

bludgeon, bully, threaten, intimidate
coercion the practice of pressuring someone
to do something by using force or threats

Synonyms: force, compulsion, constraint,
duress, oppression, enforcement,
harassment, intimidation, pressure

Miranda at 50

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False Confessions in The 21st Century

This special issue of *The Champion* is dedicated to the *Miranda* decision, one of the best-known and controversial U.S. Supreme Court rulings in American history. The *Miranda* warning is so well known that many Americans can recite a credible version of it, having heard it in countless crime movies and television episodes. Although the warning is part of the country's collective consciousness, *Miranda* has done little to reduce the risk of wrongful conviction resulting from false confessions.¹

The overwhelming majority of suspects (78 to 96 percent),² after police inform them of their *Miranda* rights, waive them. Suspects give about as much attention to *Miranda* warnings as free Wi-Fi seekers give to click-through agreements to access the internet. After a suspect has waived his rights, however, police officers have free rein to conduct accusatory interrogations, where they presume guilt and may deceive the suspect about the purpose of the interrogation, the evidence against him, and the consequences for both confessing and maintaining innocence. They aim to co-author a confession narrative. Although the *Miranda* decision changed police behavior insofar as officers routinely provide at least a nominal *Miranda* warning to suspects,

police in the decades following *Miranda* strategically adapted their warning practices so that they do not inhibit self-incrimination by suspects. Police have devised strategies to avoid, circumvent, nullify, or simply violate *Miranda* warnings in ways that result in legally acceptable waivers of suspects' rights. Indeed, police have turned *Miranda* into a tool to solve cases through eliciting confessions.³

The police dictate when and how they give *Miranda* warnings and obtain waivers, and they control the construction of case facts around *Miranda* disputes. Whereas courts used to focus on the voluntariness of confessions, they now often focus on the voluntariness of the *Miranda* waiver, and after they conclude that the waiver was voluntary, the confession typically goes to the jury.

At best, the *Miranda* decision has had little or no impact on the risks of false confession and wrongful conviction. At worst, the influence of police on *Miranda* procedures and subsequent litigation has actually made things worse for defendants.⁴

False Confession and Wrongful Conviction

The study of wrongful convictions has a long history in the United States. In 1932, Edwin Borchard was the first to publish a set of case studies of wrongful convictions and identify their causes.⁵ Approximately every 10 years following the publication of Borchard's book, a new group of authors published a new set of case studies and causes.⁶ The advent of DNA technology in the 1980s and its application to criminal cases fueled interest in the

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problem of wrongful convictions. A recurring theme has been the set of errors that caused or at least contributed to wrongful convictions. False confessions figure prominently among them. For example, Hugo Bedau and Michael Radelet identified 350 cases of wrongful conviction in capital cases between 1900 and 1987,⁷ and 49 of them could be attributed in whole or part to false confessions. Richard Leo and Richard Ofshe (1998) identified an additional 60 cases of false confession that led to wrongful conviction.⁸ In Rob Warden's (2003) sample of 42 wrongful convictions, 25 involved false confessions.⁹ Steven Drizin and Richard Leo (2004) identified and reviewed 125 cases of wrongful conviction resulting from false confession.¹⁰ By the end of 2015, the Innocence Project had tallied 336 DNA-based exonerations;¹¹ 88 of the first 325 cases contained false admissions or confessions. The National Registry of Exonerations uncovered 1,721 wrongful convictions by the end of 2015, and 219 of the convictions involved innocent individuals who had falsely confessed.¹² Thus, researchers have documented hundreds of cases of wrongful convictions in which false confessions were contributing factors.

It should come as no surprise that false confessions often become wrongful convictions. False confessions are the most incriminating form of false evidence that the government can muster against an innocent defendant. Confessions, even when they are false, appear authentic and self-corroborating and have been shown to bias the proceedings that follow.¹³ False confessions set in motion tunnel vision and confirmatory biases,¹⁴ which can corrupt other evidence, such as eyewitness identifications and judgments of forensic scientists.¹⁵ With a confession in hand, police typically believe that the case has been solved and stop investigating other suspects. Prosecutors tend to be skeptical of allegations of false confessions and treat those who confess more harshly than those who do not. For example, prosecutors charge confessors with more — and more serious — offenses, set bail higher, and take a more punitive stance in plea bargaining.

