 81% to 36%. This decision-making tendency was so strong that 67% of innocents signed the waiver even when approached by a hostile, closed-minded detective who asserted, "I know you did this and I don't want to hear any lies!" When asked afterward to explain their decisions, most said that they waived their rights because they were innocent, did nothing wrong, and had nothing to hide or fear.

Consistent with the results of naturalistic research, these findings suggest that people have a naïve faith in the power of innocence to set them free. This phenomenology was evident in the classic case of Peter Reilly, an 18-year-old who falsely confessed to the murder of his mother. 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). Innocence may lead innocents to forego other important safeguards as well. Consider the case of Kirk Bloodsworth, the first death row inmate to be exonerated by DNA. In 1985, based on eyewitness identifications, Bloodsworth was convicted for raping and murdering a 9-year-old girl. He was exonerated by DNA 8 years later and ultimately vindicated when the true perpetrator was identified. The day of his arrest, Bloodsworth was warned that there would be cameras present and was asked whether he wanted to cover his head with a blanket. He refused, saying he did nothing wrong and was not going to hide, even though potential witnesses might see him on TV (Junkin, 2004).

MYTH 3: PEOPLE DO NOT CONFESS TO CRIMES THEY DID NOT COMMIT

Built on case law, which has largely prohibited the use of egregious third degree tactics, modern American police interrogation is a psychologically oriented process of influence (for a historical overview, see Leo, 2004). 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 would confess to crimes they did not commit, federal and state courts in the United States 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 physical force; deprivation of food, sleep, or other biological needs; threats of punishment or harm; promises of immunity or leniency; or without properly notifying the suspect of his or her *Miranda* rights (see Grano, 1993; Kamisar, LaFave, Israel, & King, 2003; Mueller & Kirkpatrick, 1995; Wigmore, 1970).

Police employ a number of tactics in the interrogation room (see Kassin et al., 2007; Leo, 1996b). The most influential approach is described in Inbau et al.'s (2001) *Criminal Interrogation and Confessions*. In the so-called Reid technique described in this manual, investigators are advised to isolate the suspect in a small, private room, which increases his or her anxiety and incentive to escape. A 9-step process then ensues in which an interrogator employs both negative and positive incentives—on the one hand, confronting the suspect with accusations of guilt, assertions that may be bolstered by evidence, real or manufactured, and refusing to accept denial; on the other hand, offering sympathy and moral justification, thereby minimizing the crime and leading suspects to see confession as an expedient means of escape.

The courts have long assumed that normally functioning adults would not confess to crimes they did not commit if properly Mirandized and exposed only to techniques deemed legally noncoercive—not physical force, deprivation, threats, or explicit promises. Within the population of known wrongful convictions, however, are numerous false confessions that judges did not suppress and appellate courts did not overturn (Drizin & Leo, 2004; Gross et al., 2005). These cases suggest that certain aspects of interrogation, not prohibited by the courts, put innocent people at risk (e.g., courts have set no time limits on interrogation; whereas most sessions last for an hour or two, the average interrogation lasted 16.3 hr in a sample of false confession cases; see Drizin & Leo, 2004).

There are two forms of trickery and deception, both lawful interrogation tactics, which can put innocent people at risk. One concerns the use of minimization, the process by which a sympathetic investigator normalizes and minimizes the crime in question by suggesting to the suspect that it was spontaneous, provoked, drug induced, peer pressured, an accident, or otherwise morally justified. By design, minimization tactics lead people to infer that they will be treated with leniency if they confess, even when no explicit promises are made (Kassin & McNall, 1991). In the laboratory, this tactic led 18% of innocent college students to confess that they cheated on an experimental problem that they were supposed to solve without assistance—a possible violation of the university honor code (Russano, Meissner, Narchet, & Kassin, 2005). Although more work is needed to compare the different alternative themes and the conditions under which this tactic puts innocent people at risk, it appears that minimization—by communicating leniency through a process of pragmatic implication—may induce confessions from innocent suspects who are beleaguered and feel trapped.

