
Miranda's Revenge: Police Interrogation as a Confidence Game

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By requiring that police issue fourfold warnings to silence and appointed counsel prior to any custodial questioning, *Miranda v. Arizona* (1966) created universalistic criteria for the legal regulation of police interrogations. While *Miranda* appears to be partly responsible for the dramatic decline in violence in the interrogation room in the 20th century, American police have become skilled at the practice of manipulation and deception during interrogation. Drawing on more than 500 hours of participant observation fieldwork in three police departments, I argue that the sequence, structure, and process of contemporary American police interrogation can best be understood as a confidence game based on the manipulation and betrayal of trust. Understanding interrogation as a confidence game, I argue, goes a long way toward explaining (1) the paradoxical observation that criminal suspects continue to provide police with incriminating statements, admissions and confessions in the majority of cases; (2) the nature of the social interaction during interrogation more generally; and (3) how contemporary police interrogators both exercise and mystify their power inside the interrogation room.

In 1966 the U.S. Supreme Court redefined the law of confessions in *Miranda v. Arizona*, which has since become one of the most celebrated as well as one of the most reviled laws in the history of American criminal justice (Malone 1986). As the overwhelming majority of Americans know,¹ police must now advise all custodial suspects of their fourfold rights to silence and appointed counsel prior to questioning or else any admissions of guilt will be excluded from evidence in subsequent trial proceedings. In the past 30 years, *Miranda* has generated enormous political, legal, and academic controversy (Leo 1996b; Baker 1983;

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¹ A national poll in 1984 revealed that 93% of those surveyed knew that they had the right to an attorney if arrested (Toobin 1987), and a national poll in 1991 found that 80% of those surveyed knew that they had a right to remain silent if arrested (Walker 1993). The *Miranda* rights have been so entrenched in American popular folklore during the past 30 years that they are now an indelible part of our collective heritage and consciousness.

Graham 1970). In the immediate aftermath of *Miranda*, police officials complained indignantly that *Miranda* would handcuff their investigative abilities and significantly damage law enforcement. Politicians linked *Miranda* to rising crime rates, as Congress attempted legislatively to invalidate *Miranda* in the 1968 Omnibus Crime Control Act (while individual congressmen called for Chief Justice Earl Warren's impeachment), and Richard Nixon declared *Miranda* to be a victory of the "crime forces" over the "peace forces." Newspaper editorials uniformly deplored the Warren Court's "coddling of criminals" following the *Miranda* decision (Baker 1983; Graham 1970). In the past three decades, *Miranda* has continued to be a recurrent source of popular and political controversy, as newspaper editorials, law review articles, and congressional committees continue to attack its legitimacy and call for its reversal (Cassell 1995, 1996).

Within the first decade following the *Miranda* decision, several academic studies collected data to examine the effect of *Miranda* on law enforcement (see Neubauer 1974b, 1974a; Witt 1973; Stephens, Flanders, & Cannon 1972; Schaefer 1971; Milner 1970, 1971; Leiken 1970; Medalie 1968; Robinson 1968; Griffiths & Ayres 1967; Seeburger & Wettick 1967; Wald et al. 1967; Younger 1966). The consensus of these studies is that after initially adjusting to the new rules propounded in the *Miranda* decision, police have complied with the letter, but not the spirit, of the required fourfold warnings; that despite these standard warnings most criminal suspects routinely waive their constitutional rights; that the *Miranda* rules have had only a marginal effect on the ability of the police to successfully elicit admissions and confessions from criminal suspects; and therefore that *Miranda* has not exercised a significant impact on rates of either the apprehension or the conviction of criminal suspects (for a contrary view, see Cassell 1996; but see also Schulhofer 1996). The most recent empirical study of police interrogation found that 78% of custodial suspects studied waived their *Miranda* rights and 64% of the suspects questioned provided incriminating statements, admissions of guilt, or full confessions to their interrogators (Leo 1996a).

Despite the popular and academic controversy, however, *Miranda* presents a central paradox that no scholar and no study has yet to resolve: Why do suspects usually waive their rights and so often provide incriminating admissions and confessions to police when it so clearly violates their self-interest? The answer, I argue here, lies in the nature of contemporary interrogation strategies, which are based on the manipulation and betrayal of trust. Although interrogation is fundamentally a conversation between two or more people for the purpose of establishing or refuting criminal liability, the process, sequence, and structure of contemporary police interrogation bears many of the essential

hallmarks of a confidence game.² Viewing police interrogation as a confidence game, I further argue, provides a framework for understanding (1) why suspects so often provide police with admissions and confessions; (2) the nature of the social interaction of contemporary interrogations more generally; and (3) how contemporary American police interrogators both exercise and mystify their power inside the interrogation room. Finally, I argue that while *Miranda* appears to be partially responsible for the dramatic decline in the use of physical and psychological coercion during custodial questioning in the 20th century (Leo 1992; Simon 1991; Hart 1981), American police have responded to *Miranda's* legal requirements by becoming increasingly skilled at the use of manipulation and deception inside the interrogation room.

The model I propose here for understanding custodial interrogation practices is ideal-typical. Although I argue that contemporary American police interrogations resemble the structure and sequence of a classic confidence game, I am not suggesting that all police interrogations necessarily must or do follow this model. As with any ideal-typical model, there are always similarities, points of overlap, and departures. Most police interrogations share many elements with, but are not always identical to, confidence games. There is considerable variation in practice, both in how police interrogate and why suspects confess. In general, contemporary American police interrogations resemble confidence games to the extent that they involve the systematic use of deception, manipulation, and the betrayal of trust in the process of eliciting a suspect's confession. Although elements of the confidence game are present in most interrogations, the degree to which an interrogation resembles the structure and sequence of a confidence game is a function not only of the extent to which the interrogator systematically uses deception, manipulation, and the betrayal of trust. It is also a function of several individual and structural variables: the motivation, acting ability, and intelligence of the detective; the sophistication of the suspect; the perceived seriousness of the case; and the police organization's support for in-depth interrogation practices.

² This is not the first time that law has been analogized to a confidence game. In an influential and widely cited article, Abraham Blumberg (1967) argued that the organizational needs of the criminal justice system cause defense counsel to abandon their commitment to the adversarial defense of their clients. Coopted by the criminal courts, defense counsel instead "become agent-mediators who help the accused redefine his situation and restructure his perceptions concomitant with a plea of guilty" (Blumberg 1967:20). The empirical basis of Blumberg's argument has since been criticized and, at least in part, refuted (see McIntyre 1987; Mann 1985; Feeley 1979). Blumberg's more general comparison to confidence games, however, has always been problematic because he used the term "confidence game" merely as a diminutive epithet, without providing any explicit description or analysis of how the practices of defense counsel actually resemble the practices of confidence men.

Moreover, there are some obvious differences between the interrogation of criminal suspects and the standard confidence trick. For example, suspects often lie to detectives. Many interrogations begin with a suspect issuing a denial statement and alibi that he later acknowledges was either partially or entirely untruthful, whether or not he ultimately confesses. Perhaps this is because suspects know that detectives may release them from custody if they become convinced of either the likelihood of the suspect's innocence or the impossibility of proving his guilt. That is why, according to many detectives, so many guilty suspects waive their *Miranda* warnings; suspects, they believe, are always trying to "con" them. To the degree that this occurs, perhaps police interrogation is more accurately described as a "double confidence game." Both parties use deception. The difference between the two sides, however, is the level of sophistication at which they operate. Most lying suspects are simply too crude and unrefined in their deceptions to be analogized to confidence men. Skillful detectives, on the other hand, are highly experienced and trained human manipulators who resemble confidence men because of the subtle and sophisticated strategies of persuasion they effortlessly employ during interrogation.

