

Arresting and Convicting the Innocent: the Potential Role of an “Inappropriate” Emotional Display in the Accused[†]

Wendy P. Heath, Ph.D.*

Research from both simulated and actual jurors has demonstrated that the defendant’s emotional display can influence legal decisions. The purpose of this paper is to review the evidence regarding the influence of the defendant’s emotional display, and to consider the potential role of suspect and defendant emotion in wrongful convictions. It is possible that the lack of “appropriate” emotion during questioning or interrogation may lead investigators to create a mind-set that the suspect is the guilty party; as a result, they may be less inclined to investigate other leads. During a trial, the defendant’s perceived level of emotion can potentially mislead jurors (e.g. a defendant displaying a low level of emotion leading people to believe, inappropriately, that he is guilty). After a review of the pertinent literature and examples of relevant cases, reasons are provided regarding why one’s emotional display may be of limited diagnostic value. Future research ideas are proposed in an effort to determine more definitively the impact of the emotional display of the accused on legal decisions. Copyright © 2009 John Wiley & Sons, Ltd.

Consider the case of Ronald Cotton. After his rape trial, a juror responded in a post-trial interview that the defendant’s complete lack of emotion over the eight day trial made him look guilty (Loeterman, 1997). Cotton was convicted and sentenced to life in prison. After more than 10 years in prison, Cotton was exonerated with the help of DNA evidence. We do not know how much of an impact Cotton’s lack of emotion had on the jury’s decision, but it does seem apparent that his absence of emotion misled at least one of the jurors in his trial. Judging from her comment, this juror expected to see a display of emotion, perhaps as a sign of remorse. But Cotton was innocent; why would an innocent person show remorse? Clearly his lack of emotion should not have been used as an indicator of guilt. Have others been

*Correspondence to: Professor Wendy P. Heath, Ph.D., Rider University, Psychology Department, 2083 Lawrenceville Road, Lawrenceville, NJ 08648, U.S.A. E-mail: heath@rider.edu

[†]I would like to thank the editors of this volume, an anonymous reviewer, Saul Kassin, Ed Diener, Bruce Grannemann, and Elaine Scorpio for their helpful comments.

similarly misled? The purpose of this paper is to review the evidence regarding the influence of a defendant's emotional display on legal decisions and to consider the potential role of suspect and defendant emotion in wrongful convictions.

Why would the perceived emotion level of a suspect or defendant affect legal decisions? A strong emotional display (e.g. crying) could be taken as a genuine sign of remorse (Kottler & Montgomery, 2001), and a show of remorse affects judgments possibly because one who is sorry for having committed a crime may seem less deviant (Robinson, Smith-Lovin, & Tsoudis, 1994), less likely to reoffend (Adshead, 1998; Gold & Weiner, 2000; Pipes & Alessi, 1999; Proeve & Howells, 2006), and more likely to respond to treatment (Proeve & Howells, 2006; Wood, 2004) than one who is not sorry. Others have considered remorse as self-punishment (see, e.g., Ohbuchi, Kameda, & Agarie, 1989; Sarat, 1999); one must punish oneself (i.e. feel remorse) to compensate the victim and restore equity.

For reasons stated above, those making decisions within the legal system often wish to see remorse in a suspect or a defendant, and thus will attempt to determine whether the perceived emotional display is a genuine reflection of remorse. This determination can be seen as a task of credibility assessment or deception detection. In other words, observers evaluate whether or not the suspect can be believed. How adept are observers at identifying when deception is present? A brief review of the relevant research is warranted and will be presented next; special attention will be paid to the role of suspect/defendant emotion in such assessments.

THE DETECTION OF DECEPTION

When a suspect is initially brought in for questioning, an investigator will begin with a nonaccusatory interview. Inbau, Reid, Buckley and Jayne (2001) describe this process in their training manual entitled *Criminal Interrogation and Confessions*. During this interview the investigator will gather information from the suspect while evaluating the suspect's behavioral responses (e.g. facial expressions) in an effort to determine whether the suspect is being truthful or deceptive. After the initial questioning, if an investigator is "reasonably certain of the suspect's guilt," then the investigator begins the interrogation, which is accusatory in nature (p. 8).

With regard to the detection of deception, there are major concerns with the interview/interrogation process. One major concern is that researchers have consistently found that law enforcement personnel, like the average person, have little ability to detect deception (see, e.g., Ekman & O'Sullivan, 1991; Vrij, 2001). Observers often rely on various nonverbal cues to determine whether one is being deceptive (see, e.g., DePaulo et al., 2003, for a review), but there is no one behavior that liars exhibit reliably (see, e.g., Mann, Vrij, & Bull, 2002). In addition, although there is general agreement on what perceived behaviors can indicate deception (Global Deception Research Team, 2006), observers are often wrong in these judgments. For example, many believe that an avoidance of eye contact indicates deception (see, e.g., Global Deception Research Team, 2006), but deceivers do not avoid eye contact (see, e.g., Sporer & Schwandt, 2007). These incorrect beliefs have also been found in police officers (see, e.g., Akehurst, Köhnken, Vrij, & Bull, 1996). Even prior experience and the training that law enforcement officers receive (see Inbau et al., 2001) do not improve performance in detecting deception (Meissner &

Kassin, 2002). Police investigators also have been found to be quite confident about their accuracy judgments, significantly more so than student observers (see, e.g., Kassin, Meissner, & Norwick, 2005), and more so than students trained to detect deception (Meissner & Kassin, 2002).

