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CHAPTER 3

Confession Evidence

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What could have more impact during the course of a trial than a revelation from the witness stand that the defendant had previously confessed to the crime? The truth is, probably nothing. Indeed Wigmore, in his classic treatise on *Evidence* (1970), asserted the opinion of several authoritative legal scholars that confessions rank as highest in the scale of evidence.

There are two bases for this appraisal. First, although estimates vary, there is reason to believe that confession evidence is introduced with astonishing *frequency* in the courts. A survey of deputy district attorneys in Los Angeles County, for example, revealed that confessions were given in 47 percent of the over 4000 cases reported (Younger, 1966). At the same time, the district attorney of New York City asserted that he planned to offer confession evidence in 68 percent of the homicide cases he had pending (see Kaufman, 1966). Kalven and Zeisel's (1966) extensive survey of trial judges indicated that, overall, "disputed" confessions (i.e., those that are denied or whose admissibility is challenged by the defense) arose in approximately 20 percent of the 3576 cases they had sampled nationwide.

In addition to the frequency with which confession evidence is received, a second reason for its importance is the obvious *impact* it can single-handedly exert on a defendant's fate. As McCormick (1972) put it, "the introduction of a confession makes the other aspects of a trial in court superfluous" (p. 316). Indeed over the years, several instances have surfaced of erroneous convictions based almost exclusively on uncorroborated confession evidence. In *Convicting the Innocent*, for example, Borchard (1932) reviewed 65 criminal cases, many involving individuals who were incarcerated or executed on the

basis of confessions subsequently proved to be false (see also Frank & Frank's *Not Guilty*, 1957). The compelling nature of confession evidence has also been demonstrated on an empirical level. In a mock jury experiment, Miller and Boster (1977) had subjects read a description of a murder trial that included (1) only circumstantial evidence, (2) eyewitness testimony from either an acquaintance or a stranger, and (3) testimony alleging that the defendant had confessed to the police. It turned out that those subjects who received the confession evidence were more likely to view the defendant as guilty than the other groups, including those provided with the eyewitness identification.

THE RULES OF CONFESSION EVIDENCE AND PROCEDURE

Historically, confession evidence has provided a recurring source of controversy in American jurisprudence, as it simultaneously elicits both praise and suspicion. Is the alleged confession authentic? Can the testimony of paid informers, angry victims, and overzealous police officers be trusted? If so, was the defendant of sound mind, or could he or she have confessed to deeds that he or she did not commit? Was the defendant's statement coerced or induced by trickery during custodial interrogation? Was his or her constitutional privilege against self-incrimination violated? These questions illustrate and represent the complexity of the issues surrounding the use of confession evidence in court.

Before discussing the special rules that have evolved for the reception of confession evidence, we must first clarify what constitutes a confession. Traditionally, a confession was defined as "an acknowledgement, in expressed words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it" (Wigmore, 1970, p. 308). This definition has been considered narrow in scope, as it excludes guilty conduct (e.g., fleeing from arrest), exculpatory statements (e.g., a self-defense explanation or apology) and other admissions (i.e., those that do not bear directly on the issue of guilt or fall short of an acknowledgment of all essential elements of the crime). These distinctions—particularly that between confessions and other admissions—had, in the past, enabled the courts to circumvent having to apply the stringent rules for introducing confession evidence when dealing with the other types of self-incriminatory statements (McCormick, 1972). However, because these distinctions are often subtle and difficult to

make in individual cases (see Slough, 1959), and because the U.S. Supreme Court has indicated that coerced admissions are subject to the same constitutional safeguards as full confessions (e.g., *Ashcraft v. Tennessee,* 1944), today's accepted operational definition is, for all practical purposes, one that encompasses a relatively wide range of self-incriminatory behaviors under the label *confession.*[1]

A Historical Overview

According to Wigmore's (1970) historical analysis, the modern law's use of confessions has proceeded through a series of discrete stages. During the sixteenth and seventeenth centuries in England, there was no restriction, no doctrine about excluding confessions. All avowals of guilt were accepted at face value without discrimination. In fact, confessing was like pleading guilty, thereby precluding the need for a formal trial. Wigmore noted that at least through the middle of the seventeenth century, the use of physical torture to extract confessions was common and evidence so obtained was accepted without scruple. In contrast, by the nineteenth century there was a period during which the judiciary was generally cynical of all confessions and tended to repudiate them upon the slightest pretext. Two bases for this distrust of confessions were articulated—(1) that the process of procuring proof of an alleged confession through the testimony of an associate, informer, police officer, or victim, is of questionable reliability, and (2) even when the confession is a well-proved fact, it may have little diagnostic value (i.e., as an indicator of guilt) if it was the result of coercion or was induced by promises, threats, or other tactics of the "third degree."

During the twentieth century, confession evidence has been neither accepted nor rejected outright. Instead its admissibility has been determined on an individual basis by a rational consideration of the surrounding circumstances and the all-important requirement that it be proved voluntary. According to Wigmore, the outstanding development in recent years is the nationalization of confession laws, established through a series of U.S. Supreme Court decisions and founded upon the Due Process Clause of the Fourteenth Amendment (see also Stephens, 1973). Thus, in *Brown v. Mississippi* (1936), the court reversed a guilty verdict because of a confession that was received through physical brutality, and asserted that a trial "is a mere pretense where the state authorities have continued a conviction resting solely upon confessions obtained by violence" (p. 287; see also *Chambers v. Florida,* 1940).

In a nutshell, *voluntariness* had emerged as the primary criterion for the admission of confession evidence. The major task of recent years had thus become to articulate the theoretical rationale for this criterion as well as a procedural strategy for its implementation. Why are involuntary confessions excluded? Through the various Supreme Court decisions, essentially two types of reasons were advanced. First is the common law explanation that involuntary confessions, like testimony given while intoxicated or in response to leading questions, are untrustworthy and unreliable (see Wigmore, 1970; *Stein v. New York*, 1953). Accordingly, the operational test recommended for judges' rulings of admissibility is whether the inducement was sufficient to preclude a "free and rational choice" and produce a fair risk of false confession. The second rationale, first articulated in *Lisenba v. California* (1941), is that "the aim of the requirement of due process is not to exclude presumptively false evidence but to prevent fundamental unfairness in the use of evidence whether true or false" (p. 219). Both scholarly sentiment (McCormick, 1946; Paulsen, 1954) and subsequent case law (e.g., *Rogers v. Richmond*, 1961) have shifted toward this current emphasis on constitutionally-based procedural fairness, individual rights, and the deterrence of offensive police misconduct. As such, although involuntary confessions must be excluded if believed to be untrustworthy, that criterion is not enough—they must also be excluded if illegally obtained.

