

# Police Deception during Interrogation and Its Surprising Influence on Jurors' Perceptions of Confession Evidence

by Krista D. Forrest & William Douglas Woody

Police deception raises important ethical and legal questions across a variety of constituents, particularly given several recent and highly publicized miscarriages of justice that resulted from false confessions, such as those involving Marty Tankleff, John Kogut, and the suspects in the Central Park Jogger cases (see Friedman, 2010; Innocence Project, 2010a; Hirschhorn, 2002, 2003, respectively). Inbau and colleagues (2001), authors of the *Criminal Interrogations and Confessions* manual, train police officers in the careful use of trickery and deception. In an additional volume, Jayne and Buckley (1999) go on to say “the use of trickery and deception is of paramount importance to the success of an interrogation” (p. 443).

The materials that follow review our recent study of jurors' perceptions and decisions in cases involving confessions and police deception during interrogation (Woody & Forrest, 2009) and provide additional updates from our ongoing research program. We briefly review the psychological and legal literature related to police deception in the form of false-evidence ploys, and then discuss our methodology and findings. We conclude with a series of concrete recommendations for litigators.

## *False-Evidence Ploys*

One form of deception is the false-evidence ploy, a claim by police to have non-existent evidence that implicates the suspect (see Leo, 2008). A false-evidence ploy is a common police strategy, with 92% of over 630 police detectives from the United States and Canada reporting that they use false-evidence ploys during interrogation (Kassin, et al., 2007). Many forms of false-evidence ploys exist. Leo (2008) identified testimonial ploys (i.e., a claim to have eyewitness or video evidence), scientific ploys (i.e., a false claim to have DNA, footprint, or other scientific evidence), and demeanor ploys (i.e., a false claim that the suspect's behavior indicates guilt). False-evidence ploys raise particular concerns in the social science community because false-evidence ploys increase the likelihood of false confession in laboratory studies (see Kassin & Kiechel, 1996; Nash & Wade, 2009; Perillo & Kassin, 2010; Redlich & Goodman, 2003; Stewart, Woody, & Pulos, 2010) as well as within interrogations described in archival data (Gudjonsson, 2003; Leo & Ofshe, 1998). A recent review of the false confession literature concluded that false-evidence ploys “have been implicated in the vast majority of documented false confession cases” (Kassin et al., 2010, p. 12).

The U.S. Supreme Court has allowed confessions to be admitted to court after police use false-evidence ploys to induce suspects to confess (e.g., *Frazier v. Cupp*, 1969). Additionally, other courts have evaluated false-evidence ploys in several cases, and with some exceptions (discussed subsequently) courts ruled that the voluntariness of a confession was not compromised by the use of false-evidence ploys (see e.g., *State v. Cobb*, 1977 and *State v. Jackson*, 1983 for discussions of false-evidence ploys including fabricated fingerprints and fabricated bloodstains and eyewitnesses, respectively). Courts have recognized limits, however, due to excessive coercion or due to the form of

fabricated evidence. For example, in *Lynum v. Illinois* (1963) police deceived the suspect by telling her that if she did not confess she would lose government benefits as well as custody of her children; the U.S. Supreme Court rejected the suspect's confession. Additionally, if the fabricated evidence could be mistaken for real evidence by the media, appellate courts, or the trial court (e.g., by being printed on official letterhead), courts have ruled that the confession was inadmissible (see e.g., *Florida v. Cayward*, 1989). These rulings have led legal scholars to argue for a variety of positions related to police deception ranging from eliminating police deception outside of severe circumstances (e.g., Paris, 1997) to avoiding deception prior to Miranda (Mosteller, 2007), to leaving current limits unchanged (e.g., Magid, 2001), to increasing the rigor of the limits on police deception (e.g., Slobogin, 1997, 2007; Thomas, 2007).

Despite the legal questions related to police deception, false-evidence ploys during interrogation are generally legal, and these ploys increase the likelihood of false confession. For any confession, if the suspect recants the confession and then goes to trial, the judge may hold a pre-trial hearing to determine whether the confession can be admitted into the courtroom (Kassin & Gudjonsson, 2004). If the judge admits the confession to trial, the next line of protection for the defendant is the jury.

#### *Jurors, Confessions, and False-Evidence Ploys*

How do jurors evaluate confession evidence, and how influential is a confession to jurors? According to Kassin and Neumann (1997), jurors rely on confession evidence *more* than other forms of evidence (*italics added*). Of greater concern is the finding that even if jurors rated a confession as less voluntary and believed that the confession did not affect their decisions, these jurors were *still* more likely to convict than jurors who did not read confession evidence (Kassin & Sukel, 1997). Additionally, since *Arizona v. Fulminante* (1991), jurors carry particular responsibility to evaluate confessions (see Woody, Forrest, & Stewart, *in press*, for a review). Prior to *Arizona v. Fulminante* (1991), courts "routinely" reversed convictions when a coerced confession was mistakenly admitted to the trial (Kassin & Sukel, 1997, p. 29; see *Chapman et al. v. California*, 1967). In *Arizona v. Fulminante* (1991), however, the U.S. Supreme Court ruled that the mistaken admission of a coerced confession into the trial could comprise a harmless error that does not increase the risk of mistaken conviction and is therefore subject to harmless error analysis. This ruling rests on the assumption that jurors can recognize and reject a coerced confession, even though empirical findings contradict this assumption (Kassin & Sukel, 1997; Kassin & Wrightsman, 1981).

