

BRIAN L. CUTLER, PHD

REPORT IN THE MATTER OF CHESTER OTTO WEGER

Brian L. Cutler, Ph.D.

Professional Background

1. For more than 30 years I have held faculty and academic administrative positions at Florida International University, the University of North Carolina at Charlotte, the University of Ontario Institute of Technology, and, currently, Fielding Graduate University. In my roles as a university professor, I have taught a variety of psychology and criminology courses at the undergraduate and graduate levels and have supervised undergraduate, master's and doctoral students in research. I have also taught continuing legal education workshops. Since 1983, I have conducted research on various forensic and social psychology topics and have active research programs on eyewitness memory, interrogations, and police psychology, from social and cognitive psychological perspectives. I have held research grants from the National Science Foundation of the United States and Social Science & Humanities Research Council of Canada. I have authored or edited nine books, including: *The APA Handbook of Forensic Psychology*, the *Encyclopedia of Psychology and Law*, *Reform of Eyewitness Identification Procedures*, and *Conviction of the Innocent: Lessons from Psychological Research*. I have also authored more than 30 book chapters and 75 peer-reviewed articles in psychology, law, and interdisciplinary journals, 30 articles in professional newsletters and given more than 100 professional presentations at conferences and universities. I have been active in professional associations as well. I served as President of the American Psychology-Law Society (Division 41 of the American Psychological Association), Editor-in-Chief of the peer-reviewed journal *Law and Human Behavior*, as Division 41 Council Representative for the American Psychological Association and as an advisor to APA's Amicus Brief program. I am a Distinguished Member of the American Psychology-Law Society and Fellow of the Association for Psychological Science. In 2017 I formed Coral Coast Group, Inc., to facilitate my consulting, expert testimony, and research services.
2. I have been engaged with the research on interrogations and false confessions in various ways since the 1990s. I served as a peer-reviewer for manuscripts on this topic submitted to scientific journals. In my role as Editor of *Law and Human Behavior*, I oversaw the peer review process for many manuscript submissions on this topic. Some of the books I edited (the *APA Handbook of Forensic Psychology*, *Encyclopedia of Psychology and Law*, *Conviction of the Innocent: Lessons from Psychological Research*) have chapters on false confessions written by other scholars. In 2016 I received a research grant from the Social Sciences & Humanities Research Council of Canada to for research on the assessment of coercion in

videorecorded interviews and interrogations. To date I have authored or co-authored 3 book chapters and 6 peer-reviewed articles on interrogations and false confessions. I have taught the topic of interrogations and false confessions in undergraduate and graduate courses as well as continuing legal education courses for prosecuting and defense lawyers. I have consulted in more than 100 cases involving contested confessions and testified as an expert in court on this subject about 12 times. I have attached my CV separately.

This Assignment

3. I have been asked by attorneys from Hale & Monico to review the materials in Appendix A, to provide an overview of the psychological and social scientific literature on interrogations and false confessions, and to explain how the principles and research findings reviewed pertain to this case.
4. I do not in this report, and would not in testimony, provide opinions about the accuracy of any statement made by Mr. Weger or any of the witnesses, for I understand that such opinions are the purview of fact finders and not expert witnesses. I have no independent knowledge about the facts or evidence in this case beyond what I have learned from the materials listed in Appendix A.
5. In paragraphs 7-81, I explain what the social sciences have uncovered about the science of false confessions.
6. In paragraphs 82-104, I provide my opinions of how the facts of this case – as decided by a jury – would give rise to a coerced and contaminated false confession in this case.

Foundational Knowledge on Interrogations and False Confessions

7. **The knowledge base on interrogations and false confessions is informed by decades of foundational psychological research from behavioral, clinical, cognitive, developmental, and social psychology.** Psychological theorizing about false confessions dates back more than a century to Hugo Munsterberg's 1908 article entitled "Untrue Confessions." Munsterberg wrote about the roles of promises, threats, and suggestions in eliciting false confessions and the psychological processes involved in the decision to falsely confess. Various subfields of psychology contribute to our understanding of false confessions. Behavioral psychology informs us about how the promise of rewards or threats or punishment (explicit, implied, real, or perceived) influence behavior in an interrogation setting. Clinical psychology teaches us about individual risk factors for false confessions, such as mental illnesses and intellectual disabilities, and provides tools for practitioners to use when assessing individuals for those risk factors. Likewise, clinical psychologists possess tools for assessing individuals' abilities to understand and exercise constitutional rights. Cognitive psychology teaches us about the roles of memory and decision-making in the interrogation-to-confession process, and about factors that may influence or manipulate cognitive decision-making processes. Cognitive and neuropsychology also inform us about how biological factors, such as fatigue, hunger, and pain can interfere with cognitive processing in interrogation settings. Social psychology

teaches us about the roles of social influence, persuasion, obedience to authority, and related processes influence cognition, emotion, and behavior during police questioning.

8. **In addition to contributions of the psychology subfields, there is a specific literature on the topic of false confessions. The research on interrogation and false confession is not limited to psychology, however. Scholars in criminal justice, criminology, law, and sociology also contribute to this research, as do practitioners experienced in conducting interrogations.** The literature includes law review articles (e.g., Drizin & Leo, 2004; Garrett, 2010; Leo, 2017; Primus 2015), peer-reviewed journal articles (e.g., Blair, 2007; Horgan et al., 2012; Huff, Rattner, & Sagarin, 1996; Kassin, 2008; Ofshe, 1992; Russano, Meissner, Narchet, & Kassin, 2005; Scherr et al., 2020; Swanner, Meissner, Atkinson, & Dianiska, 2016), scholarly books written or edited by psychologists and other social scientists (e.g., Cutler, 2011; Feld, 2013; Gudjonsson, 2002; Lassiter & Meissner, 2010; Wrightsman & Kassin, 1993), and suspect questioning training manuals (e.g., Carr, 2015; Centrex, 2004; Inbau et al., 2013; Wicklander-Zulawski, 2020). The research on interrogations and false confessions is substantial in volume and has grown exponentially since the early 1990s.
9. **The social science research on interrogation and confessions uses a variety of methodologies, each of which is a commonly accepted method of inquiry.** The methods include archival studies of actual cases of false confession (e.g., Drizin & Leo, 2004), observational studies of police interrogation (e.g., Feld, 2013; Kaplan & Cutler, 2021; King & Snook, 2009; Leo, 1996), surveys of professional populations (e.g., Cleary & Warner, 2016; Kaplan et al., 2020; Kassin et al., 2007; Reppucci et al., 2010), laboratory experiments (e.g., Horgan et al, 2012; Klaver et al., 2008; Russano, Meissner, Narchet, & Kassin, 2005), and meta-analysis (Meissner et al., 2014).
10. **The research on interrogation and confessions is generally accepted in the field of psychology.** Research on interrogation and confessions is routinely included in psychology textbooks and courses, presented at national and international psychology conferences, and adopted as a research topic of master's theses and doctoral dissertations. A recently published survey that examined acceptance among experts (Kassin et al., 2018) found nearly universal agreement between forensic psychological experts on the risk factors for false confessions such as threats, physical abuse (i.e., "enhanced interrogations," p.70), promises, and implications of leniency.
11. **Several professional associations have in various ways embraced and endorsed the research on interrogations and false confessions.** The American Psychology-Law Society, Division 41 of the American Psychological Association, formed a committee of experts to conduct a comprehensive review of the research on interrogation and confessions, conducted an extensive peer-review process of their review (see Thompson, 2010), and eventually adopted the review and published it in the association's journal (Kassin et al., 2010). As of this writing, the scientific review paper was one of only two adopted by the association. The American Psychological Association has to date submitted Amicus Briefs on false confessions

in eight cases and in 2014 adopted a Resolution on Interrogations of Criminal Suspects.¹ Other organizations that have availed themselves of this research include legal committees such as prosecutorial conviction integrity units, and advocacy organizations such as the Innocence Project and Center on Wrongful Convictions.

- 12. In addition to the psychological and social scientific research on interrogations and confessions, there is also a literature on police practices, including workshops sponsored by such agencies as the Reid Institute and Wicklander-Zulawski.** Both organizations as well as police practitioners have authored interrogation manuals and other materials to supplement training (e.g., Carr, 2015; Centrex, 2004; Inbau et al., 2013; Watkins, 2017; Wicklander-Zulawski, 2020). The vast knowledge and experience accumulated by experts in law enforcement and police practices contributes to our understanding of interrogation and false confessions as well. Indeed, false confessions and their causes are regularly taught in interrogation training and included in training materials (e.g., Inbau et al., 2013; Wicklander-Zulawski, 2020).