Current Status

Voluntariness is a difficult concept to operationalize since it requires inference about the suspect's subjective state of mind and embraces the dual concerns for trustworthiness and due process.[2] The Supreme Court, in fact, has evaded precise definition and stated in *Blackburn v. Alabama* (1960) that "a complex of values underlies the stricture against use by the state of confessions which, by way of convenient shorthand, this court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case" (p. 207). The concept of involuntariness thus represents a summary expression for all practices that violate constitutional principles (e.g., the right to a fair trial, the privilege against compulsory self-incrimination) and can be determined only through a comprehensive analysis of the "totality of the relevant circumstances" *(Culombe v. Connecticut,* 1961, p. 606).

The catalog of factors that may be relevant to a determination of voluntariness covers a wide range. It includes characteristics of the accused (e.g., youth, subnormal intelligence, physical disability, mental illness, intoxication, illiteracy), the conditions of detention (e.g., delayed arraignment, inadequate living facilities, lack of access to counsel, friends, or other assistance), and—of course—the manner of interrogation (e.g., lengthy and grueling periods of questioning, physical abuse, deprivation of needs, threats of harm or punishment, advice, promises or reassurances, deception). Not surprisingly, the case law has been confusing and inconsistent, the courts have been burdened by numerous appeals for postconviction reviews of the voluntariness issue, and attempts at synthesis and generalization have met with little success. As Justice Frankfurter said, "there is no simple litmus-paper test" (*Culombe v. Connecticut*, 1961, p. 601).[3]

In the 1960s, the Supreme Court moved toward establishing more objective criteria for the admissibility of confession evidence. To that aim, the refusal of police to permit the accused to consult with an attorney was regarded as part of the relevant circumstances for judging voluntariness. In *Massiah v. United States* (1964), however, the Court ruled that if the accused has been indicted, all incriminating statements elicited by government agents in the absence of counsel are inadmissible.[4] Then in *Malloy v. Hogan* (1964), the Court broadened the exclusionary rules further by explicitly linking confession evidence to the privilege against compulsory self-incrimination. These decisions culminated in the landmark *Miranda v. Arizona* (1966) ruling in which the Court established broad, universally applicable guidelines for safeguarding the rights to remain silent and to counsel. It thus articulated the *Miranda* warnings and ruled that unless the accused is informed of these rights, all self-incriminating statements made are inadmissible.

For several years, the *Miranda* doctrine stood as a definitive and unambiguous safeguard against confessions induced or coerced through interrogation. More recently, however, the Supreme Court has limited its scope considerably (see Stone, 1977). In the latest development, in fact, the Court ruled that "overriding considerations of public safety" could justify a police officer's violation of the *Miranda* strictures (*New York v. Quarles*, 1984). One result of this decision is that, under certain circumstances, any self-incriminating statements elicited during questioning could now be admitted as trial evidence even if the suspect had not been apprised of his or her rights. A second result

of this public safety exception to *Miranda* is the obvious forfeiture of a clear and objective criterion by which to judge the exclusion of confession evidence. As such, despite calls for the articulation of objective guidelines (White, 1979) in all likelihood the more subjective voluntariness criterion will take on added importance.[5]

COMPETENCE: THE PSYCHOLOGY OF POLICE CONFESSIONS

As our historical overview has shown, the exclusionary rules relating to confessions were based, from the outset, on the ethic of insulating our adversarial system of justice from the introduction of unreliable evidence. As Wigmore (1970) noted, although there is no way to determine the frequency of untrue confessions, it is reasonable to conclude "based on ordinary observation of human conduct, that under certain stresses a person, especially one of defective mentality or peculiar temperament, may falsely acknowledge guilt" (p. 329). In this section, we explore two questions—(1) what actually transpires behind the closed doors of the interrogation room, and (2) how competent or trustworthy is confession evidence?

Methods of Interrogation

The term *interrogation* is used generally to describe all questioning by police, regardless of whether it is conducted in custody or in the field, before or after arraignment. Despite the persisting controversy surrounding this aspect of criminal investigation, there is surprisingly little in the way of empirical documentation of interrogation practices.

In 1931, the U.S. National Commission on Law Observance and Enforcement published a report of its findings and confirmed the worst fear about police abuse, noting that the use of severe third degree tactics to extract confessions is "widespread" (p. 153). As examples, the commission cited as commonplace the use of physical violence, methods of intimidation adjusted to the age and mentality of the accused, fraudulent promises that could not be fulfilled, and prolonged illegal detention. In an effort to characterize the interrogation process as it might have changed since that time, the *Miranda* (1966) court—lacking direct observational or interview data—turned for evidence of what transpires to actual reported cases involving coerced confessions and to a review of the most popular manuals written to advise law enforcement officials about successful tactics for eliciting confessions

(cf. Aubry & Caputo, 1965; Inbau & Reid, 1962; O'Hara & O'Hara, 1981). Essentially, the Court concluded from its inquiry that "the modern practice of in-custody interrogation is (now) psychologically rather than physically oriented" (p. 448),[6] but that the degree of coerciveness inherent in the situation had not diminished. The Court's specific substantive findings are described below.

The physical setting. To begin with, police manuals (most notably Inbau & Reid's *Criminal Interrogation and Confessions,* 1962) urge officials to employ a specially constructed room that is psychologically removed from the sights and sounds of the police station, and to maintain rigid control over the ecology of that interrogation room. The novelty of this facility is designed to give the suspect "the illusion that the environment itself is withdrawing further and further away" (Aubry & Caputo, 1965, p. 38). To further minimize sensory stimulation and remove all extraneous sources of distraction, social support, and relief from tension, the manuals recommend that the interrogation room be accoustically soundproofed and bare, without furniture or ornaments—only two chairs and perhaps a desk. Also critical, of course, is that the accused be denied communicative access to friends and family. Finally, the interrogator is advised to sit as close as possible to the subject, in armless, straightbacked chairs, and at equal eye level. Invading the suspect's personal space, it is said, will increase his or her level of anxiety from which the only means of escape is confession.

