



## Chapter 11

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# A critical appraisal of modern police interrogations

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### Introduction

Let me begin with a story that already has historic value in the annals of wrongful convictions. This was an infamous case that took place in 1989 in New York City. Known as the 'Central Park jogger case', it involved a young woman, an investment banker, who was beaten senseless, raped and left for dead. It was a heinous crime that horrified the city. The victim's skull had multiple fractures, her eye socket was crushed and she lost three quarters of her blood. Defying the odds, she survived; but to this day, she is completely amnesic for the incident. Soon thereafter, solely on the basis of police-induced confessions taken within 72 hours of the crime, five African- and Hispanic-American boys, 14–16 years old, were convicted of the attack and sentenced to prison. There were no physical traces of the defendants at the crime scene and no traces of the scene on them. At the time, however, it was easy to understand why detectives aggressively interrogated the boys, some of whom were 'wilding' in the park that night.

Four of the five jogger confessions were videotaped and presented to the juries at trial. The tapes (which showed only the confessions, not the precipitating 14½–30 hours of interrogation) were compelling, as the boys described in vivid detail how the jogger was attacked, when, where and by whom, and the role that they played in the process. One boy physically re-enacted the way he allegedly pulled off the jogger's running pants. A second boy said he felt peer-pressured to join in his 'first rape' and he expressed remorse. These

confessions, portions of which were aired on television, fooled not only two trial juries but an entire city and nation – including myself, a native New Yorker who followed the case closely when it broke. Thirteen years later, Matias Reyes, in prison for three rapes and a murder committed after the jogger attack, stepped forward with a voluntary, accurate, independently corroborated confession supported by DNA evidence (semen found on the victim's body and socks excluded the boys as donors in 1989; the district attorney prosecuted the boys solely on the basis of the confessions and argued to the jury that just because police did not capture *all* the perpetrators does not mean they did not get *some* of them). As the result of a painstaking and thorough re-examination of the case, including an analysis of the original confessions, the Manhattan District Attorney's Office joined a defence motion to vacate the boys' convictions, which was granted in 2002 (*New York v. Wise et al.* 2002).

The assault on the Central Park jogger was a horrific, violent act. Yet the case also now stands as a shocking tale of five false confessions resulting from a single investigation. Despite its notoriety, this case illustrates a phenomenon that is not new or unique. The pages of history reveal many tragic miscarriages of justice involving innocent men and women who were prosecuted and wrongfully convicted solely on the basis of false confessions. I would not hazard an estimate as to the prevalence of the problem, which is unknown. Within the recent population of post-conviction DNA exonerations, 20–25 per cent had confessions in evidence (Scheck *et al.* 2000; <http://www.innocenceproject.org>).<sup>1</sup>

Notably, these tragic outcomes occurred because innocent people were interrogated, because they confessed, and because prosecutors, judges and trial juries believed their false confessions. Indeed, when false confessors plead not guilty and proceed to trial, the jury conviction rate is 81 per cent, a figure that led Drizin and Leo (2004: 959) to lament that confession evidence is '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'. This sobering result suggests that there are not adequate safeguards in the criminal justice system to catch the mistakes – which increases the pressure on police to ensure that their practices elicit accurate outcomes.

The jogger case also points to a sequence of three potential problems to watch for in a police investigation: 1) that innocent people are often targeted for interrogation, despite a lack of evidence of their

involvement, based solely on an interview-based judgement; 2) certain interrogation techniques can cause innocent people to confess to crimes they did not commit; and 3), afterwards, it is difficult for investigators, attorneys, judges and juries to distinguish between true and false confessions. I will argue that there are risks of error inherent in each link of this three-step chain of events – from the pre-interrogation interview, to the interrogation that elicits an admission, to the full confession that is so difficult for trial judges, juries and others to assess.

