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

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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; Hirschkorn, 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).

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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).

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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[1]. 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

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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 naive 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

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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

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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

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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.** 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.*

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We asked trial consultants Wayne Wallace and Kathy Kellerman to respond to this article. Their responses follow the reference list below.

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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.

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Wayne Wallace responds:

I had the pleasure of reviewing *Police Deception During Interrogation and it's 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

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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 is 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.

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Kathy Kellermann responds:

Experts and Jury Selection for False Confessions

Despite due process guarantees, most criminal defendants do not begin trial being presumed innocent. Approximately 60% of jurors believe a defendant is probably guilty because he/she was arrested and put on trial. From 30% to 50% of jurors give more weight to law enforcement testimony than other witnesses simply because the witness is a law enforcement officer. From 30% to 60% of jurors believe a defendant is probably guilty

if he/she does not testify[1]. Jurors hold these attitudes before a confession enters the picture.

Once a confession enters the picture, in almost all jurors eyes' they have received unequivocal evidence of a defendant's guilt. A confession is a defendant testifying, in his or her own words, about committing a crime. A confession contains true details that jurors do not believe a defendant could know without having committed the crime. Errors in the confession are generally excused or ignored by jurors as coming from a defendant trying to cover up what he/she did. The interrogation itself is only rarely shown in its entirety to jurors, and never to my knowledge as it is experienced by a defendant: without breaks, without sleep, limited food, in unfamiliar surroundings, and isolated. Neither a videotape nor audiotape usually allows jurors to vicariously experience, see, understand or imagine the emotional trauma of the defendant. And once a false confession occurs, the defense faces the quintessential prosecutor's challenge of: "Is the defendant lying now, or was he/she lying in the confession?" The answer to that question is easy for most jurors.

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Jurors are unable to imagine themselves making a false confession[2], and generally do not accept that circumstances of interrogation, isolation, and lack of sleep can lead a normal adult to confess, let alone offer true details of a crime that others wouldn't know. Jurors are *sometimes* willing to accept that a vulnerable person might falsely confess (e.g., children, intellectually challenged, etc.), but the false confession containing true details troubles jurors greatly even in these instances. And in actuality, normal adults are the primary confessors.

Jurors believe that a false confession is against a defendant's self-interest, and so they believe the confession. Even when jurors accept that a confession is coerced, jurors still convict. Jurors do not reject their conclusion that the defendant is guilty simply because a confession is coerced. Rather, jurors maintain their belief that a defendant would not confess unless guilty, coerced or not.[3]

In my experience, a successful defense of a false confession for a normal adult occurs only when the defense can proffer overwhelming evidence that the confession is false, the setting is coercive, the defendant was given crime details by law enforcement, law enforcement used deception during the interrogation, law enforcement deception detection skills are limited, and false confessions happen. The details of the interrogation are insufficient by themselves to overcome jurors' beliefs about false confessions in the context of a prosecutor arguing the defendant is guilty at trial. A successful defense of a false confession is a difficult task, and every persuasive tool at a defense's command is necessary, in my experience, to have a fighting chance.

While it is sometimes challenging to be allowed to present even one expert on false confessions, in my experience a successful defense of a false confession case often rests on multiple experts testifying from different areas of expertise. Persuasion researchers find, and my experience accords, that multiple experts each testifying on a single issue are more persuasive than one expert testifying on many issues. Multiple experts reinforce without duplicating, and it is harder for jurors to reject multiple (and diverse) experts than one (usually psychological) expert.