Manipulative tactics. Inbau and Reid (1962) described in considerable detail 16 overlapping strategies for eliciting confessions from initially recalcitrant suspects. From them, three major themes emerge. The first is to reconceptualize for the suspect the attributional implications of his or her crime by minimizing its seriousness (e.g., "I've seen thousands of others in the same situation") or by providing a face-saving external attribution of blame. The interrogator might, for example, suggest to the suspect that there were extenuating circumstances in his or her particular case, providing such excusing conditions as self-defense, passion, or simple negligence. Or, the blame might be shifted onto a specific person such as the victim or an accomplice. Inbau and Reid (1962) offered the following example of how such attributional manipulation has been used successfully as bait: A middle-aged man, accused of having taken indecent liberties with a 10-year-old girl, was told that "this girl is well developed for her age. She probably learned a lot about sex from boys . . . she may have deliberately tried to

excite you to see what you would do." In another documented instance, Wald et al. (1967) observed a detective tell a breaking-and-entering suspect that "the guy should never have left all that liquor in the window to tempt honest guys like you and me" (p. 1544).

From an entirely different angle, an alternative strategy is to frighten the suspect into confessing. One way to accomplish this is by exaggerating the seriousness of the offense and magnitude of the charges. In theft or embezzlement cases, for example, the reported loss—and hence the consequences for a convicted defendant—could be increased. Another variation of the scare tactic is for the interrogator to presume to have a firm belief about the suspect's culpability based on independent, "factual" evidence. Police manuals are replete with specific suggestions about how to use what is referred to as the "knowledge-bluff" trick. The interrogator could thus pretend to have strong circumstantial evidence (e.g., the suspect's fingerprints at the scene of the crime), have a police officer pose as an eyewitness and identify the suspect in a rigged lineup, or even—through elaborate staging devices—try to persuade the suspect that he or she has already been implicated by an accomplice or another suspect. Another interesting technique, along similar lines, is to alert the suspect to his or her apparent psychophysiological and nonverbal indicators of a guilty conscience such as dryness of the mouth, sweating, fidgety movements, or downcast eyes.

The third general type of approach is based on the development of a personal rapport with the suspect. Referring to this as the emotional appeal, police manuals advise the interrogator to show sympathy, understanding, and respect through flattery and gestures such as the offer of a drink. Having established a friendly relationship, the interrogator might then try to persuade the suspect that confessing is in his or her own best interests. In a more elaborate version of this strategy, two detectives enact a "Mutt and Jeff" routine in which one comes across as hostile, and relentless, while the other gains the suspect's confidence by being protective and supportive. This technique is apparently quite common and was used in a case described by Zimbardo (1967).

In addition to these various specific strategies, the literature reviewed by the Supreme Court in *Miranda* contained several universally applicable rules of thumb, the most important of which is "an oppressive atmosphere of dogged persistence." Not surprisingly, the

Court concluded from its findings, that interrogation practices were inherently coercive.

Direct observational data. Are the admittedly indirect and poorly sampled data culled by the Supreme Court an accurate depiction of the interrogation process or do they portray only the most atypical and extreme forms of coercion? In an empirical study, Wald, Ayres, Hess, Schantz, and Whitebread (1967) observed 127 interrogations over the course of eleven weeks in the New Haven, Connecticut, Police Department. In addition to recording the frequency with which various tactics were used in these sessions, the investigators interviewed the police officers and attorneys involved as well as some exsuspects.[7]

Overall, this research revealed that one or more of the tactics recommended by Inbau and Reid (1962) was employed in 65 percent of the interrogations observed and that the detectives used an average of two tactics per suspect. The most common approach was to overwhelm the suspect with damaging evidence, to assert a firm belief in his or her guilt, and then to suggest that it would be easier for all concerned if the suspect admitted to his or her role in the crime. This latter plea was often accompanied by a show of sympathy and concern for the suspect's welfare. Most of the other methods cited in the manuals were also used with varying frequency, including the Mutt and Jeff routine, playing off other suspects, minimizing the seriousness of the offense, shifting the blame for the crime to external factors, and alerting the suspect to signs of nervousness that reveal a guilty conscience. The investigators reported that no undue physical force was used by the detectives, but they did observe the frequent use of promises (e.g., offers of lowered bail, reduced charges, and judicial leniency) and vague threats about harsher treatment. In three instances, suspects were told that the police would make trouble for their families and friends if they refused to cooperate.

Wald et al. (1967) concluded from their observations that the New Haven detectives employed most of the persuasive techniques listed by Inbau and Reid, thus justifying, to some extent, the Court's fears.[8] Indeed it is perhaps reasonable to speculate that because the mere presence of observers at the sessions could have inhibited the use of stronger forms of pressure, these results might even have underestimated the coercion employed during interrogation. Moreover, such tactics do not merely represent the abuses of an unenlightened, bygone

era, as White (1979) cites similar kinds of advice in current police manuals and several such instances in recently reported cases.

Validity of Confession Evidence

As we noted earlier, judgments about the voluntariness and, hence, competence of evidence rest on two criteria—trustworthiness and procedural fairness. Earlier, we discussed the latter criterion. We focus now on the accuracy or trustworthiness requirement.

To measure the actual validity of confession evidence, one would ideally assess the combined frequency with which truly guilty suspects confess and truly innocent suspects do not. Two types of erroneous outcome are thus possible—those probably common instances in which guilty suspects fail to confess (*misses* in signal detection terms) and the probably rarer occasions when suspects who are innocent do confess (*false alarms* in signal detection terms). Because our accusatorial system of justice protects the individual's right to refuse self-disclosure, the first type of error obviously does not provide a basis for concern. The second category of error, however, does pose a serious problem for the courts. In assessing the trustworthiness of confession evidence, the question we must therefore ask is, What is the risk of false confessions?

Anecdotes and case histories. It is impossible to determine or even estimate the frequency with which people confess to crimes they did not actually commit. Is there a reasonable risk of false confessions? Although the layperson might find it difficult to believe, enough instances have been documented to suggest that concern over such a risk is justified (Barthel, 1976; Borchard, 1932; Foster, 1969; Frank & Frank, 1957; Munsterberg, 1908; Reik, 1959; Sutherland, 1965; Wigmore, 1937; Zimbardo, 1967; Note—*Indiana Law Journal,* 1953).