Jurors' perceptions of and decisions about police deception are particularly important because of changes in interview and interrogation protocols across the country. More than ever before, police interrogations are likely to be video-recorded, audio-recorded, transcribed, or all three. Trickery and deception, once hidden within the secretive interrogation process, now becomes clearer, more likely to be viewed by judges and other observers, and more likely to be studied in detail by the jury. These changes taken together raise important concerns about how jurors understand and evaluate interrogation strategies and confession evidence.



Our primary research question is whether jurors decide cases differently when police use false-evidence ploys during interrogation. As triers of fact, jurors must evaluate confessions that judges admit into trials, and jurors must evaluate the veracity of a given confession as well as recognize and reject any coerced confession (*Arizona v. Fulminante*, 1991; see also *Lego v. Twomey*, 1972).

Jurors, however, may not know much about police interrogation (Chojnacki, Cicchini & White, 2008; Leo & Liu, 2009) and may accept what Leo (2008) calls the myth of psychological interrogation, the belief that people will not falsely confess in the absence of mental illness, cognitive limitations, or torture (see also Loftus, 2004). Therefore, in a case involving a disputed confession, the defense may introduce an expert to discuss the possibility of false confession as well as other aspects of police interrogation with which jurors are unlikely to be familiar (see Jayne & Buckley, 1999; Kassin & Gudjonsson, 2004; Leo & Liu, 2009). Our secondary research question is whether an expert witness who informs jurors that false confessions happen and that false-evidence ploys raise important concerns regarding false confessions could affect jurors' perceptions and decisions.

### *Specific Research Questions*

First, we examined whether jurors evaluate confession evidence differently as a function of whether the police used false-evidence ploys during the interrogation. We expected jurors to rate interrogations as more deceptive and more coercive when interrogators used false-evidence ploys, and in these conditions we also expected jurors to render fewer guilty verdicts, rate the defendant as less guilty, and recommend shorter sentences<sup>1</sup>. Second, we expected the presence of an expert witness to help jurors better understand the pressures of the interrogation process as well as the possibility of false confession; therefore, we expected the presence of an expert witness to increase ratings of deceptiveness and coerciveness and to decrease both conviction and sentencing rates. Third, we measured the deceptiveness and coerciveness of different false-evidence ploys. We hypothesized jurors would perceive scientific and testimonial ploys as more deceptive and coercive than demeanor ploys. Finally, we examined the extent to which jurors believe they, themselves, or others would falsely confess and then determined whether these beliefs predict verdicts and sentencing.

### *Overview of Method*

All participants ( $N = 387$ ) read a trial summary which established the following conditions: First, the murdered victim had been an associate of the defendant. Second, although police did not have any actual scientific, testimonial, or demeanor evidence against the defendant, the police initiated the interrogation. Third, the defendant confessed. We randomly assigned participants to one of two false-evidence ploy conditions (present or absent) and one of two expert conditions (present or absent). Participants in the ploy-present condition read an interrogation transcript that depicted a demeanor, testimonial, or scientific false-evidence ploy. The first author and colleagues developed the 15-page interrogation transcript from a 385 page transcript of an actual



interrogation (see Stastny et al., 2006). Participants then rendered verdicts with those participants convicting the defendant also recommending sentences. Jurors' instructions regarding the definition of the crime, the presumption of innocence, the definition of reasonable doubt, and sentencing guidelines conformed to Colorado law (Criminal Code, 18 CO. Rev. Stat. §§ 3-103, 2004; Criminal Code, 18 CO. Rev. Stat. §§ 1-402, 2004; Criminal Code, 18 CO. Rev. Stat. §§ 1.3-401, 2004, respectively). All participants answered a series of posttest questions regarding the degrees of deception and coercion involved in the interrogation techniques.

### *The Effects of False-Evidence Ploys*

Not all participants correctly identified the false-evidence ploy or control condition in their interrogation transcript; therefore, the analyses described here included data from the 361 participants who correctly identified the false-evidence ploy in their version of the interrogation transcript. As expected, mock jurors reading interrogation transcripts including false-evidence ploys rated their interrogations as more coercive and more deceptive than did jurors who did not read about false-evidence ploys. There were nonsignificant trends such that participants who read a false-evidence ploy appeared slightly less likely to convict the defendant and rated his guilt slightly lower than did participants who did not read about a false-evidence ploy. False-evidence ploys did, however, influence jurors' recommended sentences. Compared to participants in the control condition, mock jurors exposed to false-evidence ploys recommended lighter sentences. Although jurors do not usually recommend sentences, this outcome suggests jurors viewed the defendant exposed to police deception as less deserving of punishment, even though the crime, the evidence, and the presence of the confession were identical across all conditions.