Before launching into a critique of current interrogation practices, let me put my predispositions on the table. First, I know that most police investigators are well intended, well trained and competent, so it is not my intent to paint an unflattering portrait of the profession. But performance can be improved at every step in the process. Secondly, I am not an ideological zealot looking to handcuff cops in their pursuit of criminals. I think everyone 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, I think everyone would also agree that the process itself should be structured to produce outcomes that are diagnostic, as measured by the observed ratio of true to false confessions. Adopting this strictly pragmatic position has two implications. The first is that I recognize that society's relative tolerance for false-positive and false-negative errors may well shift as a function of contextual factors (e.g. one could reasonably argue that the fundamental value, rooted in Blackstone's *Commentaries on the Laws of England*, that it is better to acquit ten guilty people than to convict one who is innocent, may have to be 'tweaked' in extreme conditions, as in the questioning of terrorism suspects who pose an imminent threat). Secondly, whilst the exclusion from evidence of involuntary confessions serves a number of important values – such as the desire to ensure that these statements are reliable, to protect a defendant's due process rights and to deter repugnant police conduct that undermines the public's trust in government – the research I will talk about is driven by cold, pragmatic concerns for reliability.

### **The pre-interrogation interview: a platform for bias and error**

The first problem is that innocent people are often targeted for interrogation, despite the absence of any evidence of their involvement, based solely on an investigator's hunch. Consider, for example, the

military trial of *U.S. v. Bickel* (1999), in which I testified as an expert witness. In this case, the defendant confessed to rape as a result of interrogations by five agents. There was no independent evidence against the defendant. So, when asked why they interrogated him so forcefully, one investigator said that Bickel behaved in a deceptive manner:

His body language and the way he reacted to our questions told us that he was not telling the whole truth. Some examples of body language is that he tried to remain calm but you could tell he was nervous and every time we asked him a question his eyes would roam and he would not make direct contact, and at times he would act pretty sporadic and he started to cry at one time.

Correctly, I think, this defendant was acquitted by a jury of military officers.

Numerous other examples illustrate the problem. In Florida, Thomas Sawyer was interrogated for 16 hours for sexual assault and murder because his face flushed red and he appeared embarrassed during an initial interview, a reaction seen as a sign of deception. What the investigators did not know at the time was that Sawyer was a recovering alcoholic and also had a social anxiety disorder that caused him to sweat profusely and blush in public situations. Ultimately, the charges were dropped. Then there was the California case of 14-year-old Michael Crowe, falsely accused in the murder of his sister Stephanie. Michael confessed after intense interrogations, but the charges were dropped when a drifter in the area was found with the victim's blood on his clothing. According to the detectives in this case, Crowe became a prime suspect in part because they felt that he had reacted to his sister's death with inappropriately little emotion.

The first problem can be traced to the pre-interrogation interview. As per the Reid Technique, the police do not commence interrogation until and unless they have made an initial, interview-based judgment that the suspect is lying. Sometimes that judgment is reasonably based on reports from witnesses or informants, or on other forms of extrinsic evidence. At other times, however, that judgment is based on nothing more than a hunch, a clinical impression that detectives form during a non-confrontational interview. In *Criminal Interrogation and Confessions*, for example, Inbau *et al.* (2001) advise investigators to look for behavioural symptoms or indicators of truth and deception

in the form of verbal cues (e.g. long pauses, qualified or rehearsed responses), non-verbal cues (e.g. gaze aversion, frozen posture, slouching) and behavioural attitudes (e.g. unconcerned, anxious, guarded). They also recommend the use of various 'behaviour 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 did 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 per cent level of accuracy – an average that substantially exceeds human lie-detection performance obtained in any of the world's laboratories.

As this initial judgment becomes a pivotal choice-point in a case, determining whether a suspect is interrogated or sent home, it is important to determine scientifically how – and how well – that judgment is made. As an empirical matter, there are reasons to be sceptical. Over the years, large numbers of psychological studies involving thousands of subjects from all over the world have consistently failed to support the claim that groups of individuals can attain such high average levels of accuracy at judging truth and deception. Rather, this research has shown that people perform at no better than chance level; that training produces, at best, small and inconsistent improvements compared with control groups; and that police, judges, customs inspectors, psychiatrists, polygraph examiners and other experts perform only slightly better than chance, if at all. In general, professional lie catchers exhibit accuracy rates in the range from 45 to 60 per cent, with a mean of 54 per cent (for reviews, see Vrij 2000; Memon *et al.* 2003; Granhag and Strömwall 2004).