A perusal of the anecdotal literature suggests that it is useful to distinguish three psychologically distinct types of false confession—(1) voluntary, (2) coerced-compliant, and (3) coerced-internalized. *Voluntary false confessions*, those purposefully offered in the absence of elicitation, are on the face of it the most enigmatic of the three types. Why, for example, did over 200 people confess to the famous Lindbergh kidnapping? Apparently a "morbid desire for notoriety" could account for this episode as well as others in which numbers of false confessions are received for widely publicized crimes (see Note, *Indiana Law Journal*, 1953, p. 382). Other suggested motives for voluntary false

confessions include the unconscious need to expiate guilt over previous transgressions via self-punishment, the hope for a recommendation of leniency, and a desire to aid and protect the real criminal. Then, of course, there are the innumerable instances in which false confessions are offered by individuals subsequently diagnosed as mentally ill and unable to distinguish between fantasy and reality (cf. Guttmacher & Weihofen, 1952).

In contrast to those occasions when individuals voluntarily initiate false confessions are those in which suspects confess through the coerciveness of the interrogation process. Within this category of *coerced false confessions,* a further distinction should be drawn. Psychologists have long recognized the importance of two conceptually different responses to social control attempts—compliance and internalization (see Kelman, 1958). Compliance may be defined as an overt, public acquiescence to a social influence attempt in order to achieve some immediate instrumental gain whereas internalization refers to a personal acceptance of the values or beliefs espoused in that attempt. Two meaningful differences between these closely related processes have been observed. First, although compliance is reflected in subsequent behavior only if it continues to have instrumental value, internalized behaviors persist over time and across a variety of situations. Second, it appears that whereas immediate compliance is most effectively elicited through powerful and highly salient techniques of social control, internalization is best achieved through more subtle, less coercive methods (see Lepper, 1982, for a self-perception theory explanation of this phenomenon).

In view of the foregoing distinction, it is clear that some false confessions may be viewed as *coerced-compliant,* wherein the suspect publicly professes guilt in response to extreme methods of interrogation, despite knowing privately that he or she is truly innocent. Reflecting the instrumental component of such conduct, Wigmore (1970) noted that one of the main reasons for distrusting confession evidence arises "when a person is placed in such a situation that an untrue confession of guilt has become the more desirable of two alternatives between which the person was obliged to choose" (p. 344). Historically, most of the false confessions extracted through torture, threats, and promises were probably of this type (e.g., the Salem witchcraft confessions of the seventeenth century). And, reflecting the nonpermanent character of "mere" compliance, such confessions are typically withdrawn and challenged at a pretrial voluntariness hearing.

A good example is the classic case of *Brown v. Mississippi* (1936) in which the defendants confessed after having been threatened by a lynch mob and whipped with steel-studded belts, and then maintained—upon appeal—that they had made false self-incriminating statements in order to escape the painful beatings and avoid further punishment.

It is also clear, however, that there are times when false confessions are *coerced-internalized*: when the suspect—through the fatigue, pressures, and suggestiveness of the interrogation process—actually comes to believe that he or she committed the offense. What is frightening under this stronger form of false confession is that the suspect's memory of his or her own actions may be altered, making its original contents potentially irretrievable.

As an illustration of how a suspect might come to internalize the events as suggested by the police, consider the following case, described by Barthel (1976). Peter Reilly, 18 years old, returned home one night to find that his mother had been murdered. He called the police who, after questioning him with the aid of a polygraph, began to suspect the boy of matricide. Transcripts of the interrogation sessions revealed a fascinating transition from denial through confusion and self-doubt (largely facilitated by the police officer's assertions about the infallibility of "the charts"), and finally to the statement, "Well, it really looks like I did it" and the signing of a written confession. Two years later, it was revealed through independent evidence that Reilly could not have committed the murder, that the confession that even he came to believe was false.

Psychological perspectives. Various theories have been brought to bear on the question, What is it about the coerciveness of interrogation that can cause innocent people to incriminate themselves? From a psychological standpoint, the coerced-compliant false confessions are readily explained by the individual's desire to escape an aversive situation and secure a favorable self-outcome. In these cases, the act of confession—compared to the consequences of silence or denial—is simply the lesser of two evils for a beleaguered suspect. But what about the more puzzling instances of internalized false confessions?

To account for this phenomenon, some observers have likened the interrogation process to hypnosis. Foster (1969), referring to the "station house syndrome," stated that police interrogation "can produce a trance-like state of heightened suggestibility" so that "truth and falsehood become hopelessly confused in the suspect's mind" (pp. 690-691). Since the state of hypnosis is characterized by the subject's

loss of initiative, heightened capacity for fantasy production, confabulation, and reality distortion (e.g., an acceptance of falsified memories), and an increased suggestibility (e.g., in response to leading questions; see Hilgard, 1975), the danger of what appear to be internalized false confessions could provide a real source of concern. Indeed a study by Weinstein, Abrams, and Gibbons (1970) revealed that when a false sense of guilt is implanted in hypnotized subjects, they become less able to pass a polygraphic lie detector test.

Interestingly, Munsterberg (1908) had reported on a murder case in which the defendant was convicted and executed on the basis of a confession that might have been elicited through hypnotic induction. In 1906, a woman named Bessie Hollister was raped and murdered. Richard Ivens discovered the body and reported it to the police. Looking tired and disheveled, he was immediately suspected, placed under arrest, and interrogated. According to the police, although he initially denied the allegations, Ivens then confessed repeatedly, enriching the story on each successive occasion. At the trial, the prosecutor's case was centered around the confession. The defendant repudiated his statements and produced 16 unimpeached witnesses to substantiate his alibi. What, then, prompted the sudden shift during interrogation from denial to confession? According to Ivens, his only recollection of the session was of seeing a revolver pointed at him—"I saw the flash of steel in front of me. Then two men got before me. I can remember no more than that about it. . . . I suppose I must have made those statements, since they all say I did. But I have no knowledge of having made them" (Munsterberg, 1908, p. 169). As it turned out, the defense sought the opinion of several experts as to whether the confession could be explained through the use of hypnosis. Affirmative replies were received from many sources, including Hugo Munsterberg and William James.

From another standpoint, it has been suggested that internalized false confessions could result from a process of self-perception. Interested in "When saying is believing," Bem (1966) explored the idea that a false confession could distort an individual's recall of his or her own past behavior if the confession is emitted in the presence of cues previously associated with telling the truth (e.g., reassurance that one need not admit to wrongdoing). In an interesting experiment, subjects performed a task that required them to cross out a sample of words from a master list. Then, to establish two lights as discriminative stimuli for truth and falsity, subjects were asked general questions about

themselves and instructed to answer them truthfully when the room was illuminated by a green light and to lie in the presence of an amber light. In the next phase of the procedure, the experimenter announced several words taken from the initial task. After some, he instructed subjects to lie and after others to tell the truth about whether they had previously crossed the word out—again while in the presence of a green or amber light. In the final step of the procedure, subjects were asked for each word to recall whether they actually had or had not crossed it out. The results indicated that false statements made in the presence of the truth light produced more errors in the recall of actual performance than either false statements made in the presence of the lie light or none at all. It thus appears that under conditions normally associated with telling the truth, subjects came to believe the lies they had been induced to tell.[9] In discussing the legal implications of this finding, Bem (1967) noted that "a physical or emotional rubber hose never convinced anyone of anything" and that "saying becomes believing only when we feel the presence of truth, and certainly only when a minimum of inducement and the mildest and most subtle forms of coercion are used" (pp. 23-24).

