Law Hum Behav (2010) 34:49–52
DOI 10.1007/s10979-010-9217-5

ORIGINAL ARTICLE

Police-Induced Confessions, Risk Factors, and Recommendations: Looking Ahead

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Published online: 29 January 2010

Abstract Reviewing the literature on police-induced confessions, we identified suspect characteristics and interrogation tactics that influence confessions and their effects on juries. We concluded with a call for the mandatory electronic recording of interrogations and a consideration of other possible reforms. The preceding commentaries make important substantive points that can lead us forward—on the effects of videotaping of interrogations on case dispositions; on the study of non-custodial methods, such as the controversial Mr. Big technique; and on an analysis of why confessions, once withdrawn, elicit such intractable responses compared to statements given by child and adult victims. Toward these ends, we hope that this issue provides a platform for future research aimed at improving the diagnostic value of confession evidence.

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Keywords Police · Interviews · Interrogations · Confessions · Juries

The human craving for justice is evident from public reaction whenever a criminal evades capture and punishment—and whenever an innocent is wrongfully convicted and sent to prison. This dual motivation is what energizes psychologists who study police-induced confessions. Together, the four commentaries that follow the Kassin et al. (2009) White Paper help to reinforce this pursuit of justice with suggestions for additional ways to achieve that ultimate goal.

Focusing on our strongest recommendation, that custodial interviews and interrogations be videotaped in their entirety, Lassiter (2010) cautions—correctly, we believe—that this single reform may not serve as a panacea to prevent confession-based wrongful convictions. To be sure, basic research on the fundamental attribution error and the array of confirmation biases provide a psychological basis for concern. In addition, any number of tragic tales can be told to illustrate the contrary point. The story of DNA exoneree Robert Lee Miller Jr. cited by Lassiter is a case in point. Miller was interrogated on tape for 12 h and the tape was presented at trial to the jury. Still, he was convicted and sentenced to death.

The power of confessions, even false ones, to influence the trier of fact, is undeniable both in the archives of wrongful convictions and in the laboratory. With many false confessions containing accurate crime details (Garrett, 2009), this influence is not surprising. But it may not be inevitable. We see two reasons to be more sanguine about the impact of videotaping. First, self-reports from police suggest the possibility that the recording of interrogations

will alter the very process of interrogation by causing investigators, who are acutely aware that their sessions will later be scrutinized by prosecutors, defense lawyers, judges, and juries, to limit their use of highly aggressive tactics (Sullivan, Vail, & Anderson, 2008). To the extent that the resulting process involves less egregious uses of the tactics that cause us great concern (e.g., the false evidence ploy and certain minimization tactics as well as explicit promises and threats), especially with regard to highly vulnerable suspect populations (i.e., juveniles and adults impaired by intellectual disability or psychological disorder), the net result should be a reduction in false confessions. Importantly for prosecutors, Sullivan et al. (2008) found that police who have started to record interrogations also report a sharp reduction in the number of motions to suppress their custodial statements.

The second basis for optimism is that videotaped interrogations, to the extent that they present an accurate and balanced account of the entire process, may well improve the fact-finding accuracy of judges (regarding voluntariness) and juries (regarding guilt). In a vast majority of confession-based wrongful convictions, the facts of what transpired were in dispute—such as whether or when the suspect was Mirandized; whether strong promises, threats, or deception were used to elicit an admission; and most importantly, perhaps, whether the crime details contained in the narrative confession originated with the suspect or investigator. To be sure, Robert Lee Miller Jr. was convicted despite the potentially clarifying presence in court of a recorded interrogation. But that was in 1987, long before much consciousness had been raised about the risk of false confessions. As Lassiter notes, and we agree, triers of fact may benefit from recorded interrogations only to the extent that they know what to look for, on their own or with assistance from lawyers and expert witnesses. In an unpublished research currently being prepared for publication, one of us (S.K.), along with colleagues, exposed mock jurors to the videotaped confessions of five actual suspects who were later proved guilty or innocent. Half the participants saw only the confession; the others also viewed an edited version of the preceding interrogation. Results showed that whereas jurors who saw the full interrogation were less likely to convict two of three innocent confessors, they were not less likely to convict the two perpetrators.[1]

Although our White Paper summarized the most commonly employed approaches to interrogation, including the confrontational Reid technique initiated in the USA and the investigative interviewing model developed in England, Smith, Stinson, and Patry (2010) have commented on a new, uniquely Canadian addition to the interrogator's arsenal—the "Mr. Big" technique (as a general rule, Canadian and American police use similar techniques). As Smith et al. (2010) described, this technique involves setting an elaborate trap, over a long period of time, which is fraught with massive amounts of deception, promises of financial and social support, and implied or explicit threats of harm and punishment, all designed to get a suspect to confess in a non-custodial setting. We share the deep concern that they have expressed about this technique.

When directed at the perpetrator of the crime under investigation, the Mr. Big technique is sure to be effective. But what if used against suspects who are innocent? Shortly after the White Paper was completed and posted online, Kyle Unger, a Manitoba man convicted by confession in 1992 for sexual assault and murder, was DNA exonerated. Targeted for a Mr. Big operation, Unger—who was young, naïve, and poor—was befriended by two undercover Royal Canadian Mounted Police Officers posing as tourists who gave him large sums of money for odd jobs, took him out drinking, put him up in a penthouse suite, and offered him a place in their criminal organization. After several weeks, he confessed to a fictitious mob boss who sought a confession after plying Unger with alcohol and expressing an interest in hiring someone capable of violence. Although the confession was filled with crime details that were incorrect, Unger was convicted at trial. Ultimately, on October 23, 2009, all charges against him were dropped. Indeed, one of us (G.G.) served as a consultant for the Canadian Department of Justice in this case—having previously written about the Mr. Big technique (Gudjonsson, 2003), and having thoroughly assessed Unger's psychological state—and submitted a commissioned report that was useful in the Crown's decision to dismiss the charges against Unger. In light of the research we reviewed earlier demonstrating the persuasive impact of simpler forms of deception and promises and threats that are merely implied, the risk to an innocent person of the "enhanced" Mr. Big technique causes us a great deal of concern and indicates a need for serious scrutiny by the Supreme Court of Canada.