We found few differences between ploy types. Although participants rated scientific and testimonial ploys as more deceptive than demeanor ploys, ratings of coercion did not differ. Additionally, jurors recommended longer sentences for defendants who confessed after a demeanor false-evidence ploy. Jurors reading interrogation transcripts with demeanor false-evidence ploys rated their interrogations as less deceptive; it follows they would also recommend longer sentences for convicted suspects exposed to this interrogation technique.

### *The Effects of Expert Testimony*

Regardless of false-evidence ploy condition, expert testimony influenced jurors' perceptions of confession evidence. Similar to courtroom expert testimony, participants assigned to the expert testimony condition read that false confessions occur and that scholars have particular concerns regarding false-evidence ploys and the potential for false confessions as well as general information concerning the three types of false-evidence ploys discussed previously. Although the expert testimony did not refer specifically to the current defendant, mock jurors exposed to the expert testimony convicted less often, considered their defendants less guilty, and rated their interrogations as more deceptive and coercive (see also Blandon-Gitlin, Sperry, & Leo, 2010). These findings suggest that experts may influence trial outcomes in cases involving false-evidence ploys because many jurors perceive themselves as naïve when it comes to police interrogation (Leo, 2001; 2008; Leo & Liu, 2009).



## *The Myth of Psychological Interrogation*

Leo (2001; 2008) has suggested three reasons why jurors find false confessions difficult to understand in the absence of mental limitations or physical coercion. First, although few jurors understand the degree to which police interrogation is a manipulative form of persuasion, many acknowledge they know less than they should when asked to consider interrogation and confession evidence (Henkel, Coffman & Dailey, 2009). Second, observers find it hard to believe that suspects would go against their own self-interest by confessing to something they did not do (Henkel et al., 2009; Leo, 2008; Leo & Liu, 2009). Third, because those same observers “know” they would never falsely confess, they apply the same logic to their peers. Typically, college students and potential jurors state neither they nor others would falsely confess to crimes not committed (Leo, 2008; Sauer & Wilkens, 1999). Consistent with previous research, more of our participants suggested that false confessions were possible for others (87%) than for themselves (32%). In contrast with previous work, more participants in our study than in previous studies admitted that they could possibly confess to a crime they did not commit in the absence of physical coercion. In the study described here, these differences did not predict jurors’ decisions. Our more recent and more thorough investigation of these questions, however, involved a larger sample of participants and demonstrated that a predictor of verdict and sentencing in similar trials is whether or not the juror believes others may falsely confess in the absence of coercion (Woody, et al., 2010). Jurors who believe that others may falsely confess are less likely to convict a confessing defendant than were jurors who do not believe that others may falsely confess. Whether or not the juror believes that he or she would falsely confess was also a significant but less powerful predictor, such that jurors who believe they may confess were less likely than other jurors to convict a confessing defendant (Woody et al., 2010).

## *Costs of False-Evidence Ploys*

The false-evidence ploys result in primary and secondary costs to society. The obvious primary costs of false confession apply most directly to falsely-confessing and therefore mistakenly-convicted defendants, who may spend years or decades in prison for crimes they did not commit. For example, after his false confession Jeff Deskovic spent 16 years in prison for a 1989 sexual assault and homicide, despite the introduction into the trial of DNA evidence that did not implicate him (Innocence Project, 2010b). Only the admission of the actual perpetrator led to Deskovic’s freedom. Another primary cost is to the community that faces risk from a perpetrator who remains free as law enforcement officers cease to search for the actual criminal after a suspect falsely confesses. Tragically, the perpetrator who committed the crime for which Deskovic was mistakenly convicted committed another murder in 1994, a murder that could have been prevented had the actual perpetrator been arrested and convicted in 1989 (Innocence Project, 2010b).

Secondary costs of false-evidence ploys affect society and the legal system in many ways. First, deception upsets the individual who has been deceived, and deceived suspects may respond with their own deception or even aggression (see Bok, 1999; Slobogin, 1997). Second, Skolnick and Leo (1992) argue that acceptance of police deception during interrogation may make it easier for police to lie in other situations such as in court, to judges, or to internal affairs investigators. Third, as noted previously, false evidence could appear real to media, trial judges, or appellate judges who could make errors based on the belief that the fabricated evidence is real (see *Florida v. Cayward*, 1989). Fourth,

police deception may affect observers' views of the justice system as a whole as well as observers' views of the judges, attorneys, and police officers who accept and further legitimize police deception (Paris, 1997).

### *Recommendations*



Our improved understanding of jurors' perceptions of and decisions about cases involving police deception during interrogation suggests a series of practical recommendations for litigators. What factors should attorneys consider when going to trial in the cases involving confessions and police deception during interrogation?

