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Three Things We Have Learned from Studying Investigative Interviews by Police that Should be Used to Guide Investigative Interviews by Military and Intelligence Agencies

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Abstract: The psychological study of investigative interviewing is over 100 years old (Munsterberg, 1908), with a rich literature and body of knowledge (Drizin and Leo, 2004; Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2009). Although behavioral and social science has focused primarily on investigations by police, findings should also be considered by investigators who work for military or intelligence agencies. The state of the science leads to at least three recommendations. First, all investigative interviews should be video-recorded in their entirety, with an equal focus on interviewers and interviewees. Second, rather than seeing interrogation as a method to persuade or coerce an uncooperative subject into confessing, investigators should consider interviews of suspects, victims, witnesses, and sources as investigative interviews, with a common goal of finding the truth. Third, because investigators do not really know which interviewees are guilty (have guilty knowledge) and which are not (do not), no law-enforcement, military, or intelligence-agency interrogator should ever use a technique on a "presumed-guilty" suspect that would not be appropriate for use with an innocent person.

Keywords: interrogation, confession, investigative interview, detection of deception, forensic psychology, police psychology, military psychology

In this issue, Evans, Meissner, Brandon, Russano, and Kleinman examine similarities and differences between interrogations in criminal and human-intelligence settings and discuss the extent to which the current empirical literature can be applied to criminal and/or human-intelligence interrogations. They note that social scientists have studied investigative interviews by police more than those conducted by military or intelligence personnel, and they suggest that military and intelligence interviewers can benefit from studies of police interviewers. Although Evans et al. did a commendable job of summarizing research that is likely to be of interest to military and intelligence agencies, they

did not focus primarily on safeguarding against potential misuses of interrogation techniques. That is the focus I take here.

The psychological study of interrogations and confessions is over 100 years old (Munsterberg, 1908). Drizin and Leo (2004) note that there is a rich literature and body of knowledge regarding interrogations and confessions, including laboratory experimentation (e.g., Kassin & Neuman, 1997), participant observation (e.g., Leo, 1996), interviews (e.g., Leo, 1994), analysis of archival and documentary records (e.g., Ofshe & Leo, 1997), and surveys (e.g., Leo, Kassin, Richman, Colwell, Leach, La Fon, & Meissner, 2006). Summaries have appeared in the flagship journals of the American Psychological Association (e.g., Kassin, 2005) and the Association for Psychological Science (e.g., Kassin & Gudjonsson, 2004), and books have been published (e.g., DeClue, 2005; Gudjonsson, 2003; Leo, 2008). A draft of a White Paper, *Police-Induced Confessions: Risk Factors and Recommendations*, has been approved by the Scientific Review Committee of the American Psychology-Law Society (Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2009); the final version is expected to appear soon in *Law and Human Behavior*.

I expect that, as the White Paper is finalized, it will contribute to a major re-examination of investigative interviewing, particularly by police in the United States of America. Along with Evans et al.'s excellent summary of empirical findings about what works in police investigative interviewing, I encourage military and intelligence agencies to carefully consider the White Paper's review and recommendations regarding risk factors. Here, at a macro level, I summarize some of the recommendations in the White Paper, selectively emphasizing certain points and extending the recommendations in a way that should be relevant to military and intelligence agencies throughout the world. The reader is strongly encouraged to read the White Paper in its entirety and to stay tuned to what is likely to be an exciting, unfolding process of development in research and practice.

In criminal cases investigated by police, "Wrongful convictions based on false confessions raise serious questions concerning a chain of events by which innocent citizens are judged deceptive in interviews and misidentified for interrogation; waive their rights to silence and to counsel; and are induced into making false narrative confessions that form a sufficient basis for subsequent conviction" (Kassin et al., 2009, p. 4). In military and intelligence investigations, false statements by suspects can, at the extreme, contribute to an unjustified invasion of one country by another. As devastating as it is for one person to be wrongfully convicted in a criminal case (allowing the truly guilty party to continue committing crimes), false statements that contribute to an unjustified war could contribute to catastrophic loss of human lives, severe damage to ecosystems, and tremendous economic and social costs.