One might argue that performance in these laboratory experiments is poor because participants are asked to detect truths and lies uttered in relatively low involvement situations, which can weaken deception cues. But forensic research on the detection of high-stakes lies has thus far produced mixed results. One might also argue that professionals would be more accurate when they personally conduct the interviews than when they observe sessions conducted by others. But research clearly does not support this notion either. In short, there is no scientific evidence to support the claim that professionals, trained or not, can distinguish truths and lies simply by observing a person's interview behaviour. This result is not particularly surprising in light of the kinds of deception cues that form the basis for training. For example, Inbau *et al.* (2001) focus on several visual cues – such as gaze aversion, non-frontal posture, slouching and grooming gestures

– that are not empirically predictive of truth and deception (for a comprehensive meta-analysis of deception cues, see DePaulo *et al.* 2003).

In studies that illustrate the point, my colleagues and I have examined the extent to which special training in deception detection increases judgment accuracy in a specifically forensic context. In one study, Kassin and Fong (1999) randomly assigned some college students but not others to receive training in the Reid Technique using videotapes and written materials on the behavioural symptom analysis. Next they created a set of videotapes that depicted brief interviews and denials by individuals who were truly guilty or innocent of committing one of four mock crimes. As in past studies in non-forensic settings, observers were not proficient at differentiating between truthful and deceptive suspects better than would be expected by chance. In fact, those who underwent training were less accurate than naïve controls – but more confident. Closer inspection of the data revealed that the training procedure itself produced a response bias towards guilt.

From a practical standpoint, this study was limited by the fact that the observers were college students, not police detectives, and their training was condensed, not offered as part of professional development to those with prior experience. To address these issues, Meissner and Kassin (2002) conducted a meta-analysis and a follow-up study to test the performance of experienced investigators. Looking at past research, they found that police investigators and trained participants, relative to naïve controls, exhibited a proclivity to judge targets in general as deceptive rather than truthful. Next, they used Kassin and Fong's videotapes to compare police and college student samples and found that the police exhibited lower, chance-level accuracy, a response bias towards judgments of deception and significantly more confidence. Within our sample of investigators, both years of experience and special training correlated significantly with the response bias – but not with accuracy. It appears that special training in deception detection may lead investigators to make pre-judgments of guilt, with high confidence, that are biased and frequently in error.

Let me be clear that I am not prepared to claim that it is impossible to increase the accuracy of judgments made in this domain. High average levels of lie-detection accuracy may be rare, but some individuals are intuitively and consistently better than others (Ekman *et al.* 1999). It is also clear that lying leaves behavioural traces that may provide clues as to how to improve performance (DePaulo *et*

*al.* 2003). Hence, it may be necessary to reconceptualize the current approach. Following traditional models of polygraphic lie detection, professionals tend to search for behavioural cues that betray stress (e.g. gaze aversion), a presumed symptom of deception. But this approach may be misguided. Indeed, after shadowing homicide detectives for a year in Baltimore, Simon (1991: 219) 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.

Recent research suggests the possibility of an alternative approach that focuses on the fact that lying is an effortful cognitive activity. In one study, Newman *et al.* (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 such as *except*, *but* and *without*, words that indicate cognitive complexity, which requires effort. In a second study, Walczyk *et al.* (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 would be more accurate if asked to make judgments that are indirect but diagnostic. In a third study, Vrij *et al.* (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?'

As an empirical matter, it is also possible that certain 'behaviour-provoking questions' suggested by the Reid Technique, and others of a similar nature, will enhance an investigator's ability to discriminate between truthful and deceptive suspects. For example, Inbau *et al.* (2001) suggest that police ask suspects for an opinion of what should happen to the person who committed the crime, whether that person should get a second chance and what the results of forensic tests will show about their own involvement – the assumption being that innocents will not hesitate in their responses to be punitive, uncompromising and self-confident. Of potential relevance in this regard is recent research indicating that innocent people are more

likely than perpetrators to waive their rights to silence, to counsel and to a line-up – co-operative acts, like a willingness to undergo a polygraph, physical examination, or house search, that may betray a naïve phenomenology of innocence (Kassin 2005).

In short, when it comes to making accurate discriminations, it remains a reasonable goal to seek future improvements in training as a way to make police more effective interviewers and lie detectors (Bull and Milne 2004; Granhag and Stromwall 2004; Vrij 2004). For now, however, it is vital that police be mindful of their own limitations and stay vigilant whilst they interrogate to the possibility that their first impressions were mistaken.

