Chapter four.

interviewing suspects and witnesses.

Confessions.

Societies expect that their police service will protect them from wrongdoers, especially dangerous criminals, and police forces strive hard to achieve this. One of the major ways in which they seek to do this is by apprehending the criminals and getting them to confess to their crimes. Unfortunately, this commendable striving to get the guilty to confess also has a number of negative effects.

Two important drawbacks of too strong a focus on confessions are that (i) innocent people do confess to crimes they have not committed (i.e. false confessions) and (ii) guilty people might confess but, if the police do not also strive to gather other evidence against them (e.g. in their interviews), when some of these later retract their confession there is little else that courts can use against them.

We will soon look at the explanations criminal psychologists have developed to help explain the puzzle of why innocent people confess. But how do we know that innocent people confess? One way involves modern uses of DNA that check whether ‘biological’ traces left by the criminal (e.g. in hair, semen, and so on) match the confessor. Ongoing work in the USA called the ‘Innocence Project’ examines cases of people imprisoned for crimes that they claim they did not commit. At the time of the crime some years ago a biological trace was left by the perpetrator but this DNA trace was too small to be analysed by the time of the trial at which a person was found guilty (i.e. on other evidence). However, recent advances in DNA testing now allow much smaller samples to be tested than was the case even a few years ago. If the police and/or the authorities (to their credit) have safely preserved the small sample it might now be amenable to testing. The Innocence Project has now done just this and in well over one hundred cases the DNA of the person in prison has been found not to match the crime sample. When the case files of these imprisoned people have been examined it has been found (i) that the most frequent type of evidence against them was eyewitness testimony (see chapter 6) and (ii) that in around twenty per cent of cases the person now shown to be innocent actually confessed to the police.

Another way of demonstrating that false confessions do occur is by examining individual cases in which people have confessed and have been found guilty on this basis by a court of law only for it to be demonstrated years later that they were not the guilty party. Gudjonsson’s (2003) book provides details of several such cases.

So what are the explanations that criminal psychologists have offered to explain false confessions? One rather obvious reason is that some (probably a minority) are voluntary – innocent people confess, for example, to gain notoriety or to cover up for a friend. Another explanation, which involves more psychology, is that under pressure people will sometimes agree to things simply to relieve the pressure (e.g. torture, solitary confinement). Such confessions are called ‘coerced-compliant’, partly because the false confessors still know they did not do it. Most worrying are ‘coerced internalized’ false confessions in which the confessors themselves actually come to believe that they must have done it. For these, the psychological explanation is more complex and can involve special vulnerability on the part of the confessor (e.g. due to low intelligence, high anxiety, low maturity and/or a number of psychological/mental disorders). However, such vulnerabilities are not enough to explain this phenomenon. Poor, or should we say old-fashioned, police interview methods have been shown, time and again, to have resulted in coerced false confessions.

Research has demonstrated that unless trained to the contrary most police officers who are about to interview suspects already believe that it is highly likely that the suspect is the person who committed the crime. This is so even when the available information indicating this to be so is poor or weak. Given this prior belief in guilt, it is not surprising that such officers see their main role as the securing of a confession. Unfortunately, in most countries in the world, the officers do not actively seek to gather information from the suspects within the interviews that can reliably be used to guide the decision as to whether the confession is a true one or a false one.

In some countries (e.g. the USA) many police forces currently train their officers to interview suspects in two main stages. The first stage (often called ‘the interview’) is designed to allow suspects to say whether they committed the crime or not. Some do admit to it. For those who do not, a decision is made during stage one as to whether they are lying when saying that they did not do it. Those deemed to be lying then enter stage two (often called ‘the interrogation’) which is designed to persuade/pressurize them to admit it. Police officers using this two-stage approach base much of their stage one decision as to whether the denying suspect is lying or not on an examination of the suspect’s behaviour. Most unfortunately, the cues they are trained to look for, while relating commonsense beliefs about lying (see the next chapter for more on this), are not valid. Thus, they misclassify innocent deniers as liars and then put pressure on them to confess. This pressure is designed to gain confessions (for more on this see Kassin, 2005) and therefore, not surprisingly, many people confess, especially those who are vulnerable to pressure. However, those not so affected by psychological pressure (e.g. psychopaths, terrorists, spies, career criminals) may not confess. Some of these may not do so even in the face of ethically and morally questionable procedures involving torture and threats to their families.