Overview of Expert Testimony on Interrogation and False Confessions and Expert Testimony Admissibility Issues

- 13. When parties proffer expert testimony on false confessions, courts are of course tasked with determining its admissibility. The purpose of expert psychological testimony on false confessions is to educate the fact finder about false confessions in general and the individual and situational risk factors that give rise to them. The purpose is not to evaluate and opine on the veracity of a defendant's confession, for such evaluations are understood to be the purview of fact finders and not expert witnesses.** Expert witnesses may be from various subdisciplines of psychology (clinical, development, social, cognitive), or from other social sciences (criminology, sociology), and should be expected to meet the qualifications for experts in the courts in which they are proffered. Typical expert psychological testimony involves foundational work in psychology that underlies false confessions (such as discussed throughout this report) and a review of the case-specific risk factors for false confessions (e.g., characteristics of the suspect, the interrogation setting, and the nature of the interrogation).
- 14. The notion of an error rate, which applies to expert testimony in other domains (e.g., forensic testing), does not apply to expert testimony on false confessions, as the purpose is**

¹The APA briefs and resolutions can be found at www.apa.org.

to educate fact finders and not to provide a diagnosis or test result. The inquiry concerning admissibility also addresses the reliability of the science underlying the testimony. I have addressed the reliability and general acceptance of the science above.

15. **Inquiries concerning admissibility also address the helpfulness of the proffered expert testimony and whether the expert opinion exceeds the knowledge of the trier of fact and/or is of value to the extent that some of the conclusions are contrary to common sense.** There is overwhelming evidence that interrogation and false confessions are not a matter of common sense, as summarized in the following paragraphs.
16. **Research on known cases of wrongful conviction routinely cite false admissions and confessions as a common cause** (e.g., Garrett, 2008; Huff, Rattner, & Sagarin, 1996; Kassir et al., 2010; Scheck, et al., 2000). The National Registry of Exonerations is a database that was founded by the University of Michigan Law School in conjunction with Northwestern University's School of Law. The National Registry identifies and provides details of exonerations in the United States since 1989. As of January 13, 2023, the National Registry had accumulated 3,361 exonerations and reported that false confessions were contributing factors in 397 (12%) of those cases. That many of the false confessors were convicted by triers of fact suggests that false confessions and their risk factors are not merely a matter of common sense, for if they were a matter of common sense, the juries would have recognized the confessions as false and acquitted the defendants. False confessions lead to erroneous verdicts and wrongful convictions because false confessions are compelling, believable, and defy common sense (Kassin, 2008).
17. **The fact that police are trained in interrogation methods in lengthy workshops that require manuals and other learning materials and includes lessons on false confessions is evidence that interrogation techniques are not within the ken of laypeople.** The inclusion of learning materials on false confessions in university courses throughout North America is further evidence that they are not a matter of common sense. If interrogation practices and false confessions were already within common knowledge, there would be no need to train investigators and teach undergraduate students about them. There would also be no need for universities and federal granting agencies in North America to devote grant funding annually to supporting the research efforts of psychologists and other social scientists to study interrogations and confessions.
18. **Psychologists have developed a program of research specifically on the question of whether false confessions, and the factors known to be associated with false confessions, are a matter of common sense. This research has classic social psychology as a foundation.** Considerable research in social psychology has been devoted to the process by which people attribute causality for behavior. When observing another person and reasoning about their motivations and decision-making processes, people tend to engage in the actor-observer bias (Jones & Nisbett, 1971). Heider (1958) maintained that we tend to see our own behavior as caused by the situation we are in, whereas we see others' behaviors as caused by their internal states. Thus, when people evaluate confessions, their default position is typically to assume that the suspect confessed because they were guilty. The insensitivity to and discounting of the interrogation context when evaluating a confession is consistent with the

general tendency of people to discount situational influences when explaining the causes of other people's behaviors. To those familiar with this social psychological literature, the external pressures of an interrogation are relatively salient. Most laypeople, however, when evaluating interrogations and confessions of suspects often fail to appreciate external pressures such as coercive tactics and instead default to internal attributions (i.e., guilt) as their explanations for confessions (Kassin, 2008; 2017). The tendency to attribute behavior to personal factors rather than situational factors has been labeled the "fundamental attribution error" (Ross, 1977), a well-established phenomenon in social psychology (Myers, 2002).

- 19. Social psychological research on lay knowledge concerning interrogation and false confessions uses three methodologies: surveys of general knowledge, trial simulation experiments, and studies of peoples' abilities to distinguish true from false confessions.** Surveys of general knowledge about false confessions have been conducted with jury-eligible undergraduate students and community members (e.g., Blandon-Gitlin et al., 2011; Chojnacki et al., 2008; Costanzo, Shaked-Schroer, & Vinson, 2010; Henkel et al., 2008; Leo & Liu, 2009; Mindthoff et al., 2018). Typically, the findings are that lay participants view false confessions as highly improbable occurrences, and/or that they would be extremely unlikely to falsely confess to a crime. Contrary to the findings of research on risk factors (see Kassin et al., 2010; Scherr et al., 2020) and the opinions among psychologists with expertise on interrogations and confessions (Kaplan et al., 2020; Kassin et al., 2018), jury-eligible laypeople also appeared to underestimate the significance of common risk factors for false confession. Lay people tend not to believe that psychological coercion, high levels of stress, repeated accusations, the presentation of false evidence, or expressed or implied leniency in exchange for a confession would likely lead to a false confession; all of which are known risk factors for false confession among psychological experts (Kassin et al., 2010; 2019; Scherr et al., 2020). Recent evidence suggests that lay knowledge on false confessions may be improving, and this improvement is hypothesized to be due to an increasing media focus on the phenomena of wrongful conviction (Mindthoff et al., 2018). Yet, the research also suggests that interrogation process and risk factors for false confession remain beyond the ken of the average juror (Alceste et al., 2020; Jones et al., 2021; Kaplan et al., 2020). Barring physical violence or some extreme threat, it is very difficult for many people to empathize with a suspect's motivation for falsely confessing. There are similar and significant gaps in lay knowledge about individual risk factors for false confession. Some studies claimed to have found increasing but far from perfect levels of understanding of how youth, mental illness, and intellectual disability are particularly at risk for false confessions (Chojnacki et al., 2008; Mindthoff et al., 2018).
- 20. Another method of inquiry is trial simulation research, wherein jury-eligible community members or undergraduate students are provided with simulated trial materials in which the evidence surrounding an interrogation and confession (e.g., the coerciveness of the procedure, the individual characteristics of the suspect) is systematically manipulated while other evidence is held constant.** Participants, in the roles of jurors, evaluate the evidence and render verdicts. Trial simulation methodology enables researchers to examine what factors do and do not influence jurors' evaluations of the interrogations and confessions. Researchers commonly find that confessions are powerful evidence and trump other evidence, and jurors are not fully sensitive to individual and situational risk factors for false confession (e.g., Appleby & Kassin, 2016; Brimbal & Jones, 2018; Henderson & Levett, 2016; Henkel,

2008; Jones & Penrod, 2016; Kassin & Neumann, 1997; Kassin & Sukel, 1997; Nadjowski & Bottoms, 2012; Palmer et al., 2016; Woestehoff & Meissner, 2016). For instance, Kassin and Sukel (1997) presented mock jurors with trial transcripts where the only non-circumstantial evidence presented by the prosecution was a confession. Participants read different versions of the transcript in which the evidence surrounding the confession was systematically manipulated. Participants' evaluations of the confessions were insensitive to the use of threats with a weapon and the defendant's level of physical pain during their interrogation, and the presence or absence of these factors in the interrogation did not influence participants' verdict decisions. More recently, and using similar methodology, Woestehoff and Meissner (2016) found that participants were sensitive to the pressures examined by Kassin and Sukel (1997), but in cases in which the defendant confessed in response to threats, 33% to 50% of participants still voted to convict. Using this same trial simulation methodology, Gomes et al. (2016) found that judicial instructions were useful to mock jurors weighing confession evidence, but that expert witness testimony had an even greater effect in assisting mock jurors in aiding them in identifying and weighing the factors associated with false confessions.