I. Methodology and Data Collection

The interrogation room is—and historically has always been—the most private social space in an American police station. It is traditionally located at the rear of the station house, carefully secluded from the view of civilian outsiders and the distractions of police insiders. What happens inside the interrogation room—the drama of custodial questioning, the art and science of police technique, and the confession of guilt—has long remained a mystery not only to the public but also to academic criminologists, sociologists, and legal scholars. Notwithstanding the many, often sensational, portrayals of interrogation scenes in American cinema, we know very little about how custodial police questioning is routinely conducted in America. Even among the most professional police departments, contemporary interrogation practices remain shrouded in secrecy.

Because police interrogation remains an intentionally hidden institutional practice, it is an unusually difficult subject for social scientists to research, *especially through observational methods* (Leo 1995b). Not surprisingly, virtually all scholarship on American police interrogation is relegated to a doctrinal analysis of leading and (thus unrepresentative) appellate court cases. To be sure, there have been a few theoretical and experimental studies in the social psychology of confessions (see Gudjonsson 1992 for a review), a few sociolinguistic or "conversational" analyses of interrogation transcripts (Sanders 1976; Watson 1990; Wowk 1984),

and several early evaluative studies of the impact of *Miranda* on conviction rates (see Stephens 1973:165–200 for a review). With the exception of my own recent research (Leo 1992, 1994a), only two observational studies of police interrogation exist in the American literature (Wald et al. 1967; Milner 1971). Both studies, however, rely on data collected in the 1960s, and both studies sought not so much to observe and describe the process of police interrogation as to assess the short-term influence of required *Miranda* warnings on confession and conviction rates. While observers were permitted to be present during interrogations in both studies, neither one describes the process, dynamics, or experience of police interrogation; neither one is a participant observation study per se.

The analysis reported here is based on 9 months (more than 500 hours) of fieldwork inside the criminal investigation division (CID) of a major, urban police department that I identify by the pseudonym “Laconia,”³ where I contemporaneously observed 122 interrogations involving 45 detectives. In addition, I viewed 30 videotaped custodial interrogations performed by a police department I identify by the pseudonym of “Southville”⁴ and another 30 videotaped interrogations performed by a police department I identify by the pseudonym of “Northville.”⁵ In total, then, I observed, either contemporaneously or by videotape, 182 police interrogations of custodial suspects. For each interrogation, I recorded my observations qualitatively in the form of field notes and quantitatively with a 47-question coding sheet.⁶ In addition, I interviewed, both formally and informally, numerous detectives at all three police departments. Finally, I attended a half-dozen interrogation training courses taught by private training firms as well as by local and federal police agencies.

³ The 1990 census recorded a population of 372,242 in Laconia—about 43% black, 28% white, 14% Asian/Pacific Islander, and 15% Hispanic. In 1992 Laconia recorded 58,668 Part I offenses (10,140 violent crimes and 48,548 property crimes), reporting an official crime rate of 123 per 1,000 members of the population.

⁴ According to U.S. Census Bureau figures for 1993, Southville reports a population of 121,064 residents. Of Southville’s residents, 51% are white, 24% Hispanic, 10% African American, and 15% Asian. In 1993 Southville recorded 8,505 incidents of Part I crime (1,298 incidents of violent crime, 7,207 incidents of property crime), reporting an official crime rate of 70.3 per 1,000 members of the population.

⁵ As of 1 January 1994, Northville’s population was 116,148. According to the 1990 census, the population of Northville is 46% white, 20% African American, 21% Asian, and 11% Hispanic. In 1993 Northville recorded 9,360 Part I crimes (1,613 violent crimes and 7,747 property crimes), reporting an official crime rate of 80.78 per 1,000 members of the population.

⁶ For a quantitative analysis of the 182 interrogations I observed, see Leo 1996a.

II. Police Interrogators as Confidence Men

A. The Sociology of the Confidence Game

Confidence games are as old as Western civilization. Memorialized in fiction, popular biographies, and cinema, archetypal images of confidence men—typically as charming tricksters, clever manipulators, and betraying seducers—have long been salient in American folklore, ranging from Herman Melville's 19th-century novel *The Confidence Man* to the biography of the famous con man Yellow Kid Weil (Brannon 1948) to such recent films as *House of Games* and *The Grifters*. The *locus classicus* for discussing confidence men remains journalist David Maurer's (1940) empirically grounded and detailed study, *The Big Con: The Story of the Confidence Man and the Confidence Game*. Surprisingly, however, social scientists have had relatively little to say about confidence games or their perpetrators, though there exists a small, if dated, literature on the subject (Prus & Sharper 1977; Leff 1976; Nash 1976; Blum 1972; Gasser 1963; Schur 1958; Sutherland 1937).

Ordinary social life affords numerous opportunities for confidence games, however. Indeed, as Inciardi (1973:166) has pointed out, "a con game can be undertaken in any situation where one individual may place trust in another." Trust is one of the most elementary and essential principles of any social order. Many social relationships require the giving and receiving of trust, creating unstated obligations and potential vulnerabilities. As Blum (1972) notes, trust is given to those to whom one is close, those from whom one needs something, and those on whom one depends. Erving Goffman (1952) has invoked the idiom of the confidence trick as a metaphor for the cynical manipulations of social performances in everyday life, suggesting that the social world consists of con artists and their marks (i.e., victims). Goffman argues that we are all manipulators behind changeable masks and facades, as well as potential marks who arrange our affairs so as to minimize the risk of being "conned" and of subsequently needing to be "cooled out." Like trust, betrayal is also a common feature of social life (Akerstrom 1991).

The essence of a confidence game is the exchange of trust for hope. The confidence man, as the name suggests, attempts to induce confidence from an unknowing (if self-interested) victim by offering him the prospect of a better life, typically through financial gain. Drawing on his repertoire of tricks, the confidence man carefully contrives and frames the situation to set up the mark, sometimes even rehearsing and making up his particular roles. The confidence man must vary his personality and adapt his technique to fit the particular event, enticing the mark by holding out something he very much desires. The confidence man preys on the psychological vulnerabilities of the mark—usu-

ally greed, vanity, ignorance, or loneliness—through false representations, artifice, and subterfuge, eventually eliciting from the mark both his money and his trust. Once he has fleeced the mark, however, the confidence man must “cool him out”—assuage his anger so that the mark does not attempt retribution or complain to the police. Ultimately, then, the defining characteristic of a confidence game is the exploitation and betrayal of another person’s trust for some kind of gain. Unlike other criminals, however, the confidence man never uses force to separate a mark from his money; rather, the confidence man thrives by his wits alone. The only weapons a confidence man has are his words and the images they offer. Indeed, “[t]he grift has a gentle touch” (Maurer 1940:15).

The successful confidence man must therefore possess certain psychological and interpersonal skills. For example, he must be an excellent student of human nature, someone who possesses a superior ability to size up potential marks. Confidence men refer to this ability, somewhat ineffably, as “grift sense.” The confidence man must also be a skillful actor, one who is capable of shifting roles easily, mustering impromptu performances from the slightest cues, and creating the appearance of unmistakable integrity.