Another major concern is that law enforcement officers who are experienced or trained in detecting deception have an increased likelihood of saying that a suspect is deceptive as opposed to truthful (Meissner & Kassin, 2002). Entering the questioning process with this expectation means that investigators are at risk for confirmation bias (see Lilienfeld & Landfield, 2008). In other words, biased investigators will seek out information that will support their hypothesis, and will likely ignore non-supporting information (see, e.g., Nickerson, 1998; Skov & Sherman, 1986). Thus, one with a bias toward seeing a suspect as deceptive will seek out information that suggests the suspect is deceptive. Indeed, Hill, Memon, and McGeorge (2008) found that expecting guilt rather than innocence in a suspect led mock investigators to generate and plan to ask more guilt-presumptive rather than innocence-presumptive or neutral questions (also see Kassin, Goldstein, & Savitsky, 2003). In addition, although the type of question (guilt-presumptive versus neutral questions) did not affect the confession rates in the study by Hill et al. (2008), participants who listened to audiotapes of the interviews perceived the suspects who were asked guilt-presumptive questions as more nervous, defensive and guilty. Of special concern, guilt-presumptive questioning led suspects to be judged as more deceptive, especially when they were innocent of any wrongdoing.

With regard to interrogation, Kassin et al. (2003) found that when people listened to tapes of student interrogators expecting guilt rather than innocence from student suspects, the interrogators were judged as exerting more pressure on the suspects, especially when those suspects were innocent. Exerting pressure on suspects during interrogation can lead to a confession, sometimes even a false confession (see, e.g., Kassin, 1997; Scheck, Neufeld, & Dwyer, 2000). Furthermore, investigators have been shown to presume that those who confess are guilty (Kassin et al., 2005), suggesting that the investigators may not be likely to question the legitimacy of a confession elicited during an accusatory interrogation.

A third concern in the detection of deception becomes apparent when one considers that suspects who are being questioned either by police or while in a courtroom are under stress, and investigators may misread emotional correlates of this stress. Lazarus (1999) refers to emotions such as anger, anxiety, fright, guilt, shame, and sadness as stress emotions, because they usually arise from stressful conditions.

There may also be behavioral manifestations of this stress, although note that researchers have found that many suspects do not appear to be nervous (i.e. appear fidgety and avoid eye contact) during questioning (see, e.g., Mann et al., 2002). The concern here is that people expect those deceiving to be nervous (The Global Deception Research Team, 2006), and thus behaviors that might be produced as a result of being in a stressful situation can be read inappropriately as deception. Inbau et al. (2001) seem to anticipate this concern, in that they acknowledge "it is not uncommon for innocent as well as guilty subjects to exhibit signs of nervousness when questioned" (p. 158). Inbau et al. (2001) indicate that the difference between the nervousness of the innocent and the guilty is the length of the time one is nervous. The innocent suspect is presumed to become more relaxed as he or she recognizes the nonaccusatory nature of the questioning, while the guilty suspect's nervous

demeanor does not weaken. However, the act being questioned by police can be a stressful event no matter how nonaccusatory the police attempt to be, and the act of being say, cross-examined by an attorney can be a stressful event no matter what the attorney's approach. For example, one can be nervous because of the possibility of erroneously being considered guilty (Inbau et al., 2001). In addition, recall that those experienced or trained in detecting deception have an increased likelihood of seeing a suspect as deceptive (Meissner & Kassin, 2002). As a result, the move to accusatory questioning may occur quickly, and the suspect may then not had much of an opportunity to "relax" before being thought of as deceptive. In any case, the emotional and behavioral manifestations of stress could be misattributed to deception designed to cover up an illegal action.

Pertinent to the topic of this article, Inbau et al. (2001) do give investigators some information regarding what to look for in the suspect in terms of emotion. Inbau et al. (2001) indicate that, during an interrogation, when a suspect is discussing a traumatic event, one should be suspicious if the suspect just includes a description of behaviors and does not include information about experienced emotions. The reason for this is that, according to Inbau et al. (2001), in truthful accounts, information regarding emotions is typically connected with experienced behaviors. Is there evidence for this? Certainly, a guilty person can provide information about experienced emotions if they experience remorse when thinking about actions taken (see, e.g., Scully & Marolla, 1984). However, one can provide information about experienced emotions and not be guilty; there is evidence that people can describe experienced emotions when "remembering" an event that did not happen to them or even become quite emotional about events that they have not personally experienced (see Laney & Loftus, 2005, for a review). In addition, one can appear emotionally disconnected while being interrogated because of being traumatized by the questioning (see Ortony, Clore, & Collins, 1988, for a description of being "cognitively anesthetized"). Inbau et al. (2001) refer to this as a "freeze response, wherein the person under stress experiences a feeling of numbness and emotional detachment" (p. 143). In fact, Inbau et al. (2001) say that there are two kinds of offenders. Specifically, "emotional offenders" feel remorse after committing an offense; one possible behavioral manifestation of this is that the suspect will become tearful during the interrogation. The "nonemotional offender," on the other hand, does not feel remorse and typically remains detached during the interrogation (p. 209). Inbau et al. (2001) themselves acknowledge that a common mistake many investigators make when formulating an interrogation strategy is to assume, based on the offender's criminal record or demeanor during the interview, that he must be a nonemotional offender. A problem here is that Inbau et al. (2001) have created categories that can capture every possibility (the suspect can be emotional or not), so if, as an investigator, you are looking for deception, you will likely be able to find it. The overall result is that an investigator's predisposition to see a suspect as deceptive during the initial questioning could lead to an accusatory interrogation; this in turn puts the suspect in danger of being coerced into providing a false confession (see Meissner & Kassin, 2002).