Defense attorneys are not immune to the persuasive power of false confessions. When suspects confess, often their own attorneys believe they are guilty. Defense attorneys often pressure their clients who confess to take plea bargains rather than risk harsh jury verdicts.

When a case does go to a jury, a confession carries a great deal of weight, typically resulting in conviction even when the confession is false.¹⁶ The jury perceives confession evidence to be more potent than virtually any other form of evidence. Laypeople are inherently skeptical about claims of false confessions and prone to errors in attributing causality. To wit: when explaining a suspect's confession, they look for internal reasons (such as the defendant's guilty conscience) rather than external reasons (a highly coercive interrogation that would lead even an innocent person to confess). Studies of juror decision-making reveal that jurors believe confessions and rely on them in their deliberations even when the suspect who confessed was particularly vulnerable to social influence, the confessions were judged to be coerced, and the suspects retracted the confessions.¹⁷ Even those who dismiss jury simulation studies cannot ignore that in the hundreds of wrongful convictions in which false confessions played a role, juries believed the false confessions and convicted based in part or in whole on them.

In short, the suspect who falsely confesses is more likely to be incarcerated prior to trial, charged, overcharged, pressured to plead guilty, and wrongfully convicted.

Developments in the Study of False Confession

Scholarly and professional sources contribute to the knowledge of false confessions.¹⁸ The understanding of the link between false confession and wrongful conviction has been developed based on compendiums of wrongful conviction cases published in books,¹⁹ ongoing data collection and analysis by the Innocence Project and the National Registry of Exonerations, and documentary research on proven false confession cases.²⁰ And knowledge of psychologically coercive interrogation techniques has benefited from (1) research on false confessions, (2) observational research of actual interrogations, (3) surveys of police investigators and suspects, (4) psychological experiments involving police, (5) experiments involving simulated interrogations, and (6) study of commonly used police training manuals.²¹ Documentary research has also contributed to the understanding of how investigators contaminate false confessions.²² Studies of jury and judge decision-making, as well as surveys of jurors, have enriched the understanding of the

powerful influence of confessions on trial outcomes.²³

The research literature on false confessions is substantial. A Google search for "false confession" conducted at the end of 2015 produced more than 5,000 citations, nearly 1,500 since 2011. Research on interrogation and false confession regularly appears in peer-reviewed social science journals and chapters and books published by respected academic presses. In addition, in the past decade there have been several comprehensive reviews of research on false confessions.²⁴

The maturity of the research literature has led to significant efforts to affect practice and public policy. One of the aforementioned reviews²⁵ was a "Scientific Review Paper" endorsed by the American Psychology-Law Society (Division 41) of the American Psychological Association (APA). The development of this paper followed a rigorous consultative and peer-review process,²⁶ and it is one of only two Scientific Review Papers thus far produced by the association. The APA's Office of General Counsel is responsible for submitting amicus briefs on behalf of the association. To date, APA has submitted six amicus briefs on false confession research. In 2014 the APA's Council of Representatives adopted a "Resolution on Interrogation of Criminal Suspects" that highlights the research on risk factors associated with false confessions and recommends various safeguards to reduce the risks.

Understanding False Confessions

Leo and Drizin identified three categories of investigative error that lead to the production of false confessions: misclassification errors, coercion errors, and contamination errors.²⁷ A misclassification error occurs when the investigator erroneously concludes that an innocent suspect is guilty of the crime under investigation. Various factors can contribute to misclassification errors. One is that many investigators do not receive training in effective methods of interrogation, and numerous others receive training that is misleading and increases the risk of misclassification errors. Specifically, trainers of what is known as the Reid Technique teach investigators, through manuals and workshops, that they can become highly adept at distinguishing truth from lies.²⁸ Following training, the investigator comes to believe that he should be able to deter-

mine whether a suspect is lying or telling the truth. The training describes the verbal and nonverbal cues associated with deception. But this training is highly misleading. Decades of social scientific research unequivocally demonstrates that the ability of people, including police investigators, to tell the truth from lies is, at best, only slightly better than chance. The verbal and nonverbal cues that trainers allege to be associated with lying are not reliably associated with deception. Research on investigators' abilities to distinguish between true and false confessions shows that they are no better at this than laypersons, but shows that investigators make decisions about the veracity of confessions with higher confidence than laypersons.²⁹