Generalization from Bem's laboratory research to the real-world process of criminal interrogation should obviously be made with caution. Still, anecdotal reports suggest the existence of internalized false confessions, and Bem's self-perception ideas provide at least a partial explanation of this phenomenon. Closely related, for example, is an interrogation tactic described by Driver (1968) of having the suspect repeat the story over and over, for "if duped into playing the part of the criminal in an imaginary sociodrama, the suspect may come to believe that he was the central actor in the crime" (p. 53).

CREDIBILITY: JURIDIC PERCEPTIONS OF CONFESSION EVIDENCE

As we noted earlier, confession evidence may be introduced in court if it is obtained via due process and passes the broad test of voluntariness. In judging the latter, a variety of factors are deemed relevant, including the defendant's state of mind, the detention conditions, and the methods of interrogation. In this section, we examine the credibility issue—what inferences do people draw from confession evidence, and what impact does it have on juridic decision making?

Procedure and the Jury's Function

In practice, most jurisdictions employ one of two general procedures for handling disputed confessions. In all cases, a special preliminary hearing is held in which a factfinder—usually the presiding judge—hears all the pertinent facts and determines the voluntariness and, hence, the competence of the confession evidence.[10] Under the California or "orthodox" rule, confessions found to have been coerced are entirely excluded, and those deemed voluntary are admitted with all the other evidence. Within this procedure, the jury's sole function is to determine the weight and credibility of the confession. Under the Massachusetts or "humane" rule, however, once a confession is admitted the jury is then instructed to make its own independent appraisal of voluntariness before considering its credibility and entering it into their evidentiary equation. This method thus increases the jury's role and the importance of its perceptions of voluntariness.[11]

A second procedural question that affects the jury's role is, By what standard of proof should the pretrial factfinder judge voluntariness? In the wake of the *Jackson v. Denno* (1964) prescription that the defendant is entitled to a preliminary hearing of admissibility, some states adopted the stringent criterion that voluntariness must be proven "beyond a reasonable doubt," whereas others sanctioned lesser standards, including proof by a mere "preponderance of the evidence." Since judges have been shown to translate the reasonable doubt criterion to mean an 89 percent certainty and the preponderance standard to mean only a 61 percent certainty (Simon & Mahan, 1971), this difference is noteworthy. In *Lego v. Twomy* (1972), the Supreme Court resolved this question in favor of the lesser standard, as it affirmed its faith in the jury's capacity to assess the truthfulness of confessions and to use those that are potentially unreliable cautiously.

An Attributional Analysis

The anecdotal literature is replete with case studies that collectively suggest that juries are often overwhelmed by confession evidence, that they place a good deal of faith in its probative value. Yet in *Lego v. Twomy* (1972), the Supreme Court asserted, "Our decision was not based in the slightest on the fear that juries might misjudge the accuracy of confessions and arrive at erroneous determinations of guilt or innocence" (p. 625).

Is this assumption well founded? How do jurors perceive evidence of a confession whose voluntariness is in question? Although psychologists have not focused directly on how jurors use such information, the inference process involved in such a decision is familiar to us via the social psychology of attribution. Essentially, we have a situation in which jurors are confronted with a verbal behavior whose causal locus is ambiguous. For example, if a suspect confesses in response to a threat made during an interrogation, that confession may be viewed either as reflecting his or her true guilt or as a means of avoiding the negative consequences of silence. Ideally, jurors employing Kelley's (1971) discounting principle would entertain at least a "reasonable doubt" about the accuracy of this kind of elicited confession (i.e., compared to one that is made in the absence of threat as a plausible cause). Indeed, research has demonstrated that observers use the attributional principle of discounting in a variety of contexts (e.g., Kruglanski, Schwartz, Maides, & Hamel, 1978).

On the other hand, a number of investigators have reported that perceivers characteristically fall prey to what has been called the "fundamental attribution error": They attach insufficient weight to situational causes and, instead, accept the dispositional implications of behavior at face value (see Jones, 1979; Ross, 1977). In a series of experiments, Jones and Harris (1967) had subjects read an attitudinal essay or hear a speech presumably written by another student. In one study, subjects read an essay in which the communicator either supported or criticized the unpopular Castro regime in Cuba. Some subjects were told that the communicator had freely chosen to advocate this position, while others were told that the communicator was assigned to endorse the position by an instructor. Results indicated that subjects in the no-choice condition clearly perceived the situational determinants of the communicator's opinion. Nevertheless, their impressions about the communicator's true belief were markedly influenced by the particular position he had espoused. In short, subjects did not dismiss the dispositional cause of a situationally determined opinion. This phenomenon has been replicated for several different essay topics and even when the salience of the situational cause is increased (Snyder & Jones, 1974; Miller, Jones, & Hinkle, 1981).

The parallels between this research paradigm and the coerced confession are striking. In both, the observer is faced with a verbal behavior that he or she may attribute either to the actor's true attitude or to the pressures of the behavioral situation. Yet, while the Supreme

Court assumes that jurors would discount an involuntary confession as unreliable and not allow it to guide their decisions, previous research suggests that jurors might not totally reject the confession when considering the actor's true guilt.

To complicate matters further, we have seen that the courts have defined coercion broadly to include a variety of circumstances, including—of course—*threats* of harm and punishment as well as *promises* of leniency and immunity from prosecution. Unfortunately, despite the law's treatment of these conditions as functionally equivalent, social psychologists have shown that observers attribute more responsibility and freedom to people for actions taken to gain a positive outcome than for the same actions if aimed at avoiding punishment (Bramel, 1969; Kelley, 1971). Apparently, as Wells (1980) has found, this attributional assymetry is related to a pervasive, often erroneous assumption that punishment exerts a more powerful effect on human behavior than does reward. The implications of this phenomenon for how jurors utilize different types of coerced confession evidence are clear. Specifically, they suggest that a confession that is made in response to a promise of mild treatment, leniency, or other favorable legal action (positive constraint) will be perceived by jurors to be more voluntary and hence as more indicative of guilt than one that followed a threat of continued interrogation, maltreatment, or harsh punishment (negative constraint).