21. The third method involves examining peoples' ability to discriminate between true and false confessions. Untrained laypeople are usually not highly adept at discriminating between truth and lies and perform only slightly above chance levels (Bond & DePaulo, 2006). Similar accuracy rates have been found in their abilities to discern between true and false confessions. For example, Honts et al. (2014) asked their participants to judge the veracity of 3208 juvenile suspects' true and false confessions and found an accuracy rate of only 52.8%. Further, law enforcement officers who have undergone training in deception detection typically do not produce results that are any more highly accurate than the rates observed among laypeople. For instance, in a relatively novel study for its time Kassin, Meissner, and Norwick (2005) enlisted the participation of 17 male inmates from a Massachusetts corrections facility. Each inmate was videotaped describing the crime for which he was convicted in response to ten questions designed to elicit detail about the crime. Each inmate was also videotaped describing a crime in which he was not involved. For these videotapes, each inmate was given a brief description of a true crime described by another inmate and asked to fabricate a confession following the same ten questions used to elicit the true confession. Kassin et al. (2005) selected videotapes of 10 of the inmates each giving one confession. Five of the confessions were true and five were false. Kassin et al. showed the ten videotapes to 61 university students and 57 federal, state, and local investigators from Florida and Texas and asked them to attempt to determine whether each of the 10 suspects was guilty or innocent of the crime to which he confessed and to rate their confidence levels in each decision. On average, accuracy in evaluating confessions was about 54%, not significantly different from guessing. Students, on average, were more accurate than investigators (59% versus 48% correct), but investigators were on average more confident than students. Trained polygraphers, without the aid of polygraph readings to reference, have likewise been found to operate at only slightly above chance levels in discriminating between true and false confessions (61.8% of true confessions correctly identified, 52% of false confessions correctly identified; Honts et al. 2019). A notable finding in Honts et al.'s (2019) research was that polygraphers who had undergone training in accusatory interrogation methods were more likely to label false confessions as true.

- 22. Research using the three methodologies converge on the conclusion that the psychology of forensic interrogations and suspects' confessions are outside the ken of juries.** That juries – when left to their own devices – have difficulty evaluating confessions (as evidenced in the exoneration cases in which false confessions led to guilty jury verdicts) is consistent with the more general phenomenon that people do not fully understand social and cognitive psychological processes that affect our everyday thinking and behavior. As explained above, attribution research consistently shows that people underestimate the impact of situational factors on behavior (Ross, 1977).

Types of False Confessions

- 23. Having discussed the scientific foundation for research on interrogation and false confession and having provided an overview of the need for expert testimony on false confessions, I turn now to a summary of the research findings. The research literature on false confessions typically distinguishes between three types of false confessions: voluntary, compliant, and internalized (Kassin et al., 2010).**
- 24. Voluntary false confessions are those in which an individual, without prompting or pressure, admits to committing a crime of which they are factually innocent.** For example, about 200 people offered voluntary false confessions in the kidnapping of Charles Lindbergh's infant in 1932. According to Kassin et al. (2010), people may offer voluntary false confessions to obtain notoriety, for self-punishment, because of their inability to distinguish fact from fantasy, or as a means of protecting the real perpetrators.
- 25. Compliant false confessions are those in which the pressures of interrogation lead the suspect to admit to having committed a crime of which they are innocent.** The use of powerful persuasion and behavior-shaping techniques by interrogators provides the pressure to confess, and factors such as time and fatigue can diminish a suspect's ability to resist pressure. The suspect who offers a compliant false confession agrees to confess to escape the stressful interrogation and despite the long-term potential negative consequences of the confession. Privately, however, the suspect knows that the confession is false and continues to maintain their innocence.
- 26. Internalized false confessions are those in which an individual admits to a crime of which they are factually innocent yet has come to believe that they committed (or possibly committed) the crime.** The suspect may initially proclaim their innocence but over time and through persuasion comes to distrust their own memory and accepts the possibility of their culpability. In some cases, innocent suspects have been persuaded into believing that they committed the crime in a blacked-out state or otherwise have blocked it from their memory (Gauger, 2005; Kassin et al., 2010; Scherr et al., 2020). Leo (2008) draws the same distinctions between voluntary, compliant, and internalized false confessions but instead labels that third type persuaded confessions. While mental illness and induced blackouts may be a significant risk factor for internalized false confessions, they are not necessary components. In one case in which I served as an expert witness, Constable Stephen Todd, a Vancouver, British Columbia police officer, was persuaded that his cousin had confessed to him concerning his involvement

in a murder that had happened about a decade prior to Constable Todd's interrogation. Constable Todd's belief in his cousin's confession was erroneous and induced by a prolonged, high coercive interrogation by a special unit of the Royal Canadian Mounted Police (see Travers, 2017). Constable Todd immediately retracted his statement once free of the coercive interrogation.

Three Types of Errors in Investigations

27. **Leo and Drizin (2010) describe three pathways from false confession to wrongful conviction: classification errors, coercion errors, and contamination errors.**

Classification Errors in Investigations

28. **Classification errors are the misclassification of innocent suspects as guilty suspects.** More recently, Scherr et al. (2020) has expanded upon the description of this pathway by also describing how a false confession can taint the collection and interpretation of other evidence. According to Leo and Drizin (2010), misclassification errors are facilitated by poor or erroneous interrogation techniques and lie detection failures.
29. **Classification errors are facilitated and exacerbated by tunnel vision (Findley & Scott, 2006) at the investigative stage.** Using a case study approach, Findley and Scott identified tunnel vision in the investigation process in the wrongful cases of Marvin Anderson, Steven Avery, and the Central Park Jogger case (five wrongful convictions). Findley and Scott gave examples of how confirmation bias -- the tendency to interpret evidence in ways that support and ignore evidence that disconfirms existing beliefs, expectations, and hypotheses -- negatively impacted police investigations in the aforementioned case studies. In an innovative experiment on the impact of induced mood on the judgments of 61 experienced criminal investigators, Ask and Granhag (2007) found that angered investigators were less sensitive than saddened investigators to situational factors affecting witness statements and to the inconsistency between witness statements and the central hypothesis in the investigation. Ask and Granhag concluded that anger induces heuristic processing and greater potential for errors in criminal investigations. Innes (2003) discusses how a strong amount of external pressure on police to solve a crime and charge a suspect quickly can lead to tunnel vision and classification errors.
30. **Classification errors are also facilitated by deception detection errors at the investigation stage prior to interrogation.** Investigators interview potential suspects to determine their levels of suspiciousness (Inbau et al., 2013). During these interviews, investigators may incorrectly conclude that the potential suspects are lying and perceive them as more suspicious, and on this basis proceed with interrogation. Decades of psychological research, however, have consistently shown that people operate at or only slightly above chance levels when discriminating true from false statements (Bond & DePaulo, 2006). Experienced police investigators fare no better at discriminating true from false confessions, as discussed in the aforementioned study by Kassin, Meissner, and Norwick (2005). While training in deception detection generally does little to improve lie detection accuracy, it does typically boost confidence in lie judgments (DePaulo & Pfeifer, 1986). Confidence in deception detection

decisions does not strongly relate to accuracy (De Paulo et al., 1997), but undue confidence that a suspect is lying can result in coercive and guilt-presumptive interrogations that are liable to produce false confessions (Kassin, Goldstein, & Savitsky, 2003; Leo, 2008).

Coercion Errors in Investigations

31. A coercion error occurs when an innocent suspect is coerced into giving a false confession.

The coercion results from a combination of individual and situational risk factors that render suspects vulnerable to social influence during the interrogation process and ultimately to false confession. My use of the term “coercion” in this report refers to psychological coercion and not coercion as defined by law. Legal definitions of coercion incorporate concepts such as voluntariness and focus on tactics such as threats, promises, and physical confrontation. In a recent chapter (Kaplan et al., 2019), my colleagues and I reviewed legal and psychological definitions of coercion and from them derived the following psychological definition of coercion (p. 7): “Coercion in police interrogation consists of the use of persuasive techniques that limit the suspect’s autonomy by manipulating the perceived costs and benefits of possible courses of action and/or depleting the suspect’s motivation or ability to resist acceding to the investigator’s demands.”