Other factors contribute to misclassification errors as well. The pressure to close cases (particularly high-profile ones such as murders) can lead investigators to interpret ambiguous information from a suspect in accordance with the investigator's preconceived notions about the suspect's culpability, and to ignore disconfirming information.³⁰ Investigators are human and rely on schemas and biases in their decision-making, even more so under intensely adversarial conditions.³¹ They sometimes draw conclusions based on incomplete, unrepresentative, and ambiguous information.³²

After a misclassification error occurs and the investigator deems an innocent suspect to be guilty, the investigator's next step is to subject the suspect to a guilt-presumptive interrogation. The goal is to produce a confession. The confession is particularly important when law enforcement officers have no other evidence against the suspect. Modern interrogation methods are designed to be psychologically manipulative and to influence the suspect's perception of his situation and his expectations for the future; they aim to move him from denial to admission.³³ Leo and Drizin defined psychological coercion in interrogations as the use of tactics that overbear the suspect's will — such as through promises or threats — or cumulatively cause the suspect to conclude that compliance with the interrogator's demand for a confession is his only viable option.³⁴ Thus, a coercion error occurs when an investigator uses coercive interrogation techniques to convince an innocent suspect to admit to having committed the crime.

Psychological coercion may include some combination of isolation, deprivation, and questioning that,

through time or intensity, produces fatigue. Other tactics, however, are more common in modern interrogation: confident assertions by police of the suspect's guilt; confrontations by interrogators that employ real or fictitious evidence of the suspect's guilt; feigned desires by police to help the suspect; the offering by interrogators of explanations, legal justifications, and excuses for committing the crime that appear to minimize the suspect's culpability; and promises and threats (whether implicit or explicit). These and other tactics are designed to lead the suspect to conclude that his guilt will be established beyond any reasonable doubt, that he will have no chance of convincing anyone of his innocence, maintaining his innocence will only worsen his situation, and only by confessing will he be able to improve it. The irony of psychologically coercive interrogation is that it leads the suspect to conclude that an otherwise irrational decision to falsely confess — under the circumstances — has become a rational one.³⁵

The investigator's next task after obtaining an admission of guilt is to turn it into a full-fledged and compelling postadmission narrative that will help build the case against the suspect and win a conviction. The investigator understands the importance of the narrative. He or she helps the suspect construct a convincing plotline that gives verisimilitude to the story, including motives, remorse, and crime details that can be corroborated and give the appearance that the suspect possesses incriminating knowledge. Investigators may suggest details to the suspect verbally or through crime-scene photos. They may pressure, or even coerce, the suspect into adopting their storyline and details, and may rehearse the storyline so that the suspect can tell it without hesitation or mistake. The contamination error occurs when the investigator conveys crime-specific details to the suspect, and the suspect incorporates the details into his narrative false confession.

As Ofshe and Leo first illustrated,³⁶ investigators contaminate most suspects — i.e., leak or disclose nonpublic case facts to them — who then incorporate these details into their false confessions. More recently, in a study of the first 250 postconviction DNA exonerations of innocent U.S. prisoners, Garrett found that contamination was present in 95 percent of the false confession cases (38 of 40). In these cases, police wrote in

their reports, and subsequently testified under oath at pretrial hearings and at trial, that these defendants not only admitted to committing the crimes, but confessed to a number of specific nonpublic facts about how the crime occurred, supplying “surprisingly rich, detailed, and accurate information.”³⁷ Those facts included information that matched the crime-scene evidence, scientific evidence, expert evidence, and accounts by the victims.³⁸ In other words, 95 percent of these future DNA exonerees gave confessions replete with incriminating or inside knowledge of the crime supplied by their interrogators.