But the success of the confidence man depends on more than merely his personal attributes, his “grift sense,” self-confidence, will-power, predatory instincts, or ability to wear many guises naturally. For the confidence game is, after all, a structured social interaction with an underlying logic and sequence of events. It typically moves from the initial contact phase to the money-extracting phase to the cooling-out phase. Whether the confidence man relies on the sheer force of his personality or outright trickery, he must move the mark through each of these stages. The successful confidence man must therefore draw not only on his histrionic talents but also on the logic and characteristics of the game. The confidence man does so by cleverly constructing a situation that seems authentic to the victim. The confidence man then uses the elements of the situation to carefully create and exploit the role obligations of the mark. These obligations are based on informal social understandings built into the particular confidence game. Drawing on these everyday understandings of the situation, the confidence man obtains compliance by appealing to the mark’s desires or personal vulnerabilities, as well as to his sense of obligation within the situation. To succeed, then, the confidence man must manipulate not only the mark but also the structure of his subsequent social interaction with the mark.

Although interrogation is fundamentally an information-gathering activity, it closely resembles the process, sequence, and structure of a confidence game. To understand either the confi-

dence game or police interrogation, then, one must analyze not merely its individual players but also its structure and sequence. In the past 30 years, police interrogators have refined their skills in human manipulation and become confidence men par excellence. In the course of my fieldwork numerous detectives described this sentiment, whether they invoked the metaphor of the confidence trick, the poker bluff, skilled salesmanship, or some related metaphor to describe their activities. As one police instructor in an interrogation training class I attended proudly declared, "We are con men . . . and con men never tell the mark they've been had." Or as another detective privately told me:

The bottom line is that getting a confession comes down to bait and switch. It's like handing candy to a child and then gradually taking it away. You keep giving the suspect a little bit of the truth, and eventually they get so wrapped up in their lies that they confess. It's really all just one big con game.

In the remainder of this article, I develop this argument by analyzing the similarities between the confidence game and police interrogation through several stages of detective work: from "qualifying" the suspect, to "cultivating" the suspect, to "conning" the suspect into giving up the confession, to "cooling out" the suspect. Like the confidence game, police interrogation consists of an underlying sequence and structure of events; the whole of interrogation adds up to more than the sum of its individual parts. That structure and that sequence, of course, remain hidden from the suspect; it becomes visible only to repeat players, though they too—just like marks who return to the confidence operator only to be beaten again—sometimes fall prey to the very same tricks once more. Police interrogators, like confidence men, attempt to induce compliance from their suspects by offering them hope. The detective sells this bargain by exploiting the suspect's trust, ignorance, and sense of obligation within the situation. The essence of the con that is police interrogation ultimately lies in convincing the suspect that he and the interrogator share a common interest, that their relationship is a symbiotic rather than an adversarial one. "That is the lie," writes David Simon (1991:197), "and when the roles are perfectly performed, deceit surpasses itself, becoming manipulation on a grand scale and ultimately an act of betrayal."

B. "Qualifying" the Suspect

The confidence man begins by "qualifying" the mark: that is, determining whether the person is desirable as a victim and will respond to further overtures. The confidence man typically starts by striking up a conversation with the potential mark, usually on a safe but interesting topic. In the process of talking to the person, the confidence man tests his potential mark for suggestibil-

ity, deference, and cooperativeness. The goal of this initial encounter is to determine whether (or, perhaps more accurately, the degree to which) the suspect is con-wise. A confidence man qualifies the victim by probing into his interests, background, and wealth, as well as testing his susceptibility to control.

Like the confidence man, the detective begins by qualifying or sizing up his suspect. This involves two consecutive stages of police work for the interrogating detective: he must first size up the suspect and the case against the suspect *prior to* any custodial questioning; second, the detective will psychologically size up the suspect *during* interrogation. The purpose of the first sizing up is to construct a working profile of the suspect as well as a situational profile of the particular crime for which the suspect has been arrested; the purpose of the second sizing up is to figure out how the detective can manipulate the suspect into confessing.

Prior to any questioning, the detective has already “worked up” the suspect’s case. The detective has read the police report and possibly contacted the arresting or reporting officer for any clarifications, as well as any fellow detectives who may have experience with the suspect; the detective has certainly contacted the victim; taken any witness statements; examined any property found in evidence; and usually has done any other preparatory work necessary to learn as much about the case as is reasonably possible. In addition, the detective has run the rapsheets of both the suspect and the victim to examine their arrest/conviction records, another factor that helps in sizing up both the suspect and the case prior to any questioning.

A kind of personal and situational profiling takes place here. The suspect’s record provides the detective with information that he perceives as relevant to the crime in question: whether the suspect has been arrested for and convicted of any previous crimes, especially similar ones; if so, whether the suspect’s disposition runs toward assaultive crimes such as battery or traditionally nonviolent crimes such as petty theft, for example; or whether the suspect is generally law-abiding and encountering the criminal justice system for the first time. In conjunction with the suspect’s rapsheet, the arrest/conviction record of the victim helps the detective determine the seriousness of the case and the culpability of the suspect. Does the victim have a long arrest or conviction record? What does the record disclose about the victim’s disposition toward crime and violent activity? Is the victim credible? The perceived seriousness of the case turns on several factors: How serious is the crime of which the suspect is accused? How threatening to society is the suspect? How badly injured or violated was the victim? How “righteous” is the victim? Was the victim conspiring with the suspect? How “solvable” is this case? In addition to sizing up the suspect, then, the detective has also

sized up the victim, and thus by implication the case—all of which affect the calculus of how much effort the detective will expend attempting to elicit incriminating admissions from the suspect. Based on this background investigation, the detective is usually convinced of the suspect's likely guilt prior to entering the interrogation room.⁷

Having sized up both the likelihood of the suspect's guilt and the "righteousness" of the victim, as well as the seriousness of the case, the detective enters the interrogation ready to size up the suspect on another level: the psychology of his personality and his vulnerability to various forms of manipulation. As one skillful female detective told me:

I guess everyone has their own technique and strategies, but the first thing you have to do is meet with the person that you are going to interview and then you can determine what kind of strategy you are going to use—if it's going to be the mother approach, the mean approach, the sullen approach, the real friendly approach. It varies from person to person, and while you are interviewing the person, you are formulating questions in your mind as you speak.

The detective sizes up the suspect with what police almost universally refer to as their sixth sense, a heightened intuition about, and ability to analyze, human behavior based on occupational life experiences. The sixth sense of the police interrogator is identical to the grift sense of the confidence man. The detective analyzes the suspects's behavior, his body movements, and demeanor, as well as the content of his responses to different types of questions or appeals, in order to discern the suspect's apparent manner of lying and truth-telling as well as his apparent psychological vulnerabilities. The detective's goal in sizing up the suspect is to figure out strategically how he or she can "break" the suspect during interrogation to eventually elicit a confession.

In sizing up the suspect, the detective may conduct a "pre-interview" of sorts, asking the suspect essentially nonaccusatorial questions in order to observe his verbal and nonverbal baseline responses to stressful as well as nonstressful stimuli. As a homicide interrogator told me:

In essence we are doing a pre-interview once we start talking to the guy. We don't jump right into the crime, we're talking to the guy basically getting his story, oftentimes it's his alibi, his

⁷ In the interrogations I observed, the detective's belief in the suspect's probable guilt almost always seemed justified. Typically there was enough evidence against a suspect—whether witness identification, arrest in commission of an offense or shortly after in the area of the crime, possession of articles of crime, or, as in all the rape cases I witnessed, identification by a physically traumatized victim—to sustain a "more likely than not" belief in the suspect's guilt. On the other hand, a few interrogations I observed were, as the detectives unhesitatingly told me, "fishing expeditions" for the purpose of establishing guilt or innocence. And in several interrogations, the detective, who initially believed in the suspect's probable guilt, became convinced of the suspect's probable innocence after questioning, later releasing the suspect from custody.

denial. During that denial phase is when we use these techniques to determine what kind of person he is, you know, how he responds, and during his denial I am using things and keeping mental notes because in that denial there are things that I'm going to use against him later on to get him to break, and that's when I gather information about his background, his family, his girlfriends, who he looks up to, those kinds of things.