A. Coercion Errors and Psychological Impact of Interrogation

32. Prior to reviewing the individual and situational risk factors for false confession, I first provide a summary of the psychological impacts of interrogation, as psychological impacts are referenced in the discussion of individual and situational specific risk factors. Many psychological phenomena are relevant, as discussed in the following paragraphs. Some phenomena, such as self-regulation depletion and social influence, are outcomes that apply broadly to the interrogation experience, whereas others, as discussed below, are brought about by the use of certain tactics. I lead with the more general phenomena. The psychological impacts of interrogation may be greater for some individuals than others because of individual risk factors, and greater in some interrogations than in others because of situational risk factors.

33. Social influence is a classic subfield of study within social psychology. Social psychologists have historically conducted research on such topics as conformity, persuasion, compliance, and obedience to authority, all of which may play a role in the interrogation room. For example, obedience refers to behavior that complies with direction from authority. Common sense tells us that obedience is appropriate in many cases. Children should obey their parents and teachers. Employees should obey their managers. Members of the armed forces should obey their higher-ranking officers. And citizens should obey law enforcement. Common sense also tells us that obedience has limits. Many laypeople think that they would not or should not obey commands that are contrary to their moral codes. Contrary to common sense, however, social psychological research informs us that certain situational pressures may overwhelm our moral codes (Blass, 2009; Burger, 2009). According to Blass (2009), people have a propensity to obey authority to the point of acting in ways that are contrary to their own moral principles or in ways that are directly in opposition to their own self-interests. When people accept the legitimacy of an authority figure guiding their behavior, they experience certain changes that

ultimately lead to their obedience. They accept the authority's definition of the reality of the situation and see things through the eyes of the person in charge.

- 34. Resisting pressures to confess requires self-regulation, or the ability to regulate one's own thoughts, behaviors, and emotions.** Examples of self-regulation include holding back one's temper when provoked, making oneself appear cheerful when sad, and declining dessert when dieting. Self-regulation can be thought of as willpower, a muscle, or an energy source (Baumeister, Vohs & Tice, 2007). In this respect, self-regulation is limited. Fatigue, hunger, pain, anxiety, and cognitive effort deplete self-regulation (Davis & Leo, 2013), whereas rest and glucose restore self-regulation (Baumeister, Vohs, & Tice 2007; Blagrove, 1996). Thus, the mental state that the suspect brings to the interrogation from the outset influences their ability to self-regulate their thoughts, emotions, and behaviors, and to resist confessing. A suspect who is tired, hungry, and/or physically uncomfortable begins the interrogation with a depleted source of self-regulation. The act of arguing one's innocence requires cognitive effort and further depletes self-regulation. Once self-regulation becomes sufficiently depleted, the suspect no longer has the willpower to resist and gives in to the temptation to confess.
- 35. The concept of regulatory decline is not purely an abstract psychological construct but is measurable on a physiological level.** Confrontational and coercive interrogations may affect suspects' heart rates, blood pressure, and neural activity (Guyll, Yang, Madon, Smalarz, & Lannin, 2019). In an experiment by Guyll et al. (2013), 132 university students were accused of and interrogated for misconduct and pressured to confess. Half of these participants were guilty, and the other half were innocent of the misconduct. The investigators measured each suspect's blood pressure, heart rate and other physiological measures of stress before, during, and after the interrogations. There were two key findings. First, innocent suspects experienced less physiological stress than did guilty suspects. Second, innocent suspects who continued to maintain their innocence in the face of interrogation pressure showed higher levels of physiological stress in comparison to their baseline stress levels. Guyll et al.'s findings suggest that the process of resisting persuasion to confess induces stress and mobilization of psychological resources (for example, self-regulation and coping efforts) in the service of resisting pressure and maintaining innocence. These psychological resources eventually become depleted. In Guyll et al.'s study (2013), 32 of the 74 innocent suspects eventually confessed to the misconduct of which they were falsely accused.
- 36. Another important implication of Guyll et al. (2013) was that innocent suspects showed less stress in response to accusation than did guilty suspects, presumably because they naively believed their innocence would protect them.** The belief in the power of innocence is consistent with other findings that innocent suspects are less likely than guilty suspects to invoke their rights to silence or counsel or take other defensive efforts to protect their statuses (Kassin, 2012).
- 37. High levels of prolonged stress may interfere with memory and reasoning abilities (Arnsten, 2009), placing suspects in a more suggestible, vulnerable, and easily manipulated state (Davis & Leo, 2012; 2013).** Leo and Davis (2010) discuss the phenomenon of a stress-induced confession: a confession "in which the suspect has become so distressed (tired, fearful, anxious, or distressed by the aversiveness of the interrogation) that

they become willing to do or say anything—including give a false confession—to escape the interrogation.” When known false confessors are asked why they falsely confessed, they commonly respond that they just wanted to end the interrogation (Leo, 2008).

- 38. Factors such as self-regulatory depletion and stress can interfere with cognitive functioning and lead to temporal discounting.** Temporal discounting refers to the well-established finding that immediate – or proximal – factors have a stronger influence on behavior than delayed – or distal – factors (Madon et al., 2012). In the interrogation context, temporal discounting may lead suspects to give greater weight to ending the interrogation by confessing than to the more distal consequences of the confession (Kassin et al., 2010), a finding supported by laboratory research (Madon et al., 2012; Yang, Madon, & Guyll, 2015). Perceived uncertainty of the distal consequences may also increase the extent of temporal discounting (Yang, Madon & Guyll, 2015). Thus, to the extent that an innocent suspect believes that their innocence will eventually be established, perhaps because of the belief that the truth will prevail, they might be more willing to falsely confess to end the proximal distress of interrogation. In Madon et al.’s (2012) words, “Because innocent suspects tend to believe that their innocence will protect them (Kassin, 2005), they may be more inclined than guilty suspects to perceive future punishment as an improbable event.”

B, Coercion Errors and Individual Risk Factors for False Confession

- 39. Individuals with mental illnesses are greatly overrepresented among false confessors and the wrongfully convicted** (Drizin & Leo, 2004; Garrett, 2010; Gross, Jacoby, Matheson, & Montgomery, 2004). Mental illnesses has been associated with high levels of suggestibility (Follette, Davis, & Leo, 2017; Gudjonsson, Sigurdsson, Bragason, Newton, & Einarsson, 2008; Peters, Moritz, Tekin, Jelacic, & Merckelbach, 2012). The extent that mental illness is a risk factor depends on the disorder, individual’s symptomology and current state, and the situational risk factors present in the interrogation.
- 40. Certain mental states can increase the risk of false confession. Factors such as fatigue, hunger, physical discomfort, and intoxication are known to deplete peoples’ abilities to regulate their thoughts, feelings, and behaviors** (Baumeister, Vohs, & Tice, 2007; Blagrove, 1996), interfere with cognitive processing, and render individuals more susceptible to social influence during interrogation, and increase the risk of false confession (Davis & Leo, 2010; Kassin et al., 2010).
- 41. Sleep is essential to human functioning.** Psychological research on sleep deprivation shows that fatigue impairs the ability to sustain attention and flexibility of thinking and increases suggestibility in response to leading questions (Kassin et al., 2010). Fatigue interferes with effective self-regulation (Galliot & Baumeister, 2007). Lack of sleep has also been shown to impair job performance in medical interns and surgeons. A literature review authored by Pilcher and Huffcut (1996), as cited in Kassin et al. (2010), concluded that “overall sleep deprivation strongly impairs human functioning.” Kassin et al. (2010), citing Suedfeld (1990), noted that “sleep deprivation is historically one of the most potent methods used to soften up prisoners of war and extract confessions from them” and that “Amnesty International reports that most torture victims interviewed claim having been deprived of sleep for 24 hours or

more.” (p. 16). In a laboratory experiment, Frennda et al. (2016) provided direct evidence that sleep-deprived suspects were more likely to falsely confess than rested suspects.