As for detecting deception in the courtroom, researchers have found that judges, like most others, detect deception at chance levels (e.g. Ekman & O'Sullivan, 1991). In fact, in the courtroom, those judging (i.e. the judge and jury) have a particular disadvantage as they typically can only view the face of one on the witness stand.

Facial cues are especially problematic as sources of information; because the face is more controllable, it is less likely to give away deception and may even provide misleading information (Ekman & Friesen, 1974). Thus, overall, at each decision point (i.e. during initial questioning, interrogation, trial testimony), an observer's ability to detect deception is far less than ideal. Thus, it seems reasonable to ask whether different levels of a suspect or defendant's emotional display (i.e. potentially seen as varying levels of experienced remorse) can lead to different decisions within the legal system. Although there is not yet a body of literature to consider regarding the influence of a suspect's emotional display during questioning/interrogation, there is evidence that, for defendants, an emotional display can have an impact. I shall now turn to the literature regarding the impact of perceived defendant emotion on legal decisions.

EFFECTS OF DEFENDANT EMOTION: EXPERIMENTAL EVIDENCE

Researchers have considered the impact of defendant emotion, particularly levels of sadness and distress, and have found evidence that defendant emotion can affect sentencing decisions.¹ For example, Robinson et al. (1994) found that those who read about a confessing defendant portrayed as either emotionally distressed or not distressed assigned sentences that were indirectly influenced by the defendant's emotion level (i.e., path analyses revealed that the defendant's emotional display changed the perception of the defendant and this, in turn, altered sentencing—see also Tsoudis & Smith-Lovin, 1998, 2001). Others have manipulated defendant emotion level to determine whether it can affect guilt ratings as well as sentence assignments. More specifically, Heath, Grannemann, and Peacock (2004) found that a stronger display of emotion (the defendant's voice and expression suggested sadness/distress as previously identified in research—e.g. Izard, 1977) from a testifying defendant was associated with a lower proportion of guilty verdicts and shorter sentence assignments when evidence was weak as opposed to strong. Path analyses in this case revealed that defendant emotion indirectly affected defendant guilt level decisions—the emotion had an effect on perceptions of the defendant (e.g. her honesty level) and this, in turn, affected perceptions of guilt. Salekin, Ogloff, McFarland, and Rogers (1995) also found that the defendant's emotion level had an impact on decisions regarding guilt; participants perceived a female defendant as more guilty when she displayed high affect (excessive crying even when talking about unemotional matters) or flat affect and less guilty when she displayed moderate affect (crying) while testifying.

EFFECTS OF DEFENDANT EMOTION: SURVEY EVIDENCE

There is also evidence, obtained from *actual* jurors, that a *perceived* show of or lack of defendant remorse can influence sentencing decisions. For example, Sundby (1998)

¹ I am focusing on research in which defendant emotion has been varied (often to represent the presence/absence of remorse), thus I am leaving out research such as that by Kleinke, Wallis, and Stalder (1992) and Rumsey (1976) who manipulated remorse without a corresponding display of emotion.

examined data from the Capital Jury Project and reported that the defendant's degree of remorse significantly affected the decisions of many who had imposed life or death sentences. Note that the jurors in Sundby's dataset were "informed" about the defendant's level of remorse mostly from watching the defendant's demeanor (e.g. a lack of displayed emotion) while in the courtroom (most of the defendants in Sundby's sample did not testify). Interestingly, many of the jurors in Sundby's sample who had imposed the death penalty said that if the defendant had shown some remorse they might have voted for a life sentence instead. Others have found similar results (e.g. Eisenberg, Garvey, & Wells, 1998; Garvey, 1998; Geimer & Amsterdam, 1988).

Thus, we have real-world evidence that displays of or lack of defendant emotion, presumably as perceived remorse, potentially can affect sentencing decisions. Some would argue that it is appropriate, once guilt has been established, to determine whether the offender is sorry for committing the act; a show of remorse can then reasonably lead to a mitigation of punishment (see, e.g., Sarat, 1999). However, have *actual* jurors' verdict decisions been affected by the defendant's emotional display, and more importantly, given the goals of this paper, have verdict decisions been *inappropriately* affected by defendant emotion? Interestingly, when Eisenberg et al. (1998) interviewed jurors from capital cases, they found that "defendants who insisted that they had no role in the crime did not fare well" as they were not seen as remorseful (p. 1616). It is within the realm of possibilities that the defendants denying guilt could have been innocent.

ACTUAL CASES: THE INFLUENCE OF THE SUSPECT'S EMOTION BEFORE THE TRIAL

Most of the research, what little of it there is, has focused on the possible influence of defendant emotion during the trial or sentencing. I will now consider the role emotion has potentially played in real cases, specifically in decisions made before the trial.

Can a suspect's perceived emotion level make authorities suspicious even during initial questioning?² The details from the case of Michael Crowe suggest that this can happen. Fourteen year old Michael Crowe and two of his friends were charged with the murder of Michael's 12 year old sister, Stephanie. According to media accounts, Michael Crowe was "oddly unemotional" with regard to his sister's death, a point that made detectives suspicious of Michael's involvement in the murder (see, e.g., Sauer & Wilkins, 2002). Although Michael confessed after two long interrogation sessions (a confession that was later ruled as inadmissible), charges against Michael and his friends were dismissed a year later when DNA testing revealed that drops of Stephanie's blood were on a sweatshirt worn by Richard Tuite, a transient who had been seen in the neighborhood on the evening of the crime. Tuite was ultimately convicted of Stephanie's murder (Moran, 2004).

