



GUILTY? INNOCENT?



© Peshkov | AdobeStock ; Jennifer Waters, NACDL

Analyzing Videotaped Interrogations and Confessions

In *Convicting the Innocent*, published nearly 85 years ago, law professor Edwin Borchard¹ summarized 65 cases of conviction of the innocent, documented the investigation and prosecution errors that led to the conviction, and recommended reforms that would reduce the risk of miscarriages of justice. Among the errors he identified were false confessions resulting from high-pressure interrogations, and among the reforms he recommended was the recording of interrogations. Approximately every decade thereafter another scholar identified new cases of wrongful conviction, a similar set of contributing factors, and a similar set of reforms.² In the 1990s, the use of DNA as a forensic tool and the work of the Innocence Project ushered in an “innocence movement,”³ the results of which include the exoneration of hundreds of convicted-but-innocent citizens and a focus by some legislatures, police departments, and professional organizations on procedural reforms designed to reduce the risk of wrongful convictions.

Chief among the procedural reforms fueled by the innocence movement is the recording of interrogations, as recommended by Borchard nearly 85 years ago. Police departments in at least 20 states now require the electronic recording of interrogations of specified felonies or all crimes.⁴ Electronic recording has several benefits, including

improved professionalism among officers conducting the interviews, minimization of disputes regarding what occurred during interrogation, and discouragement of spurious motions to suppress interrogations.⁵

Why is the recording of interrogations important? Considerable observational⁶ and documentary⁷ research examines the conditions to which suspects are sometimes subjected during interrogation and their effects on the pressure to confess, regardless of actual culpability for the crime under investigation. The unrepresented suspect is distinctly disadvantaged when isolated in a room with a detective armed with modern psychological methods of interrogation. At the outset, the suspect may be convinced to sign a waiver by the detective who perhaps dismisses the waiver as an innocuous formality or convinces the suspect that having a lawyer will just complicate matters and slow things down to the suspect's detriment. Worse, the suspect may be a youth, mentally ill, or developmentally disabled, or possess a combination of these at-risk features. The suspect is ill-prepared for the subsequent onslaught of guilt-presumptive accusations, attacks on denials, deception, interpersonal pressure, and inducement — sometimes even threats and promises. The purpose of this onslaught is to produce high levels of anxiety, deplete the suspect's mental resources, and lead the suspect to conclude that his choices are ultimately to confess and minimize his damage or to be found guilty by other means.⁸

The suspect who succumbs to the social pressure of interrogation and confesses is further disadvantaged in the subsequent proceedings and faces poor odds of a favorable outcome. Defendants who confessed during interrogation are likely to be charged with and plead to more serious offenses and, if tried, are likely to be perceived as guilty by

BY BRIAN L. CUTLER AND RICHARD A. LEO

the prosecutor, judge, and jury — and even by their own attorneys.⁹ Suspects who confess falsely and whose cases proceed to trials are convicted in strikingly high numbers, only later to prove their factual innocence.¹⁰ Historically, the interrogation that led to the suspect's confession takes place in private, with little or no objective record of the conversation and tactics that produced the confession. Fact finders would learn of the confession and believe it, for the idea that someone would falsely confess to a crime defies common sense.¹¹ The recorded interrogation has the potential to make the playing field more level by inhibiting some of the more egregious interrogation tactics and making interrogator-suspect interaction available for replay by fact finders.

Thus, the defense attorney's case file may now contain a DVD of the interrogation in its entirety. The video recording of the interrogation, however, may *not* give the appearance of a smoking gun or make it perfectly obvious to fact finders that any defendant, guilty or innocent, regardless of his age, intelligence, or mental health, would cave to the coercive pressure of the encounter and the interrogator's unrelenting demands for a confession. Rather, the videotaped interrogation will require some decoding. It behooves the defense attorney to become familiar with the techniques and social psychology of interrogation so that she or he can identify persuasion at best and coercion at worse and explain the suspect's decision to confess. Where coercion occurs, the defense attorney can explain — with data — how the interrogators used techniques that could have overborne the suspect's will and may have caused the suspect to confess falsely. This article does not provide an exhaustive description of techniques. Instead, it highlights a few things to watch for and invites the interested reader to consult other sources¹² for more thorough descriptions.