42. Just as food and sleep deprivation can drain our resources and challenge our abilities to self-regulate, so too can the experience of pain and discomfort. Research supports the link between the physiological measure HRV (the variability in intervals between successive heartbeats) and the capacity for self-regulation. Higher levels of HRV are associated with improved performance on a difficult task, ability to regulate emotions, reductions in emotional distress, and impulse control, whereas lower levels of HRV are associated with reduced abilities to control emotions and behaviors associated with anxiety and depression (Evans et al., 2014). In a recent study (Evans et al., 2014), participants who had pain induced from a “cold pressor task” were at risk for lower levels of self-regulation. The authors concluded: “Taken together with other recent findings regarding pain and self-regulation, it appears that tasks requiring self-regulatory energy undertaken by someone in pain, either chronic or acute, may overwhelm or rapidly deplete whatever self-regulatory resources were initially present due to the taxing nature of simultaneous self-regulatory demands” (p. 28)

43. There is growing attention to innocence as a risk factor for false confession, as discussed by Kassin (2005). Innocent people are more likely than guilty people to waive their rights to remain silent, to cooperate, and to speak freely with investigators (Kassin & Norwick, 2004). Rather than remaining silent, the innocent suspect repeatedly denies their involvement in the crimes, attempts to tell their side of the story, and at least initially, believes that they can convince the investigators that they are innocent. Appearing uncooperative by maintaining their innocence, the innocent suspect’s protestations trigger more aggressive and/or accusatory questioning by the interrogators. The use of more aggressive or accusatory tactics by the investigators in turn makes the suspect appear more anxious and suspicious. The suspect exerts physical and mental effort and resources to trying to convince the interrogators of their innocence, but failing, the suspect’s resources become depleted over time (Guyll et al., 2013, 2019). Upon failing to convince the investigator of their innocence, the innocent suspect eventually reaches a state of hopelessness, gets worn out, and, in order to end the ordeal of interrogation, admits to involvement in the crime. The innocent suspect may continue to believe that despite agreeing to confess to the crime, they will prove their innocence in court. But often, even without additional evidence linking the suspect to the crime, the suspect’s confession becomes the new reality, and the false confession results in a wrongful conviction.

C, Coercion Errors and Situational Risk Factors and Their Effects

44. Situational risk factors for false confession include the setting in which the interrogation is conducted, the length of the interrogation, and the interrogation tactics used during the interrogation. With respect to setting, interrogations are typically conducted in an interview or interrogation room, deliberately designed to maximize privacy (Inbau et al., 2013). Inbau et al. (2013) provide detailed specifications for interview and interrogation rooms designed to maximize a sense of privacy for the suspect, the idea being that a suspect is more likely to confess to a transgression in private than in public.

- 45. The conditions that create privacy, however, can also create a sense of physical and social isolation, and isolation can have negative effects.** Humans are social beings. Our identities are often determined by our relationships with other people. In ambiguous or new situations, we look to the behavior of others for cues as to what is going on and how to behave. In stressful situations, we look to others for social support and belonging (Kassin et al., 2010). Indeed, recent research shows that chronic social isolation leads to poorer health and premature mortality and represents a significant public health concern (Holt-Lunstad, Smith, Baker, Harris & Stephenson, 2015). The interrogation is a stressful situation (Kassin et al., 2010). Isolation increases stress and may contribute to perceptions of loss of control and autonomy (Kassin & Gudjonsson, 2004). The isolated nature of the interrogation setting and lack of outside support increases anxiety and decreases self-confidence, which in turn diminishes the ability to resist an investigator's demands among innocent and guilty suspects alike (Ofshe & Leo, 1997). The inability to seek and obtain support from friends, family members or a legal advocate can heighten distress and enhance the motivation to end the interrogation (i.e., by confessing).
- 46. Excessive interrogation length is a risk factor for false confession.** In Drizin and Leo's (2004) analysis of 125 cases of proven false confessions, the durations of the interrogations were much longer than the average interrogation lengths from the survey (Kassin et al., 2007) and observational (Leo, 1996a) studies. In the false confession cases, 16% of interrogations lasted less than 6 hours, 34% 6-12 hours, 39% 12-24 hours, 7%, 24-48 hours, and 4% 48 hours or more. By contrast, survey research of investigators has found that interrogations typically do not exceed an hour and a half (Kassin et al. 2007). Trainers maintain that a properly conducted interrogation should last no more than three to four hours (Buckley, 2017; Inbau et al., 2013) or less (Wicklander-Zulawski, 2020), and highly discourage exceeding six hours (Blair, 2005). In cases of particularly long interrogations, Inbau et al. suggest inquiring about what justifies the excessive length (pp. 347-248): "can the excessive length of interrogation be explained by the suspect's behavior? For example, did the suspect offer a series of different versions of events, before offering the first incriminating statement? A suspect who has maintained their innocence and made no incriminating statements for 8 or 10 hours has not offered any behavior to account for this lengthy period of interrogation." Long interrogations deplete self-regulation abilities and the ability to resist influence by the interrogator and lead to cognitive distortions (Davis & Leo, 2012; Leo & Davis, 2010).
- 47. The tactics used by interrogators can enhance the risk for false confession.** Interrogation tactics are verbal statements or questions and nonverbal actions that are designed to move a suspect toward confession of wrongdoing. Examples of interrogation tactics include accusing the suspect of the crime, leveraging the interrogator's experience and knowledge of the crime, deflecting the suspect's denials, leveraging true, exaggerated, or wholly false evidence against the suspect, asking the suspect guilt-presumptive questions, giving the suspect a time-limited offer, offering the suspect rationales or excuses for committing the crime, moving physically closer to the suspect, and staring at the suspect. Interrogation tactics can create stress and fatigue, deplete the suspect's ability to self-regulate, and lead both a guilty or innocent suspect to conclude that he has no chance of proving his innocence and that confession is in his best interest. False evidence ploys (e.g., claiming that there is inculpatory forensic evidence or eyewitness testimony when it doesn't exist) and minimization tactics (e.g., blaming the victim,

minimizing the crime, offering excuses or justifications) have specifically been linked to higher risk of false confession (Kassin et al., 2010).

Contamination Errors in Investigations

48. **Once a suspect admits guilt during interrogation, the interrogator may continue using the same tactics described above to encourage the suspect to elaborate on their account of the crime and provide inculpatory details (Leo, 2008).** Trainers teach that, once the confession narrative is complete, the confession should be memorialized in written statements or recorded (Inbau et al., 2013). With increasing frequency, interrogations and confessions are video recorded as a safeguard for police and suspects against wrongful conviction (Sullivan, 2014).
49. **In the course of the interrogation, interrogators may intentionally or inadvertently leak crime details to the suspect.** Guided by the belief that the disclosure of crime details will further persuade the suspect to confess, the investigator might intentionally convey crime details during evidence ploys or as a way of proving their claimed omniscience. By comparison, the investigator might inadvertently disclose details as part of an interrogation tactic and without consciously noticing the disclosure or remember the disclosure after the interrogation (Garrett, 2010, 2015; Trainum, 2006). Regardless of whether the detail leakage is intentional or inadvertent, the leaked information contaminates the confession (Appleby, Hasel, & Kassin, 2013; Garrett, 2010, 2015; Leo, 2008)
50. **A significant problem caused by confession contamination is that it makes false confessions appear compelling to others.** In a study of the first two-hundred and fifty (250) post-conviction DNA exonerations of innocent prisoners in the American criminal justice system, Garrett (2010) demonstrated that contamination was present in 95% of the false confession cases in his data set (38 of 40 cases). In other words, police interrogators in most of these cases fed the suspect unique non-public facts that “only the true perpetrator would know,” but the prosecutor erroneously alleged that the suspect volunteered these facts and that the suspect thereby corroborated the reliability of their own confession. Because the jury in each case mistakenly believed the prosecutor rather than the defense, each of the confessors was convicted, and in each of these cases, the defendant’s innocence (and the falsity of the confession) was only proven many years later by DNA evidence.
51. **In a follow-up study of DNA exonerations involving false confessions, Garrett (2015) found that another 21 of 23 (91%) were contaminated.** In most of the cases analyzed in Garrett’s (2010, 2015) studies, 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 (Garrett, 2015). In these cases, the officers were likely testifying truthfully but based on inaccurate and/or incomplete memories for the interrogations.