1. Defense attorneys should attempt to introduce an expert witness in the area of false confessions to educate jurors about the little-known, manipulative, and potentially deceptive nature of police interrogation. Rather than focusing primarily on the defendant, we recommend that defense attorneys focus instead on how interrogation strategies in general and false-evidence ploys in particular have been shown to influence voluntariness and even elicit false confessions in laboratory studies and archival cases.
2. If the interrogation includes police deception in general or false-evidence ploys in specific, defense attorneys should interview the police officers who interrogated the defendant. Defense attorneys should assess the extent to which these deceptive techniques are considered typical in that officer's working climate and the degree to which deception is involved, if at all, in the particular case.
3. If audio or video evidence of the interrogation has not been suppressed and the interrogators used false-evidence ploys, defense attorneys should identify and discuss each ploy for the jury.
4. In addition to explicit false-evidence ploys, as discussed in this paper, in which investigators explicitly claim to have nonexistent evidence, we also encourage defense attorneys to seriously evaluate implicit false-evidence ploys, called bait questions by Inbau et al. (2001) and Jayne and Buckley (1999). Inbau et al. (2001) state that an implicit false-evidence ploy "is nonaccusatory in nature but at the same time presents to the subject a plausible probability of the existence of some evidence implicating him in the crime" (p. 193). For example, if a suspect has denied that he or she was near the crime scene, an investigator might ask whether the suspect would appear on a hidden camera at the scene without directly claiming that such a recording exists or has been evaluated by police. In an implicit false-evidence ploy there is not an explicit lie about evidence, and legal scholars and social scientists have only recently begun to examine these deceptive interrogation tactics (Gohara, 2006, Forrest, Woody & Hille, 2010; Perillo & Kassin, 2010). Explicit and implicit claims of evidence are legally distinct. For example, Inbau et al. (2001) and Jayne and Buckley (1999) extensively discuss and defend the legality of explicit false-evidence ploys, but neither examines the legality of implicit false-evidence ploys. Despite these distinctions, both explicit and implicit false-evidence ploys induce false confessions at similar rates (Perillo & Kassin, 2010), and jurors cannot distinguish between them (Forrest et al., 2010).

In other words, even if investigators used a seemingly less deceptive implicit false-evidence ploy, defense attorneys should have the same concerns that they would have regarding an explicit false-evidence ploy.

5. Prosecutors should advise police detectives about the potential trial outcomes that stem from deception during interrogation. Not only do false-evidence ploys increase the likelihood of false confessions in experimental studies as well as in the archival data, false-evidence ploys may also lead a jury to perceive the interrogation as more deceptive and coercive. Police deception only marginally decreased the likelihood of conviction in this study, but these changes in jurors' perceptions of deception and coercion raise important concerns. If police interrogators know that deception may reduce the chance of a conviction and lead to shorter sentences for confessing defendants, interrogators may choose to avoid deception during interrogation to reduce these risks. We have an ongoing study to evaluate whether judges are subject to these biases in sentencing.
6. When appropriate, *voir dire* should include questions concerning false confessions and the degrees to which jurors see themselves and others as capable of making a false confession. As we found, jurors who believe that false confession is possible for others or for themselves are less likely to convict than are jurors who believe the myth of psychological interrogation (Woody et al., 2010).
7. Although the study discussed here assessed jurors' perceptions and decisions, we recommend that judges use caution when deciding whether to admit disputed confessions into trial, particularly when a confession follows police deception. We raise these concerns here due to potential effects on jurors, but we strongly recommend that judges consider the experimental and archival evidence that demonstrates that false confession becomes more likely when interrogators use false-evidence ploys (Stewart, Woody, & Pulos, 2010).

### Conclusions

Unfortunately, due to the limited effects of the presence of false-evidence ploys on verdicts, jurors do not provide a safety net that prevents false-evidence ploys and potential false confessions from leading to mistaken convictions. Despite the larger potential for false confessions in the presence of false-evidence ploys, jurors were only marginally less likely to convict a defendant who confessed after a false-evidence ploy. Our results suggest that jurors are not likely to act as effective gatekeepers who prevent confessions in response to false-evidence ploys from increasing the likelihood of mistaken convictions.

Without a careful consideration of how false-evidence ploys influence suspects and decision-makers, convictions based on such techniques accompanied by long sentences become the worst deception of all. Despite judicial decisions that assume jurors can appropriately recognize and reject coerced confessions (e.g., *Arizona v. Fulminante*, 1991; *Lego v. Twomey*, 1972), jurors do not appear able to rise to these legal expectations. Beyond all of the previous recommendations, we argue that litigators should be aware of the limitations of jurors and of the disconnections between legal expectations and jurors' actual abilities. The myth of psychological interrogation remains powerful, and it can bring devastating consequences to a falsely confessing defendant. Beyond jurors, we recommend education for police investigators, particularly about the connections of false-evidence ploys and false confessions

and about differences in jurors' perceptions of the interrogation as a function of false-evidence ploys. In court, assessment of the actual interrogation techniques including false-evidence ploys if relevant, inclusion of expert testimony related to interrogation techniques, and education for the jury provide the beginnings of additional safeguards. Across all of the findings in this study and in our ongoing research, we hope to provide litigators with additional tools to help jurors render more accurate decisions about trial defendants.