The Techniques and Psychology of Modern Interrogation

Sources vary in their use of labels for commonly used interrogation tactics. Early on in the interrogation, the detective may express a very high level of confidence that the suspect is guilty and that the purpose of the interrogation is not to determine whether the suspect is guilty. Instead, the purpose is to find out why he committed the crime (or the details, or who else was involved, or what other crimes the suspect has committed). These unwavering expressions of confidence in the suspect's

guilt are called direct positive confrontation,¹³ confrontation,¹⁴ and accusation.¹⁵ It is important to note that these statements are often exaggerations or outright lies. The detective sometimes has concluded that the suspect is guilty based on inferences about the suspect's verbal or nonverbal behavior prior to the interrogation.¹⁶ The expression of confidence in the suspect's guilt, however, is a strategic statement designed to convince the suspect that he is caught and that he has no chance of persuading the detective of his innocence.¹⁷

As part of the strategy, detectives often falsely state or imply that they have evidence of the suspect's guilt or that evidence of guilt will soon be in hand. The detective may assert that there is another eyewitness, a co-defendant who flipped, or forensic evidence found at the scene that has since been sent to the lab and irrefutably establishes the suspect's guilt or knowledge of the crime. The detective may have a large file or set of files before him designed to give the suspect the impression that the files contain evidence. The detective may refer to evidence that does not in fact exist. Decades of research in social and cognitive psychology show that misleading people renders them vulnerable to manipulation.¹⁸

Investigators are taught that the more frequently a suspect denies his involvement and professes his innocence, the more difficulty a suspect will have changing his story to a confession. Trainers teach investigators, therefore, to try to prevent the suspect from denying guilt. It is not uncommon, for example, for the investigator to do most of the talking in the early part of the interrogation. This is not an accident, but rather a tactic. When a suspect tries to speak up and deny guilt, the investigator may interrupt him and tell him to wait until the investigator is finished with what he has to say. The investigator will likely also challenge the suspect's denials as illogical, implausible, and/or contradicted by existing evidence. When the suspect does get a word in, it might be to explain why he could not have committed the crime. Investigators are trained to overcome these objections by identifying reasons for which the objections might not hold water, pointing out contradictions, and repeating the accusations and excuses. These tactics are meant to strengthen the suspect's belief that he is irreversibly caught and that his only reasonable option, under the circumstances, is to stop denying and start confessing. In order to drive this point home, the investigator at some point may ask forced-choice, guilt presumptive questions: Did you have sex with her because you thought she was

interested and willing or because you were determined to get off regardless of what she wanted? Was it planned or just a one-time mistake, a mere accident?

Whereas accusations, attacks on denials, evidence ploys and interpersonal pressure are designed to cause the suspect to perceive that he is caught and resistance is futile, minimization tactics and other inducements are designed to motivate the suspect to stop denying and start admitting guilt.¹⁹ One common form of minimization is the offering of rationales and excuses that seemingly justify the crime and imply that the suspect is guilty. These techniques are sometimes called "theme development" in police manuals²⁰ and scenarios by scholars.²¹ Investigators present the motives and explanations as reasonable or even morally (and sometimes even legally) justifiable excuses, such as "you recently lost your job, your only source of income, and you have a wife and kid to take care of." Other rationales and excuses include "the act was impulsive" or "the victim deserved what he got."

It is easier to adopt these sorts of themes as compared to a theme that paints the suspect as an incorrigible, lazy thug with no moral principles. Minimization may also involve down playing the consequences the suspect will face and sympathizing with the suspect's situation. Most interrogators know that they cannot explicitly tell a suspect that he will be treated more leniently if he confesses (though this is not uncommon), but they can say things that will make the suspect reach this conclusion on his own. Minimization often has that effect. By adopting a morally, psychologically, and/or legally defensible justification and confessing, the suspect may reasonably infer (without being explicitly told) from the interrogators' statements and suggestions that he will receive more lenient treatment — maybe even immunity — than if he refuses to confess and is found guilty. The use of minimization techniques that imply leniency increase the risk of eliciting a false confession.