To this end, interrogators may draw on the methods of Behavioral Analysis and/or "Neuro-Linguistic Programming," two psychological strategies that, many police believe, teach interrogators to read the behavior of their subjects like "human lie-detectors" (see Leo 1994b:98–101). Fashioned by the Chicago-based interrogation training firm Reid & Associates, the Behavioral Analysis Interview consists of a structured set of nonaccusatorial hypothetical questions, ranging from general questions such as why the suspect thinks someone would have committed the crime to more specific questions such as whether the suspect would be willing to take a polygraph. Many police believe that such questions will evoke particular behavioral responses from which interrogators can ascertain the suspects' truthfulness and subsequently infer guilt or innocence (see Inbau, Reid, & Buckley 1986:63–68). According to the theory of Behavioral Analysis, guilty suspects react defensively and with discomfort to these questions; they equivocate, stall, and provide evasive or noncommittal answers. By contrast, innocent suspects are thought to produce cooperative, direct, and spontaneous responses to these questions.

Like the Behavioral Analysis Interview, Neuro-Linguistic Programming is another method of detecting truth and deception (again equated with innocence and guilt) on the basis of behavioral responses to nonaccusatory questions. According to Neuro-Linguistic Programming, a relationship exists between the positioning and movement of the eyes and the brain's sensory process mechanisms. Many interrogators believe that one can easily and reliably determine the suspect's predominant system of information processing (visual, auditory, or kinesthetic) by watching and studying the suspect's eye movements, which become windows into the suspect's soul. By analyzing the suspect's eye movements in relation to his primary sensory orientation, the interrogator can determine whether the suspect is lying or responding truthfully. For example, if a visually oriented person looks up and to the left, he is most likely telling the truth; but if his eyes look up and to the right or if he is staring straight ahead and not focused, he is most likely lying. In addition, once a pattern of eye movement has been established, a movement in the opposite direction is believed to indicate deception. Symptoms such as a break in eye contact, looking away at the ceiling or

floor, pupil dilation, closed eyes, squinting eyes, and rapid blinking of the eyes are considered likely indicators of deception (see Leo 1994b:110–17).

C. “Cultivating” the Suspect

The next stage of the confidence game is to “cultivate” the mark, which confidence men accomplish through strategies of manipulation and control well known to students of “compliance professionals” (see Cialdini 1993). Masters of influence and suggestion, confidence men draw on a variety of psychological techniques that resemble common methods of persuading and manipulating others. Like a salesman, the confidence man must be a convincing talker who knows his product and can shift roles easily (see Shorris 1994; Oakes 1990). For like the salesman, the confidence man attempts to trade on certain weaknesses of human nature.

The confidence man’s psychological tricks range from simple emotional appeals such as flattery, to logically persuasive appeals, to promises and subtle threats or blackmail. One strategy for manipulating a person is to assume the costume, speech, and attitude of the mark; confidence is believed to develop through perceived similarity (see Cialdini 1993:173–74). A good confidence man must adjust himself to the idiosyncracies and situation of the mark, overcoming any possible resistance (Blum 1972). The confidence man also relies on emotional appeals. For example, one well-known technique is to “work their hatred.” The confidence man continues: “Everybody has hates. Just find out what it is they hate and agree with them. When the heart takes over instead of the brain, then the sucker is beat” (*ibid.*, p. 34). Another strategy confidence men employ is to establish intimacy with the mark. “There’s got to be that intimacy,” says one con man, “even if you have to bully or badger him into it” (*ibid.*, p. 25). Maurer (1940:115–16) notes: “Within a quarter of an hour he can be on good terms with anyone; in from twenty-four to forty-eight hours he has reached the stage of intimate friendship.”

Confidence men also emphasize the importance of controlling the situation and the mark. To maintain control, the confidence operator must always “keep the initiative.” The primary threat to losing that control is exposure of the confidence game. It is therefore important for the con man to sustain the trust of his victim once it has been established. “In cultivating a mark, you must never lie; that is, you must never be caught lying” (Blum 1972:35).

Once the interrogator’s belief in the suspect’s guilt is confirmed, the detective’s goal becomes to cultivate the suspect to respond to his overtures. If detectives draw on the methods or

general principles of Behavioral Analysis and/or Neuro-Linguistic Programming to qualify the suspect, they use many of the tactics I have described elsewhere as “conditioning” (see Leo 1994a:99–113) to cultivate the suspect. The goal here is to establish a pattern of psychological dependence on the interrogator that leads to a “yes or submissive mood.” To achieve this “conditioned reflex,” police carefully stage-manage the physical and social aspects of the interrogation setting. In addition, police use positive and negative reinforcement to condition the suspect to feel emotionally compelled to cooperate with the interrogator’s requests for information. As police training manuals recommend, the interrogator may continuously play on the suspect’s need for recognition and approval while communicating his control over the suspect’s attitudes and emotions (Royal & Schutt 1976).

Of course, even before questioning the suspect, the detective structures the custodial environment so as to facilitate conversation. The detective often brings the suspect from the jail to the interrogation room in the criminal investigation division, politely introduces himself (shaking the suspect’s hand), inquires about the suspect’s well-being, careful to project a friendly and sincere image, perhaps even joking a little with the suspect, and then provides the suspect with coffee before leaving him to “stew” in the interrogation room.

For example, in one interrogation I observed:

[T]he detective went down to the jail, very politely and graciously introduced himself and his partner to the suspect, apologized for having to handcuff the suspect, brought him up to the interview room in C.I.D, took off the cuffs, offered the suspect a cup of coffee, and then let him wait for 15 minutes.

The secluded interrogation room—with its barren and remote interior—is ecologically structured to avoid distractions and promote intimate conversation. Posted on the interrogation room door will be a sheet with the suspect’s name written on it as well as the crime for which he is under investigation, and when the detective returns, he will bring in a thick case folder with the suspect’s name prominently featured on it. An entry from my field notes describing an interrogator who uses this technique:

He puts the suspect’s name on a sheet on the door, which the suspect then looks at before entering the interrogation room, which makes the suspect’s interrogation look more serious than it really is. . . . He also lets the suspect sit in the room for 5–15 minutes, so as to create the impression that it isn’t so important to the investigator whether he talks. He also brings in a stack of reports, so as to suggest that the suspect has a lot of evidence against him.

All these ploys are, of course, intended to raise the suspect’s anxiety level and thus facilitate the process of eliciting inculpatory

admissions. Once inside the interrogation room, the detective again strives to maintain a positive rapport with the suspect, even while asking the background questions necessary to fill out the top part of the *Miranda* form. During the process of asking the suspect these “routine booking questions,” the detective may talk to him about where he lives, who else lives in his household, his employment history or prospects, sporting events, or any other subject that may be the basis of rapport-building conversation.

The first step in cultivating the suspect is successfully negotiating the *Miranda* waiver. Detectives will use subtle psychological strategies to predispose a suspect toward voluntarily waiving his or her *Miranda* warnings. For example, the detective may precede the reading of the *Miranda* warnings with a discussion of the importance of truth-telling. In one interrogation I observed:

The detective said that he wanted to hear the suspect’s side of the story but that he could do so only if the suspect gave us permission to talk to him. The suspect immediately denied any wrongdoing. The detective responded that we could not listen to his side of the story just yet. As he was to do many times throughout the interrogation, the detective emphasized that it would be important for the suspect to tell us the truth, so that he could clear himself if he was not guilty. This would be his only opportunity to tell his side of the story, however, the detective said. But he first had to read the *Miranda* warnings, which he said were no big deal since the suspect had seen them before on television.