Yet all of these individuals were factually innocent: none of them had even been *present* at the crime scene or knew any of the nonpublic details memorialized in their confessions and recounted at great length in their trials.³⁹ Police investigators disclosed nonpublic crime details to the exonerees during the unrecorded interrogations by telling them how the crime happened and feeding them crime facts.⁴⁰ They sometimes showed the defendants police reports, co-defendant statements, and crime photographs, and even took some of them to the crime scene. Yet the same investigators emphatically represented in their reports and sworn pretrial and trial testimony that the defendants — not the investigators — provided the nonpublic crime facts in the confessions. The investigators represented that they “had assiduously avoided contaminating the confessions by not asking leading questions, but rather allowing the suspects to volunteer crucial facts.”⁴¹ In a follow-up study of more recent false confession cases in which DNA exonerated the defendants, Garrett found that 21 of 23 (91 percent) of the confessions were contaminated.⁴²

Strategies for Litigating False Confession Cases

To successfully mount a false confession defense, criminal defense attorneys must fashion persuasive answers to two separate but related questions: Why did the client falsely confess? How do we know it is a false confession? Some defense attorneys mistakenly assume that these two questions are the same. The import of the first question is obvious: As survey studies have repeatedly shown,⁴³ the idea that an innocent person, at least one who has not been physically tortured or is mentally ill, would confess to a crime he or she did not commit is highly counterin-

tuitive. It is counterintuitive because most laypeople consider it to be so irrational, self-destructive, and contrary to self-interest as to defy common sense. The defense attorney must make the counterintuitive appear reasonable and understandable. The two primary reasons a person would falsely confess are that (1) police interrogators manipulated or coerced the client into falsely confessing by using interrogation strategies and techniques that caused him or her to perceive that there was no meaningful choice but to accede to the demands of the interrogators; and (2) the client had personal characteristics — i.e., vulnerabilities — that rendered him or her susceptible to making a false confession. These explanations are not mutually exclusive, though experts believe most false confessions result from police manipulation and coercion, not individual personality traits.⁴⁴

To successfully explain why the client falsely confessed, criminal defense attorneys should first read the relevant literature on the social psychology of police interrogation and false confessions. Some relatively brief, recent review-of-the-field-type essays may be especially helpful.⁴⁵ More expansive book treatments⁴⁶ and older but more fundamental research articles may be helpful too.⁴⁷ Becoming familiar with the research literature will provide criminal defense lawyers with both a conceptual and verbal vocabulary to better describe the psychology of police interrogation and the various techniques and strategies that police employ, and to more effectively cross-examine police interrogators. In this age of electronic recording of interrogations, criminal defense attorneys can describe the techniques used and how and why they affected a client's perceptions during the interrogation and his decision to confess.⁴⁸ Criminal defense attorneys should also familiarize themselves with police interrogation training manuals. These manuals are good fodder for cross-examination because they provide police with a series of "do's" and "don'ts" about proper interrogative practice (e.g., thoroughly investigate before the interrogation, do not wear a gun during interrogation, do not interrogate for longer than four hours, do not make threats and promises that have real consequences, and so on).⁴⁹

Above all, when putting on a false confession defense, the criminal defense attorney needs to explain narratively, as well as specifically, how and why the interrogation techniques led the client to perceive that making a false confession

made sense at that moment. Putting on a false confession defense is not easy, and the criminal defense attorney should go beyond trying to create "reasonable doubt" and instead go on the offensive. To be successful, the attorney will need to convince the jury that the client is innocent and that the confession is actually evidence of his innocence. As explained below, a confession can be evidence of innocence when the postadmission narrative is disconfirmed by objective evidence, defies logic and/or is riddled with improbable errors. Convincing the jury will likely mean putting the client on the stand, if possible, and having the client explain how and why the officers pressured — or even tricked — him into making a false confession.

A false confession defense is a substantive defense, not a procedural one, because jurors begin with a prima facie belief that confessions are true and the defendant is probably guilty.⁵⁰ The criminal defense attorney must remember that jurors did not go to law school and do not think like lawyers. They want to know whether the client is innocent or guilty, not whether reasonable doubt exists. Only a good explanation of how and why the interrogation techniques and psychological coercion made him or her falsely confess can convince them that the client is innocent. It is important for the jurors to understand both the pressure placed on the defendant and his psychological experience under interrogation pressure.