- 52. The inadvertent conveying of information during interrogation is illustrated in an article written by former Washington, DC detective James Trainum (2006).** 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 they revealed the crime details during the interrogation. They conveyed the details without realizing it, and the suspect adopted them. In contemporary practice, investigators may determine at the outset and document the information that they will withhold from the suspect (referred to as “holdback”) in order to avoid contaminating the suspect’s statement.
- 53. Appleby, Hasel and Kassin (2013) analyzed 20 false confessions from the Innocence Project’s cases and from Dr. Kassin’s case files. In each of these cases, the confessions were taken during police interrogation, but factual innocence had been established through DNA, dismissal of all charges, acquittal, or an overturned conviction.** The confessions were similar in structure, explaining the who, what, when, and why the crimes were committed. More specifically, 100% of the confessions cited the time and location of the crimes, contained visual details, and made references to the victim and the victim’s behavior. Other people were discussed in 95% of the confessions. There were details about the victims’ appearances in 75% and the victims’ mental states in 45% of the confessions. In 80% of the confessions, there were references to what the victim said. The confessions also contained to varying degrees references to the suspects’ mental states, including reflections (85%), motives (80%), themes (60%), remorse (40%) and apologies (25%). The authors concluded that, “Although false confessions are drawn from innocent suspects lacking guilty knowledge Study 1 showed that most are not simple admissions but rather rich and textured narratives that contain a broad range of details about how the crime was committed as well as an explanatory motive” (p. 14).
- 54. In a second study reported in their article, Appleby et al. sought to determine what qualities of false confessions were most influential to those evaluating them.** They created different versions of false confessions modeled after those examined in their first study. The different versions varied the level of detail, the suspect’s motive, and whether the suspect apologized. In the detailed confession condition, the confession included a step-by-step account of how the murder occurred, what the victim was wearing, what she said, and what the accomplices said. There was also a no confession condition. Each of 141 university students read a brief case summary and one version of the confession (or no confession) and rendered verdicts. As in previous research, participants who read any confession were more likely to convict than participants who read the case without a confession. Participants rendered more guilty verdicts when the confession contained details than when it contained few details, and

they rendered more guilty verdicts when the confession contained a motive than when there was no motive mentioned.

55. The reliability of a suspect's confession can be evaluated by analyzing the fit (or lack thereof) between the descriptions in their post-admission narrative (the account a suspect gives after saying the words "I did it") and the crime facts and the extent to which the suspect's post-admission narrative reveals the presence (or absence) of guilty knowledge (Inbau et al., 2013; Ofshe & Leo, 1997).² If the suspect committed the crime, they possess personal (i.e., non-public) knowledge about both dramatic and mundane crime facts that are known only by the perpetrator, the police and/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 the wall or a pattern in the carpet). If the suspect did not commit the crime, they will not possess personal knowledge of the crime details unless they have pre-existing knowledge (e.g., from media coverage) or the police have contaminated their knowledge (i.e., educated them 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 post-admission narrative is directly proportionate to the likelihood that such details could have been guessed by chance (Ofshe & Leo, 1997).

56. Absent pre-existing knowledge or contamination, the post-admission narratives of the guilty true confessor and innocent false confessor will therefore look different (Ofshe & Leo, 1997). The guilty suspect's post-admission 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 police with missing information; will be able to explain seemingly anomalous or otherwise inexplicable crime facts; and will likely be corroborated by existing objective evidence. By contrast, the innocent suspect pressured to falsely confess will not be able to supply accurate crime details in their post-admission narrative unless they guess 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 their post-admission narrative will not be corroborated by existing objective evidence. Instead, the innocent false confessor's post-admission narrative is likely to be replete with guesses and errors and will be either inconsistent with or contradicted by the objective case evidence. In short, the post-admission narrative of a suspect who is confessing truthfully will tend to fit with the crime facts and objective physical evidence, whereas the post-admission narrative of an innocent suspect who is confessing falsely will not. Analyzing the fit of the

² The extent to which the evidence corroborates the details in Mr. Weger's statement is addressed elsewhere in this petition.

suspect's post-admission narrative with crime facts and the existing objective case evidence therefore provides a standard against which the suspect's statement should be evaluated for reliability. Trainers of interrogation maintain that confessions that cannot be corroborated may be unreliable (Inbau et al., 2013).

57. **In evaluating the reliability of confessions, Inbau et al. (2013, p. 357) suggest the timing of recantation as a factor: “An innocent suspect will know at the time of the confession that it is false, except in the case of the alleged coerced internalized confession.** As soon as the threat of interrogation has been removed, it would be expected that the innocent suspect would denounce the confession and protest innocence to anyone willing to listen. Therefore, a suspect who has visited with family members or loved ones after the confession but does not retract it until they meet with their attorney sometime later is offering a suspicious statement. A confession that was not retracted until days or weeks after it was made is probably not truthful. When a significant period of time elapses before a confession is retracted, it is much more typical of a guilty person who is anxious to prepare a legal defense.”

John Reid and the Reid Technique of Interrogations: A Brief Perspective³

58. **As John Reid played a principal role in this case, a discussion of Reid's approach to interrogation, the context in which it was developed, and how the technique has evolved is warranted.** Historically, physical means of interrogation were used regularly by police in the late 19th century until the 1930s (Kassin et al., 2010). These “third-degree” tactics included beatings, kicking, mauling, suffocation simulation, burning with cigars and pokers, hitting with a rubber hose, prolonged confinement, deprivation of sleep, food, and other needs, forcing a suspect to stand for hours, use of blinding light, and explicit threats of harm (Kassin et al., 2010; Leo, 2004). Physical abuse and aggression in interrogations, however, violate both domestic (*Brown v. Mississippi*, 1936) and international (United Nations, 1984, 1987) law and are eschewed by trainers of modern interrogation (Inbau et al., 2013). Physical interrogation may be effective at achieving compliance, but the information obtained from such approaches lacks reliability (Janoff-Bulman, 2007). The nearly 90-year-old report of the National Commission on Law Observance and Enforcement, a commission established by President Herbert Hoover and chaired by U.S. Attorney General George Wickersham, is credited with exposing the practice of the “third degree” and other forms of police misconduct and ushering in the development of modern psychological methods of interrogation. Physical interrogation

³ For a more thorough history see Leo (2008).

declined between the 1930s and 1960s and was declared virtually non-existent by a presidential commission in 1967 (Zimring & Hawkins, 1986).⁴

59. **In the wake of the Wickersham Commission report, John Reid, a former Chicago police officer and lawyer, who became a consultant and polygrapher, together with Northwestern University law professor Fred Inbau, began developing psychological methods of interrogation.**
60. **Inbau and Reid began codified their interrogation techniques early on in their collaboration.** The first edition of their book *Criminal Interrogation and Confessions*⁵ was published in 1962. The second, third, and fourth editions were published in 1967, 1986, and 2004, respectively. The fifth and most recent edition was published in 2013. The fifth edition (Inbau et al., 2013) is the source I have cited frequently in the sections above. More recent editions included co-authors Joseph Buckley and Brian Jayne. Buckley has been President of John E. Reid and Associates since Reid's death in 1982). Jayne is a retired employee of the Reid Institute.
61. **Under Reid and Buckley's leadership, John E. Reid and Associates has been a world leader in the development and training of interrogation techniques, particularly within the policing community but also within the private security and loss prevention communities.** John E. Reid and Associates offers workshops throughout the U.S. frequently. I completed their basic interrogation workshop in 2014, have reviewed their training materials frequently, have taught about the Reid Technique of Interrogation (hence forth referred to as the "Reid Technique")⁶ in my university and professional continuing education courses, have written about it in my scholarship, and have testified about it in depositions, hearings and trials.
62. **The Reid Technique is – and has always been -- an accusatory, guilt-presumptive technique.** When the investigator decides to move from an interview to an interrogation, the

⁴ As evidenced by the Jon Burge-related cases in Chicago in the 1980s and 1990s, it is evident that physical means of interrogation have not been completely eradicated. In addition, from 2002-2008 the C.I.A. held at least 119 men in secret detention locations and subjected many of them to "enhanced interrogation" that included such physical methods as slamming detainees against walls, stripping them, diapering them, chaining them to the floor or ceiling, cramming them into coffin-like boxes, and water-boarding them. A subsequent U.S. Senate Intelligence report concluded that such torture failed to achieve its objectives, and in some cases, caused permanent psychological and physical harms (Crosby, Irvine, Meissner, & Scott, 2019).