A second very troubling aspect of interrogation is the false evidence ploy by which interrogators confront suspects with allegedly incontrovertible but false evidence of their guilt, such as a fingerprint, blood, or hair sample, accomplice confession, eyewitness identification, or failed polygraph. In one investigation, for example, a detective told 17-year-old Marty Tankleff—whom he accused of murdering his parents in the absence of any evidence—that his hair was found on his mother, that a humidity test indicated he had showered (hence, the lack of blood on him), and that his hospitalized father had emerged from his coma to say that Marty was his assailant: all lies. The polygraph in particular is often used for this purpose. Although the polygraph is best known for its use as a lie-detector test, posttest failure feedback is used to pressurize suspects, producing false confessions from Marcellius Bradford, Jeffrey Deskovic, Byron Halsey, John Kogut, and countless other innocent confessors (for descriptions of these cases, visit the Innocence Project Web site at http://innocenceproject.org/). The prestigious National Research Council Committee to Review the Scientific Evidence on the Polygraph (2003) has warned of the risk of polygraph-induced false confessions.

The power of false evidence to produce these effects is not surprising in light of the fact that people who know they are innocent may agree to confess as an act of compliance when they perceive that there is strong evidence against them, a belief that induces a state of despair and an urgent need of escape. To the extent that a suspect is vulnerable to manipulation (by virtue of youth, naiveté, stress, exhaustion, cognitive impairment, or drugs) and the false evidence is disclosed as a credible if not incontrovertible fact (e.g., physical or scientific evidence, testimony from a trusted source), the unwary suspect may even come to internalize the belief that he or she committed the crime without awareness, a belief change that is sometimes accompanied by false memories (for reviews, see Gudjonsson, 2003; Kassin, 2007).

The false evidence ploy has been sanctioned by the U.S. Supreme Court (*Frazier v. Cupp*, 1969). Yet empirical research warns of the risk. In surveys, actual suspects report that the reason they confessed is that they perceived themselves to be trapped by the weight of evidence (Gudjonsson & Sigurdsson, 1999; Moston et al., 1992). Testing a causal hypothesis, laboratory experiments have added that false evidence leads innocent people to confess to prohibited acts they did not commit. For example, Kassin and Kiechel (1996) accused college students typing on a keyboard of causing the computer to crash by pressing a key they were instructed to avoid. Despite their innocence and initial denials, subjects were asked to sign a confession. In some sessions but not others, a confederate said she witnessed the subject hit the forbidden key. This false evidence nearly doubled the number of students who signed a written confession, from 48% to 94%. Follow-up studies have replicated the effect even when the confession was said to bear a financial consequence or future commitment of time (e.g., Horselenberg, Merckelbach, & Josephs, 2003; Redlich & Goodman, 2003).

Even if counterintuitive to laypeople, none of these results is terribly surprising from a psychological standpoint. Across the hundred-plus year history of basic psychology, the general point is clear: Misinformation renders people vulnerable to manipulation from a host of influences. To cite but a few highly recognized classics in the field, experiments have shown that presentations of false information—via confederates, witnesses, counterfeit test results, bogus norms, false physiological feedback, and the like—can substantially alter people's visual perceptions and judgments (Asch, 1956; Sherif, 1936), beliefs (Anderson, Lepper, & Ross, 1980), behaviors (Rosenthal & Jacobson, 1968), emotional states (Schachter & Singer, 1962), feelings of physical attraction (Valins, 1966),

self-assessments (Crocker, Voelkl, Testa, & Major, 1991), memories for observed and experienced events (Loftus, 1997, 2004), and even certain medical outcomes, as seen in numerous studies of the well-known placebo effect (Brown, 1998). American courts permit the false evidence ploy on the assumption that it does not induce false confessions, but scientific evidence of human malleability to influence in the face of misinformation is broad and pervasive. There is no reason to believe that innocents inside an interrogation room are immune to this effect.

MYTH 4: "I'D KNOW A FALSE CONFESSION IF I SAW ONE"

One might argue that even if innocent people are deceptively judged and harshly interrogated, even if they naïvely waive their rights, and if they are induced to confess under pressure, these problems are tolerable if the resulting false confessions are detected and corrected by authorities. With regard to the decision making of prosecutors, judges, and juries, this presumed safety net is built on an assumption: "I'd know a false confession if I saw one."