Or the detective may subtly nod his head up and down as he reads to the suspect the waiver statement that follows the warnings. In another interrogation I observed:

Detective H moves his head in a slight up-down motion as he is reading the warnings, so as to subtly induce a waiver by subconsciously conveying the message that the suspect should mirror him and also wave his head up and down in a motion signifying “yes.”

Or the detective may lightly refer to the warnings as a formality that the suspect is well aware of from television and can probably recite better than the investigator. In another interrogation I observed, the detective began by stating:

In order for me to talk to you specifically about the injury with [victim’s name], I need to advise you of your rights. It’s a formality. I’m sure you’ve watched television with the cop shows, right, and you hear them say their rights and so you can probably recite this better than I can, but it’s something I need to do and we can get this out of the way before we talk about what’s happened.

Or the detective may inform the suspect that this is going to be his one and only chance to tell the police his side of the story. In another interrogation I observed:

The detective began by telling the suspect that he just wanted the suspect's side of the story. "You're implicated," he said, "whether or not you're actually guilty." Then he confronted the suspect with the evidence against him. "Everyone says you did it. Everyone is pointing to you. You are a suspect, and that is why we have placed you under arrest for the murder of [victim's name]. If you did it accidentally, if you did it in self-defense, if someone else was in the room, we need to know, because all the evidence points to that happening. We need to get your side of the story, but first we have to advise you of your rights." The detective then read the suspect his *Miranda* rights.

Or, as David Simon (1991:195–96) notes, the detective may explicitly tell the suspect that the police will no longer be able to help him if he calls for a lawyer. The use of these strategies vary by the motivation level and skill of the detective, as well as by the perceived seriousness of the case under investigation (Leo 1994b).

Once *Miranda* has been successfully negotiated and the suspect has indicated a willingness to speak, the detective presses the suspect to respond to his questions truthfully. Prior to asking the suspect factual questions, many detectives first tell the suspect that they are not going to "jerk around" or lie to the suspect, so the suspect also should not jerk around or lie to them; or that the one thing the detective will not do is take a lie to the district attorney; or that lying to the detective will only make matters worse for the suspect. The detective might add that he has extensive experience investigating this kind of crime and can easily tell when a suspect is lying to him. Although the detectives I observed almost always appeared well versed in the facts of the suspect's case, they repeatedly emphasized the psychological importance of creating an appearance of knowing more than the suspect does about the case, so that the suspect does not think he can fool the detective. An example from my field observations:

Prior to asking any questions, the detective said that he would help the suspect out in any way he could if the suspect were telling the truth, but that he would be the suspect's toughest adversary if the suspect were not telling the truth. The detective even told the suspect that he would be his best friend if he came clean, but he made it clear that he would tolerate no lies. "Only the truth will set you free," the detective declared, as he would do several times throughout the interrogation. The detective then told the suspect that he had done hundreds of investigations, and that he wasn't easily fooled; he could always tell when a suspect was lying to him.

Following this admonition about the importance of telling the truth, the interrogator usually begins by simply asking the suspect what happened. I often observed suspects tell stories or issue denials that appeared to contradict either the victim's version of the events or the existing inculpatory evidence against the

suspect. The detective's response was typically to point out the logical or factual inconsistencies between the suspect's account and the evidentiary record, pressing the suspect for an account of the events that comports with the facts as the detective knows or perceives them. During this process, detectives use strategies of positive and negative reinforcement to condition the suspect to respond truthfully. For example, when the suspect appears to be telling the truth, the detective may compliment him, praising him for being a "man about the situation" or an unusually honest person; when the suspect appears not to be speaking truthfully, the detective may repeatedly tell the suspect he is lying and that no one will believe his story. In addition, the detective may offer positive and negative reinforcement through his body movements and the manipulation of physical space. For example, some detectives move closer to the suspect when they believe the suspect is not responding truthfully, and pull back when they believe the suspect is telling the truth. Or the detective may mirror a suspect's body language—placing a hand on his cheek when the suspect places a hand on his cheek or turning right when the suspect turns right, for example. These nonverbal forms of positive and negative reinforcement are intended to subconsciously raise and lower the suspect's anxiety levels so as to induce truth-telling (Jayne 1986).

A very common strategy among detectives is to tell the suspect that they are here to discuss why, not whether, the suspect committed the crime. In the words of one interrogator:

I say, "I'll let you talk, but don't tell me you didn't do it, because you did it. You know you did it, we know you did it, everybody knows you did it. It ain't a question of who did it, I'm telling you it's not a mystery, you did it."

However, if cultivating the suspect to issue a version of the events that comports with the detective's beliefs initially fails, the detective may take a "denial statement" from the victim, hoping to catch the suspect in a lie that the detective can use as psychological leverage to induce a true statement from the suspect later in the interrogation.⁸

D. "Conning" the Suspect: Eliciting the Confession

Once a mark has been successfully cultivated, the money-extracting phase of the confidence game, the culmination of "the con," becomes relatively straightforward. The two phases of the confidence game, in effect, blend into one. In exchange for his

⁸ At a minimum, the detective hopes to lock a suspect into a false alibi, which if the suspect fails to confess in the interrogation room, can still be used to impeach the credibility of (and thus incriminate) the suspect during trial. As one detective quoted by Hart (1981:10) stated, "If you can't get a confession or admission out of a suspect, the next best thing is to get lies out of him."

trust, the mark relinquishes the money. Of course, there exist so many confidence games (neatly divided into “short” and “long” cons by their perpetrators) that the exact sequence of the money-extracting phase varies in each situation (Leff 1976; Maurer 1940). In all successful confidence games, however, the operator persuades the mark that his self-interest requires turning over the goods.

The line between “cultivating” and “conning” a suspect during a custodial interrogation may be a very fine one. In the process of cultivating the suspect and drawing out responses to his questions, the detective makes a series of factual and emotional appeals to the suspect. These appeals, which make up the essence of the con, implore the suspect first to admit and then to confess to any wrongdoing. The detective acts as though he and the suspect share common ground, sometimes illustrating the point with a personal story, often telling the suspect the purpose of questioning is to advance the suspect’s interests. The detective portrays his role as the suspect’s ally, and he portrays his goal as relaying the suspect’s story in its most favorable light to other, more adverse actors within the criminal justice system. Whether explicitly stated or not, the detective in effect asks the suspect to trust his judgment, implicitly offering in exchange for this confidence the hope that his situation will be improved by confessing. In the process of conning the suspect into his confession, the detective draws on various techniques of persuasion, deception, manipulation, neutralization, and normalization (Leo 1994a: 99–113).

The detective often begins custodial questioning by telling the suspect that his job is merely to discover the facts and that the interrogation session will be the suspect’s only opportunity to tell the police the truth. Emphasizing that there are two sides to every story, the detective suggests, whether implicitly or explicitly, that the suspect needs to correct or rebut the charges against him if he wishes for the police to know the true version of what happened during the alleged crime. The detective attempts to establish common ground with the suspect by convincing him that the detective, in his role as fact-finder, can help the suspect only if he speaks truthfully. Underscoring that his role is merely to get the facts and report them to other, more influential actors within the criminal justice system, the detective portrays himself as the suspect’s friend and ally, if not the suspect’s advocate, implicitly seeking the suspect’s trust and confidence. “There are degrees of innocence and degrees of guilt, and we need to know your level of participation,” the interrogator may tell the suspect, suggesting that the suspect’s story, if it is truthful, can be shaped and packaged by the detective to minimize the suspect’s culpability. The catch, however, is that the suspect must be truthful.