Minimization may come across as friendly and caring. Interrogators are not trained to bully suspects (though some do so of their own accord). They are trained to establish rapport with suspects. We are not persuaded by bullies, but rather by people whom we trust. One way that the interrogator may establish rapport is through strategic self-disclosure, as well as by positioning himself as an ally of the suspect and offering to help him get through his situation. The interrogator may tell the suspect of his own troubles as a youth, his own scrapes with the law, and his own

desire to better himself. Self-disclosure helps build a sense of connection and a reciprocal desire to self-disclose. Ultimately, the rapport established by the interrogator can disadvantage the suspect. Psychological research shows that establishing rapport may increase the likelihood that people will be influenced by deliberately misleading information.²² And suggestions of help, like minimization, often implicitly communicate that the suspect may receive more lenient treatment, or a less harsh outcome, if he stops denying and starts confessing.

As the interrogation wears on, the suspect may become worn down. He has been accused. He has been offered a myriad of excuses and justifications meant to feel like his actions were understandable, and perhaps not even criminal, such as when interrogators suggest that a homicide suspect acted in self-defense. His attempts to deny his involvement have been stopped in their tracks. His objections — his arguments regarding why he could not have committed the crime — were met with counterarguments at every step. He folds his arms across his chest, slouches, and becomes quiet. Rather than concluding that the suspect is cognitively and emotionally worn out and that the interrogation should be temporarily suspended, the investigator may take actions

rogate for no longer than four hours absent “exceptional situations” and states that “most cases require considerably fewer than four hours.”²⁶

Lengthy detention and interrogation is a significant risk factor for false confessions because the longer an interrogation lasts, the more likely the suspect will become fatigued and depleted of the physical and psychological resources necessary to resist the pressures and stresses of accusatory interrogation,²⁷ especially when investigators use physically or psychologically coercive methods.²⁸ It can also lead to sleep deprivation, which heightens interrogative suggestibility by impairing decision-making abilities, such as the ability to anticipate risks and consequences, inhibit behavioral impulses, and resist suggestive questioning.²⁹ The longer an interrogation lasts, the more pressure investigators bring to bear on the suspect and the more techniques and strategies they may use to move the suspect from denial to admission.

Researchers consider the length of an interrogation to include both the time that a suspect is being questioned and/or accused as well as any breaks between questioning/accusation sessions, for breaks between accusation and questioning add to the stress and fatigue of the interrogation. Investigators sometimes use breaks as an interrogation technique because they

niques that comprise it, in order to most effectively litigate disputed confession cases. The first psychological step of American police interrogation is to convince the suspect that he is caught, that the evidence irreversibly establishes his guilt, and that it is therefore pointless for him to resist because his conviction is inevitable. The goal of the second step of interrogation is to convince the suspect that, given his situation and available options, it is in his best interest to stop denying and start admitting if he wishes to minimize his damage and put an end to the interrogation before the opportunity disappears.³²

Confession Contamination and Scripting

The combined pressures of accusations, attacks on denials, evidence ploys, minimization, and other inducements are designed to move the suspect from denial to an admission of guilt to the underlying act. The next phase of the interrogation often involves converting the admission into a full-fledged confession that contains details, motives, explanations, expressions of voluntariness, and/or emotions that make it more compelling to third parties and fact finders. Throughout this phase of the interrogation, it is particularly important to monitor the flow of crime-related details. Eventually, the suspect may provide a richly detailed narrative of how he committed the crime. The narrative may include motives, details about the victim or other people at the crime scene, emotions experienced, and even details that only the true perpetrator and the police would know. Such “guilty knowledge” may be very compelling when conveyed to the prosecutor, judge, and jury — and to defense counsel. But where did the details come from? Was the suspect the first to offer up the details or were the details first suggested by the detective during the interrogation?

Research on known false confessions reveals that false confessions can be detailed and compelling. In a study of the first 250 postconviction DNA exonerations of innocent prisoners in the American criminal justice system, one scholar demonstrated that contamination was present in 95 percent of the false confession cases in this data set (38 of 40 cases).³³ In other words, in the overwhelming majority of these proven false confession cases, police interrogators fed the suspect unique nonpublic facts that “only the true perpetrator would know,” but the prosecutor erroneously alleged that the suspect volun-

The videotaped interrogation will require some decoding. Advocates must become familiar with the techniques and social psychology of interrogation so that they can identify persuasion and coercion and explain the suspect’s decision to confess.

to keep the suspect engaged. The investigator may move his chair closer to the suspect. He may attempt to engage him by establishing eye contact. He may begin using visual aids, such as by drawing diagrams of the crime scene. He may interject some rhetorical questions.