### **Interrogation: a guilt-presumptive process of influence**

In the past, the police often practised 'third degree' methods of custodial interrogation – inflicting physical or mental pain and suffering to extract confessions and other types of information from crime suspects. Amongst the methods used 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 torture (e.g. suspects were tied to a chair and smacked to the side of the head or beaten with a rubber hose, which seldom left visible marks). The use of such methods declined precipitously from the 1930s to the 1960s and was replaced by a more professional approach to policing and by interrogations that are more psychological in nature, as in the Reid Technique (for a review, see Leo 2004).

Despite this historic and seismic paradigm shift, modern interrogations continue to put innocent people at risk to confess to crimes they did not commit. To begin with, the two-step approach – in which an interview generates a judgment of deception, which, in turn, sets into motion an interrogation – is inherently flawed. Inbau *et al.* (2001: 78) advise that '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'. Thus, interrogation is by definition a guilt-presumptive process, a theory-driven social interaction led by an authority figure who has formed a strong belief about the suspect and who measures success by the ability to extract an admission from that suspect. For innocent people who are initially misjudged,



one would hope that police would remain open-minded and re-evaluate their beliefs over the course of the interrogation. But the two-step approach makes this an unreasonable expectation. Over the years, research has shown that once people form a belief, they selectively seek and interpret new information in ways that verify that belief even in the face of contradictory evidence. This problem contributes to the errors committed by forensic examiners, whose assessments of handwriting samples, ballistics, and other 'scientific' evidence are often corrupted by prior beliefs, a problem uncovered in many DNA exoneration cases (Risinger *et al.* 2002). To complicate matters further, people unwittingly create behavioural support for their beliefs, producing a self-fulfilling prophecy. This effect was first demonstrated by Rosenthal and Jacobson (1968) in their classic report on the effects of teachers' expectancies on students' performance. Similar results have been obtained in military, business and other organizational settings (McNatt 2000).

In a story that illustrates how investigators can be blinded by the guilt-presumptive lens they wear, a man confessed to his wife's murder after 19 hours of interrogation when police 'bluffed' him into thinking they had DNA evidence to be tested (*Missouri v. Johnson* 2001). During interrogation, it is common for police to bluff in this manner about having independent evidence on the assumption that the suspect, whom they presume guilty, will realize the futility of denial and capitulate. What they cannot see, however, is that to an innocent but beleaguered person, who is naïve about the use of this tactic, the 'threat' of DNA may be construed as a promise of future exoneration – ironically making it easier to confess. In this case, the defendant – who was instantly acquitted by a jury – explained afterwards that he confessed because he was exhausted and knew that the test results would show his innocence.

The process of interrogation is not only guilt presumptive but powerful in its impact. Inbau *et al.* (2001) advise interrogators to remove the suspect from familiar surroundings and place him or her in a small, barely furnished, soundproof room housed within the police station. Against this physical backdrop, a nine-step process begins with the positive confrontation and the development of alternative themes – and ends with a full written or oral confession. Conceptually, this approach is designed to get suspects to incriminate themselves by increasing the anxiety associated with denial, plunging them into a state of despair and minimizing the perceived consequences of confession. Glossing over the specifics, interrogation is reducible to an interplay of three processes: *isolation* for some

indefinite period of time, which increases stress and the incentive to relieve that stress; *confrontation*, in which the interrogator accuses the suspect of the crime, expresses certainty in that opinion and blocks all denials, sometimes citing real or manufactured evidence to support the charge; and *minimization*, in which the sympathetic interrogator morally justifies the crime in the form of an alternative version of events (e.g. that it was spontaneous, accidental, provoked or peer pressured), which can lead a suspect to infer that he or she will be treated with leniency. The net effect is to trap the suspect so that he or she sees confession as the most effective means of 'escape'.