What, then, do jurors believe about disputed confessions? To address this question and test the predictions derived from attribution theory, we conducted a series of mock jury experiments. In each, subjects read an abridged transcript of a criminal trial in which evidence of a confession and its surrounding circumstances was varied. They then rendered their verdicts and answered a series of case-related questions.

Relevant Mock Jury Research

To this point, it is clear that there are a multitude of important questions that can be raised about juries' views of confession evidence. As a starting point, we sought to investigate their perceptions of voluntariness and the verdicts that follow under the two most significant categories of eliciting circumstance—promises and threats.

Kassin and Wrightsman (1980). In our first experiment, subjects read a 25-page transcript of a criminal trial in which the defendant,

Ronald Oliver, was charged with transporting a stolen vehicle in interstate commerce. The transcript consisted of opening statements, the examination of three witnesses, closing arguments, and the judge's instruction to the jury.

Four versions of the trial were written. They were identical except for the inclusion and manipulation of a police officer's testimony in which it was revealed that upon arrest Ron Oliver confessed to having stolen the car. In a *no-constraint* condition, he confessed on his own initiative (i.e., without prompting). In a *positive-constraint* condition, Oliver confessed after being promised that "he would be treated well during his detention and that the judge would surely be a lot easier on him—maybe even a suspended sentence." In a *negative-constraint* condition, he confessed after having been warned that "he would be treated very poorly during his detention and that the judge would surely be very hard on him—maybe even the maximum sentence." Finally, in a *no-confession* version of the trial, it was revealed that the defendant flatly denied having anything to do with the crime.

Overall, we found that whereas 19 percent of the subjects in the no-confession version of the trial voted guilty, the conviction rate increased to 56 percent in the no-constraint confession group. This difference thus reaffirmed the time-honored suspicion that evidence of a prior confession has a measurable impact of juror decisions. The primary question we asked, of course, was whether or not subjects would discount a confession if induced by promises or threats. As it turned out, the answer is yes and no. When the confession was precipitated by a threat, the conviction rate increased only slightly, to 25 percent. When precipitated by a promise, however, it increased even further—to 38 percent. Presumably, these results were mediated by subjects' perceptions of the defendant's freedom of choice—positively constrained confessions are seen as more voluntary and therefore have a greater effect than negatively constrained confessions.

To test this mediation hypothesis, a second experiment was conducted using a stronger version of the Ron Oliver trial. This time, before rendering their verdicts, subjects in the three confession groups indicated whether they believed the defendant had confessed voluntarily and without coercion. As in the first experiment, the proportion of guilty verdicts was highest in the no-constraint confession condition at 78 percent, and lowest in the no-confession control group, at 11 percent. Compared to the latter as a baseline figure, the positively constrained confession significantly increased the conviction rate (50 percent), whereas the negatively constrained confession did not (22

percent). The voluntariness-judgment data, however, did not follow the same pattern. Whereas 94 percent of the subjects in the no-constraint group accurately perceived the confession as voluntary, this proportion was significantly reduced in *both* the positive and negative constraint conditions (39 percent and 22 percent, respectively).

Taken together, the foregoing results provide only qualified support for the ideal that jurors would discount coerced confessions as unreliable. When the coercive influence was operationally defined as a threat of harm or punishment, subjects fully discounted the confession evidence—that is, they viewed the confession as involuntary *and* they exhibited a relatively low rate of conviction. However, when coercion took the form of an offer or promise of leniency, subjects did not completely dismiss the confession. Under these circumstances, their judgments were internally inconsistent—they conceded that the defendant had behaved involuntarily but then voted guilty anyway. We have termed this latter result the "positive coercion bias."

Kassin and Wrightsman (1981). From a practical standpoint, this research suggests that positively coerced confessions, because they enter significantly into jurors' decisions, pose an evidentiary problem for the courts. Of course, one possible strategy for curbing this bias might be through the use of an appropriate cautionary instruction. Indeed, as we mentioned earlier, several states follow the Massachusetts procedure in which the jury is instructed to decide the voluntariness issue before rendering a verdict. Toward this end, two types of approved instruction are available to judges (see LaBuy, 1963; Mathes & DeVitt, 1965)—(1) a short form that simply directs jurors to reject any confession they believe to have been coerced, and (2) a longer version that actually defines both the positive and negative forms of constraint as coercive and, further, articulates the rationale that such elicited confessions are unreliable.

Does judicial instruction effectively limit jurors' use of positively constrained confession evidence? To address this question, we had some subjects read a version of a trial that included one of the two available forms of voluntariness instruction. The results replicated our earlier findings and, unfortunately, revealed that both sets of judicial instruction failed to mitigate the positive coercion bias. Why might subjects have been unaffected by the instruction manipulation? The simple answer is that, as a general rule, jurors are insensitive to judicial instruction (see Chapter 11 of this book). On a more specific level, recall that there are two reasons why coerced confessions are deemed inadmissible as evidence—(1) they are unconstitutional and procedural-

ly unfair to the accused, and (2) they are unreliable and untrustworthy. Kalven and Zeisel (1966), citing real-world examples, suggested that "the jury may not so much consider the credibility of the confession as the impropriety of the method by which it was obtained" (p. 320). Yet it is clear that whereas the short instruction advanced no rationale, the long-form focused exclusively on the trustworthiness argument. Perhaps an instruction that emphasizes the fairness justification or what Kalven and Zeisel call the "sympathy hypothesis" would prove effective.

To test this idea, we conducted a second experiment for which we composed a due process instruction, one that emphasized the unfairness of even mildly coercive tactics. This time, subjects read an aggravated assault case in which the defendant pleaded self defense. In the various confession conditions, he admitted—upon arrest—that he had acted without provocation. In the no-confession control group, he maintained that he was afraid he was about to be attacked. The coercion manipulation was almost identical to that of our earlier experiments. In addition, subjects received either no instruction, the credibility instruction from the previous experiment, a due process ("fairness") instruction, or one that combined the two rationales. As before, the positive coercion bias was replicated. More important, although none of the instructional manipulations significantly affected verdicts, the instruction that appealed to both credibility and fairness considerations was at least partially effective as it significantly lowered the proportion of voluntariness judgments.