Another risk factor for false confession is the length of an interrogation.³³ Empirical studies indicate that the overwhelming majority of routine custodial interrogations last less than one hour,³⁴ whereas the combined time of custody and interrogation in most interrogations leading to a false confession is more than six hours.³⁵ The Reid and Associates police interrogation training manual specifically recommends that police inter-

know that breaks can contribute to the suspect’s stress and fatigue and move him toward confession. In short, the research on false confessions suggests that they do not come quickly, and if an interrogation lasted more than a couple hours, the attorney should scrutinize the interrogation for reasons why it lasted so long.³⁰

In sum, American police interrogation is more than the sum of its techniques. Perhaps most fundamentally, it operates as a two-step psychological process of pressure and persuasion that is strategically directed toward moving a suspect from denial to admission.³¹ It is important for attorneys to understand the psychological logic of this two-step process, not merely the interrogation tech-

PRE-SENTENCE & MITIGATION REPORTS FOR STATE COURTS

Sentencing is often the most important hearing in a criminal proceeding.

Every client deserves the utmost preparation and presentation.

- Affordable — Fixed Pricing. (\$475 base)
- Professional — Defense counsel review prior to submission.
- Quick — One week turnaround.
- Convenient — client schedules interview.
- Optional independent risk assessments.

SENTENCING SOLUTION, LLC
(414) 367-6549

www.SentencingSolution.WordPress.Com

teered these facts and that the suspect thereby corroborated the reliability of his confession. Because the jury in each case mistakenly believed the prosecutor rather than the defense, each of the confessions was convicted, and in each of these cases DNA only proved the defendant's innocence (and the falsity of the confession) many years later. In a follow-up study of more recent false confession DNA exonerations, one of the authors found that another 21 of 23 (91 percent) were contaminated.³⁴

Following research by one of the authors of this article,³⁵ a recent study analyzed 20 false confessions from the Innocence Project's database of DNA exonerations.³⁶ These authors found that the confessions were similar in structure, explaining the who, what, when, and why the crimes were committed. The confessions cited the time and location of the crimes. They contained visual details and details about the victim's behavior. Often the confessions contained details about other people, including the victims' appearances and mental states. The confessions included details about things the victim said and made references to the defendant's own mental states, reflections, and motives. This has been called scripting confes-

sions as police investigators seek to construct a suspect's culpability.³⁷

When confessions contain non-public details, one should ask how the suspect came to possess those details. Research shows that police sometimes convey the details during the course of the interrogation, and the suspect repeats those details in the confession. The term "contamination" refers to a situation in which police leak or disclose crime scene details to the suspect.³⁸ The investigator may not be aware that he is contaminating a confession by inadvertently conveying details. In most of the cases analyzed in this study,³⁹ the police denied providing critical details to the suspect and claimed that the suspect independently volunteered the details. In most of the false confession DNA exoneration cases, the officers testified under oath that they did not provide the confession details to the suspect.⁴⁰

An article written by former Washington, D.C., detective James Trainum illustrates the inadvertent conveying of information during interrogation.⁴¹ Trainum was an experienced police officer when he interrogated a woman suspected of murder. Trainum and his team secured a confession: "The suspect said she had beaten the man to death and dumped his body by a river. She said she made purchases with the man's credit card and tried to withdraw cash using his ATM card. Surveillance video from the ATM showed a woman who resembled the suspect, and an expert said the signature on the credit card receipts was consistent with the suspect's handwriting. Even the suspect's attorney later told me she believed her client was guilty, based on the confession." Trainum and his team later discovered that the suspect could not have committed the murder because she had an ironclad alibi. The suspect was in a homeless shelter where she lived when the murder occurred, and the shelter's record indicated that she was in the shelter at the time of the murder. Years later Trainum reviewed the taped interrogation and discovered that he and his team were the source of crime details during the interrogation. They conveyed the details without realizing it, and the suspect adopted them.