Research on the impact of confessions throughout the criminal justice system is not encouraging on this front. Mock jury studies show that confessions have more impact than other potent forms of evidence and that people do not fully discount confessions even when they are judged to be coerced and even when it is logically and legally appropriate to do so (Kassin & Neumann, 1997; Kassin & Wrightsman, 1980). For example, Kassin and Sukel (1997) presented mock jurors with one of three versions of a murder trial transcript. In a low-pressure version, the defendant was said to have confessed to police immediately on questioning. In a high-pressure version, participants read that the suspect was in pain and interrogated aggressively by a detective who waved his gun in a menacing manner. A control version contained no confession in evidence. Presented with the high-pressure confession, participants appeared to respond in the legally prescribed manner. 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 increased the conviction rate. This increase occurred even in a condition in which subjects were specifically admonished to disregard confessions they found to be coerced. This point concerning the power of confession evidence is bolstered by archival analyses of actual cases. When proven 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 confessions 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).

There are three reasons for pessimism about the extent to which people can identify as false the confessions of innocent people. First, generalized common sense leads us to trust confessions the way we trust other behaviors that counter self-interest. Over the years, and across a wide range of contexts, social psychologists have found that social perceivers fall prey to the fundamental attribution error, that is, they tend to make dispositional attributions for a person's actions, taking behavior at face value, while neglecting the role of situational factors (Jones, 1990; Ross, 1977). Gilbert and Malone (1995) offered several explanations for this bias, the most compelling of which is that people draw quick and relatively automatic dispositional inferences from behavior and then fail to adjust or correct for the

presence of situational constraints. Common sense further compels the belief that people present themselves in self-serving fashion and that self-destructive behaviors, such as false confessions, must be particularly diagnostic. Reasonably, most people believe that they would never confess to a crime they did not commit, and they cannot imagine the circumstances under which others would do so.

A second reason for concern is that people are typically not adept at deception detection. We saw earlier that neither lay people nor professionals accurately distinguish truths from lies. But are false confessions easier to spot than other nontruthful statements? Kassin, Meissner, and Norwick (2005) examined this question in a study on the performance of police investigators and lay people. First, male prison inmates in a state correctional facility were recruited to take part in a pair of videotaped interviews. Each inmate was asked to confess to the crime for which he was in prison. Each free narrative was then followed by a standardized list of questions concerning who, what, when, where, how, and other details. In a second interview, each inmate was asked to concoct a confession to a crime he did not commit. Using this procedure, we created a videotape that depicted 10 different inmates, each giving a single true or false confession to one of five crimes: aggravated assault, armed robbery, burglary, breaking and entering, and automobile theft. The tape was shown to college students and police investigators, two thirds of whom had attended special training in interviewing and interrogation. Results showed that police relative to the students were significantly less accurate but more confident and more likely to commit false positive errors,that is, trusting the false confessions. These findings suggest that training and experience systematically reduce judgment accuracy—which is not surprising—as many of the behavioral cues that typically form part of the basis for training (e.g., gaze aversion, posture, grooming gestures) are not statistically correlated with truth telling or deception (DePaulo et al., 2003).

There is a third reason to distrust the assumption that "I'd know a false confession if I saw one": Police-induced false confessions often contain content cues presumed to be associated with truthfulness. In many documented false confessions, the statements ultimately presented in court were thus persuasive and compelling. Often they contained not merely an admission of guilt but vivid details about the crime, the scene, and the victim that became known to the innocent suspect through leading questions, photographs, visits to the crime scene, and other secondhand sources invisible to the naïve observer. To further complicate matters, most false confessors state not just what they allegedly did, and how they did it, but why—as they self-report on revenge, jealousy, financial desperation, capitulation to peer pressure, and other prototypical motives for crime. Sometimes they add apologies and expressions of remorse. In some cases, innocent suspects correct minor errors that appear in the written statements that are derived from them, suggesting that they had read, understood, and verified the contents. To the naïve spectator, such statements appear to be voluntary, textured with detail, and the product of personal experience. Uninformed, however, this spectator mistakes illusion for reality, not realizing that the taped confession is like a Hollywood drama—scripted in accordance with the police theory of the case, rehearsed during hours of unrecorded questioning, directed by the questioner, and ultimately enacted on paper, tape, or camera by the suspect.

Let me illustrate the point. Promoting the Reid technique, Inbau et al. (2001) recommended that interrogators insert minor errors into written confessions so that the suspect will spot them, correct them, and initial the changes. The goal is to increase the perceived

credibility of the statement and make it difficult for the defendant to disclaim it in court. Because only perpetrators can spot such errors, this technique appears to have diagnostic potential. However, Inbau et al. advised that to play it safe, "the investigator should keep the errors in mind and raise a question about them in the event the suspect neglects to do so" (p. 384). Similarly, they advised detectives to collect personal history facts known only to the offender. "For instance, the suspect may be asked to give the name of the grade school he attended, the place or hospital in which he was born, or other similar information" (p. 383). Of course, for the innocent suspect, the insertion of neutral, crime-irrelevant biographical details from his or her own life has no diagnostic value. Like the error correction device, it creates an illusion of credibility regardless of whether the confessor is guilty or innocent.