***Krista D. Forrest, Ph.D. [[forrestk@unk.edu](mailto:forrestk@unk.edu)] is a Professor of Psychology at the University of Nebraska, Kearney. An award-winning teacher in the areas of General Psychology, Human Development, and Group Dynamics, she supervises several students in her Undergraduate Psychology and Law Lab. Current areas of research include prototypes for police interrogation, systematic investigation of interrogation techniques and their influence on confession, and jurors' evaluations of police interrogation and confession evidence. You can review Professor Forrest's research and contact information on her webpage at [http://www.unk.edu/academics/psychology/faculty\\_staff/Krista\\_D\\_Forrest/](http://www.unk.edu/academics/psychology/faculty_staff/Krista_D_Forrest/)***

***William Douglas Woody, Ph.D. [[william.woody@unco.edu](mailto:william.woody@unco.edu)] is a Professor of Psychological Sciences at the University of Northern Colorado. He is an award-winning teacher of psychology who also serves as a research mentor for graduate students as well as advanced undergraduates. His primary research areas are in psychology and law, particularly jury decision making, interrogation, and confession, as well as the history of psychology and the teaching of psychology. You can review Professor Woody's research and contact information on his webpage at <http://www.unco.edu/cebs/psychology/woody.html>***

We asked an experienced trial consultant to respond to this article. After the listing of references, Wayne Wallace offers his thoughts about the impact of false confessions on jurors.

## References

*Arizona v. Fulminante*, 111 S. Ct. 1246 (1991).

Blandon-Gitlin, I., Sperry, K., & Leo, R. (2010). Jurors believe interrogation tactics are not likely to elicit false confessions: Will expert witness testimony inform them otherwise? *Psychology, Crime, and Law*. Retrieved on October 15, 2010 from <http://ssrn.com/abstract=1420206>

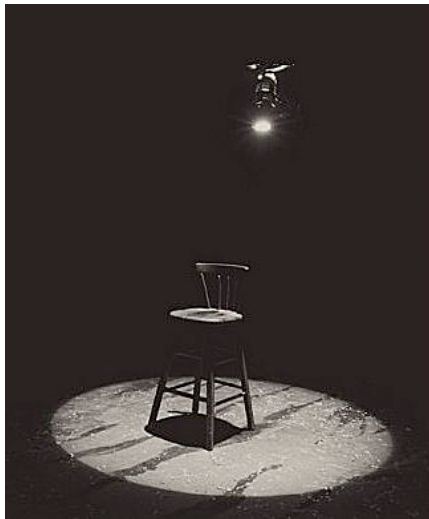
Bok, S. (1999). *Lying: Moral choice in public and private life* (enlarged edition). New York: Vintage.

*Chapman et al., v. California*, 386 U.S. 18; 87 S. Ct. 824; 17 L. Ed. 2d 705 (1967).



- Chojnacki, D. E., Cicchini, M. D., & White, L. T. (2008). An empirical basis for the admission of expert testimony. *Arizona State Law Journal*, 40, 1-44.
- Criminal Code, 18 CO. Rev. Stat. §§ 1-402, (2004).
- Criminal Code, 18 CO. Rev. Stat. §§ 1.3-401, (2004).
- Criminal Code, 18 CO. Rev. Stat. §§ 3-103, (2004).
- Florida v. Cayward*, 522 So. 2d. 971 (1989).
- Forrest, K. D., Woody, W. D., & Hille, S. (2010). Comparing the effects of false-evidence ploys and bluffs on jurors' verdicts, sentencing, and police interrogation evaluations. *Manuscript under review*.
- Frazier v. Cupp*, 394 U.S. 731 (1969).
- Friedman, E. (2010). Marty Tankleff: A true story of a false confession. Retrieved September 24, 2010 from <http://www.martytankleff.org/>
- Gohara, M. S. (2006). A lie for a lie: False confessions and the case for reconsidering the legality of deceptive interrogation techniques. *Fordham Urban Law Journal*, 33, 791-842.
- Gudjonsson, G. H. (2003). *The psychology of interrogations and confessions: A handbook*. New York and Chichester: John Wiley.
- Henkel, L. A., Coffman, K. A. J. & Dailey, E. M. (2008). A survey of people's attitudes and beliefs about false confessions. *Behavioral Sciences and the Law*, 26, 555-584.
- Hirsch Korn, P. (Dec 10, 2002). Prosecutor: Drop all convictions in Central Park jogger case. Retrieved September 24, 2010 from <http://archives.cnn.com/2002/LAW/12/05/central.park.jogger/index.html>
- Hirsch Korn, P. (Jan 28, 2003). Police panel slams decision to absolve men in Central Park jogger case. Retrieved September 24, 2010 from <http://www.cnn.com/2003/LAW/01/27/nyjogger.report/index.html>
- Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2001). *Criminal interrogations and confession* (4<sup>th</sup> edition). New York: Aspen.
- Innocence Project. (2010a). Innocence project – know the cases: John Kogut. Retrieved October 12, 2010 from The Innocence Project: [http://www.innocenceproject.org/Content/John\\_Kogut.php](http://www.innocenceproject.org/Content/John_Kogut.php).
- Innocence Project. (2010b). Innocence project – know the cases: Jeff Deskovic. Retrieved October 12, 2010 from The Innocence Project: [http://www.innocenceproject.org/Content/Jeff\\_Deskovic.php](http://www.innocenceproject.org/Content/Jeff_Deskovic.php).
- Jayne, B. C., & Buckley, J. P. (1999). *The investigator anthology*. Chicago, IL: John E. Reid and Associates, Inc.
- Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior*, 34, 3-38.
- Kassin, S. M., & Gudjonsson, G. H. (2004). The psychology of confessions: A review of the literature and issues. *Psychological Science in the Public Interest*, 5, 33-67.