What is important, the detective informs the suspect, is not what the suspect tells the detective so much as what the detective tells the district attorney. For it is the district attorney, not the detective, who exercises the real power over the suspect's fate in the criminal justice system. It is the district attorney who will, at his complete discretion, decide whether and to what degree the suspect will be charged with the alleged offense. But how the district attorney reacts to the information the detective relays to him depends on what the suspect tells the detective. Following this suggestion, the detective may repeat several times that the suspect's degree of truthfulness and cooperation with the detective will determine how the district attorney approaches the case. An example from my field notes illustrates this point well:

Sergeant D tried to sell suspect B on the idea that remorse was in his self-interest because the district attorney would go favorably on him if he was cooperative. Sergeant D drew out a little box chart on a piece of paper and said that the district attorney would, for example, X the 90-months box if the suspect did not cooperate, but only X the 10-month box if he did. That if the district attorney thought suspect B was full of shit, he wouldn't think twice about pressing for the maximum sentence. The district attorney's decision, then, was dependent on suspect B's honesty and cooperativeness, especially since suspect B won't be clogging up the judicial system and he will be taking responsibility for his actions, Sergeant D told him.

Detectives are careful to qualify their appeals and make no explicit promises of leniency, but what the detective communicates to the suspect is, in effect, a hint or suggestion of leniency in exchange for truthful cooperation. If the detective believes the suspect is lying, the detective will conjure an image of the district attorney as a cynical and punitive figure, who has heard every cock-and-bull story enough times to know when an accused suspect is lying and when he should be "charged to the max." On the other hand, if the detective believes the suspect is telling the truth, he will conjure an image of the district attorney as an understanding and forgiving person who realizes that reasonable people sometimes make mistakes. An example from my field notes involving a single woman accused of theft:

Sergeant O reiterated that the D.A. wants to deal with these cases quickly and efficiently, that the D.A. is going to look at the kids and that will work in her favor. You've got two kids and you don't have a violent past, he told her. Sure, you've made some mistakes. But we all make mistakes. You're not a bad person. You have two kids, we understand. You're just trying to help them. We're not going to chastise you. We're not looking at something major. The D.A. isn't going to throw the book at you if you're honest. . . . The district attorney will understand, but you need to come clean and become completely truthful with us.

How the district attorney perceives the suspect and views the case, the detective informs the suspect, thus depends on what the suspect tells the detective. If the suspect is speaking truthfully, the detective states he will put in a good word to the district attorney.⁹ In another example from my field notes:

The detective pointed out to the suspect that he didn't believe this was the whole truth, emphasizing to her the seriousness of the crime (a felony armed robbery) and pointing out again, amid her denials, that he was here to get her side of the story and to bring it to the D.A. He told her he can go a number of ways: that he could make her a principal, which would make her just as guilty as the guy who did the robbery; or he could make her an intimate witness, which essentially reduced her involvement to that of an eyewitness, but that she needed to tell the truth.

But the district attorney remains an abstraction to many suspects, even suspects who have traveled through the criminal justice system many times. The detective's next strategy may be to invoke the sensibilities and powers of a hypothetical judge and jury against which to evaluate the plausibility of the suspect's claims. In the detective's persuasive appeals to his expertise, to the weight of the incriminating evidence (whether real or fabricated) against the suspect, or to the suspect's self-interest, the detective may repeatedly conjure images of the judge and jury as future questioners of the suspect's motives and integrity unless he comes clean and admits to his crimes in the present. If the detective believes the suspect is not speaking truthfully, the detective portrays the judge as a stern and unforgiving figure, who, like the district attorney, is cynical about defendants who plead their innocence despite overwhelming evidence of their guilt. For example, in one audio-recorded interrogation that I observed, the detective told the suspect:

You know a thing the judge takes into consideration for sentencing is remorse or guilt in the person who did the crime. And somebody who doesn't feel sorry for what happened, who doesn't feel remorseful for what happened, the judge is going to feel they really need to be punished. They can't admit to what they did, that it was wrong, that they made a mistake. But this person didn't think he did anything wrong. I guess we'll just lock him up because he didn't do anything wrong. Or they say, look he knows he made a mistake, he knows he did something wrong.

Unlike the district attorney, however, the suspect realizes (or is told) that the judge carries sentencing powers. Although he

⁹ There is a parallel here to how Blumberg (1967:29) describes the defense attorney's attempt to sell a plea bargain to his client: "Since the dimensions of what he is essentially selling, organizational influence and expertise, are not technically and precisely measurable, the lawyer can make extravagant claims of influence and secret knowledge with impunity."

often intones these words and delivers this appeal in a friendly and sympathetic manner, the detective's intent is to raise the suspect's anxiety about the perceived negative consequences of failing to provide the detective with inculpatory admissions.

Detectives, however, appeal more to juries in their persuasive efforts than to either the district attorney or the judge, perhaps because of the popular, and sometimes quite vivid, representations of the jury in American cinema. Detectives typically portray juries, *in their role as fact-finders*, as reasonable people who judge the suspect's credibility based on the consistency and plausibility of his denials; however, detectives also typically portray juries, *in their role as adjudicators of guilt*, as angry about high levels of crime in our society and as especially punitive toward dishonest and remorseless defendants. In one audio-recorded interrogation I observed, for example, the detective made the following appeal:

DETECTIVE: If you take this to a jury trial, they're going to hit you hard. They're going to slam you real hard. He's trying to lie to us, he must think we're stupid. Ladies and gentlemen of the jury, we have the evidence that shows he broke the window. He says "no, I didn't do it." Now do you want to be lenient with this guy?

The suspect interjects: No, I'm not going to go for this one.

DETECTIVE: Fine, we'll take it to a jury trial, but they're going to say he's guilty, he's guilty. You had a chance to tell the truth. They'll say: he had a chance. The sergeants talked to him and gave him an opportunity to explain how it happened, to give his side of the story, and what did he do? He lied. That's what he's going to say. He's going to say you lied. You had a chance to tell the truth but you lied. That's exactly what he's going to say.

With these images in place, the detective may repeatedly ask the suspect how he or she plans to prove their innocence to the jury in light of the evidence against them; or how the suspect expects the jury to react to his obviously inconsistent or contradictory alibi; or how the suspect expects the jury to treat an obviously guilty defendant who refuses to be truthful about or acknowledge responsibility for his actions (oftentimes the detective has caught the suspect in a lie and repeatedly uses this fact to challenge the suspect's perceived integrity in the eyes of the imagined jury unless the suspect comes forward with the whole truth); or what the suspect would do if he were in the jury's shoes and the facts were as the detective believes (and everyone else will also believe) them to be. An example from my field notes:

Sergeant O constantly evoked images of the judge and jury, suggesting that they would be very sympathetic to a remorseful defendant who said he was wrong and wouldn't do it again. He pointed to examples of people who admit they are wrong and don't get punished as severely, if at all, as a result, examples ranging from his son to a famous senator who recently did this.

He contrasted this with the jury acting out of fear of being robbed themselves and feeling indignation at what was done and thus giving a higher sentence if the defendant didn't confess and admit his wrongdoing. The jury, he said, wants to hear remorse, not that he isn't guilty.

Another example from my field notes:

They told her that she was digging a hole for herself, but she said the judge could make that decision. No, they said, a jury of 12 people, all of whom would be told the same thing, would be making that decision. With all the evidence against her, they said, she would not have an easy time proving her innocence to them.