Also consider the case of Jeffrey Deskovic. He was only 16 years old when he became a suspect after a classmate was murdered. Media accounts indicated that Deskovic's level of emotion shortly after the victim's death was influential (see, e.g., Berger, 2007); police saw him as "overly distraught" (see, e.g., Santos, 2006,

² I would like to thank Saul Kassin for bringing this issue to my attention.

paragraph 17). Deskovic allegedly confessed after being interrogated. Amazingly, analysis of the crime scene DNA had revealed that Deskovic was not the source of the semen, but the prosecution continued with the case because of Deskovic's alleged confession. After spending 15 years in prison, his conviction was overturned; with the help of the Innocence Project, a comparison of the obtained DNA with DNA from the New York state databank revealed the true killer (Crocker Snyder, McQuillian, Murphy, & Joselson, 2007).

Gary Gauger's case is also relevant. After his parents were murdered, Gauger quickly became a murder suspect. Again, there is reason to believe that emotion had an influence on the investigators. The press reported that Gauger's "voice was flat when he called 911 to report finding his father in a pool of blood... But what bothered the cops was the son's reaction: He quietly tended to his tomato plants as they investigated" (Shapiro, 1998, paragraph 1). Gauger was convicted and sentenced to die. He spent over three years in prison (with 8 months on death row). Two members of a motorcycle gang were later found to be responsible for the murders of Gauger's parents ("Gary Gauger was sentenced").

Crowe, Deskovic, and Gauger were all cited as having inappropriate emotion before trial, and they were all innocent of the crimes of which they were accused. As previously mentioned, investigators have a bias of seeing people as deceptive (Meissner & Kassin, 2002); the lack of 'appropriate' emotion in these cases could have acted to confirm what the investigator already suspected. Thus, as a result of a confirmation bias, as discussed earlier, the investigators may have been less inclined to investigate other leads. Indeed, investigators who considered "what went wrong" in the Deskovic case concluded that "all investigation ceased after police obtained Deskovic's purported confession" (Crocker Snyder et al., 2007, p. 5). Also of interest, Ray and Kassin (2007) have early evidence that suggests that a suspect's perceived level of emotional response during an interrogation might serve to increase the influence of a confession otherwise seen as flawed.

ACTUAL CASES: THE INFLUENCE OF DEFENDANT EMOTION DURING THE TRIAL

There is also anecdotal evidence that a defendant's perceived level of emotion *during trial* can impact views of a defendant. Ronald Cotton's case as already reviewed is relevant here. Marty Tankleff's case is also worth mentioning here. Tankleff was 17 when he called police to report that his parents had been attacked. His mother was dead when police arrived, but his father was comatose and would remain so for several weeks before dying. The police brought Marty Tankleff in for questioning. The lead detective later said he had become suspicious in part because Tankleff was extremely calm and not crying; years later, a reporter asked Marty Tankleff's relatives "Does anyone here think it was odd that Marty wasn't very emotional?". The answer? "No, that's his way; this is the way he is" ("More From Tankleff's Family"). During Tankleff's interrogation, an investigator deceptively told Tankleff that his father had been brought out of the coma and had said that Marty had attacked him. Tankleff wondered if he had blacked out and thus didn't remember killing his parents (Lambert, 2006). He then confessed, although he never signed the confession that the detective had written, and later recanted. Tankleff was convicted

and sentenced to 50 years to life. He spent 17 years in prison, his conviction only recently vacated by the New York State Supreme Court (Vitello, 2008). This case is relevant to the current issue because some of the jurors in this case said that Tankleff's lack of emotion during testimony regarding the murder of his parents affected their decision to convict (Springer, 2002). Interestingly, in a recent interview, one of Marty's relatives said that the "attorney told all of us not to show emotion" ("More From Tankleff's Family"). Did Ronald Cotton's and Marty Tankleff's lack of emotion really influence the jury? Should a defendant's perceived emotion level influence a jury?

A LACK OF EMOTION: WHAT DOES IT SIGNIFY?

Previous research and anecdotal evidence suggest that one's emotional display, perhaps as an indicator of remorse, can influence how one is viewed. Even though a display of emotion might lead to more favorable views, suspects/defendants sometimes do not display emotion. For example, finding a capital defendant who shows remorse is unusual (Sundby, 1998). Why is this? There are many possible reasons why the accused might not appear to show remorse. One reason, of course, is that the person is guilty and does not feel sorry for what he or she has done. It is also possible that defendants experience emotional evanescence, a weakening of one's emotional reaction over time (Wilson, Gilbert, & Centerbar, 2003), as there is often a lengthy delay between the crime and the trial. A defendant may not appear to show remorse during trial because he or she is worried that the jury will not see it as sincere (see Sundby, 1998). But there are other possible reasons, reasons that can be experienced by one who is guilty or innocent. One may not appear to show remorse because one generally is subdued; affect intensity tends to be an individual difference characteristic (see, e.g., Gohm, 2003; Larsen & Diener, 1987). A suspect or defendant may not appear to show remorse during a schizophrenic episode (i.e., the individual has flat affect—American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, 1994) or as a result of brain damage (see, e.g., *North Carolina v. Shytle*, 1989). Of course, one's level of displayed emotion may also be affected by medication (Perlin, 1994; Zientek, 1992); many defendants take powerful psychotropic medication (see, e.g., Engebretsen & Olson, 1975). There is something else to consider. Being accused of wrongful conduct can be stressful (Halleck, 1990; Strasburger, 1999), and an absence of emotion may be a response to this stress; as mentioned previously, Ortony et al. (1988) refer to this type of reaction as being "cognitively anesthetized" (p. 62). Indeed, defendants have been noted as indicating that they felt numb throughout their entire trial (Slovenko, 2006, p. 417). These are just some of the possible reasons why one is not showing emotion; there are others (see, e.g., Vingerhoets, Cornelius, Van Heck, and Becht (2000) for more information about factors (e.g. culture) that may inhibit crying).