It is difficult to determine how often ethically and morally questionable procedures are used on those suspected of wrong- doing. Some suspects later make claims about how they were interviewed/interrogated, but the ‘authorities’ may deny such claims. However, if the interviews are tape-recorded then it may be possible to obtain a better picture of what actually happened. This is one of the reasons why in England and Wales the Police and Criminal Evidence Act 1984 mandated that all police interviews with suspects be audiotape recorded.

Another reason for this pioneering legislation was to assist the police to determine, via the tape recordings, which aspects of suspect interviewing they were already good at and where there might be room for improvement.

Before we examine studies of tape-recorded interviews with suspects, let us look at one of the few published studies in which a researcher was allowed to sit in on police interviews with suspects. Other similar studies may have been conducted in various countries but have not usually been published. In this 1980 study (which was conducted for the Royal Commission On Criminal Procedure) Barrie Irving was present at several dozen interviews in England. He noted that the interviewers used a number of persuasive/manipulative tactics, including:

pretending to be in possession of more evidence than they actually had.

minimizing the seriousness of the offence.

manipulating the interviewee’s self-esteem.

pointing out the futility of denial.

In its 1981 report the Royal Commission expressed concern about these tactics. Not only is lying to the suspect about the evidence ethically questionable (given that the suspect may be innocent), it may also reveal to guilty suspects (who know what happened) that the police are mistaken/lying about the evidence: thus the guilty may be less likely to confess. Furthermore, if the police lie in this context, the general public will learn of this and it may well lessen the positive regard societies need to have of their police service. These are some of the reasons why British courts dissuade police officers from lying to suspects. However, in the USA it seems that the Supreme Court has sanctioned such lying.

This tactic of minimizing the seriousness of the offence can take several forms. One example we heard about (from outside the UK) involved the interview of an uncle accused of the rape of his six-year-old niece. The police interviewer said to him: ‘I’ve had little girls sitting on my lap. They wriggle and before you realise it you’ve got an involuntary erection. Is that what happened to you and then did it just slip into her?’

Manipulation of the interviewee’s self-esteem to lower it so that they become more psychologically vulnerable not only raises ethical concerns but may also result in more false confessions.

Pointing out the futility of denial is designed to stop guilty suspects continuing to deny their involvement, but again this is likely to increase the false confession rate. However, here we should note the point made earlier in this section that in some countries police forces believe that they can tell which suspects are liars/guilty, so they say they use these tactics only on guilty people (who, of course, won’t produce false confessions). Discussing the detection of deception, chapter 5 demonstrates that such police beliefs are error-prone.

In light of the 1981 Royal Commission report and UK national media focus on the possibility of false confessions (which, of course, mean that the guilty remain free), the government in England and Wales brought in the 1984 Act which not only mandated the tape recording of interviews with suspects but also aimed to stop the use of inappropriate – coercive, oppressive – tactics, emphasizing that confessions should be voluntary.

A few years after the introduction of the new legislation the government funded a number of studies of tape-recorded interviews with suspects. These (and other published studies conducted by senior police officers as part of their research doctorates – a crucial development) revealed a surprising lack of police skills if the suspect denied the offence. Most suspects who confessed did so near the beginning of their interview (that is, before the interviewers’ skills were revealed) and the strength of the (true) evidence against them played a role in this. A major tactic seemed to be to reveal at the beginning of the interview all of the evidence against the suspect and to then tell them to confess. This might work if the evidence is very strong – guilty suspects can tell this and also know that courts might give them a lesser sentence if they confess. However, if the evidence is not strong, the guilty may well realize this and not confess. When the evidence was weak and the suspects did not confess, the research found that the police interviewers did not seem to know what to do. The 1984 Act had resulted in inappropriate psychological tactics rarely being employed but had not provided the police with alternative procedures.