Evaluating the Likely Reliability of Confession Evidence

The reliability of a suspect's confession can be evaluated by analyzing the fit

(or lack thereof) between the descriptions in his postadmission narrative (the account a suspect gives after saying the words "I did it") and the crime facts, the extent to which the suspect's postadmission narrative reveals the presence (or absence) of guilty knowledge, and the extent to which the suspect's account is corroborated (or disconfirmed) by objective evidence.⁴² If the suspect committed the crime, he will possess personal (i.e., nonpublic) knowledge about both dramatic and mundane crime facts that are known only by the perpetrator, the police, and/or the victim. This personal knowledge includes the location of the weapon, items taken during the crime, and specific aspects of the crime scene such as the color of paint on the 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 has pre-existing knowledge⁴³ or police officers "contaminated" him (i.e., educated him about the crime scene facts) during the interrogation process. Assuming that the suspect does not possess pre-existing knowledge and has not been contaminated by police suggestion, the probative value of crime facts and details accurately provided in the suspect's postadmission narrative is directly proportionate to the likelihood that such details could have been guessed by chance.⁴⁴

Absent pre-existing knowledge or contamination, the postadmission narratives of the guilty true confessor and innocent false confessor will therefore look different.⁴⁵ The guilty suspect's postadmission narrative will likely demonstrate personal knowledge of crime facts; will be able to lead police to new, missing and/or derivative crime scene evidence; will be able to provide them with missing information; will be able to explain seemingly anomalous or otherwise inexplicable crime facts; and will likely be corroborated by existing objective evidence.⁴⁶

By contrast, the innocent suspect made to falsely confess will not be able to supply accurate crime details in his postadmission narrative unless he guesses them by chance; will not be able to lead police to new, missing or derivative evidence; will not be able to explain crime scene anomalies or other unique or unlikely aspects of the crime; and his postadmission narrative will not be corroborated by existing objective evidence.⁴⁷ Instead, the innocent false confessor's postadmission narrative is likely to be replete with guesses and errors and will be either inconsistent

with or contradicted by the objective case evidence.⁴⁸

In short, the postadmission narrative of a suspect who is confessing truthfully will tend to fit with the crime facts and objective physical evidence, whereas the postadmission narrative of an innocent suspect who is confessing falsely will not. Analyzing the fit of the suspect's postadmission narrative with crime facts and the existing objective case evidence therefore provides a standard in many cases against which to evaluate the statement's likely reliability.

The details of the confession therefore provide signs of its reliability.⁴⁹ How much new detail did the suspect provide? Did the details provided independently by the suspect match nonpublic facts or evidence that the investigators already knew (e.g., the victim's injuries)? Did the new details provided by the suspect lead to discovery of new inculpatory evidence (e.g., where the perpetrator hid the weapon or stolen goods)? Are there parts of the confession that were inconsistent with or even contradicted by known evidence or facts? A reliable confession is one in which the suspect produces details (not suggested by the interrogator), and the details are corroborated by nonpublic evidence in hand or obtained following the confession. Trainers of interrogation⁵⁰ maintain that confessions that cannot be corroborated may be unreliable.

Conclusion

The increasing availability of electronically recorded interrogations presents a unique opportunity to observe and explain how the psychological strategies and techniques of American interrogation may have moved a suspect from denial to admission. The defense attorney may find that the client offered up a confession with only modest persuasion on the part of the interrogator, and that it will be hard to convince a judge or jury that the confession is not genuine. Or, the defense attorney may find that the client confessed only after the full arsenal of persuasive techniques was unloaded on the suspect, and the confession may have been contaminated and cannot be corroborated. In such a case the defense attorney stands a better chance of convincing the fact finder that the confession was not a product of the suspect's guilty conscience but rather a reaction to a highly persuasive or coercive situation — in which even an innocent person could be convinced to confess.