Kassin, Wrightsman, and Warner (1983). Before drawing any firm negative conclusions about the curative powers of voluntariness instructions, at least two important issues remained. First, can the *timing* of the instruction mediate its impact? In Kassin and Wrightsman's (1981) research, the judge's charge followed the presentation of evidence, as is common practice in most courts. Yet studies have shown that certain types of judicial instruction affect mock jurors' decisions only when they *precede* the evidence (cf. Elwork, Sales, & Alfini, 1977; Kassin & Wrightsman, 1979). Perhaps our subjects had tentatively decided on their *verdicts* before the instruction was delivered and so were subsequently influenced only in their *voluntariness* judgements. A second important question that remains is, Does the positive coercion bias persist or disappear after a jury deliberates and, if it persists, is judicial instruction any more effective a device at this group level? Kaplan and Miller (1978) have reported that jury discussion may correct for certain nonevidentiary biases. Yet our

own research had focused on the beliefs and judgments of the individual, nondeliberating juror.

To investigate these possibilities, Kassin et al. (1983) had 102 five- and six-person juries read a version of the assault case, and receive the combined (credibility + fairness) or standard (i.e., no mention of voluntariness) instruction either before or after the presentation of evidence. The groups were then given 30 minutes to deliberate and arrive at a unanimous verdict. As it turned out, the conviction rate was somewhat lower in the positively constrained than unconstrained confession conditions (27 percent and 43 percent, respectively), although this difference was not statistically significant. When broken down by instruction condition, we found that although this pattern held for the uninstructed groups (41 percent and 49 percent), there was a significant difference among those groups that received the special charge (13 percent and 40 percent). In short, positively coerced confessions *were* rejected by juries who received the double-barreled voluntariness instruction.[12]

Summary and conclusions. Our research has shown that despite the courts' treatment of promises and threats as equivalent conditions of coercion, jurors react very differently to these two circumstances. When a suspect was said to have confessed in response to a threat of harm or punishment, even without signs of physical brutality, mock jurors fully rejected that evidence. When the inducement took the form of a promise of leniency, however, subjects were unable or unwilling to excuse the defendant completely and discount his or her confession. Under these circumstances, they tended to vote for conviction despite having conceded that the confession was, by law, involuntary. On the individual juror level, this phenomenon has proven to be quite robust and resistant to the effects of judicial instruction, even that which explicitly cites positive forms of constraint as coercive and potentially unreliable. On the encouraging side, our most recent study has shown that our own instruction, written to articulate both the credibility and fairness rationales, did eliminate the positive coercion bias among deliberating mock juries.

Our research represents a modest first step in understanding how juries view confession evidence in all its complexity. As such, several important questions remain unresolved. For example, why did mock jurors react so differently to the two types of constraint? Part of the answer, as suggested by Wells (1980), is simply that people view the promise of reward as a weaker form of behavioral inducement than a threat of punishment. Our own data provided mixed support for this

hypothesis. In one study, we had subjects rate the degree of pressure exerted on the defendant to confess and found that these ratings were significantly higher in the negative- than positive-constraint situation. In the same study, however, we asked subjects to estimate the percentages of guilty and innocent people who would confess under the circumstances of the case they had read, and found that the promise and threat conditions were virtually identical on this measure.[13] Parenthetically, it is interesting to note that across constraint conditions, subjects estimated that 46 percent of truly guilty people and 36 percent of truly innocent people would confess. The latter figure is especially surprising because it suggests that people do clearly recognize the risk of false confessions (see Kassin & Wrightsman, 1981).

In addition to the empirical questions we have gleaned from the laws of confession evidence and procedure, innumerable others of conceptual interest to psychologists and of practical value to the judiciary await experimentation. For example, in recent years law enforcement officials have begun videotaping interrogation sessions for presentation in court. As such, the jury is enabled to view the confession and its surrounding circumstances directly rather than through the testimony of a witness (see Salvan, 1975). How might this procedural innovation affect jurors' perceptions of voluntariness and the inferences they draw from confession evidence? Based on the fact that people tend to attribute causality to that which is perceptually salient (see Taylor & Fiske, 1978), Lassiter and Irvine (1984) tested the hypothesis that judgments of voluntariness in videotaped confessions would be systematically biased by camera angle. A mock interrogation resulting in a confession was thus videotaped from three angles so that either the interrogator, the suspect, or both were visually salient. Subjects watched one of these versions of the episode. Sure enough, their judgments of coercion were lowest when the suspect was salient, highest when the interrogator was salient, and intermediate when the two were equally visible. In short, this seemingly trivial detail of procedure can, as attribution psychologists would predict, have a marked effect on juries' perceptions of confession evidence.

Implications for the entrapment doctrine. Finally, in the wake of the government's Abscam investigation as well as the recent, highly publicized John DeLorean trial, we would like to point out the implications of the issues discussed here for the related doctrine of entrapment. In *Sherman v. United States* (1958), the Supreme Court explicitly equated entrapment with positively coerced confessions. In both, the basic objective is actively to coax an individual into self-

incriminatory behavior. The only meaningful difference is that in the case of solicitation the police disguise their identity and elicit nonverbal conduct that the suspect does not realize will be used toward his or her prosecution.

The entrapment doctrine has long been a source of jurisprudential controversy (cf. LaFave & Scott, 1972; Park, 1976). Was Abscam, for example, a fair investigation, or did it employ unjustifiably contrived methods not to prevent corruption but to create it? What conditions must be present for this line of defense to be relevant? Essentially, two positions have been advanced by the courts (*Sorrells v. United States,* 1932; *Sherman v. United States,* 1958). One position—a minority view referred to as the "objective" test—focuses exclusively on the propriety of investigatory methods, maintaining that entrapment occurs when police conduct is compelling enough to instigate a criminal act, even by an individual who is otherwise not ready and willing to commit it. The second view, favored by most courts and referred to as the "subjective" test, focuses instead on the defendant's state of mind. If the defendant was behaviorally predisposed, then the police are said merely to have afforded the opportunity to commit the offense. Within this framework, it is the jury that is responsible for evaluating the credibility of the entrapment defense.

How does the average citizen react to and interpret the defense of entrapment? There is anecdotal evidence to suggest that, as jurors, they react harshly to that line of justification (Kalven & Zeisel, 1966; see also Gershman, 1982, for a review of the Abscam verdicts). Indeed our attributional analysis and the discovery of a positive coercion bias in the use of confession evidence are entirely consistent with that characterization. Yet it is surprising that virtually no systematic research has addressed this important matter and the many practical issues it raises (e.g., how does the decision maker's perceptual set, as manipulated by the contrasting subjective and objective definitions, affect entrapment verdicts?).