Sometimes a detective poses these appeals to the suspect as questions; other times, the detective may state the question and then supplies its answer to the suspect.

Through the use of these appeals, detectives often effectively reverse denials and elicit admissions, for they exploit not merely the suspect's trust but, like any good confidence operator, the mark's ignorance as well. To be successful, this confidence trick necessarily relies on the ignorance of its victim. For the detective can only persuade the suspect that his best interests dictate confessing if the suspect actually believes (or comes to believe) that he must prove his innocence to a jury; in fact, however, the prosecution bears the entire burden of proving the suspect's guilt in a criminal proceeding. Nor could this confidence trick succeed if the suspect realized that, despite the dramatic images of testimony and cross-examination, virtually all criminal cases never see the light of a jury trial but are instead resolved by backroom plea bargaining.

Perhaps most fundamentally, however, this confidence trick can only work if the detective mystifies the real nature of his relationship to the suspect. Although the suspect may convince a detective of his innocence and earn his subsequent release, it remains true that in most instances the detective is not a friend or protector of the suspect any more than he is a neutral fact-finder. In the adversary system, the purpose of the interrogation is, for the most part, to incriminate rather than to exculpate the criminal suspect. The suspect who admits to his crimes naively believes that by confessing to the interrogator his situation will be improved or that he will feel better or that this is the first step in turning his life around or that his family and friends will treat him with greater respect. The suspect may also confess out of a sense of obligation and reciprocation to the detective, who is offering to help him out.

Of course, some suspects are con-wise enough to see through the detectives' confidence tricks and scripted performances, just as some potential marks see through the guises of the con artist. The suspect may, for example, remind the detective that he

doesn't have to prove his innocence to the police; or tell the detective that confessing will only earn him a prison sentence; or insist that he will prevail if his case is taken to a jury trial. And, of course, some suspects choose not to speak to the police altogether. Although the skillful interrogator is a confidence artist par excellence, he operates at a double disadvantage that distinguishes him from his real-world counterpart. First, unlike the confidence man, the detective does not get to choose his victims. Second, *Miranda* requires that the detective forewarn the suspect of the confidence game of police interrogation prior to its inception: "Anything you say can and will be used against you in court of law" flatly announces to the suspect that the detective's purpose is to incriminate him. Moreover, the suspect is told that he may remain silent and is entitled to state-appointed legal representation before any questioning. The language of "rights" implies that he is in control, since the detective cannot begin any questioning without his permission. In addition, some states, like California, undermine the confidence game of police interrogation even further by excluding confessions if the *Miranda* waiver was obtained after a softening-up period of 15 to 20 minutes (*People v. Honeycutt* 1977). Ironically, once *Miranda* is negotiated, police interrogation, like any confidence scheme, becomes fundamentally an exercise in softening up the victim.

Most suspects who confess, however, do not appear to see through the con. The detective has treated the suspect in a polite, sympathetic, and sincere manner. Moreover, the detective, who embodies the authority of a police officer even if he is attired in civilian clothes, has convinced the suspect that he was acting in his best interest and thus doing the right thing when he confessed to his crimes. In exchange for the suspect's inculpatory admissions, the suspect received the hope of a better situation, perhaps even the promise of a better life. He has just been conned. The next step in the police interrogation, as in the classic confidence game, thus involves cooling out the suspect so that, having incriminated himself in the most fundamental and damning manner possible, he remains convinced (if only for a short while) that he did the right thing. For eventually the suspect will realize that he has been conned—whether this occurs immediately after he made his admissions; or when he is returned to jail and contemplates the significance of what just happened; or when he first speaks to the public defender's office and is chastised by his attorney for waiving his *Miranda* rights. Another example from my field notes:

The detective asked the suspect why he "fessed up" to this at the end of the interrogation. The suspect remarked, "I've been conned." "No," the detective responded, "You've just been tricked into telling the truth."

Apart from common tactics, there remains another striking parallel between confidence men and police interrogators: they both hold deeply cynical views of human nature that allow them to rationalize their manipulation and deception. Confidence men perceive the world as a Hobbesian jungle in which everyone strives for competitive advantage. Says one confidence man: "I make the assumption that everyone I meet is a lying dirty son-of-a-bitch not worth shit. Only once in a while am I disappointed—surprised—when they're not" (Blum 1972:42). Says another: "The victim, after all, is just another con man too" (*ibid.*). Confidence men thus perceive that the only difference between themselves and their victims is that they are acting a part, whereas their victims are "going for real." "There's really no such thing as a con artist because that distinguishes the con from the victim. But the victim is as guilty as the other" (*ibid.*, p. 46). Through such incantations, the confidence man absolves himself of any moral responsibility for his trust violations and betrayals. An aristocrat in the world of criminals, the confidence man recasts his identity as normal and his activity as socially useful.

Like confidence men, police interrogators also maintain a generally cynical, if dualistic, view of human nature. It is a truism among detectives that all suspects lie; as one detective told me, "you can tell if a suspect is lying by whether he is moving his lips." Detectives perceive their suspects as typically corrupted (sometimes violent) and remorseless individuals who, given another opportunity, would unhesitatingly repeat their criminal acts. Though no detective would describe a suspect as a "lying dirty-son-of-a-bitch not worth shit" during a taped interview, they sometimes referred to their suspects in similar language in informal conversations with me or with one another. Like the confidence man, then, the police interrogator morally absolves himself from responsibility for his deceptions, manipulations, and betrayals by pointing to the character or the actions of his suspect. Just as the confidence man views his mark as no more than a con artist who is merely "going for real," so too do interrogators believe that the criminal suspects they interrogate are no more than hardened liars, manipulators, and criminals. Ironically, then, police interrogators, like confidence men, often justify their own behavior as simply mirroring the behavior of their victims.

Moreover, just as a confidence man believes that no honest person can be cheated by his tricks, so too do contemporary police interrogators believe that no innocent person can be tricked into falsely confessing by their techniques. These beliefs, central to the respective folklores of both the confidence game and police interrogation, are frequently offered to rationalize the confidence operators' or police detectives' deceptions. They are myths, however. Honest people are, in fact, sometimes swindled by con-

confidence tricksters, just as innocent suspects sometimes do, in fact, falsely confess to police as the result of psychologically sophisticated interrogation techniques (Leo 1995a; Parloff 1993; Gudjonsson 1992; Ofshe 1989). Virtually all of the police detectives in my study, however, denied the possibility of false confessions, and were altogether ignorant of recent, documented cases of false confessions to police.¹⁰

E. Cooling Out the Suspect

Once the confidence game is completed, the mark needs to be cooled out, so that he doesn't threaten retribution or notify the police. Always careful to leave the mark with some funds to continue his business or occupation, the confidence man may, for example, convince the mark that the swindle was his fault all along or that complaining to the police would reveal his own criminal motives as a culprit and co-conspirator. A cliché among confidence men is that "you can't cheat an honest man," with the corollary that "every mark has larceny in his heart." The confidence man rationalizes his violation of trust by blaming the greed and stupidity of his victims, and thus displays no remorse for the advantage he has taken of them or for his act of betrayal. The mark, after all, yielded to the blandishments of the con game. The mark tried to get something for nothing. Not only do the overwhelming majority of victims decline to file complaints to the police, but many victims return to the confidence man only to be beaten again (Blum 1972:37).