MYTH 5: IT IS POSSIBLE TO DETERMINE WHETHER A CONFESSION ERROR WAS HARMLESS

In cases involving a contested confession, a preliminary suppression hearing is held in which the judge determines the voluntariness and admissibility of this statement. Until fairly recently, and in recognition of the power of confession evidence, convictions were automatically reversed whenever an appeals court found that the judge had erroneously admitted a coerced confession into evidence. In *Arizona v. Fulminante* (1991), however, the U.S. Supreme Court broke new ground. In that case, Oreste Fulminante was convicted, at least in part on the basis of a confession. The defendant claimed that 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 erroneously admitted into evidence. By a 5 to 4 margin, however, the Court stated that in certain situations (e.g., when a confession is cumulative or other evidence is sufficient), the error may be deemed harmless. Refusing to afford unique treatment to confessions, the 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" (p. 1265).

Many legal scholars have criticized *Fulminante* on constitutional grounds (Ogletree, 1991) on the belief that it will encourage police coercion (Kamisar, 1995) and on the argument that appeals court judges are cognitively ill-equipped to mentally set aside the confession and objectively gauge the strength of the evidence and, hence, the cumulative or harmless nature of the confession in dispute (Hirsch, 2007). Discussing the pernicious effects of tunnel vision, for example, Findley and Scott (2006) have argued that appellate courts tend to define errors as prejudicial or harmless on the basis of their personal judgments of the defendant's guilt—not their assessments of whether the error contributed to the jury's verdict. If the evidence in question is a confession, appellate judges will likely presume the defendant's guilt. Following a voluminous body of research on cognitive confirmation biases, one would thus expect them to notice unwittingly hypothesis-confirmatory evidence (Snyder & Swann, 1978; Wason, 1960) and overlook, discount, assimilate, or criticize new information that contradicts their guilty expectations (e.g., Asch & Zukier, 1984; Ask & Granhag, 2007; Darley & Gross, 1983; for a review, see Nickerson, 1998): all enabling the perseverance of beliefs even after they have been discredited (Anderson et al., 1980).

Further complicating a harmless error analysis is that confessions, even if seriously flawed, can empower and derive power from other weak evidence. DNA exoneration cases reveal that many hotly contested confessions were accompanied by junk science, jailhouse snitches, testimony about the defendant's demeanor on arrest, and other evidence of questionable probative value. In the infamous Central Park jogger case, the confessions were supplemented by microscopic hair analysis suggesting that one of the exonerated defendants had hair on his shirt that was consistent with the jogger's hair. Often the backup evidence consists of testimony concerning the confessor's lack of emotionality at the time of arrest and interrogation (e.g., Michael Crowe, Peter Reilly, and Gary Gauger were described as calm after the murder of a loved one).

Testing the hypothesis that a highly flawed confession increases people's guilty judgments when paired with nondiagnostic testimony concerning the confessor's demeanor, Ray and Kassin (2007) presented subjects with a summary of a New York case involving 17-year-old Marty Tankleff who was convicted of killing his parents. Tankleff was convicted on the basis of a confession handwritten by police hours after he discovered his parents' bodies, after detectives egregiously lied about evidence, and even though Tankleff ultimately refused to sign the confession. Subjects read one of four versions of the case: (a) A baseline control version, (b) a demeanor version in which two detectives testified that the defendant was unemotional at the time, (c) a confession version that contained the statement Tankleff allegedly gave to police, and (d) a dual-evidence version that contained both the demeanor and confession evidence. Compared with the baseline version, which yielded a guilty judgment rate of 53%, the flawed confession increased convictions slightly to 69%, and the demeanor testimony had no effect whatsoever at 48%. Yet when the two items were combined, the conviction rate was significantly boosted to 88%, suggesting, "Where there's smoke there must be fire"; results showed that when two impotent items of evidence items were combined, their impact was fatal.