NACDL® STAFF DIRECTORY

MEMBERSHIP HOTLINE 202-872-4001

Senior Resource Counsel	Vanessa Antoun	202-465-7663	vantoun@nacdl.org
Education Manager	Akvile Athanason	202-465-7630	aathanason@nacdl.org
Sales & Marketing Director	James Bergmann	202-465-7629	jbergmann@nacdl.org
Deputy Executive Director	Tom Chambers	202-465-7625	tchambers@nacdl.org
Editor, The Champion®	Quintin Chatman	202-465-7633	qchatman@nacdl.org
Membership Director	Michael Connor	202-465-7654	mconnor@nacdl.org
Director of Public Affairs & Communications	Ivan Dominguez	202-465-7662	idominguez@nacdl.org
Public Affairs & Communications Assistant	Ezra Dunkle-Polier	202-465-7656	edunkle-polier@nacdl.org
Director of State Legislative Affairs and Special Projects	Angelyn C. Frazer-Giles	202-465-7642	afrazer-giles@nacdl.org
Staff Attorney — Clemency Project 2014	Caprice Jenerson	202-872-8600	cjenerson@clemencyproject2014.org
Director of Events	Tamara Kalacevic	202-465-7641	tkalacevic@nacdl.org
Associate Executive Director for Programs, Business Services, and Technology	Gerald Lippert	202-465-7636	glippert@nacdl.org
Counsel — White Collar Crime Policy	Mario M. Meeks	202-465-7628	mmeeks@nacdl.org
Senior Privacy and National Security Counsel	Jumana Musa	202-465-7658	jmusa@nacdl.org
Associate Executive Director for Policy	Kyle O'Dowd	202-465-7626	kodowd@nacdl.org
Director — White Collar Crime Policy	Shana-Tara O'Toole	202-465-7627	sotoole@nacdl.org
Public Defense Training Manager	Diane Price	202-465-7631	dprice@nacdl.org
Grassroots Advocacy Manager	Monica Reid	202-465-7660	mreid@nacdl.org
Executive Director	Norman L. Reimer	202-465-7623	nreimer@nacdl.org
Project Manager — Clemency Project 2014	Cynthia Roseberry	202-872-8600	croseberry@clemencyproject2014.org
Member Services Assistant	Nelle Sandridge	202-465-7639	nsandridge@nacdl.org
Production Design Assistant	Zach Schermerhorn	202-465-7635	zschermerhorn@nacdl.org
National Affairs Assistant	Lisa Ama Schrade	202-465-7638	lschrade@nacdl.org
Senior Membership and Operations Associate	Viviana Sejas	202-465-7632	vsejas@nacdl.org
Information Services Manager	Doug Shaner	202-465-7648	dshaner@nacdl.org
Multimedia Production Specialist	Koichi Take	202-465-7661	ktake@nacdl.org
Public Defense Training and Reform Director	Colette Tvedt	202-465-7649	ctvedt@nacdl.org
Graphic Designer	Jennifer Waters	202-465-7655	jwaters@nacdl.org
Foundation Manager and Executive Assistant	Daniel Weir	202-465-7640	dweir@nacdl.org
Art Director	Catherine Zlomek	202-465-7634	czlomek@nacdl.org

11092016

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.

Notes

1. E.M. BORCHARD, CONVICTING THE INNOCENT (1932).
2. R.A. Leo, *Rethinking the Study of Miscarriages of Justice: Developing a Criminology of Wrongful Convictions*, 21 J. CONTEMPORARY CRIM. JUST. 201-223 (2005).
3. R.A. LEO, POLICE INTERROGATION AND CRIMINAL JUSTICE (2008).
4. T.P. Sullivan, *Compendium Shows More Jurisdictions Recording Custodial Interrogations*, THE CHAMPION, March 2014 at 20.
5. R.A. Leo & J.B. Gould, *Studying Wrongful Convictions: Learning From Social Science*, 7 OHIO STATE J. CRIM. L. 7-30 (2009).
6. R.A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266-303 (1996).
7. R.J. Ofshe & R.A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, DENVER UNIV. L. REV. 74, 979-1122 (1997); S.A. Drizin & R.A. Leo, *The Problem of False Confessions in a Post-DNA World*, 82 N.C. L. REV. 891-1007 (2004).
8. Ofshe & Leo, *supra* note 7 at 203-207.
9. Leo, *supra* note 3 at 248-250.
10. S.A. Drizin & R.A. Leo, *The Problem of False Confessions in a Post-DNA World*, 82 N.C. L. REV. 891-1007 (2004).
11. R.A. Leo & B. Liu, *What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?* 27 BEHAV. SCI. & L. 281-399 (2009).
12. F.E. Inbau, J.E. Reid, J.P. Buckley & B.C. Jayne, CRIMINAL INTERROGATIONS AND CONFESSIONS (5th ed.) (2013); Ofshe & Leo, *supra* note 7; S.M. Kassir, S.A. Drizin, J. Grisso, G.H. Gudjonsson, R.A. Leo & A.D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations* 34 L. & HUM. BEHAV. 211-227 (2010); Leo, *supra* note 6.
13. *Id.* at 192.
14. Kassir et al., *supra* note 12.
15. Leo, *supra* note 3 at 134.
16. These verbal and nonverbal cues do not reliably indicate deception. Kassir et al., *supra* note 12 at 6 and Leo, *supra* note 3 at 93.
17. Inbau et al., *supra* note 12 at 192-193.
18. Kassir et al., *supra* note 12 at 17.
19. Ofshe & Leo, *supra* note 7.
20. Inbau et al., *supra* note 12 at 202.
21. Leo, *supra* note 3 at 152.
22. D.S. Wright, R.A. Nash & K.A. Wade, *Encouraging Eyewitnesses to Falsely Corroborate Allegations: Effects of Rapport-Building and Incriminating Evidence* 21 PSYCHOL. CRIME & L. 648-660 (2015).
23. Kassir et al., *supra* note 12.
24. Leo, *supra* note 6. See also B. FELD, KIDS, COPS AND CONFESSIONS: INSIDE THE

INTERROGATION ROOM (2013).