How do we know the confession is

If a confession does not match the credible case evidence, then the confession is evidence of innocence rather than guilt.

false? In order to answer this question, defense attorneys need to move beyond the interrogation process and focus on the confession itself. They should compare the account their client gave after saying, in effect, "I did it," with the crime facts in order to determine whether their client's postadmission narrative reveals the presence (or absence) of incriminating knowledge, and whether the narrative is corroborated (or disconfirmed) by objective evidence.⁵¹ If the suspect committed the crime, he will possess nonpublic knowledge of both dramatic and mundane crime facts known only by the perpetrator, the police, or the victim (e.g., the location of the weapon, items

taken during the crime, and specific aspects of the crime scene, such as the color of paint on a wall or a pattern in the carpet). If the suspect did not commit the crime, he will not possess personal knowledge of the crime details unless he had pre-existing knowledge,⁵² the police contaminated him by educating him about the crime facts during the interrogation, or he was contaminated by a third party. Absent pre-existing knowledge or contamination, the probative value of crime facts and details provided in the suspect's postadmission narrative is directly proportionate to the likelihood that such details could not have been guessed by chance.⁵³

The postadmission narratives of the guilty true confessor and the innocent false confessor will look different.⁵⁴ The guilty suspect's postadmission narrative not only will likely demonstrate personal knowledge of crime facts, but also will be able to lead police to new, missing, or derivative crime scene evidence, provide them with missing information, explain seemingly anomalous or otherwise inexplicable crime facts, and likely be corroborated by objective evidence.⁵⁵ By contrast, the innocent suspect made to give a false confession will not be able to supply accurate crime details in his postadmission narrative unless he correctly guesses them. The innocent suspect will not be able to lead police to new, missing or derivative evidence, and he will not be able to explain crime scene anomalies or other unique or unlikely

aspects of the crime. Moreover, the objective evidence will not corroborate his postadmission narrative.⁵⁶ Instead, the innocent false confessor's postadmission narrative will probably be replete with guesses and errors, and be either inconsistent with or contradicted by the objective case evidence.⁵⁷

In short, the postadmission narrative of a suspect who confessed truthfully will tend to fit with the crime facts and physical evidence, whereas that of an innocent suspect will not. The fit between the suspect's postadmission narrative and the crime facts and objective evidence therefore provides a standard in many cases for

evaluating the likely reliability of the suspect's statement.

To persuade a jury that the confession is false, the attorney therefore must argue that it does not fit and, in fact, the extrinsic case evidence as well as common sense and logic contradict the confession. The attorney must point out that it reveals the client's ignorance of the true crime facts (except when the client provided details that the public knew or resulted from contamination). If a confession does not match the physical, medical and other credible case evidence, then it is evidence of innocence, not guilt, regardless of whether the interrogation involved coercion. The psychological methods and strategies of interrogation explain how and why the client falsely confessed, but only a comparison of his postadmission narrative to the extrinsic evidence and nonpublic crime facts will show why it is false and/or unreliable.⁵⁸

To successfully litigate disputed confession evidence, criminal defense attorneys must plan their strategies before trial. Voir dire is an excellent opportunity to ask potential jurors about their beliefs as to whether false confessions occur, whether police investigators make factual and interpretive mistakes when investigating crimes, and whether coercive police interrogation can cause innocent suspects to make false statements, even incriminating ones. Voir dire is thus an opportunity to educate potential jurors as well as exclude those who might be unreceptive to a false confession defense.

The preliminary hearing may be an opportunity to develop a false confession defense. Defense counsel's goal at the hearing will be to lock the investigators into their account of what occurred during the interrogation (especially if the interrogation was not recorded) and illuminate their biases during the investigation that led them to mistakenly classify the innocent client as guilty and therefore improperly subject him or her to a guilt-presumptive accusatory interrogation. Many criminal defense attorneys, for strategic reasons, might prefer not to aggressively litigate the confession at the preliminary hearing. But if the client really did falsely confess, then the confession is usually the centerpiece of the state's case (unless other mistaken, ambiguous or fabricated evidence exists), and without it there may be no probable cause to bind the client over for trial. It is important to remember that a successful false con-

fession defense must go on the offensive because at every step of the pretrial process, third parties (i.e., police, prosecutors, the judge, the media) will presume the client's incriminating statements to be true and thus the client to be guilty, regardless of the methods police used to obtain them. If a defense attorney wants a false confession defense to succeed, she needs to convince the judge and jury that her client is innocent.