In the interrogation room, as in other settings, some individuals are more vulnerable to manipulation than others, particularly if they are characteristically prone to exhibit social compliance or interrogative suggestibility. Youth, naïvete, a lack of intelligence, cultural upbringing, and social anxiety and various psychological disorders that impair cognitive and affective functions, present unique sources of vulnerability to watch for (see Gudjonsson 1992, 2003). Certain situational factors can also increase the risk of a false confession, even amongst suspects who are not by nature vulnerable. One such risk factor is time: as a tactical matter, interrogators isolate suspects in custody – but for how long? Prolonged isolation is likely to be accompanied by fatigue, feelings of helplessness, and a deprivation of sleep, food and other biological needs, mental states that impair complex decision-making. Yet whereas most interrogations last 1–2 hours (Leo 1996), and whilst 3–4 hours is generally sufficient (Inbau *et al.* 2001), a study of documented false-confession cases in which interrogation time was recorded showed that 34 per cent lasted 6–12 hours, 39 per cent lasted 12–24 hours, and the mean was 16.3 hours (Drizin and Leo 2004). Following the Police and Criminal Evidence Act 1984 in Great Britain, police should be trained to set time limits on the process, or at least flexible guidelines, as well as periodic breaks from questioning for rest and meals.

A second problem concerns the presentation of false evidence. This tactic often takes the form of outright lying to suspects – for example, about an alibi that allegedly failed to corroborate the suspect's story; 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 presentation of false evidence is implicated in the vast majority of false confession cases that have been documented for analysis. In addition, laboratory research shows that it increases the risk that innocent people would confess to acts they did not commit and, at times, internalize guilt for outcomes they did not produce

(e.g. Meyer and Youngjohn 1991; Kassin and Kiechel 1996). Especially disconcerting in this regard is the role that the polygraph has played. The polygraph is best known for its use as a lie-detector test but, because it is not admissible in most courts, police use it primarily to induce suspects to confess. Far too often, however, false confessions have been extracted by police examiners who told suspects they had failed a lie-detector test. This tactic is so common that Lykken (1998: 235) coined the term 'fourth degree' to describe it. This problem recently led the National Research Council Committee to Review the Scientific Evidence on the Polygraph to warn of the risk of polygraph-induced false confessions (National Research Council 2003).

A third potential problem concerns the use of minimization, the process by which the police suggest to a suspect that the crime in question was provoked, 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 and McNall 1991). In the laboratory, this tactic led 18 per cent of innocent college students to confess that they cheated on a problem that they were supposed to solve without assistance (Russano *et al.* 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 'under the radar' – may at times induce confessions in suspects who are beleaguered and feeling trapped, even if innocent.

Taking stock of what psychological science has, and has not, achieved when it comes to police interrogations, it is clear that researchers have thus far sought to identify the risks, with an eye towards reducing the number of false confessions and wrongful convictions. To develop fully a science of interrogation, however, researchers must also help the police to build a better mousetrap. The surgical objective is simple: develop interrogation techniques that are 'diagnostic' to the extent that they increase the observed ratio of true to false confessions.

This objective brings with it some important implications. First, because the decision to confess is largely influenced by a person's expectations of the consequences, both guilty and innocent people are most likely to capitulate when they believe that there is strong evidence against them (Moston *et al.* 1992). As the police are more likely in nature to have direct and circumstantial proof of guilt against perpetrators than against innocent suspects who are falsely accused, the practice of confronting suspects with real evidence should increase

the diagnosticity of the confessions that are ultimately elicited. To the extent that the police are permitted to misrepresent the evidence, however, and lie to suspects, the guilty and innocent become equally trapped and similarly treated, reducing diagnosticity. On the question of how to confront suspects with real evidence for maximum impact, recent research suggests that it may be easier to 'trap' those who are guilty into betraying their culpability by strategically delaying the disclosure of crime details rather than disclosing details early, as part of a positive confrontation. In a study involving a mock crime and investigation, Hartwig *et al.* (2005) found that when they disclosed facts at the outset, both guilty and innocent suspects managed to shape their responses in ways that were consistent. When the disclosures were delayed, however, guilty suspects seeking to evade detection held back in describing what they knew but were more likely than innocents to contradict the facts that were withheld – inconsistencies that betrayed attempted deception. More work is needed, but this initial study suggests that the timing of disclosures can be used to differentiate between guilty and innocent suspects.