Kassin, S. M., & Kiechel, K. L. (1996). The social psychology of false confessions: Compliance, internalization, and confabulation. *Psychological Science*, *7*, 125–128.



Kassin, S. M., Leo, R. A., Meissner, C. A., Richman, K. D., Colwell, L. H., Leach, A-M., & La Fon, D. (2007). Police interviewing and interrogation: A self-report survey of police practices and beliefs. *Law and Human Behavior*, *31*, 381-400.

Kassin, S. M., & Neumann, K. (1997). On the power of confession evidence: An experimental test of the “fundamental difference” hypothesis. *Law and Human Behavior*, *21*, 469-484.

Kassin, S. M., & Sukel, H. (1997). Coerced confessions and the jury: An experimental test of the “harmless error” rule. *Law and Human Behavior*, *21*, 27-46.

Kassin, S. M., & Wrightsman, L. S. (1981). Coerced confessions, judicial instructions, and mock juror verdicts. *Journal of Applied Social Psychology*, *11*, 489-506.

*Lego v. Twomey*, 404 U.S. 477 (1972).

Leo, R. A. (2001) False confessions: Causes, consequences, and solutions. In S. D. Westervelt and J. A. Humphrey (Eds.), *Wrongly Convicted: Perspectives on Failed Justice* (pp 36-54). Newark, NJ: Rutgers University Press.

Leo, R. A. (2008). *Police interrogation and American justice*. Cambridge, MA: Harvard University Press.

Leo, R. A., & Liu, B. (2009). What do potential jurors know about police interrogation techniques and false confessions? *Behavioral Sciences and the Law*, *27*, 381-399.

Leo, R. A., & Ofshe, R. J. (1998). The consequences of false confessions: Deprivations of liberty and miscarriages of justice in the age of psychological interrogation. *Criminal Law and Criminology*, *88*, 429-496.

Loftus, E. F. (2004). The devil in confessions. *Psychological Science in the Public Interest*, *5*, i-ii.

*Lynum v. Illinois*, 372 U.S. 528 (1963).

Magid, L. (2001). Deceptive police interrogation practices: How far is too far? *Michigan Law Review*, *99*, 1168-1210.

Mosteller, R. P. (2007). Confessions and police disclosure: Police deception before Miranda warning: The case for per se prohibition of an entirely unjustified practice at the most critical moment. *Texas Tech Law Review*, *39*, 1240-1273.

Nash, R., A. & Wade, K. (2009). Innocent but proven guilty: Eliciting internalized false confessions using doctored-video evidence. *Applied Cognitive Psychology*, *23*, 624-637.

Paris, M. L. (1997). Lying to ourselves. *Oregon Law Review*, *76*, 817-832.

- Perillo, J. T., & Kassin, S. M. (2010). Inside interrogation: The lie, the bluff, and false confessions. *Law and Human Behavior, 34*. Retrieved October 15, 2010 from <http://www.springerlink.com/content/lq727674411x270t/fulltext.pdf>
- Redlich, A. D., & Goodman, G. S. (2003). Taking responsibility for an act not committed: Influence of age and suggestibility. *Law and Human Behavior, 27*, 141–156.
- Sauer, & Wilkens, J. (May, 1999). The bombshell, Part 6 of Haunting questions: The Stephanie Crowe case, a series of articles published in the *San Diego Union Tribune*.
- Skolnick, J. H., & Leo, R. A. (1992). The ethics of deceptive interrogation. *Criminal Justice Journal, 11*, 3-12.
- Slobogin, C. (1997). Deceit, pretext, and trickery: Investigative lies by the police. *Oregon Law Review, 76*, 775-816.
- Slobogin, C. (2007). Confession and police disclosure: Lying and confessing. *Texas Tech Law Review, 39*, 1275-1292.
- Stastny, B., Forrest, K.D., Leo, R. & Bienhoff, J. (2006, March). Evaluating evidence ploys: the role of ploy type in perceptions of deception and coercion. Presented at the annual meeting of American Psychology – Law Society, St. Petersburg, FL.
- State v. Cobb*. 115 Ariz. 484; 566 P.2d 285 (AZ 1977).
- State v. Jackson*, 308 N.C. 549 (1983).
- Stewart, J. M., Woody, W. D., & Pulos, S. (2010). Meta-analysis of confession research. *Manuscript under review*.
- Thomas, G. C., III (2007). Confessions and police disclosure: Regulating police deception during interrogation. *Texas Tech Law Review, 39*, 1293-1319.
- Woody, W. D., & Forrest, K. D. (2009). Effects of false-evidence ploys and expert testimony on jurors' verdicts, recommended sentences, and perceptions of confession evidence. *Behavioral Sciences and the Law, 27*, 333-360.
- Woody, W. D., Forrest, K. D., & Stewart, J. M. (in press). False confessions: The role of police deception in interrogation and jurors' perceptions of the techniques and their outcomes. In F. Columbus (Ed.), *Crime: Causes, Types and Victims*. New York: Nova Publishing.
- Woody, W. D., Stewart, J. M., Walker, A. T., Barfield, G., Ponzi, M. J., & Woestehoff, S. A. (2010, March). False confession plausibility as a predictor of juror's decisions and evaluations of police deception. American Psychology-Law Society Convention, Vancouver, BC. Poster session. *Manuscript in preparation*.

