

Scientific American Mind, "True Crimes, False Confessions," argue that "society should discuss the urgent need to reform practices that contribute to false confessions and to require mandatory videotaping of all interviews and interrogations" (2005, p. 26). After analyzing their argument, I shall argue that, although one might object that Kassin and Gudjonsson focus too heavily on the importance of protecting criminal suspects, they provide a compelling argument that social justice requires such reforms as mandatory video-taping of police interrogations.

In developing their case for the need to reform interrogation tactics, Kassin and Gudjonsson survey a number of studies regarding the role of confessions in criminal investigations. For example, they are at pains to provide evidence that interrogations are often influenced by a bias on the part of the interrogator. Further concern is found in the fact that Miranda rights, as found in the American legal system, are insufficient safeguards, given that suspects, especially innocent ones, often waive those rights. Finally, Kassin and Gudjonsson note that aggressive interrogation tactics can often produce false confessions.

What makes these findings most troubling, according to Kassin and Gudjonsson, is the strong correlation between false confession and wrongful conviction. Trial jurors, we are told, are inclined to give disproportionate weight to a confessions, even taking it to outweigh so-called "hard evidence." As a characteristic example, Kassin and Gudjonsson cite the case of Bruce Godschalk. Even when DNA evidence proved Godschalk could not have been the rapist, the District Attorney of the case refused to release him from prison, stating that "...I trust my detective and his tape-recorded evidence" (Kassin and Gudjonsson, 2005, p. 28). Because of this tendency on the part of jurors and prosecutors, together with the facts listed above regarding the potential for unrestricted interrogations to elicit false confessions, Kassin and Gudjonsson argue for the need to reform police interrogation tactics.

Underlying their argument is the implicit moral principle that social justice requires that we do everything we can to minimize the potential to wrongly convict innocent persons. This may seem obvious, but one could reasonably question whether it puts too much emphasis on protecting potentially innocent suspects and not enough on convicting potentially guilty criminals. In a perfectly just system, criminals would always be brought to justice and treated appropriately, and innocent suspects would always be exonerate. However, any system devised and implemented by humans must deal with the reality of imperfection.

The difficult moral question we need to ask is how we are to balance the needs of society to protect itself from criminals while at the same time protecting the rights of innocent persons. We need to ask at what cost we are willing to limit the ability of police and Crown prosecutors to prosecute criminal suspects. Imagine, for example, the following two systems: (1) Almost no innocent persons are ever convicted, but a very high percentage of recidivist offenders are able to escape conviction, (2) A very high percentage of offenders are caught and brought to justice; however, a small but non-negligible percentage (say 3%) of innocent persons are unjustly caught in the system and thus wrongly punished for crimes they never committed. Neither of these is very palatable, but if forced to choose, my intuitions favor result (2). Of course, there are many variables at work here, and I do not have the space to delve into a detailed discussion of all the relevant trade-offs. My basic point is that social justice requires not only that we protect innocent individuals from prosecution, but that we hold guilty persons accountable for their actions.

While I think that this is a reasonable worry to raise given the tenor of Kassin and Gudjonsson's article, I do not think it ultimately undermines their argument. That is, I think one might reasonably object that they are overly focused on the possibility of false confessions without saying much about the utility of true confessions. However, their specific proposal that interrogations be video-taped does not seem to diminish the ability of police to effectively interrogate suspects and, when possible, to elicit a confession. Indeed, they conclude their essay by citing a study showing that police largely found the practice of video-taping to be quite useful and not to inhibit criminal investigations.

So, even if one thinks that Kassin and Gudjonsson are a bit one-side in focusing on false confessions, ultimately I think these authors provide a compelling argument for the need for such reforms as mandatory video-taping of police interrogations.