⁵ Reid also authored books about the polygraph and interrogation 1942, 1948, and 1953

⁶ Modern versions of the Reid Technique include pre-interrogation interviews, namely, the Behavioral Analysis Interview

investigator assumes for the purpose of interrogation that the suspect is guilty and behaves accordingly. The modern version includes 9 steps:⁷

- a. Step 1 involves a direct, positively presented confrontation of the suspect with a statement that he is considered to be the person who committed the offense.
- b. Step 2 the investigator expresses a supposition about the reason for the crime's commission whereby the suspect should be offered a possible moral excuse for having committed the offense (an interrogation theme).
- c. Step 3. when confronted, suspects typically deny involvement. Step 3 is procedures for handling denials.
- d. Step 4 involves overcoming the suspect's secondary line of defense following denial — offering reasons why he would not or could have committed the crime.
- e. Step 5: when the denials and objectives are ineffective, the suspect typically mentally withdraws and tunes out the investigator's theme. In Step 5 the investigator takes steps to procure and retain the suspect's attention through nonverbal (e.g., eye contact, moving closer) and nonverbal (e.g., sympathizing) means.
- f. Step 6 recognizes the suspect's passive mood. During this stage the suspect is weighing the possible benefits of telling the truth and this is generally reflected in changes to his nonverbal behaviors (tears, collapsed posture, averted gaze)
- g. Step 7 is the alternative question, presenting two alternatives where one is more acceptable or understandable than the others but both inculpatory. This step usually yields an incriminating admission.
- h. In Step 8 the suspect orally relates details of the offense that will establish legal guilt.
- i. In step 9 the oral confession is converted to a written or recorded one.

63. Use of the Reid Technique is controversial. While John E. Reid and Associates maintain that, if used properly, the Reid Technique is very effective at obtaining true confessions and

⁷ According to Inbau et al. (2013, p. 188): "The numerical sequence does not signify that every interrogation will encompass all nine steps or those that are used must conform to a specific sequence."

does not lead to false confessions, scholars (e.g., Kassin et al., 2010; Leo, 2008) maintain that the Reid Technique has led to numerous false confessions and wrongful convictions. Innocence advocacy organizations, such as the Innocence Project, Innocence Network, the Center on Wrongful Conviction, and the National Registry of Exonerations point to accusatory interrogation and general and the Reid Technique in particular as a cause of false confessions and miscarriages of justice.

- 64. The process of accusatory interrogation affects both the interrogator and the suspect in a manner that increases the risk of false confession.** The stated goal of the interrogation is to learn the truth (Inbau et al., 2013), but because interrogation is only used on people believed to be suspicious, once the investigator decides to interrogate, the objective is to secure a confession and inculpatory information. Naturally, the strength of the investigator's belief in the suspect's guilt can be expected to affect the interrogator's determination and resolve to obtain a confession (e.g., Kassin, Goldstein, & Savitsky, 2003; Liden, Minna, & Juslin, 2018). Thus, an investigator who believes that the suspect might be guilty may press ahead and interrogate the suspect as if they are guilty, but back off if met with signs of innocence (Carr, 2015; Inbau et al., 2013; Wicklander-Zulawski, 2020). In contrast, an investigator who strongly believes in a suspect's guilt may ignore or misinterpret signs of innocence and persist in using more rigorous strategies to obtain a confession (Kassin et al., 2003). Ironically, innocent people sometimes behave in such a way as to appear more suspicious and invoke more rigorous interrogation strategies by the interrogator (Kassin, 2005).
- 65. Many of the accusatory interrogation tactics enhance the risk of false confession.** Early in the interrogation, the investigator may express a very high level of confidence that the suspect is guilty and convey to the suspect that the purpose of the interrogation is not to determine whether they are guilty, but rather to find out why they committed the crime (or the details, or who else was involved, or what other crimes they have committed). These unwavering expressions of omniscience and confidence in the suspect's guilt are called direct positive confrontation (Inbau et al., 2013), confrontation (Kassin et al., 2010), and accusation (Ofshe & Leo, 1997). These statements are often exaggerations or strategic deceptions. The investigator sometimes has concluded that the suspect is guilty based on inferences about the suspect's verbal or nonverbal behavior prior to the interrogation (Kassin et al., 2010; Leo, 2008). Other times, the investigator may be suspicious but open-minded about the suspect's culpability. Regardless, the investigator's expression of confidence in the suspect's guilt is a tactic designed to convince the suspect that they are caught and that they have no chance of persuading the investigator of their innocence (Inbau et al., 2013).
- 66. The frequent use of omniscience and direct positive confrontation tactics are designed to serve the purpose of conveying to the suspect that they have no chance of convincing the interrogator of their innocence – a form of “choice architecture” on the part of the investigators (Thaler & Sunstein, 2008).** If the option of establishing innocence is taken off the table, it would be reasonable for anyone to attempt mitigation, or the next best outcome. If one perceives confession as a path toward more lenient treatment, the seemingly irrational solution – falsely confessing – becomes a rational solution. In psychological terms, the suspect engages in cognitive reframing during the interrogation. Cognitive reframing occurs when a suspect concludes that establishing their innocence is no longer feasible and switches

their focus to the next best option, minimizing their chances for harsh treatment (Kaplan et al., 2019; Leo, 2008; Scherr et al., 2020).

- 67. Investigators may use another tactic: falsely stating or implying that they have evidence of the suspect's guilt or that evidence of guilt will soon be in hand (Inbau et al., 2013).** The investigator 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 has irrefutably established or will (in the case of a bluff) undoubtedly establish the suspect's guilt or knowledge of the crime. The investigator may have a large file or set of files before them in order to create the impression that the files contain inculpatory evidence against the suspect. Decades of research in social and cognitive psychology has shown that misleading people renders them vulnerable to manipulation (Kassin et al., 2010). The use of false evidence and bluffs has specifically been linked to increased risk of false confession (Kassin et al., 2010). Trainers recommend against the use of false evidence tactics with vulnerable populations (Carr, 2015; Inbau et al., 2013), or discourage its use altogether (Centrex, 2004; Wicklander-Zulawski, 2020). While the use of false or misleading evidence renders suspects vulnerable to manipulation, the use of true evidence has psychological effects as well. At minimum, the use of true evidence is believed by trainers of interrogation to increase pressure to confess (Inbau et al., 2013) and also has the potential to contaminate confessions, a topic addressed below.
- 68. Investigators are taught that the more frequently a suspect denies their involvement and professes their innocence, the more difficulty a suspect will have in changing their position from denial to confession. Investigators are taught, therefore, to try to prevent the suspect from denying guilt, a tactic referred to as denial management (Inbau et al., 2013).** 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 the suspect tries to speak up and deny guilt, the investigator may interrupt them and tell them to wait until the investigator is finished with what they have 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 they could not have committed the crime. Investigators are trained to overcome these objections by acting as if they were expected, identifying reasons for which the objections might not hold water, pointing out contradictions, and repeating the accusations and excuses (Inbau et al., 2013). These tactics are meant to strengthen the suspect's belief that they are irreversibly caught and that their only reasonable option, under the circumstances, is to confess as a means of attempting to mitigate punishment.
- 69. The use of threats and incentives is particularly compelling.** Decades of psychological research on animal and human learning demonstrates that people are sensitive to the promise of rewards and the threat of punishment. Behavior modification based on these principles is used in homes with children and pets, in schools with youth, in organizations with employees, and, of course, in the justice system with offenders. Threats and incentives push suspects toward confession.
- 70. Some forms of threats and incentives (e.g., threats of physical violence, explicit promises of leniency) are prohibited in interrogation and may lead to confessions being deemed**

inadmissible (Inbau et al., 2013; Pepson & Sharifi, 2010). Other forms of threats and incentives are allowable. For example, trainers encourage interrogators to offer the suspect certain benefits for confessing, such as attaining internal relief or saving face and averting social consequences, such as damage to their reputation or ostracism by their communities (Inbau et al., 2013). Trainers encourage the use of these behavior modification tactics because they believe them to be effective at modifying the suspect's behavior toward confession. Making the suspect believe they will in some way benefit from the confession is essential for motivating the suspect to confess, according to trainers.