With multiple diverse experts, the many diverse aspects of the defendant's false confession can be addressed. While a certain percentage of jurors are not enthralled by the use of deception by law enforcement officers in interrogations, jurors have more tolerance for such practices by law enforcement officers than by defendants: In a choice, lies by officers are more excusable than lies by defendants. Expert testimony must address police practices and a host of other factors: how a defendant's situation was coercive, how a defendant learned details of the crime, how the emotional trauma of a situation can be worse than physical torture, how false confessions historically occur given these circumstances, and so on. Rather than making the practices "imaginable," I believe expert testimony in false confession cases best serves the defense when the experts make the circumstances of the false confession *unimaginable* to jurors, to prevent jurors from trying to project themselves into the situation. When jurors project, they have difficulty accepting that they would falsely confess because they project themselves into situations with which they are familiar. In my experience, a goal of the expert testimony is to describe the defendant in a situation unlike anything jurors have ever experienced. In the un-experienced and un-imagined, jurors can accept that a false confession might occur: their focus is on a defendant (not themselves) and on a situation about which they *know nothing* (and so are reliant on expert testimony). The purpose of the experts is to explain *why* a defendant falsely confessed.

Here are some of the types of experts who have helped the successful defense of a false confession case:

Police Practices Expert: Jurors often believe confessions are made during *interviews*, imagine themselves in interviews with which they are familiar (e.g., job interviews), and are unable to see themselves confessing in such a setting. A police practices expert can help jurors understand that the confession was made during an *interrogation*; can define the nature, practices and goals of interrogations (control, manipulation, confession, etc.); and can let jurors know that interrogations are nothing like the interviews jurors experience in their everyday lives. The police practices expert can stress the role of deception in such interrogations, as most jurors are unaware deception is permitted and a fair number are uneasy about its use. The police practices expert can paint a picture of the power of the law enforcement officers and the helplessness of even normal adults in the face of police interrogation techniques.

Videotape Perspective Expert: Some confessions are videotaped, some audiotaped, some written, and some attested to by officers or others. When videotaped, criminal interrogations customarily have the camera lens focused on the suspect. Jurors

judge confessions as more voluntary when the camera focuses on the suspect than when the camera focuses equally on suspect and interrogator, or when transcripts/audiotapes are used.[4] A videotape perspective expert can help jurors understand these differences, or assist the defense in excluding the videotaped confession in favor of using transcripts and/or audiotapes at trial.

Deception Detection Expert: Many jurors believe that law enforcement officers are better at detecting lies than other people. Many officers also believe in their ability to detect deception accurately. Social science research finds both of these beliefs to be incorrect. A human communication expert or psychological expert in deception detection can help jurors understand that law enforcement interrogators are not much better than chance at detecting deception, and because of the officers' beliefs that they "don't interrogate innocent people" they are sometimes worse detectors of deception than other people. The deception detection expert can discuss how an officer's belief in his/her own ability to detect deception can reduce the officer's accuracy in detecting true from false confessions.

Linguistics Expert: Often, a key task of a defense in a false confession case is to explain how the defendant "knew" true crime details that are in the confession. A linguistics expert can analyze the text/video/audio of an interrogation and point to how specific exchanges encouraged a defendant to keep talking or change to another statement, to adopt facts or reject them, to be pressured into making particular answers, and so on. A linguistics expert can talk about how the power of the law enforcement interrogators is displayed in what they say, and how a defendant is responding to the power difference rather than stating a self-known truth. A linguistics expert can talk about how the defendant relied on conversational norms and conventions in a situation that was not normal, and how his/her responses are inaccurately portrayed by law enforcement and the prosecution.[5]

Emotional Trauma/Torture Expert: A defendant's emotions and emotional trauma are a critical aspect of most false confessions. Jurors are often expected to understand emotional trauma without ever having experienced it, or hearing testimony about it. Unfortunately, jurors understand physical torture far better than emotional trauma/torture. An emotional trauma/torture expert (e.g., a psychologist specializing in emotions) can educate jurors about emotional coercion; how sympathy, kindness and friendship can be more coercive than accusations; how highly stressful, emotionally taxing interrogations can impair a person's capacity to think; how emotional "torture" occurs in interrogations; how fear and anxiety make people accede to demands that they admit things; and how people subjected to such emotional torture (including the defendant) can break down.