CONCLUSIONS AND IMPLICATIONS

In the operation of our criminal justice system, confession evidence plays a vital role—it always has and, in all likelihood, it always will. As such, we have attempted to describe the behavioral dynamics of confessions, how they are handled by the courts, and how they are perceived by juries. To characterize our review of the literature, we would have to conclude that although confession evidence has

attracted widespread attention from the legal community, it has virtually escaped scrutiny by academic psychologists, including those interested in forensic issues. We believe more time and energy should be devoted to understanding this important topic in all its brilliant complexity.

In particular, this chapter has suggested three general concerns toward which research efforts should be directed. First is the issue of accuracy. What precisely is the risk of false confessions under the varying circumstances and contingencies of interrogation? To date, this question is unanswerable as the uncorroborated anecdote is our only source of data. What is needed, therefore, is a creative experimental paradigm designed to provide at least an estimate of the problem. Ethical considerations notwithstanding, this paradigm would ideally involve providing subjects with an opportunity and incentive to commit a "crime" that is subsequently detected. Following this, subjects would be questioned under varying types and degrees of inducement to confess. The frequencies of true and false confessions, and nonconfessions as well, could thus be assessed (see Wells, 1980, method for measuring the effects of reward and punishment on rates of compliance with an aversive task). Alternatively, of course, a role-playing paradigm could be employed. That is, subjects could be asked to play the role of a truly guilty or innocent suspect in a mock interrogation session. As such, the frequency with which they break down and confess in response to prearranged prods and tactics could be observed (cf. Chapter 4 of this volume for a description of a similar methodology for studying the accuracy of polygraphic lie detection).

A second general issue in need of further research is that of credibility, or juridic beliefs about the accuracy of confessions. Our own research on perceptions of voluntariness for confessions elicited by promises and threats represents merely a first step toward understanding how people causally attribute and evaluate such evidence. What about other factors that enter into the "totality of the circumstances," factors such as the suspect's age, state of mind, or level of intelligence? How do jurors react to confession evidence that is obtained through the trickery and other tactics recommended by Inbau and Reid (1962)? And to what extent are all these judgments influenced by jurors' underlying philosophies about criminal justice—for example, whether they embrace a crime-control or due-process model of law enforcement? These and other important questions await further empirical research. Methodologically, jury decision-making paradigms are an obvious vehicle for addressing these credibility questions. An even more

intriguing possibility is actually to measure peoples' ability to distinguish accurately between true and false confessions. This could be achieved by having subjects observe experimental interrogation sessions, as suggested earlier, and then judge whether the outcomes (confession or denial) are commensurate with the reality (guilt or innocence).

Finally, we believe the issues raised by the psychology of confession evidence can be extended in important ways to other areas of the law. Their relevance to the entrapment doctrine was articulated earlier. Likewise, very similar questions are posed in the controversy about the voluntariness and coercion inherent in plea bargaining (cf. Brunk, 1979). To this point, we are long on questions, short on answers.

NOTES

1. The rules for admitting confession evidence to which we have alluded apply only to statements made by the criminally accused, not to admissions of a civil party or a criminal witness other than the defendant.

2. Voluntariness, for example, cannot be equated with the probable truth or falsity of the confession because the use of this definition could result in the failure to enforce the Due Process Clause of the Fourteenth Amendment (i.e., in instances where confessions are coerced but subsequently corroborated by additional testimony). Many courts had adopted a rule-of-thumb approach by which confessions were excluded if induced by a "threat" or "promise" or, in subjective terms, by "fear" or "hope." This definition is inadequate because it fails to account either for different degrees of inducement (and, hence, reliability) or for other tactics of coercive interrogation that do not involve promises and threats (e.g., prolonged detention). Still other courts defined voluntariness as a subjective state of mind and attempted to assess whether confession was free and rational or "the offspring of a reasoned choice" (*United States v. Mitchell*, 1944). As Justice Frankfurter noted, "because the concept of voluntariness is one which concerns a mental state, there is the imaginative recreation, largely inferential, of internal, 'psychological' fact" (*Culombe v. Connecticut*, 1961, p. 603).

3. As an example of the inconsistency, compare the following rulings reported in McCormick (1972). In one case, a confession was excluded because the interrogator told the defendant that the judge "would be easier on him." Yet in another, the confession was admitted despite it having followed the interrogator's promise that "it would go easier in court for you if you made a statement."

4. In *Escobedo v. Illinois* (1964), this principle was extended to include prearraignment stages of interrogation.

5. Most all courts follow a common law requirement that pretrial confessions be corroborated by independent evidence. Because of the number of exceptions carved out of that rule, however, and the laxity with which it has been interpreted, very few confessions are actually excluded by this legal safeguard (for a review, see Ayling, 1984).

6. Still, the Court was quick to point out that "the use of physical brutality and violence is not, unfortunately, relegated to the past" (p. 446).

7. The primary objective of this research was to assess the interrogator's compliance with and effects of the *Miranda* ruling. Since these findings are tangential to this chapter, they are not reviewed here.

8. Wald et al. (1967) also concluded that when these tactics were combined with a generally hostile demeanor and lengthy interrogation, they often appeared to be successful.

9. It is also interesting to note that the data provided support for the converse hypothesis that cues associated with falsehood can raise the subject's doubts about the validity of his or her true statements.

10. In cases where the defendant waives jury trial, opinions differ on the question of whether the same judge who resolved the voluntariness issue should also be permitted to determine guilt (see *Developments in the Law—Confessions*, 1966).

11. Until 1964, there was a third procedure known as the New York rule in which the judge was to exclude a confession as involuntary only if it was not possible that "reasonable men could differ over the inferences to be drawn." Guided by this lax standard, judges would thus admit questionable confessions on a conditional basis and then leave it to the jury to decide both competence and credibility. In *Jackson v. Denno*, the Supreme Court struck down this procedure as a violation of due process: "If it finds the confession involuntary, does the jury—indeed, can it—then disregard the confession in accordance with its instruction? . . . These hazards we cannot ignore" (p. 378).

12. The timing of the judge's instruction had a significant effect on verdicts (before evidence = 26 percent; after evidence = 45 percent) but did not interact with the other variables.

13. Another possible explanation of the positive coercion bias is that although jurors concede on an intellectual level that the confession was legally involuntary, they dislike and distrust a defendant who has shown a willingness to exploit the opportunity.

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