Reform of Interrogation Practices

Kassin et al. (2009, pp. 73-74) write, regarding interrogation by police, "In light of recent events, the time is ripe for police, district attorneys, defense lawyers, judges, research-

ers, and policymakers to evaluate current methods of interrogation. All parties would agree that the surgical objective of interrogation is to secure confessions from perpetrators but not from innocent suspects. Hence, the process of interrogation should be structured in theory and in practice to produce outcomes that are accurate, as measured by the observed ratio of true to false confessions. Yet, except for physical brutality or deprivation, threats of harm or punishment, promises of leniency or immunity, and flagrant violations of a suspect's constitutional rights, there are no objective criteria by which to regulate the process. Instead, American courts historically have taken a 'totality of the circumstances' approach to voluntariness and admissibility. Because *Miranda* does not adequately safeguard the innocent, we believe that the time is right to revisit the factors that comprise those circumstances."

I believe that questions and concerns about interrogation procedures by U.S. military and intelligence agencies, from both effectiveness and human-rights perspectives, show that the time is equally right to revisit factors in military and intelligence investigations.

Kassin et al. (2009, pp. 74-75) continue, "As illustrated by the Reid technique and other similar approaches, the modern American police interrogation is, by definition, a guilt-presumptive and highly confrontational process—aspects of which put innocent people at risk. There are two ways to approach questions of reform. One is to completely reconceptualize this model at a macro level and propose that the process be converted from 'confrontational' to 'investigative.'" Of the two approaches Kassin et al. (2009) present, that is the one I favor. [See the full article in *The Journal of Psychiatry & Law* for discussion.](#)

No Perfect Lie Detector - Implications

In many cases, interrogators operate on the assumption that the party being questioned does, in fact, have guilty knowledge (Kassin et al., 2009). However, it is essential to note that such an assumption is rarely, if ever, warranted on the basis of human or mechanical detection of deception (see, e.g., Meijer, Verschuere, Vrij, Merckelbach, Smulders, Leal, Ben-Shakhar, Granhag, Gamer, Gronau, Vossel, Crombez, & Spence, 2009; Vrij, 2008. See also Evans et al., this issue). What follows is simple and profound.

Because psychological science shows that, at least currently, it is impossible to use human and/or mechanical lie-detection techniques with sufficient accuracy to pre-select known-guilty versus not-known-to-be-guilty suspects, it is impractical to classify some interrogation techniques as appropriate for use by an interrogator who generally operates on the assumption that the party being questioned does, in fact, have guilty knowledge. Indeed, even when investigators use the best available techniques, their judgments regarding detection of deception are likely to be just slightly better than chance responding (see, e.g., Bond & DePaulo, 2006; Meissner & Kassin, 2002. See also Evans et al., this issue). Once we understand that, it follows that police, military, and intelligence-agency interrogators will inevitably question people that they believe have guilty knowledge, but who in fact do not. Consulting psychologists should emphasize

this point in both public and private communications. The obvious policy implication is that no law-enforcement, military, or intelligence-agency interrogator should ever use a technique on a “presumed-guilty” suspect that would not be appropriate for use with an innocent person (see, e.g., [Commission of Inquiry, 1006](#)).

No society should ever be placed into a position where, with hindsight, we think that certain interrogation procedures should not have been used with a particular suspect because it turns out that the person was innocent and had no guilty knowledge. If a technique is not appropriate for use with innocent people, then that technique should never be used with anyone.

Some have asserted that the goal of a criminal interrogation is to elicit a confession. But since some suspects who are interrogated are innocent, and interrogators do not really know which ones are innocent and which are not (even if they think they know), every interrogator with such a goal is at risk to elicit a false confession – if not in this case, then the next, or the one after that.

In discussing interrogation, some have proposed that when an individual resists answering direct questions and/or is believed to be deceptive, interrogators may employ an array of authorized methods of persuasion to obtain the source/suspect’s cooperation, and have suggested that in some interactions an interrogator must move the target from an uncooperative state to a cooperative state in order to obtain the information of interest. I believe that such proposals are inherently dangerous. If one imagines that those authorizing the methods of persuasion are benevolent people from one’s own country’s nice government, perhaps that might seem to be a neutral statement. However, as soon as one imagines oneself as the interviewee and the people authorizing the methods of persuasion to be agents of a hostile government, potential horrors are self-evident.

Perhaps, particularly since the events of September 11, 2001, our language has drifted regarding the very meaning of the word *interrogation*. We can look to dictionaries and court decisions for definitions of interrogation. First, we go to a dictionary: When used as a noun, “interrogatory” is “a formal question or inquiry; especially: a written question required to be answered under direction of a court,” and the verb “interrogate” means “to question formally and systematically” ([Merriam-Webster Online](#)).