Within this issue is an interesting irony: those who are innocent can ultimately spend more time in prison because of their "unwillingness" to show remorse. Take the case of Jimmy Ray Bromgard. At the age of 18, he was convicted of raping an 8 year old girl. He insisted he was innocent. The judge said that this insistence suggested a lack of remorse and gave him a 40 year sentence. While in prison, Bromgard refused to attend group therapy sessions for sex offenders and the parole

board cited this refusal as their reason to deny his application for early release. After 14 years in prison, Bromgard was exonerated by DNA evidence. He had spent a longer time in prison than he probably would have had he been guilty. Calvin C. Johnson Jr. also refused to admit guilt for a rape he did not commit. He too was turned down by a parole board that wanted him to admit guilt in a therapy program for sex offenders. He too was exonerated with the help of DNA evidence; he was released after 16 years in prison (Liptak, 2002).

A DISPLAY OF EMOTION: WHAT DOES IT SIGNIFY?

Here is another scenario to consider. Say the suspect/defendant appears remorseful. How is this to be interpreted? There are at least four possibilities: (1) the person feels sorry for what he or she has done, (2) the person feels sorry for being caught, (3) the person is feigning his or her emotional display, attempting to show an unfeigned remorse, and (4) the person is responding to the stress of the challenging situation (see Lazarus, 1999, for more on stress-related emotions). I offer these explanations because it illustrates further the need for uncertainty when reading and judging emotion.

THE ROLE OF EXPECTATIONS FOR EMOTION

Researchers have found that people have expectations for others' emotional expressions, and providing emotional displays that are incongruent with expectations can diminish one's credibility. Within a legal context, this issue has been examined most often with regard to the expectations for victim emotion. For example, Kaufmann, Drevland, Wessel, Overskeid, and Magnussen (2003) presented participants with a videotaped actress portraying a rape victim who testified with expected emotions (e.g. despair), unexpected emotions (e.g. smiling) or neutral emotions (e.g. flat affect). The type of emotional display affected witness credibility and guilt ratings (the witness was rated less favorably when she displayed neutral or unexpected emotions). Similarly, Baldry and Winkel (1998) and Baldry, Winkel, and Enthoven (1997) found that police officers saw emotional rather than non-emotional victims as more credible. Gary Dotson's case is also relevant here. Six years after Dotson was convicted of rape and aggravated kidnapping, the victim recanted. The judge rejected her recantation, saying that her initial demeanor (i.e. on the night she reported the rape) was consistent with a person making a sincere charge of rape (Sawyer & Kalsmanson, 1985). After 8 years in prison, Dotson was exonerated after DNA revealed that he had not raped the victim ("Ryan pardons Gary Dotson," 2003).

Researchers have only recently considered what the expectations are for defendant emotion. This research reveals that people have specific expectations for both the strength and type of emotions that a defendant will show, and that these expectations change as a function of social context (see Warner & Shields, 2007, for support for this position). Specifically, Heath, Grannemann, and Grohosky (2007) found that guilty defendants were expected to be or appear less sad and more nervous than those not guilty. In addition, a relationship between the defendant and victim altered expectations. For example, those accused of killing a spouse versus a stranger

were expected to be or appear more unhappy, angry, and outraged when not guilty than when guilty.

Thus, recent research suggests that people have expectations of what type and level of emotion to expect from those who have suffered the death of a spouse. Indeed, in some of the cases detailed above, the suspect was accused of the murder(s) of someone he knew (a family member or acquaintance), and investigators became suspicious when the suspect's emotional response was not as expected. Are emotional reactions to these tragedies valid as police investigatory tools? One way to consider this issue is to look at what researchers have found regarding grief responses. Many, in fact, have found that grief reactions are highly varied (see, e.g., Zisook & Shuchter, 1985), with some experiencing significant alterations in functioning and others showing little or no explicit signs of grief in the early months after a loss. More specifically, in a review of the grief experience, Bonanno and Kaltman (2001) found that as few as 15% or as many as 50% in those sampled were categorized as showing minimal grief. Why the variation? DeVaul, Zisook, and Faschingbauer (1979) cite "the bereaved's psychosocial and cultural backgrounds, . . . personality, the abruptness and importance of the loss, the nature of the bereaved's relationship with the deceased and the existing social support network" as possible reasons for individual differences in grief experience (p. 393). Pertinent to the current work, Zisook and Shuchter (1985) found that 52% of widows and widowers were tearful in the first year after their spouse's death, with tearfulness significantly declining over the subsequent three years. In addition, Zisook and Shuchter (1985) found tension, feelings of restlessness, irritability, and anger to be about as common as depression and tearfulness in recently widowed persons, and 11% of those widowed in the study by Zisook and Shuchter (1985) experienced numbness during that first year after the death of a spouse. Thus, consider, as an example, the newly widowed suspect who is being interrogated. If grief reactions are indeed varied as researchers have found, then it follows that looking for particular emotional reactions in these suspects would not be appropriate.