Situational Coercion Expert: Jurors have difficulty understanding situational pressures on behavior as demonstrated by countless social scientific experiments related to obedience to authority, attribution, conformity, and a host of related issues. Situational circumstances (e.g., isolation, lack of sleep, lack of breaks, e.g.) coupled with interpersonal ploys (good-cop/bad-cop routine; false-evidence, etc.) and emotional turmoil (fear, anxiety) are beyond most people's experiences. The goal of this testimony is not to have jurors understand that their own behavior is responsive to situational pressures, but that *other* people's can be, the *defendant's* was, and that such responsiveness happens to many other people, especially in extreme circumstances. The coercion expert might be a sociologist, anthropologist, psychologist or other social scientist. I recommend choosing an expert in coercion with a *different* disciplinary background from other experts retained so as to have the best chance of having a judge allow the testimony at trial.

False Confession Expert: Jurors can be educated that false confessions occur and have occurred for a long time. Based on research and aggregated case studies by the Innocence Project and others, approximately 14% to 25% of known wrongful convictions involve false confessions; 80% of proven false confessions occur in murder cases; and while most interrogations last 2 hours or less, false confession interrogations last 10 hours or more with an average of 16 hours.[6] Specific examples of false confessions (e.g., Central Park Joggers case, Deskovic), along with the dynamics underlying those confessions, are particularly helpful to jurors. The goal is to let jurors understand that others have falsely confessed and that the defendant's false confession is not the "rare event" the prosecution would claim it to be (and jurors otherwise believe). Because vivid examples are often more persuasive than statistics, providing multiple (carefully chosen) examples of false confessions with circumstances not unlike the defendant's makes it harder to dismiss the defense's position that the defendant's confession is false.

Because a significant percentage of jurors dislike psychological defenses, I recommend making the defense more than a psychological defense. Using multiple experts from different disciplinary backgrounds makes it harder for jurors to dismiss a false confession defense as being "psychological mumbo jumbo" about something that "I would never do."

Even diverse and highly qualified experts cannot persuade jurors whose ears are closed to the defense's arguments that a defendant's confession is false. False confession cases, as with insanity and death penalty cases, often hinge on jury selection. Some jurors are unaccepting of psychological evidence. Other jurors are dichotomous thinkers and have difficulty seeing the "gray areas" required to accept a false confession being the result of situational pressures, emotional trauma/torture, the suggestiveness of linguistic pressures, and the power of deceptive police practices; they expect physical torture. Even the best police practices expert is unlikely to change the view of the approximately one-third of jurors who believe that it is okay for law enforcement officers to bend the law in order to enforce the law. And some jurors are less willing to base decisions on expert testimony than other jurors. Jurors' attitudes about false confessions and experts are critical in false confession cases, and I believe, determinative.

I personally recommend against the defense asking questions in voir dire about whether jurors believe false confessions happen, or whether other people would falsely confess in the absence of physical coercion. Jurors answering in the affirmative are in a small minority, and as soon as they are identified they are struck by the prosecution. Instead, I recommend that in voir dire the defense ask questions to identify those jurors whose ears are closed to a false confessions defense - jurors who have

strong negative feelings against psychological evidence, believe that physical injuries are worse than emotional injuries, believe that it is okay for law enforcement officers to bend the law in order to enforce the law, do not rely on experts to make important decisions, believe that a defendant who doesn't testify is probably guilty, believe that a defendant has to prove his/her innocence, believe that a defendant is probably guilty because he/she was arrested and is on trial, and so on. Rather than the defense looking for jurors receptive to the defense, I recommend the defense identify jurors receptive to the prosecution and unreceptive to the defense so as to be able to "de-select" them. Jury selection does not allow us to choose jurors, only to "de-select" jurors, and I believe voir dire is most effective when it adapts to this dynamic.