Finally, prior to trial the criminal defense attorney may file a suppression motion to exclude the client's statement as involuntary under the Fifth and Fourteenth Amendments' due process voluntariness clauses or in violation of the *Miranda* warnings. If there is a *Miranda* issue, the attorney should aggressively litigate it, but *Miranda* is usually irrelevant to false confessions.⁵⁹ Rather, a criminal defense attorney whose client has falsely confessed must try to get the confession suppressed as the involuntary product of a psychologically and legally coercive interrogation that violated due process by overbearing the client's will. Of course, no one really knows what constitutes an "involuntary" confession because voluntariness of the will is a metaphysical and ethereal concept, not directly observable. It is essentially a legal fiction. As part of the argument that the confession was legally involuntary, defense counsel must convince the judge that the officers elicited the confession through overbearing and objectionable techniques (such as false accusations, lies about evidence, lengthy interrogation, and implied or explicit promises and threats communicated as inducements), and that the client is factually innocent.

Making these arguments will require that the defense identify the interrogation techniques the police used. For example, defense counsel can reference particular parts of the interrogation transcript or show video clips if police recorded the interrogation. How and why did these techniques cause the client to perceive that he had no meaningful choice but to comply with the demands and requests of the interrogators? In order to provide an answer, it can be helpful to question police investigators about their interrogation training (which they often will claim to have forgotten or learned on the job). Did they receive training about psychological coercion? What do they understand psychological coercion to be? What do they do to make sure they are not coercing confessions from their suspects? Attorneys should also cross-examine police investigators

at the suppression hearing concerning (1) whether they received training on how to recognize, understand, and prevent false confessions, and (2) what they do to avoid eliciting them. By revealing the investigators' ignorance, poor training, poor memory, or inability to follow best practices, criminal defense attorneys can fashion a narrative about how and why the false confession occurred that does not rely on portraying the investigators as malicious or intentionally seeking a false confession. Rather, investigators will appear to be poorly trained, overzealous, or careless, if not reckless.

Contemporary Interrogation Reforms

The widespread recognition of the role that false confessions play in wrongful convictions has led to procedural reforms. One that has gained traction in the United States is video recording of interrogations. Calls for recording of interrogations have been around for decades.⁶⁰ Now, 20 states record interrogations in either specified or all felony cases.⁶¹ Recording interrogations has several benefits.⁶² It creates an objective and reviewable record of the interrogation, which should prevent investigators from making false claims about their exchanges with suspects. It should likewise prevent suspects from making their own specious claims — for example, that police failed to inform them of their rights and made threats and promises when none of that occurred. By inhibiting coercive practices, recording should promote the finding of truth. Even if coercion occurs in an interrogation, a videotape serves as a transparent record that attorneys, judges, and juries can review and should help prevent coerced confessions from becoming wrongful convictions. Moreover, when recording proves that investigators used practices geared toward gathering information in a respectful manner instead of ones focused on coercing confessions, it should increase the public's confidence in police practices. It is important for defense attorneys to learn how to analyze recorded interrogations in order to effectively litigate disputed confession cases.⁶³

Another approach to reforming interrogation procedures is to eliminate coercive practices in the first place. England and Wales took this step 30 years ago when lawmakers enacted the Police and Criminal Evidence Act and the Codes of Practice in 1984. The Act required investigators to audiotape interviews with suspects and thereby increase accountability. Following the

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Act, psychologists, academics, and police investigators collaborated to produce a training document on the PEACE interviewing method, and the police developed a course for implementing PEACE and making it standard practice. The acronym PEACE abbreviates the following principles: (1) Preparation and planning; (2) Engage the interviewee and explain the purpose of the interview; (3) Allow for an account from the interviewee; (4) Ensure that the interview is brought to a conclusion; and (5) Evaluate the interview data. As noted by Pearse and Gudjonsson, "the concept of 'investigative interviewing' is intended to encourage a nonoppressive, noncoercive approach, with an emphasis on information gathering rather than obtaining a confession per se."⁶⁴