### **Narrative confessions as Hollywood productions**

Confession evidence is powerful in court and hard to overcome. To safeguard against the wrongful convictions they elicit and their consequences, therefore, it is vitally important that confessions be accurately assessed prior to the onset of court proceedings. We have seen that people are poor lie detectors and cannot readily distinguish between true and false *denials*. But can people in general, and law enforcement officers in particular, distinguish between true and false *confessions*?

One could argue that even if the process of interrogation is psychologically coercive, and even if innocent people sometimes confess, there is no problem to solve to the extent that the errors are ultimately detected by authorities and corrected. Essential to this presumed safety net is a commonsense assumption, built on blind faith, that 'I'd know a false confession if I saw one'. There are three reasons for concern about whether people can detect as false the confessions of innocent suspects. The first is that generalized common sense leads us to trust confessions the way we trust other behaviours that are not tainted by self-interest. Reasonably, most people believe they would never confess to a crime they did not commit and they cannot imagine the circumstances under which anyone else 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 can accurately separate truths from lies. The question remains as to whether they can distinguish true and false confessions. Kassin *et al.* (2005) examined this question in a study on the performance of police investigators and lay people. First, we recruited male prison inmates in a state correctional facility to take part in a pair of videotaped interviews. Each inmate was asked to give a full confession 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 instructed to concoct a false confession on the basis of a one- or two-sentence description of a crime committed by a different inmate. Using this procedure, we created a videotape that depicted ten 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 received training in interviewing and interrogation). The result: neither group was significantly more accurate than would be expected by chance, but the investigators were more confident in their judgments and more likely to commit false-positive errors, trusting the false confessions.

There are two possible explanations for why the investigators were unable to distinguish the true and false confessions and why they were less accurate on average than college students. One is that training and experience introduce a bias that systematically reduces judgment accuracy. This is not terribly surprising in the light of the kinds of behavioural deception cues that form part of the basis for training (e.g. such visual cues as gaze aversion, non-frontal posture, slouching and grooming gestures are not correlated with truth-telling or deception; see DePaulo *et al.* 2003). A second possible explanation is that the police in our sample were impaired by our use of a paradigm in which half the observed confessions were false – a percentage that is likely far higher than the real-world base rate for false confessions. To the extent that law enforcement work leads investigators to presume most confessions true, then the response bias imported from the police station to the laboratory may have proved misleading for a study in which half the confessions were false. To test this latter hypothesis, we conducted a second study in which we neutralized the response bias by instructing all subjects prior to the task that half the confessions were true

and half were false. This manipulation did reduce the overall number of 'true' judgments amongst investigators, but they were still not more accurate than students or chance performance, only more confident.

When it comes to the assumption that 'I'd know a false confession if I saw one', there is a third reason for concern: real-life false confessions, when elicited through a process of interrogation, contain content cues that people associate with truth-telling. In most documented false confessions, the statements ultimately presented in court are compelling, as they often contain vivid and accurate details about the crime, the scene and the victim – details that can become known to an innocent suspect through the assistance of leading interview questions, overheard conversations, photographs, visits to the crime scene and other second-hand sources of information invisible to the naïve observer. To further obfuscate matters, many confessions are textured with what I call 'elective' statements. Often innocent suspects describe not just what they allegedly did, and how they did it, but *why* – as they self-report on revenge, jealousy, desperation, capitulation to peer pressure and other prototypical motives for crime. Sometimes they add apologies and expressions of remorse. In some cases, innocent suspects will correct minor errors that appear in the written statements that are derived from them, suggesting that they 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 much like a Hollywood drama – scripted by 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.

The Reid Technique offers advice on how to create these illusions of credibility. Inbau *et al.* (2001) recommend that interrogators insert minor errors (such as a wrong name, date or street address) 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 later to distance him or herself from it. Because only perpetrators should be in a position to spot these errors, this technique appears to have great potential. However, Inbau *et al.* advise 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 advise detectives to insert into written confessions irrelevant personal history items 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 suspect who is not the offender but an innocent person, the insertion of neutral, crime-irrelevant biographical details from his or her own life has no diagnostic value. Like the error correction trick, however it merely creates a false illusion of credibility.