Even with diverse experts and careful jury selection, confessions are strong evidence and jurors convict. The ultimate solution may be to educate society about confessions, as the Innocence Project and many researchers have sought to do. As a society, we became educated about domestic violence by the OJ Simpson trial and are becoming educated about death penalty decision-making. I have seen the effects of these educational efforts in my cases over the years. An educational approach is slow, yet it changes the core beliefs of jurors in ways that an attorney almost never can do during the course of a trial. During a trial, an attorney can use jurors' core beliefs to change unformed or less strongly held beliefs, but only rarely can the persuasive goal of conversion be achieved. I sometimes think that the only effective strategy for dealing with the issue of false confessions is to educate society and change its norms, and only then will we see real changes in the courtroom. Until that time, we rely on experts, jury selection and other case strategies. One day, perhaps, wrongful convictions from false confessions will be less of an issue.

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[1]A "Jurors' Due Process Attitudes Slideshow" of data from juror questionnaires is available on ComCon's website at www.kkcomcon.com/CCSlideShows.htm, and jurors' attitudes are discussed in ComCon's free "Online Jury Research Update" blog at www.kkcomcon.com/CCOnlineJuryResearchUpdate.htm.

[2]Costanzo and colleagues (2010) recently published an article offering data on 461 jury eligible adults on jurors' beliefs about police interrogations, false confessions and expert testimony. In their research, over 90% of jury-eligible adults could not picture themselves making a false confession; 15% to 25% approved of various forms of police deception in interrogations; over 50% thought law enforcement interrogators are better than ordinary people at identifying lies; and 40% believed they could differentiate a true from false confession by watching a videotape of a confession (twice the percentage who thought they could do so by listening to an audiotape). Almost 3/4ths of the jury-eligible adults thought it would be useful to hear expert witness testimony about interrogation techniques as well as why someone might falsely confess. These data accord with my experience in criminal and false confession cases, and offer extensive insight into jurors' attitudes as they enter a courtroom. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1605472

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

[4]Lassiter, G. D. (2002). Illusory causation in the courtroom. *Current Directions in Psychological Science, 11*, pp. 204-208; Lassiter, G. D., Geers, A. L., Handley, I. M., Welland, P. E., & Munhall, P. J. (2002). Videotaped interrogations and confessions: A simple change in camera perspective alters verdicts in simulated trials. *Journal of Applied Psychology, 87*, pp. 867-874.

[5]See, for example, work by linguist Roger W. Shuy, such as: Shuy, R. W. (1998). *The Language of Confession, Interrogation, And Deception*. Thousand Oaks, CA: Sage Publications.

[6]Costanzo, M. & Leo, R. A. (2007). Research and expert testimony on interrogations and confessions. In M. Costanzo, D. Kraus & K. Pezdek (Eds.), *Expert Psychological Testimony for the Courts*. Mahway, NJ: Lawrence Erlbaum; Drizin, S. & Leo, R. (2004). The problem of false confessions in the post-DNA world. *North Carolina Law Review, 82*, 891-1007.

Forrest and Woody reply to the trial consultants:

Research and Practice Surrounding Jurors' Perceptions of Police Deception and Confession Evidence: A Reply to Wallace & Kellermann

We are grateful for thoughtful and careful reviews of our article by Wayne Wallace and Kathy Kellermann. We hope to continue

to develop these ideas through our ongoing programmatic scholarship as well as through further discussion with other scholars and professionals across these fields. In the materials below, we review methodological questions as well as larger theoretical and legal issues raised by their reviews.