25. S. Drizin & R.A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891-1007. (2004).
26. Inbau et al., *supra* note 12 at 597.
27. D. Davis & R.A. Leo, *Interrogation-Related Regulatory Decline: Ego-Depletion, Failures of Self-Regulation, and the Decision to Confess* 18 PSYCHOL. PUB. POL'Y & L. 673-704 (2012).
28. Kassir et al., *supra* note 12.
29. M. Blagrove, *Effects of Length of Sleep Deprivation on Interrogative Suggestibility*, 2 J. EXPERIMENTAL PSYCHOL.: APPLIED 48-59 (1996); See also S. Frenda, S.R. Berkowitz, E.F. Loftus & K. M. Fenn, *Sleep Deprivation and False Confessions*. 113 Proceedings of the National Academy of Sciences 2047-2050 (2016).
30. In Kassir and colleagues' survey of 547 police investigators from the United States and Canada, investigators estimated that their interrogations lasted 1.6 hours on average (the longest interrogation reported was 7.0 hours). S.M. Kassir, R.A. Leo, C.A. Meissner, K.D. Richman, L.H. Colwell, A.M. Leach & D. La Fon, *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 L. & HUM. BEHAV. 381-4000 (2007).
31. Ofshe & Leo, *supra* note 7.
32. R. Ofshe and R.A. Leo first wrote about the two-step model in their article "The Decision to Confess Falsely: Rational Choice and Irrational Action." See *supra* note 7.
33. B.L. Garrett, *The Substance of False Confessions*, 62 STANFORD L. REV. 1051-1119 (2010).
34. B. Garrett, *Contaminated Confessions Revisited*, Forthcoming in UNIV. VIRGINIA L. REV. (2015).
35. Leo, *supra* note 3 at 165-194.
36. S.C. Appleby, L.E. Hasel & S.M. Kassir *Police-Induced Confessions: An Empirical Analysis of Their Content and Impact* 19 PSYCHOL. CRIME & L. 111-128 (2011).
37. Leo, *supra* note 3 at 165-194.
38. Ofshe & Leo, *supra* note 7. See also Garrett, *supra* 34 at 1079.
39. Garrett, *supra* note 34 at 1074.
40. *Id.*
41. J. Trainum, *The Case for Videotaping Interrogations*, L.A. TIMES (2006).
42. Ofshe & Leo, *supra* note 7 at 990-997.
43. 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.
44. 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 cor-

rect 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 7 at 993.

45. *Id.* at 990-997.

46. *Id.*

47. *Id.*

48. *Id.*

49. R.A. Leo & R.J. Ofshe, *The Social Psychology of Police Interrogation: The Theory and Classifications of True and False Confessions*, 16 STUD. L. POL. & SOC'Y 189-251 (1997).

50. Inbau et al., *supra* note 12 at 358. ■

About the Authors

Brian L. Cutler is a professor in the Faculty of Social Science and Humanities at the University of Ontario Institute of Technology. Professor Cutler regularly writes articles on forensic psychology and serves as a consultant and expert witness on eyewitness identification and false confession.



Brian L. Cutler

Faculty of Social Science & Humanities
University of Ontario
Institute of Technology
Oshawa, Ontario
Canada

E-MAIL briancutler@mac.com

Richard A. Leo, Ph.D., J.D. is the Hamill Family Chair of Law and Psychology at the University of San Francisco, and author of the book *Police Interrogation and American Justice* (Harvard University Press). He has consulted with attorneys on more than 1,800 criminal and civil cases involving disputed interrogations and/or disputed confessions.



Richard A. Leo

Temple Beasley School of Law
University of San Francisco
School of Law
San Francisco, California
415-422-6513

E-MAIL rleo@usfca.edu