### **The *post hoc* assessment of confessions**

In theory, the police, prosecutors and others can assess suspects' statements with some degree of accuracy through a genuine effort at corroboration. A full confession contains both an admission of guilt and a post-admission narrative in which suspects recount not just what they did but how, when, where and with whom. Evaluating such a statement should involve a three-step process. The first step requires a consideration of the conditions under which the statement was made and the extent to which coercive techniques were used. As in the 'totality of circumstances' approach that American courts use to determine voluntariness, relevant factors in this inquiry include a consideration of suspect characteristics such as age, intelligence and mental state; the physical conditions of detention; and the use of stated or implied promises, threats and other social influence tactics used during interrogation. Still, whilst the presence of personal and situational risk factors cast doubts on a confession, they do not invalidate it. Coerced confessions may well be true; innocent people sometimes confess voluntarily, without prompting. The second step requires a consideration of whether the confession contains details that are accurate, not erroneous, in relation to the verifiable facts of the crime. A confession can prove guilt or at least guilty knowledge (or it may fail to do so) to the extent that it is 'generative', furnishing the police with crime facts that were not already known or leading to evidence that was not already available. An often overlooked but necessary third step concerns a requirement of *attribution* for the source of the details contained in the narrative confession. A confession has diagnostic value if the accurate details it contains were knowable only to a perpetrator and were not derivable from such second-hand sources as news accounts, overheard conversations, leading interview questions, photographs or visits to the crime scene (see Ofshe and Leo 1997; Hill 2003).

This three-step analysis can be illustrated in the videotaped false

confessions in the Central Park jogger case described earlier. On tape, these defendants confessed to a gang rape in statements that seemed vividly detailed, voluntary and the product of personal experience. But examination of the conditions under which the statements were made reveals the presence of troubling risk factors. The boys were 14–16 years old, and at the time of their videotaped statements, they had been in custody and interrogation by multiple detectives for a range of 14–30 hours. The passage of time may not be visible to the naïve consumer of the final product, but it brings heightened pressure, a dogged refusal to accept denials, fatigue, despair and often a deprivation of sleep and other needs. As to other aspects of the situation, the detectives and suspects disagreed in significant ways about what went on during the many unrecorded hours of questioning. They disagreed, for example, over whether the parents had access to their boys, whether threats and physical force was used and whether promises to go home were made.

The conditions of interrogation contained classic elements of coercion, but that does not absolve the guilty or invalidate their confessions. The Central Park jogger confessions were compelling precisely because the narratives contained highly vivid details, including an on-camera physical re-enactment. From start to finish, however, the narratives were riddled with inconsistencies and factual errors of omission and commission. When asked about the jogger's head injury, one boy said she was punched with fists; then when prompted to recall a blunt object, he said they used a rock; moments later, the rock turned to bricks. Across the defendants, the statements diverged. Each and every defendant minimized his own role in the assault, placing 'them' at centre stage. When two of the suspects were taken to the crime scene and asked to point to the site of the attack, they pointed in different directions. Factual errors were also numerous. One suspect said the jogger wore blue shorts and a T-shirt; she wore long black tights and a long-sleeve jersey. Another said the jogger and clothes were cut with a knife; there were no knife cuts. A third suspect did not seem to know the victim bled; she bled profusely. A fourth said that one of the boys he was with ejaculated; yet no traces of that boy's semen were found. None of the defendants knew the location of the attack, that the jogger was left at the bottom of a ravine, that her hands were tied or that she was gagged with her own shirt.

Pointing to the presence of accurate details in these statements, the naïve spectator will see the confessional glasses as half full, not