Methodological Questions

Both Wallace and Kellermann raise important questions regarding methods in the study of jurors' perceptions of interrogations and confessions. We strongly resonate to Wallace's concerns about the limits of the false confession research literature in general, particularly that scholars may over-emphasize the Reid Technique and underestimate the degree to which interrogators function as independent practitioners. Scholars may over-rely on Reid for several reasons, some of which relate to the prominence and popularity of the Reid Technique among law enforcement and other individuals, including human resource managers and Deans of Students at universities. Other reasons for scholars' potential over-reliance on Reid may be the availability and clarity of materials by and about the Reid technique. For example, in addition to their thorough discussion of the practical, legal, and constitutional aspects of explicit false-evidence ploys, Inbau et al. (2001) provide descriptions of implicit false-evidence ploys (i.e., bait questions) as well as specific examples of these and other interrogation techniques. Paradoxically, the success and prevalence of the Reid Technique may make the technique an accessible research topic and an accessible target for criticism.

Additionally, we share Wallace's concerns that scholars may view interrogators trained by Reid as users of the Reid Technique rather than as independent practitioners. Independent interrogators may use a wide range of techniques, including tactics learned from Reid and other trainers, from police interrogators who serve as formal or informal mentors, and from their own personal experiences through years or decades in interrogation rooms. We recommend that scholars systematically look beyond the Reid Technique to evaluate specific tactics described by Inbau et al. (2001) as well as tactics described by others (e.g., Gordon & Fleisher, 2010) and tactics used in specific interrogations (see Leo, 2008). Additionally, we encourage police interrogators to publicize their instructional materials and to invite systematic study by scholars. In response to these concerns that we share with Wallace, we have investigated forms of deception (e.g., different forms of false-evidence ploys, explicit and implicit false-evidence ploys, etc.) used by police across a wide variety of actual interrogations (see Leo, 2008) rather than techniques or steps of the interrogation process that are unique to the Reid Technique (Forrest, et al., 2010; Forrest, Woody, & Hille, 2010; Woody & Forrest, 2009).

Kellermann notes that we evaluated testimony from only a single expert, and she recommends that consultants locate and employ a wide range of experts across many disciplines rather than one psychological expert. This suggestion could change the psychological impact of expert testimony on jurors, and it has an additional benefit; presenting multiple experts from multiple disciplines may increase the likelihood that at least one expert will be allowed to testify. Kellermann's recommendations for multiple experts rest upon her wealth of experience and may fit the complex choices of a consultant hired for a specific trial, but experimental data are not yet available to support or challenge her claims in cases involving disputed confessions. In our scholarship thus far, we have chosen to evaluate the influence of a single expert with as much experimental control as possible; although we would hypothesize that Kellermann's experience leads her to accurate assumptions about the effects of multiple experts on jurors' decision in cases with disputed confessions, only future scholarship can directly evaluate whether a series of experts could carry more influence with jurors or juries than would a single expert alone.

Additionally, Kellermann recommends that attorneys avoid questions related to confessions and potential false confessions during *voir dire* and that attorneys attempt to focus jurors on whether another individual would confess. Whether an attorney chooses to ask questions related false confession during *voir dire* may connect directly to his or her larger courtroom strategy and the expectations he or she wants jurors to carry into court. Kellermann's recommendations that defense attorneys consider jurors' expectations about others' false confessions parallel our recent findings about jurors' beliefs and jurors' verdicts. As we found, jurors' beliefs about whether others would falsely confess better predicted jurors' verdicts than jurors' beliefs about whether false confession is possible for themselves (Woody et al., 2010). In this context, Kellermann's experiential claims based on her years of consulting fit well with emerging experimental findings.