To their credit, the police service took note of the research findings and in 1992 produced a national training interviewing initiative which took the trouble to be informed by criminal psychology. This pioneering initiative (nothing like it appears to have happened in other countries) emphasized that in interviews with suspects the role of the police is (i) to gather accurate information, to keep an open mind, (iii) to act fairly, especially with vulnerable suspects, (iv) to compare information gained in the interview with other information, (v) to question the suspect appropriately, even if they exercise the right to silence and (vi) to not necessarily accept the first answer given by the suspect. The publication of these principles attempted to change the confession-driven model of suspect interviewing to one involving a search for information. Accompanying these principles was a training package and two booklets given to all 127,000 police officers in Wales and England. The training and the booklets were extensively based on ethical psychological notions. Some years after their introduction a number of research studies were conducted to assess the new situation. For example, we conducted in-depth interviews with highly experienced detectives about what they considered to be the important skills when interviewing suspects. From what they said and from the relevant research (some of which has been described above) we drew up a questionnaire that a large sample of police interviewers filled in. The results indicated that the police service now considered the following skills to be the most important when interviewing suspects – listening, preparation, questioning, flexibility, open-mindedness and compassion/empathy. Thus the new national initiative seemed to have been successful.

Of course, what people say may differ from what they actually do. We therefore analysed tape-recorded interviews with suspects. Some of these we evaluated as ‘good’ and some ‘not so good’. The skills which were actually more evident in the good interviews included responding to what the interviewee says, use of open questions, flexibility, open-mindedness, compassion/empathy, keeping the interviewee to relevant topics, preparing the interview, appropriate use of pauses/silences, apparent use of (appropriate) tactics, appropriate use of closed questions and communication skills. Thus what the interviewers from several forces said was important was borne out by interviews conducted in those forces (prior to this research project ever starting). However, even in the good interviews, some of these skills were not present that often (e.g. appropriate use of pauses/silences, flexibility and compassion/ empathy). On the other hand, even in the not so good interviews some skills were frequently present (e.g. absence of undue pressure, of inappropriate interruptions, of long/complex questions and not releasing all of the information at the beginning).

A few years later we conducted another analysis of real-life tape-recorded interviews with suspects. This found (contrary to the research on interviews conducted before the 1992 training initiative) that most of the confessions did not occur near to the beginning of the interviews. It also found that the problematic tactics of minimization, situational futility (i.e. telling the suspect that they committed this crime and that it will come out one day, and pointing out the negative consequences of denial) and intimidation never occurred. The tactics that occurred often included ‘challenges account’ and ‘emphasizing contradictions’, which had been emphasized in the (new) training initiative. But what about the tactic ‘showing concern’? Though this only occurred in a minority of interviews, it may be very important. Certainly, when we asked experienced interviewers what factors are important (see above), they frequently mentioned empathy/compassion. The importance of this skill probably relates to the fundamental question of ‘Why should guilty suspects confess to the police?’.

If psychologically (and physically) coercive/oppressive techniques are not to be used in interviews with suspects to motivate them to confess, what will? We were a little puzzled that showing concern seemed to be related to suspects moving from denial to confession. Then we found a study conducted just a few years ago in Sweden that noted that men now in prison for serious crimes such as murder indicated on an extensive questionnaire that a humanitarian (rather than a dominating) police interviewing style was related to their decisions to confess in the interviews.

Thus, with regard to the crucial topic of police interviewing of suspects, criminal psychology has been associated (at least in England and Wales) with a turn away from what has been called unethical to ethical policing. A number of countries (e.g. Norway) are now taking note of this.