half empty. In the light of all that is known about the problems with eyewitness memory, it is not reasonable to expect perfection in the accounts of crime suspects. This assertion, however, invites a third analytical step, an attribution as to the source of the accurate details. A confession can prove guilt if it contains details knowable only to the perpetrator, details not derivable by second-hand sources. Yet in the jogger case, after dozens of collective hours of unrecorded questioning, and amidst disputes as to what transpired, there is no way to know whether crime facts were furnished to the defendants, wittingly or unwittingly, through the process. Indeed, one need not stray from the videotaped confessions to hear the prosecutor ask leading questions that functioned not only to elicit information *from* the suspects but to communicate information *to* the suspects. Without apparent regard for the ownership of the facts being extracted, she steered one boy's story through a broken but persistent sequence of leading questions: 'Medical evidence says something other than a hand was used... what?' and 'Don't you remember someone using a brick or a stone?' In a move that grossly undermined all opportunity to get a confession indicative of guilty knowledge, the detectives inexplicably took one suspect on a supervised visit to the crime scene *before* taking his videotaped confession. The district attorney then showed him graphic photographs of the victim. For diagnostic purposes, it makes no sense to contaminate a suspect's confession by spoon feeding him information in these ways, rendering the source of his subsequent knowledge ambiguous. Whether he was there or not, the visit and photographs endowed him with key visual facts about the victim, crime and place – facts fit for a full confession. Importantly, Inbau *et al.* (2001) advise police to withhold key crime details so that they can ask suspects to corroborate their admissions.

Crime perpetrators have the unique capacity to reveal information about their actions that the police did not already know and produce evidence that police did not already have. Yet the statements of the Central Park jogger defendants – individually and collectively – were not generative in these ways. Lacking such corroboration, the case against the five defendants was like a house of cards, with each boy's confession built squarely and solely upon the foundation of the others' confessions. In December 2002, this house of cards collapsed under the weight of an imprisoned serial rapist who voluntarily confessed to the attack, who furnished the police with crime facts that proved accurate and not previously known, and whose semen was present on the jogger.

## **Towards the videotaping of interrogations**

To assess accurately the incriminating value of confessions, the police, prosecutors and fact finders must have access to a videotape recording of the entire interview and interrogation. In Great Britain, the Police and Criminal Evidence Act 1985 mandated that all suspect interviews and interrogations be taped. In the USA, Inbau *et al.* (2001) have long opposed the videotaping of interrogations, only recently changing course. The FBI continues to prohibit the practice. Today, a handful of states require electronic recording in custodial settings and others do so on a voluntary basis (for an excellent historical overview of this practice, see Drizin and Reich 2004).

There are a number of presumed advantages to a policy of videotaping interviews and interrogations in their entirety, all of which should provide for a more effective safety net. First, videotaping will deter the police from using overly guilt-presumptive, duplicitous and forceful interrogation tactics. Secondly, videotaping will deter frivolous defence claims of coercion where none existed. Thirdly, a videotaped record provides an objective and accurate account of all that transpired during interrogation, an all-too-common source of dispute in the courtroom (e.g. about whether rights were administered and waived; whether detectives yelled, intimidated, threatened, made promises or lied to the suspect; and whether the details in a confession came from the police or suspect). All this should increase the fact-finding accuracy of judges and juries. For the tapes to be complete and balanced, however, entire sessions should be recorded and the camera should adopt a 'neutral' or 'equal focus' perspective that shows both the accused and his or her interrogators (Lassiter *et al.* 2001).

In the USA, the videotaping experience has been well received wherever it has been used. Several years ago, a National Institute of Justice study revealed that amongst those police and sheriff's departments that videotaped interrogations, the vast majority found the practice useful (Geller 1993). More recently, Sullivan (2004) interviewed officials from 238 police and sheriff's departments in 38 states who voluntarily recorded custodial interrogations and found that they enthusiastically favoured the practice. Amongst 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. Contradicting

the most common criticisms, respondents in this study reported that videotaping interrogations did not prove too costly or inhibit suspects from talking to police.

The Central Park jogger case revealed a sequence of three problems: innocent people are often targeted for interrogation on the basis of judgments of deception that are frequently in error; certain processes of interrogation can cause people to confess to crimes they did not commit; and it is difficult for the police, attorneys, judges and juries to identify false confessions once they occur. The risks inherent in this chain of events suggests that there are not adequate safeguards in the criminal justice system. One would hope that recent advances in DNA testing and forensic-psychological research will bring together collaborative groups of law enforcement professionals, attorneys, social scientists and policy-makers to scrutinize current practices – the goal being to increase the effectiveness of interviews and interrogations, as measured by the diagnosticity of the outcomes they produce.

## Note

1. This percentage is even higher in homicide cases. In fact, as many false confessions are discovered before there is a trial, are not reported by police and are not publicized by the media, it is clear that the known cases represent the tip of a much larger iceberg (Drizin and Leo 2004; Gross *et al.* 2005).

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