The Larger Picture: Jurors' Responses to Coercion

We appreciate the time and energy that both Wallace and Kellermann have devoted to additional discussion of our findings. Some of the larger questions that we and both reviewers raise involve jurors' perceptions of and decisions about coercive police interrogation tactics, particularly given the difficulties in defining *coercion*. Both consultants argue from their experience that jurors can recognize coerced confessions but that jurors rarely reject coerced confessions. Kellermann notes that confessions are very convincing to jurors and that jurors view confessions as overwhelming evidence of guilt even if police use coercive tactics during the interrogation. Wallace notes, "My experience with real jurors is that they recognize coercion just fine; they just aren't offended by it when they disbelieve the defendant" (p. 20). Although we and other social science researchers agree with Wallace and Kellermann that jurors' often recognize but fail to reject coercion (see Kassin & Sukel, 1997; Kassin & Wrightsman, 1981) we remain concerned about the overwhelming influence a confession, although coerced, can have. As Kellermann notes, jurors often view a confession as "unequivocal evidence of a defendant's guilt" (p. 1) and therefore view the actions of the police as justified in order to obtain what the jurors view as a true confession, even when police actions are coercive. We argue, however, that the mere presence of a confession, which jurors typically assume to be true, affects jurors' abilities to dispassionately evaluate interrogation tactics and to make accurate decisions about the defendant. Jurors often incorrectly assume that psychological tactics could not increase the likelihood of false confessions (see also claims by Inbau et al. 2001; Jayne & Buckley, 1999), despite laboratory and archival evidence that false-evidence ploys, among other psychological tactics, do increase false confession rates (Kassin et al., 2010; Kassin & Kiechel, 1996; Nash & Wade, 2009; Perillo & Kassin, 2010; Redlich & Goodman, 2003; Stewart, Woody & Pulos, 2010). Because jurors do not recognize the relationship between psychologically coercive techniques and false confession, those same jurors become less likely to distinguish between true and false confessions. Gone is the last safety net for defendants who confess falsely; when police use techniques that *increase* the likelihood of false confessions, jurors become *less* accurate. Even though jurors may accept police coercion when it leads to confession, we argue that they should question this coercion and raise additional questions about the potential effects on the defendant as well as the legal system as a whole (see Woody & Forrest, 2009; Woody, Forrest, & Stewart, in press).

Jurors' difficulties meeting legal expectations raise questions for individual defendants and trial consultants, but they also raise important issues for judges and legislators. As we noted in our original article, courts have repeatedly expressed faith in jurors' abilities both to recognize and to reject coerced confessions (see *Arizona v. Fulminante*, 1991). For example, in *Lego v. Twomey* (1972) the U.S. Supreme Court ruled that a judge may admit a confession into trial if he or she is sure that a preponderance of evidence supports the voluntariness of a confession. Rather than requiring judges to use the standard beyond a reasonable doubt, the court accepted the less stringent standard of proof and noted that the 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" (*Lego v. Twomey*, 1967, p. 625). Courts' misplaced confidence in jurors perpetuates the increased likelihood of mistaken convictions. As scholars and practitioners in the legal system, we must continue to press for larger change and, in particular, for judges, legislators, and others who shape the system to bring their assumptions in line with jurors' actual rather than assumed abilities.

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Kathy Kellermann wrote:
Nov-28-2010
Harkins & Petty's research (see full citation below) finds that multiple sources each using different arguments to support a similar conclusion are more persuasive than one source presenting the same arguments.

Harkins and Petty compared (a) 1 person communicating 1 strong argument, (b) 1 person communicating 3 strong arguments, (c) 3 people communicating basically the same strong argument, and (d) 3 people each communicating 1 different strong argument. Only people who heard the fourth presentation -- of 3 people each communicating a different strong argument -- significantly changed their attitudes in the desired direction.

While Harkin and Petty's research was not conducted in a courtroom context, the people responding to the persuasive messages in Harkin and Petty's research were strongly opposed to what was being advocated, just as jurors are strongly opposed to a false confession defense.

My consulting experience accords with Harkin and Petty's research findings, and not only in false confession defenses: multiple expert witnesses each forwarding different points are harder to reject than one expert forwarding many points, and especially so when disciplines (including psychology, unfortunately) are viewed with suspicion by some jurors.

Citation: Harkins, S.G., & Petty, R.E. (1981). Effects of source magnification of cognitive effort on attitudes: An information-processing view. Journal of Personality and Social Psychology, 40, 401-413.[Hide]

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