In cases with confessions, there is yet another potential problem not visible to an appellate court: That additional inculpatory evidence may have appeared in the trial record—or exculpatory evidence may have disappeared—precisely because it was prompted by the confession itself. This phenomenon occurred in the case against Pennsylvania defendant Barry Laughman, whose confession to rape and murder was flatly contradicted by serological evidence (he had Type B blood, yet the semen found in the victim was from a Type A secretor). Based on his confession, the state forensic chemist went on to concoct four theories, none grounded in science, to explain away the mismatch and ensure his conviction. Sixteen years later, Laughman was set free (http://www. innocenceproject.org).

Recent empirical research confirms that confessions may taint other evidence. In one study, Dror and Charlton (2006) presented five experienced fingerprint experts with pairs of prints—one from a crime scene, the other from the suspect—from prior cases in which they had judged the prints to be matches or exclusions. The prints were accompanied by no added information, the fact that the suspect had confessed (suggesting a match) or the fact that the suspect was in police custody at the time the crime was committed (suggesting an exclusion). The misinformation produced a change in 17% of the original, previously correct decisions (see also Dror, Peron, Hind, & Charlton, 2005). In a second study, Hasel and Kassin (2008) staged a theft and obtained photographic identification decisions from a large number of eyewitnesses who were present. One week later, individual witnesses were informed that the person they had identified denied guilt, or that he confessed, or that a

specific other lineup member had confessed. In response to this disclosure, many witnesses went on to change their initial identifications when given the opportunity to do so—selecting the confessor and increasing their confidence in that decision. Among those who had failed to make an initial correct identification, half went on to do so when told of a confession.

OVERCOMING CONFESSION MYTHS

The history of wrongful convictions, including the current generation of postconviction DNA exonerations, reveals a number of problems with confession evidence. Specifically, and in contrast to commonly held beliefs, research suggests that police cannot accurately identify suspects for interrogation through special interviews allegedly designed to distinguish between truth and deception; that suspects in a custodial interrogation waive the protections afforded by their constitutional rights to silence and to counsel; that certain legal but highly deceptive interrogation tactics put innocents at risk to confess to crimes they did not commit; that prosecutors, judges, and juries, relying on some combination of intuition and corroboration, tend to believe these false confessions; and, finally, that when coerced confessions are erroneously admitted at trial, appellate courts can reasonably determine whether the error was harmless or prejudicial.

There are two mechanisms by which the courts can overcome the myths that envelop confession evidence. One involves a more active use of psychological science as a basis for expert testimony, amicus briefs, and other forms of consultation. In *United States v. Belyea* (2005), the defendant confessed to the theft of a firearm after being terrified into thinking that the weapon was used in a murder, that his fingerprints were on it, and that he could avoid jail by cooperating (the confession contradicted subsequently discovered key details of the crime). The defendant moved to introduce expert trial testimony on false confessions, but the district court rejected this motion because "Jurors [already] know people lie." Belyea was convicted, but the U.S. Court of Appeals for the Fourth Circuit overturned the verdict, noting that the law requires a nuanced analysis of whether expert testimony would be useful in a particular case. Astutely, this Court argued that although jurors know in general that people lie, they may not know that certain people under certain conditions will be judged to be liars and then confess under interrogation to crimes they did not commit. In this Court's opinion, 'The phenomenon of false confessions is counter-intuitive and is not necessarily explained by the general proposition that 'jurors know people lie'" (p. 10).

A second mechanism is to ensure that prosecutors, defense lawyers, judges, and juries can observe the process by which confessions are produced. In Great Britain, the Police and Criminal Evidence Act of 1984 (Home Office, 1985), which became effective in January 1986, mandated that all custodial sessions be taped in their entirety. In the United States, several states presently have mandatory videotaping requirements, although the practice is found elsewhere as well on a voluntary basis. There are many advantages to a videotaping policy (e.g., the presence of a camera should deter interrogators from using coercive tactics; disable frivolous defense claims of coercion; and provide a full and accurate record of the transaction, a common source of dispute in courts). For the purpose of this article, the following hypothesis presents itself: That a mandatory videotaping policy will enlighten prosecutors and defense attorneys and increase the fact finding accuracy of judges (in

ruling on voluntariness, they will observe firsthand the suspect's physical and mental state, the conditions of interrogation, and the tactics that were used) and juries (in rendering a verdict, they will observe not only how the statements were taken but from whom the crime details, if accurate, originated). Indeed, the most effective way to correct the misconceptions widely held about confessions is to record for firsthand observation the processes by which they were obtained.

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