### Footnote

1. Although jurors typically do not sentence defendants, we assessed this dependent variable as a measure of jurors' perceptions of the defendant's need for punishment.

## Wayne Wallace responds:

I had the pleasure of reviewing *Police Deception During Interrogation and its Surprising Influence on Juror's Perceptions of Confession Evidence (2010)*, by Krista Forrest and William Woody. The primary issue raised in this article is whether police deception during interrogation influences a jurors' perception of confession evidence. The surprise was to find that the influence of police deception in confession evidence on juror perception is minimal. The article proceeds valiantly to caution against excessive police coercion, and identifies the potentially devastating consequences that can result from a false confession.

This article shows an intelligent subject knowledge, but appears unwilling to yield to the concept of a jury being competent enough to recognize unreasonable or excessive coercion in a police interview. The article concludes, "*Despite judicial decisions that assume jurors can appropriately recognize and reject coerced confessions...jurors do not appear to be able to rise to these legal expectations.*" The insight continues; "*Litigators should be aware of the limitations of jurors and of the disconnections between legal expectations and jurors actual abilities.*" The chief finding in this study appears to be that, "*Jurors are not likely to act as effective gatekeepers who prevent confessions in response to false-evidence ploys from increasing the likelihood of mistaken convictions.*" Despite this measure of inadequacy consigned to the common juror, we do not learn who the appropriate "gatekeeper" should be.

My experience with real jurors is that they recognize coercion just fine; they just aren't offended by it when they disbelieve the defendant. As this article illustrates, there are many who are frustrated that juries overwhelmingly reject assertions of police coercion, accounting for the rationale that enlightenment resides only among those with an advanced knowledge of theory.

Prior to becoming a litigation consultant I retired from law enforcement, having served as a criminal investigator, special agent, and prosecutor's detective. I've been trained in most of the conventional interview and interrogation methods available - as well as a few unconventional ones. As a detective with the prosecutor's office, I've observed hundreds of post-conviction, disputed confessions, most of which required a reasonable person to suspend common sense and rational thought (most appeals were written in pencil by the defendants themselves). Judges, considering the totality of the circumstances, overwhelmingly agree.

Trickery and deceit during custodial interrogation can generate spirited debate, particularly among professionals and activists who are passionate about their position. The fact is however, that if denial was not confronted during interrogation, many crimes would never be solved. The issue is understandably controversial, and often results in polarization, however, I've not ever heard from a juror who was offended by coercion that led to a confession.

There is risk involved any time we confront a perceived injustice and attempt to stimulate change. Here, the risk is not just what some social theorists and DNA enthusiasts are focused on, there is also risk in overcompensating, and weakening the system that is intended to protect society from dangerous offenders. In addition to the many safeguards built into the system, common sense and reasoning skills are entrusted to jurors through our justice system. This article disagrees.



Defining and measuring coercion is an inexact endeavor at best, and we know that jurors give considerable latitude to police during a confession. Despite giving police the benefit of the doubt, a jury may require corroborative evidence to convict. The less evidence there is, the better chance a defendant has to confront it, and if a defendant chooses to raise coercion as an issue, he will likely have to tell the court or the jury himself to be successful. This tactical decision should be made by the defendant and his attorney, and can be risky depending on the skill of the prosecutor. Experts may testify at suppression hearings and again at trial to talk about general psychological principles, but an expert may not render an opinion about a particular confession (*US v. Hall, 1997*). In addition to the safeguard of a unanimous jury verdict, there are post-conviction appeals at several levels.

I've been summoned to jails dozens of times by convicts wanting to trade criminal information for leniency or early release, and every one of them was innocent. In reality, most claims of innocence are bogus; wrongful convictions occur in about .5% of all felony cases (Huff, Rattner, & Sagarin, 1996). This article cites an Innocence Project example of a false conviction by wrongful DNA evidence (not police interview coercion) where the actual perpetrator had committed another murder. In reality, in 60% of cases where defendants seek DNA testing or re-testing (cases vetted and supported by Innocence Projects), they were further implicated by the results (Jacobi & Carroll, 2008). Indeed, there are considerably more *wrongful innocence* claims.