The area of affective forecasting is relevant to the issue of expectations regarding the accused's expressed emotion. The term "affective forecasting" was coined to refer to "people's predictions about their future feelings" (see, e.g., Wilson & Gilbert, 2003, p. 346); some have extended this idea to predictions about others' feelings (see, e.g., Blumenthal, 2004; Igou, 2008). Forecasts have been divided into four components, each of which can be predicted. Specifically, one could predict the valence of future emotions, the specific emotions experienced, the intensity of the emotions, and the duration of the emotions. Researchers have found that people do make errors in forecasting, mostly in the forecasting of intensity and duration of emotional experiences (see, e.g., Wilson & Gilbert, 2003). Particularly pertinent to predictions regarding suspect or defendant emotion, recent research by Igou (2008) has revealed that people predict longer durations of negative affect for others (especially for unfamiliar others) than for themselves. Thus, we can ask whether people are mispredicting the components of emotion for the accused.

What happens when an emotional display is not consistent with the forecast? It is certainly possible that if one does not provide an emotional display as forecast one is penalized (e.g. considered a suspect by investigators, found guilty, sentenced more severely). This proposition is in line with the normative violation model of Levine

et al. (2000); in the theory of Levine et al. “behavior violating norms [i.e. socially inappropriate behavior] will be judged as less honest than norm-consistent behavior” (p. 127).³ Thus, pertinent to the current work, if intense crying by a suspect or a defendant is believed appropriate and is not found, suspicion increases, and the person’s credibility is questioned.

THE INFLUENCE OF EMOTION IN ACTUAL CASES: SOME CONSIDERATIONS

It is important to acknowledge that it is possible for suspect and/or defendant emotion to be judged correctly and lead to suspicion that is warranted. Consider Scott Peterson, a man convicted of killing his pregnant wife and their unborn son. According to news sources (e.g. “Lack of emotion”), interviewed jurors felt that Peterson’s “lack of emotion—from the day his wife disappeared through the last day of testimony two years later—was the final piece that doomed him to a death sentence” (paragraph 1). If we consider that Scott Peterson is guilty and was attempting to deny that guilt, then one could say that investigators and jurors were correct in their suspicion of Scott Peterson, the man with the “infamously cold demeanor” (“Lack of emotion,” paragraph 22).

Also consider the case of Pam Smart. When the murdered body of her husband, Greg Smart, was found, officers found a few things odd about the crime scene. For example, there was no sign of forced entry, and the crime scene appeared to be staged (i.e. altered after the crime) (Bouchard-Kerr, n.d.). In addition, one of the investigators noted that Pam Smart was handling her husband’s death “more professionally, than emotionally” (Rideout, 2006, paragraph 56). Another investigator was cited in a media account as follows: “This girl is showing absolutely no emotion. . . No tears. No emotion. Cold. As if the whole thing is a big pain in the neck” (Milkovits, 2008, paragraph 72). Pam Smart was later charged with coercing her teenage lover and his friends into killing her husband. During the trial, Smart’s lover, William Flynn, tearfully testified that he killed Greg Smart because Pam Smart threatened to end their affair if he did not. Pam Smart was stoic as she testified that William Flynn acted alone; in fact, she was called the “ice princess” by the media because of her emotionless testimony (Morse, 2006). William Flynn was believed, and Pam Smart was convicted of conspiracy to commit murder (*State v. Smart*, 1991/1993). It is difficult to know how much influence Pam Smart’s demeanor had on the investigators and on the jurors. There was incriminating evidence present during the investigation and presented during the trial, but if Pam Smart’s lack of emotion created suspicion in the investigators and/or jurors, that suspicion would seem to be well placed given the trial’s outcome.⁴

³ Levine et al. (2000) explain that, while expectations can come from norms (“situationally based standards for behavior,” p. 124), they can also come from other sources. For example, prior interaction with the target person or information from an informed source can lead one to expect normal or abnormal behavior. It seems reasonable that judgments made within the legal system are a result of norms, as one would have no basis for familiarity with the target person. Thus, in the present work, all expectations are assumed to be norm based.

⁴ It should be noted that, while it currently appears that the cited suspicions of those involved in Scott Peterson’s and Pam Smart’s cases were warranted, both Scott Peterson and Pam Smart are appealing their cases, and their convictions could be ultimately overturned.

Thus, suspect and defendant emotion has seemed to lead to suspicion that is warranted. In both of the cited cases (i.e. Peterson and Smart), the defendants were not emotional and were found guilty, verdicts that stand to this day. However, not all non-emotional suspects or defendants are guilty. In fact, all combinations of guilt/innocence and emotion/emotionless are possible and have been played out in the real world; sometimes observers make the right judgment, sometimes not. More specifically, consider four possible quadrants: (1) one is not emotional and not guilty (NENG), (2) one is not emotional and guilty (NEG), (3) one is emotional and guilty (EG) and (4) one is emotional and not guilty (ENG). Also consider that the variations in emotional display could be present before a trial (i.e. during questioning/interrogation) and/or during a trial. For example, Scott Peterson and Pam Smart are examples of those who were cited as non-emotional during an investigation and trial and were later found to be guilty (NEG). Recall that I have already provided examples (e.g. Crowe, Deskovic, Gauger) in which a suspect was not emotional before a trial and was found, ultimately, to be not guilty (NENG). In addition, the previously cited case of Ronald Cotton is an example of a defendant who was not emotional during trial and was not guilty (NENG). I focused on these latter examples in this article in an effort to describe errors that can be made by those making judgments within the legal system, but one can find instances that illustrate the other possibilities.