The PEACE technique differs in significant ways from the Reid Technique.⁶⁵ The Reid Technique involves deceiving the suspect about the actual purpose of the interrogation. The Reid-trained interrogator begins the interview by confidently asserting that the suspect is guilty and that the purpose of the interview is to find out why he committed the crime (or learn what other crimes he committed, or pursue some other fabricated purpose). The PEACE-trained interviewer tells the truth about the purpose of the interview. The Reid-trained interrogator interrupts the suspect's denials of guilt and only allows the suspect to speak forthrightly during the interrogation if he is incriminating himself. The PEACE-trained interviewer allows the suspect to give a full account of his involvement or lack thereof. The Reid-trained interrogator is permitted (and sometimes encouraged) to use evidence ploys, including lying to the suspect about evidence of his guilt in an effort to secure a confession. The PEACE-trained interviewer is not permitted to claim false evidence against the suspect. The Reid-trained interrogator may be discouraged (by their local department policy or culture) from recording the interview, whereas the PEACE-trained interviewer is required to record it. More generally, the Reid-trained interviewer's purpose is to obtain a confession, and he presumes guilt; in contrast, the PEACE-trained interviewer's purpose is simply to gather information to solve the crime. (A meta-analysis of research on interrogation techniques found that accusatorial techniques increased the likelihood of both true and false confessions,⁶⁶ while information-gathering ones increased the likelihood of true confessions without increasing the risk of false confessions.)

PEACE interview training has continued to evolve. For example, the police service of Ireland adapted the PEACE technique to incorporate best practices in the interviewing of eyewitnesses.⁶⁷ The technique is beginning to gain a foothold in North American policing. Dr. Brent Snook, a psychologist at Memorial University in Atlantic Canada and an advocate of it, offers PEACE technique training to Canadian police officers.⁶⁸ It is only a matter of time before PEACE training increases in popularity in the United States.

The PEACE technique is not an answer to all objections to interrogation, for it still relies on self-incrimination, a principle that is abhorrent to defense attorneys. Nevertheless, the technique appears to better protect against false confessions.

Conclusion

Decades of empirical social science research has demonstrated that American police interrogators regularly elicit false confessions, and that false confessions often lead to the wrongful conviction of the innocent. Yet false confessions remain counterintuitive to most laypeople, police, prosecutors, and judges.

False confessions bias police investigators, criminal justice officials, and triers of fact against the defendant at every stage of the criminal process. Studies have repeatedly shown that if the prosecution introduces a confession into evidence at trial — even if officers obtained it under questionable conditions, supported by no independent evidence, contradicted by substantial evidence, and ultimately proven false — it is highly likely to lead to a wrongful conviction. Nevertheless, though they are not easy to mount, false confession defenses have never been more winnable. The increasing knowledge of the causes, characteristics and consequences of false confessions enables criminal defense attorneys to litigate disputed confession cases more effectively. This article has sought in part to suggest ways that they can use this knowledge in these cases.

American police interrogation appears to be slowly moving away from guilt-presumptive and accusatory Reid-style interrogation toward more investigative interviewing approaches. It is incumbent upon criminal defense attorneys to be well versed in the social science research on interrogation and confession as well as the leading police inter-

rogation training manuals. Knowledge of current research and training manuals will help defense attorneys to litigate false confession cases aggressively and effectively and thereby prevent juries from erroneously convicting innocent and/or overcharged defendants.

Richard Leo thanks Richard Ofshe for the seminal work they wrote together in 1997, without which much of the analysis that follows would not have been possible.

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40. Looking back with the hindsight of conclusive DNA tests proving innocence, we know that the innocent could not have known or guessed such inside information. See Garrett, *supra* note 37, at 1070-1071 ("In all but two of these exonerees' cases, police claimed that the defendant had offered a litany of details that we now know these innocent people could not plausibly have known independently.").

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52. For example, if he learned about the crime from media coverage, overheard conversations, community gossip, or was an innocent bystander during the commission of the crime.

53. As Ofshe and Leo note, "Assuming that neither the investigator nor the media have contaminated the suspect by transferring information about the crime facts, or that the extent of contamination is known, the likelihood that his answers will be correct should be no better than chance. The only time an innocent person will contribute correct information is when he makes an unlucky guess. The likelihood of an unlucky guess diminishes as the number of possible answers to an investigator's questions grows large. Ofshe & Leo, *supra* note 33, at 993.

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