As trial consultants, we know that attorneys need information they can use. Initially, voir dire should identify potential jurors inclined to accept a police version of events without question. Preemptory strikes should be used accordingly. The consultant should also recommend that confession evidence be presented to a jury as coercive only if the officer's behavior is egregious enough to offend jurors. The consultant should recognize that the more heinous the crime, the more latitude a juror will give to the interviewer. Another consideration should be the amount of physical evidence that supports the confession. Proper interviewing techniques and strategies will not only break down barriers to confession, they seek evidence that independently corroborates a criminal act. Thus, the overall strength of confession evidence should be considered when electing whether or not to confront it as coercive or not. Consultants who don't frequently work with criminal juries should remember that the prosecutor must convince *every* juror, while the defense needs only *one*.

The article confronts The Reid Technique of Interviewing and Interrogation as a predominant law enforcement interviewing method, bringing up a common misconception. Those not acquainted fully with law enforcement training often have an erroneous understanding of the degree to which the Reid Technique is adopted by police interviewers. Even if an interviewer is certified in every method that Reid offers, as I am, there is no obligation to employ their strategy, at any time. Reid is by no means the most widely used interview and interrogation method in law enforcement, it's just the most recognized by researchers and academics and is thus the most frequently scrutinized. The skills, methods, and nuances comprising the art of police interviewing take years of experience to refine, and the result is an amalgam of techniques that combine with an interviewer's personality. There are many equally effective interview techniques such as behavioral analysis and cognitive interviewing available to law enforcement. Some of the better interview and interrogation training courses such as Lt. Albert Joseph's "We Get Confessions" are restricted to law enforcement, focusing on rapport and listening skills rather than coercion. It's my belief that presupposing Reid (with its distinct 9-step technique) as the predominant law enforcement interviewing method, has the potential to imperil the validity of research on this topic.

Factors that influence how people interpret coercion will differ depending on their role within the system: defendant, researcher, expert, judge, prosecutor, defense, or juror. Coercion resides in the eye of the beholder. The linchpin in this context is guilty knowledge. If an interviewer employs coercion to overcome a suspect's denial resulting in the acquisition of evidence that corroborates the confession, the coercion is immaterial to a juror.

I'm not sure that there is any effective shotgun approach to eradicating excessive police coercion during interrogation, but I agree that professional, targeted skepticism is warranted. In fact, police conduct cases constitute a majority of my own consultancy, and as a former detective I am extremely skeptical of forensic evidence. This article highlights the need to remain diligent, and contest confession evidence when appropriate with the aid of an expert witness. In my view, education and an expanded knowledge base of law enforcement interview and interrogation will aid researchers in their quest for a comprehensive understanding of this issue. Coordination between disciplines may even accommodate the acquisition of more reliable data, through which less coercive techniques might be conceived. The result could be a scenario where everyone wins.

***Wayne Wallace (wayne@strategictrial.com) is a forensic litigation consultant with Strategic Solutions Inc. He holds a Master's degree in Forensic Psychology and is currently earning a PhD. He is a retired police detective, Commonwealth's Detective, and Special Agent and is an adjunct instructor of Criminal Justice.***

### **References**

Huff, C., Rattner, A., & Sagarin, E. (1996). *Convicted but Innocent: Wrongful Conviction and Public Policy*. Thousand Oaks, CA: Sage.

Jacobi, T., & Carroll, G. (2008). Acknowledging Guilt: Forcing Self Identification in Post Conviction DNA Testing. *Northwestern University Law Review* , 102 (1), p. 8.

John E. Reid & Associates, Inc. (2003). *The Reid Technique of Interviewing and Interrogation*. Chicago, IL: Reid .

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## Editor's Note

You know how 'they' say as you get older, time seems to fly by faster? 2010 has absolutely flown by for me. This is our last issue for 2010 and we wanted to offer a full plate (so to speak) as you go into the holidays. To that end, we have articles on self-presentation in the courtroom; thoughts on what we can learn (if anything) from negative political attack ads; a review of the research on police deception in interrogation and how that influences jurors as they consider confessions; using hyperlinked briefs to power up both your argument and your persuasiveness; a look at the role and impact of juror IQ; a psychological approach to *voir dire*; and a review of the research on the role of the juror foreperson. As you peruse these (with holiday fudge and hot cider) all of us at the American Society of Trial Consultants wish you and yours the best of holiday times and success, health and happiness in the New Year.

In 2011, we hope to continue to bring you thought-provoking pieces that make you think as well as improve your litigation advocacy skills. We are in a time in this country where we have to continually assess and re-assess whether strategies in persuasion are still effective or if we have to re-group and re-vamp and re-approach the venire. As you practice and run up against new concerns, perspectives and attitudes-it helps us a lot to hear from you about topics you'd like to learn more about in *The Jury Expert*. Send me an email and tell me what topics you want to have in our 2011 issues. We'll see what we can do to make that happen. Think of it as our gift to you. Happy Holidays.

[Rita R. Handrich, Ph.D., Editor](#)

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