Consider an example of one who was emotional and guilty (EG): Susan Smith. She wept profusely as she asked a national audience to help find her children allegedly taken in her hijacked car; nine days later, it was revealed that she drowned her children when she let her car roll into a lake. Susan Smith (A decade after Susan Smith case, 2004) is an example of one who provided an intense emotional display before her trial, and she was guilty; the investigators, in this case, were correct in eliciting a confession from Susan Smith. Interestingly, an investigator in this case said he had never seen anyone as remorseful after a confession (Schwartzman, 1995). She also cried during her trial (Bragg, 1995), and later was found guilty and sentenced to life in prison; the jury spared her the death penalty (Royster Alexander, 1995). Was Susan Smith's emotional display before and during the trial seen as the emotions of a woman longing for her missing children? Was it seen as remorse, a response to her predicament? Did it just get discounted (e.g. the crying was seen as insincere), or is suspect and defendant emotion just not an influence on decisions?

There have also been cases in which a suspect was emotional during questioning and was later found not to be guilty (ENG). Eddie James Lowery is an example (Moline, 2003). Lowery was questioned after an elderly woman was raped. He later described his interrogation: "I did everything possible to prove my innocence until I broke down completely, crying on the desk, and they led me in questioning, and I just told them what they wanted to hear" (paragraph 7). He later recanted his confession. He served 10 years, only being paroled after he agreed to confess so that he could complete the sex offender treatment program that was a condition for release. His conviction was overturned when, 21 years after the offense, DNA analysis indicated that he was not the perpetrator.

As for one who was emotional during trial and not guilty (ENG), consider the example of Luis Diaz (Goodnough & Aguayo, 2005). Mr. Diaz was arrested in 1979 after eight rape victims individually identified him as their attacker. At his trial, Diaz cried; he said he had never raped anyone. After spending 25 years in prison, DNA testing provided evidence that Diaz was wrongly convicted.

In some but not all cases, errors in judgment have been made. The problem is that, at this point, we do not know which emotional displays will provide useful information. We may ultimately determine that some forms of expressed emotion have probative value and some do not, but as of right now we are not able to do this well. One could easily misread any emotional display or absence of a display (i.e., there are many possible underlying causes of any emotional display or lack of a display), so it is important that those judging recognize the difficulties inherent in this task, especially when the consequences of being wrong are so very great.

THE INFLUENCE OF EMOTION IN ACTUAL CASES: SOME LIMITATIONS

In this article I have provided information regarding cases in which media sources have suggested that defendant emotion played a role in the decisions made. Note that I am not suggesting that defendant emotion, if an influence, was the only influence on decisions. Clearly factors other than defendant emotion could have reasonably affected the judgments of the investigators/jurors in the cases cited (although the other evidence sometimes consisted of only a coerced false confession!).

That said, there are some potential limitations to this information and the way it has been obtained and used. It is inappropriate, of course, to generalize from only a handful of cases; the focus on wrongful conviction cases here is meant to illustrate the potential problems that can arise. Second, there is no way to know, definitively, the percentage of cases in which defendant emotion *does* influence decisions (either positively or negatively—if at all). It is also possible that defendant emotion was influential but was not noted in the media (e.g., perhaps it was only mentioned in police files if anywhere). We also need to consider that media sources could have misrepresented the defendant's emotion. The cases of Sebastian Burns and Atif Rafay illustrate this point. In 2004, these two men were convicted of killing Rafay's parents and sister, a crime that had occurred 10 years earlier when Burns and Rafay were 18 years old. Burns' parents claimed that the police gave misinformation to reporters in an effort to destroy the defendants' credibility. This "misinformation" included an indication that "the boys had displayed 'no emotion' when police arrived at the July 13 murder scene," a point that conflicts with police reports in which Burns and Rafay are described as "frantic" (Hutchinson, 2004, paragraph 43).

Clearly more research is needed to determine how the emotion of the accused is viewed and how best to avoid making judgment errors. I shall now propose several areas for research.

FUTURE RESEARCH

Each segment of the journey through the legal system (i.e. questioning, interrogation, trial, verdict, sentencing) can provide opportunities for observers to be influenced by emotion, and it is important to investigate the potential influence within each segment. There are also general issues worth considering. For example, it would be worthwhile to determine whether expectations for emotional display in a legal context (and violations of these expectations) are similar for males and females. There is

evidence that expectations likely will differ, as researchers have found different expectations for emotionality in males and females (see, e.g., Broverman, Vogel, Broverman, Clarkson, & Rosenkrantz, 1972). Earlier researchers generally found that crying from females was seen as more acceptable (see, e.g., Cretser, Lombardo, Lombardo, & Mathis, 1982), although there is recent research to suggest that perceptions of male criers may be changing (Labott, Martin, Eason, & Berkey, 1991; for a review see Warner & Shields, 2007). In any case, researchers should not assume that results will be the same for both genders.

Researchers may also want to consider whether the observer's gender affects how males and females make judgments. Males have been found to be more likely to have trouble telling one emotion from another (Thayer & Helge Johnsen, 2000), suggesting that males and females may differ in their judgments (although see Kaufmann et al., 2003). Other observer characteristics may affect perceptions as well. For example, Baldry and Winkel (1998) found that police officer nationality affected perceptions of an emotional versus a non-emotional victim.⁵

It is also reasonable to wonder how an observer's emotions affect his or her judgments (see, e.g., Semmler & Brewer, 2002; Wiener, Bornstein, & Voss, 2006). Emotional contagion is relevant here; this is the "tendency to automatically mimic and synchronize expressions, vocalizations, postures, and movements with those of another person's and, consequently, to converge emotionally" (Hatfield, Cacioppo, & Rapson, 1992, pp. 153–154). Observers tend to experience the same emotion that they view in someone, and stronger expressions elicit stronger emotions (Wild, Erb, & Bartels, 2001). Thus, we can ask how the emotions shown in the interrogation room and in the courtroom affect observers' emotions and, in turn, their decision-making.