Second, we look to a court’s description of what is meant by *interrogation*: “We conclude that the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term ‘interrogation’ under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect” (*Rhode Island v. Innis*, 1980, pp. 300-301). My reading of this decision by the U.S. Supreme Court is that the police are required to administer the *Miranda* warnings if a person is in police custody and is questioned by the police. In other cases, the Court addresses what constitutes *in custody*. In *Innis*, the Court ruled

that not every word or action by the police constitutes interrogation; only those words or actions “that the police should know are reasonably likely to elicit an incriminating response from the suspect.”

Thus, as I understand the decision in *Innis*, the court ruled that any words or actions that would be “reasonably likely to elicit an incriminating response” shall trigger the same rights that would be triggered by express questioning. Nevertheless, the core of an interrogation is express questioning, not “using an array of methods to get an initially uncooperative person to become cooperative.” Indeed, some people have apparently considered some acts to be “interrogation” or “enhanced interrogation” when, in my view, those acts are not part of a questioning process, but are strategic attacks on a person’s mental and physical stability.

At least until recently, some have claimed that the following “methods of persuasion” were authorized: “sleep disruption, prolonged isolation, stress positions, and military dogs [and] nudity, waterboarding, and mock executions” (Fine, 2008, p. 3). The Inspector General’s statement not only tells us that such “methods of persuasion” are not as effective as the “non-coercive rapport-based techniques traditionally used by the FBI”; the statement also, at least implicitly, distinguishes between interrogation techniques and “incremental manipulation of a detainee’s environment and perceptions” (p. 4).

One way to appreciate the potential impact of psychological research in this area is within the context of the U.S. Department of Justice (DOJ) considering what techniques are most useful. I expect the DOJ to be interested in psychological research on interrogations, and that they would use the information in conjunction with their learning by experience, such as the treatment of Muhammad Al-Qahtani (Fine, 2008). See the full article in [The Journal of Psychiatry & Law](#) for discussion.

Of course, law-enforcement, military, and intelligence agents can learn lessons from their own or others’ direct experience, including whether “techniques” such as these are effective at developing actionable intelligence: “stress positions, 20-hour interrogations, tying a dog leash to his chain and leading him through a series of dog tricks, stripping him naked in the presence of a female, repeatedly pouring water on his head, and instructing him to pray to an idol shrine.” In addition to considering the practicalities of whether such techniques are effective, both the agents and psychologists who might advise them can use a clear moral and ethical guideline that follows directly from psychological research. Once we recognize that law-enforcement officers cannot know with certainty whether the person is guilty, and military and intelligence agents cannot know with certainty whether the person actually has knowledge that would be useful for the investigation, it is obvious that it is improper to use any techniques that could not be properly used with an innocent person.

In my view, psychological consultation to investigative interviewers would be off to a better start if, instead of aiming at ways to turn uncooperative people into cooperative people, we focus on how to enhance the investigative interviewers’ search for the truth.

Summary and Restatement

My understanding of the state of the science leads to the following recommendations:

1. Video-record all investigative interviews in their entirety and with an equal focus on interviewers and interviewees.
2. Rather than seeing interrogation as a method to persuade or coerce an uncooperative subject into telling you what you want, consider interviews of suspects, victims, witnesses and sources as investigative interviews, with a common goal of finding the truth.
3. Recognize that at the time of the interview investigators do not really know which interviewees are guilty (have guilty knowledge) and which are not (do not). Focus interviews fairly and professionally so that eventual surprises about “who done it” will not be unpleasant surprises – either because you mistreated an innocent person or because you failed to adequately interview a guilty person.
4. Consider that whatever techniques you use on presumed-guilty suspects you would eventually use on an actually innocent suspect, risking a false confession such as those admittedly taken by [D. C. Detective Jim Trainum \(2007\)](#) and St. Paul Police Commander Neil Nelson (Willis, 2005).
5. Understand that if you accept the use of a set of techniques for use on “the bad guys” by your government, you thereby declare that it would be fair for a hostile government agent to use those techniques against you, your spouse, your child, etc., when – even if incorrectly – suspected of doing wrong or having pertinent knowledge.

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