The criminal suspect who makes an inculpatory admission or confesses to the police is subsequently cooled out not because the detective fears retribution or that the suspect will file a complaint against him. Rather, the detective cools out the suspect because he wants the suspect both to accept responsibility for his actions and to leave the interrogation room certain in his belief that confessing to the police was the best course of action. The cooling-out phase of interrogation is essentially an exercise in positive reinforcement and morale-building. It serves not only to

¹⁰ For example, the Laconia detectives were not aware of the widely publicized false confessions of Paul Ingram (Wright 1994), Tom Sawyer (Yant 1991), the Phoenix Temple Four (Parloff 1993), or Peter Reilly (Connery 1977). Moreover, Laconia detectives almost certainly extracted a false confession from a murder suspect in a high-profile case a decade ago. In December 1984 Laconia detectives interrogated Bradley Page, a college student, for 9 hours. The Laconia homicide detectives repeatedly lied to and manipulated Page, who was in shock from the news that his girlfriend had been found murdered only 12 hours earlier. The detectives convinced Page to imagine a scenario in which he could have killed his girlfriend, and the result was a vague and speculative confession that was contradicted by all existing evidence. Solely on the basis of this dubious confession, Page was convicted—after two trials—of voluntary manslaughter and sentenced to six years in prison. Despite the consensus among academic experts that Page was almost certainly innocent, Laconia detectives adamantly deny even the possibility that Page could have falsely confessed (Leo 1995a; "Eye to Eye" 1994; Wrightsman & Kassin 1993; Pratkanis & Aronson 1991; Page 1990).

reassure the suspect who has just incriminated himself but also to leave him with a favorable impression of both the interrogation and the police. For, as every detective knows, once the suspect obtains counsel, he will challenge the legality of his confession statement both at the pretrial *Miranda* and the pretrial evidence suppression hearings. In addition, the defense attorney will privately chastise his or her client for speaking to the police, reminding the suspect of the literal words of the *Miranda* warnings, as well as the adverse significance of confessions.

The cooling-out phase of police interrogation consists of complimenting the suspect for his actions and then portraying the confession in its best possible light. Following the suspect's initial admissions, the detective will repeatedly thank the suspect for his honesty and cooperation, perhaps even underscoring the suspect's virtuous behavior by favorably contrasting him to other suspects the detective has questioned. Trying to psychologically soothe the suspect during his admission, the detective emphasizes that the suspect just made a simple mistake, which was understandable under the circumstances, "but owning up to it is what is important." Following one confession I observed, for example, the two interrogating detectives "pointed out to the suspect that everybody made mistakes, and they complimented her for cooperating with them, admitting her mistake, and then trying to do the right thing. She was not a criminal, they said, just someone who happened to get involved in a bad situation." Consistent with his feigned role as the suspect's friend, the detective cools out the suspect by writing up the confession in a neutral tone that emphasizes the suspect's remorse. The detective may, for example, write in the confession statement that the suspect realizes what he did was wrong, is sorry for his actions, and will not repeat them. To excerpt my field notes from the same interrogation:

[D]uring the taped statement they asked her questions in such a way as to put her motive and intent in its best possible light. "Isn't it true that you didn't premeditate this but did it on the spur of the moment?" or "isn't it true that you feel bad about what you did, you know it was wrong, and you won't do it again?" . . . They emphasized that she was remorseful, that she didn't want to hurt anyone, and that when she realized what she did was wrong, she "tried to fix it by making as few waves as possible". . . The detectives assured her that they understood her plight and would relay it to the district attorney.

The detective may, once again, tell the suspect that the district attorney, judge, and jury will weigh his truthfulness and good character when evaluating the case against him, once more implicitly suggesting a hint of leniency or reward for the suspect's cooperation. The detective may also tell the suspect that he will press the district attorney to drop one of the collateral offenses

with which the suspect is charged, or perhaps even tell the district attorney that he believes the suspect should only be charged with a "lesser-included" offense. After the suspect reads over and signs the confession statement that the detective has just written, the detective walks the suspect back down to the jail, thanking him for his cooperation and wishing him well. The confidence game that is police interrogation has just been completed.

III. Conclusion: The Exercise of Power inside the Interrogation Room

The exercise of power inside the interrogation rooms occurs against a background of legal norms and procedures that frame the process of police questioning and establish its limits. For most of their history, American police interrogators have relied on force and duress to elicit confessions (Leo 1992). In 1936 the Supreme Court explicitly outlawed the use of violent police tactics (see *Brown v. Mississippi*), setting in motion a doctrinal revolution in the law of confessions that would culminate in *Miranda v. Arizona* some 30 years later. Intending to dispel the coercion that it believed to be inherent in custodial police questioning, the Supreme Court in *Miranda* required across-the-board pre-interrogation constitutional warnings, thus laying down a prospective rule that, for the first time in American history, created universalistic standards for the legal regulation of police interrogations. While *Miranda* appears to be partly responsible for the dramatic decline in coercive questioning practices in the 20th century, American police have responded to the *Miranda* requirements by developing sophisticated interrogation strategies that are grounded in manipulation, deception, and persuasion. These new methods appear to be just as effective as the earlier ones that they have replaced (Leo 1994a, 1992; Hart 1981).

That contemporary American police interrogation resembles the structure and sequence of a classic confidence game helps us understand not only why custodial suspects waive their *Miranda* rights and admit to wrongdoing in such high numbers but also how police power is exercised inside the interrogation room. As we have seen, contemporary interrogation strategies are based fundamentally on the manipulation and betrayal of trust. Like confidence men, police interrogators attempt to induce compliance from their suspects by offering them the hope of a better situation in exchange for incriminating information. The interrogator exercises power through his ability to frame the suspect's definition of the situation, exploiting the suspect's ignorance to create the illusion of a relationship that is symbiotic rather than adversarial. In the exercise of his power, the interrogator relies on a series of appeals that mystify both the true nature of the

detective's relationship to the suspect and the true extent of his influence with other actors in the criminal justice system.

Yet the detective's power in the interrogation room appears on equal footing with that of the suspect's. After all, the interrogator can only interrogate if, and to the extent that, the suspect consents to questioning; and the interrogator must implore the suspect to buy the goods the interrogator is selling. No longer premised on force or duress, police power inside the interrogation room is based on, and limited by, the social psychology of persuasion. The logic of interaction becomes consensual. As its basis shifts from coercion to persuasion, police power becomes more diffuse, more relational, and more unstable. As Austin Sarat and William Felstiner (1995:11) have argued in the context of divorce, "[p]ower is seen in the effort to negotiate shared understandings, and in the evasions, resistances and inventions that inevitably accompany such negotiations."

Miranda's revenge, however, has been to transform police power inside the interrogation room without undermining its effectiveness. Not only have the *Miranda* warnings exercised little or no effect on confession rates (Schulhofer 1996; but see Cassell 1996), but police have also embraced *Miranda* as a legitimating symbol of their professionalism (Leo 1994a). *Miranda* warnings symbolically declare that police take individual rights seriously. At the same time, *Miranda* inspired police to create more sophisticated interrogation strategies, effectively giving them the license to act as confidence men and develop their skills in human manipulation and deception. In ways not captured by doctrinal analysis, *Miranda* has changed profoundly both the psychological context and the moral ordering of police interrogation. Driven by careful strategic considerations, police interrogators exercise power by manipulating custodial suspects' definition of the situation and of their role; by creating the appearance of a symbiotic rather than an adversarial relationship; by appealing to their insider knowledge and expertise; and by exploiting the suspects' ignorance, fear and trust. Despite the universalistic pretensions of *Miranda*, the exercise of police power inside the interrogation room rests more on particularistic appeals than on universal norms. That contemporary police interrogation resembles both the method and substance of a classic confidence game—and thus has become manipulative and deceptive to its very core—may be *Miranda's* most enduring legacy.

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