In their commentary, Malloy and Lamb (2010) compare and contrast confessions with the statements often taken from child and adult victims and other witnesses. In particular, we are struck by their insightful observation that whereas investigators and lay fact finders often discount victim statements for one reason or another (as when alleged child victims are questioned repeatedly or in a suggestive manner), they do not similarly discount confessions (even when pressured, inconsistent, factually incorrect, and ultimately retracted). It is perhaps not

[1] As we sought to base our earlier review on published data, these results were not presented in the White Paper.

surprising that observers treat victim and suspect statements in such different ways. The first part of the assumption—"that suspects are disposed to deny while victims are disposed to disclose"—is firmly rooted in the fundamental attribution error, the commonsense principle in lay attribution and law that statements against self-interest can be trusted, and the more specific variant that "I would never confess to a crime I did not commit." As a result, confessions are powerful regardless of the pressure that was used to elicit them and regardless of whether they are consistent over time, accurate as descriptions of the crime, and retracted shortly after they are taken. Consistently, mock jury studies have shown that confession evidence boosts conviction rates even among jurors who believe the confession was coerced (Kassin & Sukel, 1997) and even when it was presented only secondhand by an informant who was motivated to lie (Neuschatz, Lawson, Swanner, Meissner, & Neuschatz, 2008).

Studying child sex abuse allegations, Malloy and Lamb observe that doubt is often cast on the credibility of child witnesses when their interviews are conducted in a suggestive manner and, similarly, that potential domestic violence cases are often dropped when alleged adult victims recant their initial statements. The two of us who study developmental issues in law (T.G. and A.R.) realize that in these cases the risk of the Type II error looms large. Yet no such protection is afforded to the potentially innocent confessor when the eliciting circumstances are coercive or the confession itself is inconsistent, incorrect, or subject to immediate retraction. It is important to realize that police who interview suspects are often intimately familiar with the facts of the crime they are investigating, which is not a problem encountered in child and victim witness interviews. Indeed, this explains why a vast majority of proven false confessions obtained from Innocence Project case files contained vivid often verifiably accurate crime details (Garrett, 2009). To further complicate matters, confessions can corrupt other presumably independent evidence such as fingerprint identifications (Dror & Charlton, 2006) and eyewitness testimony (Hasel & Kassin, 2009) which, in turn, provide illusory corroboration. In short, these are precisely the reasons, we believe, why false confessions are implicated in so many wrongful convictions and why it is necessary to reform interrogation practices to minimize the probability of their occurrence in the first place.

This brings us to Meissner, Hartwig, and Russano's (2010) call for a "positive approach" to reform, to be achieved through systematic experimentation, in collaboration with police investigators when possible. With regard to taking a positive approach, it is clear that researchers and law enforcement professionals alike share as an ultimate objective a set of best practices that would maximize the accuracy of outcomes. Indeed, we closed the White Paper by noting that "With increased scientific attention to the problem of false confessions, we believe it possible to reduce the serendipitous nature of these discoveries and, we hope, to increase both the diagnosticity of suspects' statements and the ability of police, prosecutors, judges, and juries to make accurate decisions on the basis of these statements." We take issue, however, with Meissner et al.'s appeal to a positive psychological approach if defined in a way that excludes critical research aimed at exposing error and bias, the dual enemies of accuracy. We believe that research aimed at minimizing wrongful convictions—which also endanger public safety by liberating real perpetrators from arrest and prosecution—services the pursuit of justice in multiple and important ways.

Terminology notwithstanding, Meissner et al.'s (2010) essential point, that systematic experimentation is needed to identify maximally diagnostic methods of interrogation, is important as we move forward to help improve the extent to which law enforcement can both elicit and assess the accuracy of the statements they take. This research can be conducted in the laboratory or in field settings, the goal being to assess individual differences and/or vary the conditions of interrogation and then measure the variation in the confession rates of known guilty and innocent suspects. We also applaud their related call for scientist–practitioner research collaborations. One of us (G.G.) was a police officer before becoming a psychologist; another (R.L.) has conducted numerous seminars and workshops for law enforcement groups; still another of us (S.K.) is currently collaborating with police chiefs in two U.S. cities who are interested in videotaping issues.

It is clear that a partnership between scientists and practitioners has the potential to bring genuine reform. The groups may well differ in their relative tolerance for false positive and false negative errors and, hence, their agreement with the core value, rooted in Blackstone's *Commentaries on the Laws of England,* that it is better to acquit ten guilty men than to convict one who is innocent. But everyone agrees that the surgical objective of interviewing and interrogation is to secure confessions from perpetrators and reveal actual innocence. We thus close by reiterating what we said in the White Paper: "Professionals from varying perspectives may differ in their perceptions of both the problems and the proposed solutions. Hence, it is our hope that the recommendations to follow will inspire a true collaborative effort among law enforcement professionals, district attorneys, defense lawyers, judges, social scientists, and policy makers, to scrutinize the systemic factors that put innocent people at risk and devise effective safeguards."

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