Researchers also need to continue to consider how the emotions of others within the legal system affect judgments. For example, it is reasonable to ask empirically how the emotional display of victims affects those making legal decisions. Researchers have increasingly been considering the effects of victim emotion, and have found, as previously mentioned, that victim emotion can affect mock jurors' credibility and guilt judgments (see, e.g., Kaufmann et al., 2003). In addition, the type of emotion shown by a rape victim was found to affect the credibility judgments of Norwegian police investigators (Bollingmo, Wessel, Erik Eilertsen, & Magnussen, 2008), but not Norwegian court judges (Wessel, Drevland, Erik Eilertsen, & Magnussen, 2006). Continued investigation into the impact of victim emotion on various legal decisions seems warranted.

Throughout this discussion, emotions such as sadness and distress have been the focus, but there are other emotions that one within the legal system (e.g. defendant, victim, juror) could experience, such as anger and/or disgust. Investigators are beginning to consider these issues. For example, Butler and Foley (1998) found that respondents were more likely to find a defendant guilty when the testifying witness, a rape victim, was angry rather than tearful. Others have considered how those who are experiencing particular emotions (e.g. anger) make decisions as jurors (see, e.g., Bright & Goodman-Delahunty, 2006; Semmler & Brewer, 2002; also see Feigenson, 2000, and Wiener et al., 2006, for reviews), and one recent team (Ask & Anders

⁵ Some have suggested that an understanding of the recognition and interpretation of emotion should include a consideration of the group membership (e.g. ethnicity) of both the observer and the observed (see, e.g., Philippot, Yabar, & Bourgeois, 2007; Richeson, Dovidio, Shelton, & Hebl, 2007).

Granhag, 2007) considered how the emotions of investigators (in this case, anger and sadness) affect the decisions made within a criminal investigation.

CONCLUSION

Wrongful conviction, such as that suffered by Ronald Cotton, is certainly a problem in our legal system (see, e.g., Scheck et al., 2000), and we now know that some wrongful convictions have been influenced by faulty eyewitness memory and/or false confession (see, e.g., McMurtrie, 2007, for a review). The legal system is responding to this knowledge, albeit slowly. For example, in an effort to make lineup misidentification less likely, then Attorney General, Janet Reno, and a panel of research psychologists made recommendations for lineup procedures (Technical Working Group for Eyewitness Evidence, 1999; Wells et al., 2000) that have been adopted by numerous jurisdictions (Turtle, Lindsay, & Wells, 2003). Reforms have also been made because of problems evident from disputes regarding what was said (e.g. confession) and done (e.g. coercion) during interrogations (see Sullivan, 2005). Now jurisdictions in almost all U.S. states record full custodial interrogations in felony investigations; this process potentially has benefits for both suspects (e.g. revealing coercive police tactics) and law enforcement personnel (e.g. defending against the claim that coercive tactics were used) (Sullivan, 2005), although interestingly (and of concern to the current author) one of the benefits noted of recording full custodial interviews was that “officers are better able to concentrate on suspects’ demeanors” (Sullivan, 2005, p. 1129). So eyewitness identification and false confession are being increasingly acknowledged as problems in our legal system. Is the perceived emotion of the accused another instigator? What role, if any, should suspect and defendant emotion play in the decisions of investigators and jurors? The information provided above suggests that some within the legal system believe that a defendant’s emotion level can be important information. Even legal rules (e.g. the hearsay rule—see Federal Rules of Evidence Article VIII) support this notion as they note that a witness’s demeanor provides valuable information to those making judgments within the justice system (see, e.g., Blumenthal, 1993). Yet, the information provided here suggests that inaccurate judgment of suspect and defendant emotion has been a problem for some cases. If one considers that many reasons can explain the presence/absence of emotion in one accused of a crime, the conclusion should be that suspect/defendant emotion is not entirely useful information. Clearly, more research is needed to determine what reforms will help ensure that suspect and defendant emotion is not used inappropriately in the legal system. For example, with regard to interrogation, would investigators be more accurate if they were aware of their general tendency to view people as deceptive? What would happen if investigators and/or jurors were taught that nonverbal behaviors are not generally reliable cues to deception? Or if investigators were taught to use evidence-based cues such as nodding, foot, leg, and hand movements, which tend to decrease when one is deceiving (Sporer & Schwandt, 2007)? (The Reid Technique (i.e. Inbau et al., 2001) currently trains investigators to use some of the cues that have not been found to be reliable, such as gaze aversion.) Would those making decisions in the legal system be more accurate in detecting deception if they focused on audible rather than visual cues (see, e.g., Bond & DePaulo, 2006; Kassir

et al., 2005)? With regard to emotion during the trial, could we alter jurors' expectations with cautionary jury instruction warning jurors that the defendant's display of emotion is not a good indicator of guilt? These are just a few of the questions we could ask in our quest to understand how to view suspect and defendant emotion. If we are aware of the problems of inappropriately judging from emotional displays, and if we work to find solutions, then we can attempt to at least lessen the occurrence of making these particular judgment errors.

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