- 71. Trainers draw the line at the use of threats and incentives that involve “real consequences” for they are apt to cause an innocent person to confess (Carr, 2015; Inbau et al., 2013; Wicklander-Zulawski, 2020).** Real consequences typically refer to matters such as incarceration, help from the investigators, the ability to see one's friends and family, etc. Some of the consequences not included among the “real” consequences, however, have very real effects. Ostracism, for example, another topic of social psychological study, has been described as follows: “Ostracism – being ignored and excluded – is a powerfully aversive interpersonal experience resulting in negative affect and threat to four fundamental human needs: belonging, self-esteem, control, and meaningful existence” (Hales, Williams, & Eckhardt, 2015, p. 157). Negative emotional consequences of ostracism have been demonstrated repeatedly in the social psychological research.
- 72. Whereas accusations, attacks on denials, evidence ploys and interpersonal pressure are designed to cause the suspect to perceive that they are caught and that resistance is futile, minimization tactics and other inducements are designed to motivate the suspect to admit guilt to a less inculpatory explanation for the crime (Ofshe & Leo, 1997).** One common form of minimization is the offering of rationales and excuses that imply guilt but justify having committed the crime. These techniques are sometimes called “theme development” by trainers (Inbau et al., 2013) and “scenarios” by scholars (Leo, 2008). The motives and explanations are presented 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 child to support. Other themes are that the crimes were committed on impulse without significant malice aforethought. Shifting blame onto the victim by stating or implying that they deserved what happened to them is another relatively common theme (Kelly et al., 2019). These sorts of themes are often contrasted against the possibility that the crime was much more aggravated and/or are compared to a theme in which the suspect is painted as much more antisocial, such as an incorrigible, lazy thug with no moral principles. With the possibility of being perceived much more negatively treated more harshly, the allure of confessing to the minimized version of the crime increases (Luke & Alceste, 2020; Redlich, Shteynberg, & Nirider, 2019).
- 73. Minimization may also involve downplaying the consequences the suspect will face and sympathizing with the suspect's situation.** Interrogators are trained not to explicitly tell a suspect that they will be treated more leniently if they confess, but interrogators can say things that will make the suspect reach this conclusion on their own (Inbau et al., 2013). And that's the effect that minimization often has. By adopting a morally, psychologically and/or legally defensible justification and confessing, the suspect is encouraged to infer (without being

explicitly told) from the interrogators' statements and suggestions, that they will receive more lenient treatment – maybe even immunity – than if they refuse to confess and are found guilty (Inbau et al., 2013). The use of minimization techniques that imply leniency increases the risk of eliciting a false confession (Kassin et al., 2010; Scherr et al., 2020).

74. **Inbau et al. (2013) advocate the use of tactics that implicitly offer leniency while warning against the use of tactics that explicitly offer leniency (so that the confession is not suppressed).** The use of tactics that implicitly offer leniency permits the investigator to truthfully state that they did not say that the suspect would be treated more leniently if they confessed. From the perspective of the suspect, however, the difference between explicit and implicit promises is less clear, for if the suspect perceived that they were offered leniency, the perceived offer would influence their decision to confess regardless of whether the offer was stated explicitly or conveyed implicitly through the above-noted tactics.
75. **Similar points can be made about other tactics, such as threats and incentives. While trainers and fact finders may draw distinctions between explicit threats and incentives, the suspect may not appreciate the distinction and may be similarly influenced by explicit and implicit threats and incentives.** For example, an investigator who informs a suspect that they will get less time in prison for confessing has made a (normally prohibited) explicit offer of leniency. By contrast, an investigator who informs a suspect that they will tell the district attorney that the suspect cooperated if the suspect confesses has made an offer that the suspect may interpret as meaning they will obtain a lesser sentence if they confess. From the suspect's perspective, it might not matter whether the offer is implicit or explicit, but the suspect will be sensitive to the offered contingency.
76. **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 (Inbau et al., 2013).** We are not persuaded by bullies, but rather by people whom we trust. Successful con artists understand this principle and devote considerable effort to gaining the victim's trust (Konnikova, 2016). 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 them get through their situation. The interrogator may tell the suspect of their own troubles as a youth, their own scrapes with the law, and their own desire to better themselves. 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 (Wright, Nash, & Wade, 2015). Investigators have been observed at times taking stronger measures to establish positive relationships with suspects, such as portraying themselves as suspects' lifelines and portraying their roles in the interrogations as ones meant to facilitate helping suspects (Kaplan & Cutler, 2021). Premising interrogations on seeking to help suspects is discouraged in interrogation training manuals and literature (Carr, 2015; Inbau et al., 2013; Wicklander-Zulawski, 2020). Suggestions of help, like minimization, often implicitly (and in some instances explicitly) communicate that suspects who confess may receive more lenient treatment or a less harsh outcome.

77. **In sum, interrogation is more than the sum of its tactics. 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 (Ofshe & Leo, 1997).** The first psychological step is to convince the suspect that they are caught, that the evidence irrefutably establishes their guilt, and that it is therefore pointless for them to resist because conviction is inevitable. The goal of the second step of interrogation is to convince the suspect that, given their situation and available options, it is in their best interest to switch from denying to admitting if they wish to minimize their punishment and put an end to the interrogation before the opportunity disappears (Ofshe & Leo, 1997). Indeed, the opportunity to confess is sometimes presented to the suspect as a time-limited offer.
78. **John E. Reid and Associates have maintained and taught that, if properly used, the Reid Technique does not lead to false confessions.** Indeed, it wasn't until the fourth edition of their training manual (Inbau et al., 2001) that they included a chapter on false confessions. Ironically, however, the case that helped establish Reid's and his consulting firm's reputation turned out to be a false confession. According to a 2013 article published in *The New Yorker*,⁸ Reid administered a polygraph exam and extracted a confession from Darrel Parker in the 1955 murder of his wife in Lincoln Nebraska. Decades later, in 2011, the Nebraska State Attorney General publicly apologized to 80-year-old Parker for his wrongful conviction and awarded him \$500,000 in damages. The AG's words: "Today we are writing the wrong done to Darrel Parker more than fifty years ago. . . Under coercive circumstances, he confessed to a crime he did not commit." Parker was certainly not the first known case of false confession. As explained above, law professor Edwin Borchard (1932) identified false confessions as a significant factor in *Convicting the Innocent*, his published collection of wrongful conviction cases.
79. **The Reid Technique was singled out as a trigger that led to the SCOTUS decision in *Miranda v. Arizona* (1966).** Chief Justice Warren's written opinion cited Inbau and Reid's (1962) *Criminal Interrogation and Confessions* in Footnotes 9, 10, 12, 13, 15, 16, 20, 21, 22, 23, pointing to the manual's recommendations to interrogate the suspect in the unfamiliar surroundings of the police department, offer excuses for the alleged criminal acts, minimize the moral seriousness of the offense, make their opinions of the suspect's guilt known, refer to circumstantial evidence of guilt, use their silence against them, and discourage the involvement of an attorney. Warren concluded (Footnote 33):

⁸ <https://www.newyorker.com/magazine/2013/12/09/the-interview-7>

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.'²³ When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

80. An article in the *New York Times* about Fred Inbau following his death in 1998 brought disparaging attention to his methods of interrogation and his antipathy for the *Miranda* decision.⁹ The article described Inbau as a master at applying his interrogation tactics: "When questioning a man suspected of killing his wife, for example, Mr. Inbau would feign such sympathy for the hapless man's plight, sometimes shedding real tears, and showing such contempt for the bullying wife who had driven him to the deed that by the time the man broke down and confessed, his main regret would be that he had not killed the woman sooner." After the *Miranda* decision, Inbau formed "Americans for Effective Law Enforcement" to fight the trend of placing individual liberties over public safety.

81. **Accusatory methods of interrogation may be on the decline in the United States.**

Following a rash of miscarriages of justice, the United Kingdom moved away from accusatory methods of interrogation toward an information-gathering approach with formal adoption of the PEACE Technique in 1993. The PEACE acronym represents the phases of the information-gathering approach: Planning and preparation; Engaging with the interviewee and explaining the interview process; Gaining an Account; Closure of the interview; and Evaluation. Training in PEACE has taken hold in North America. In 1982 Douglas Wicklander and David Zulawski, two former employees of John E. Reid and Associates, formed Wicklander-Zulawski and Associates, Inc. ("W-Z"), a firm devoted to training in investigations, interviews, and polygraph techniques. In 2017, W-Z announced that it would discontinue training in the Reid Method of Interrogation. Citing voluminous cases of false confessions and wrongful convictions, W-Z committed to training non-confrontational styles

⁹ Inbau was certainly not alone in his antipathy toward the *Miranda* decision. The *Miranda* decision was poorly received in the law enforcement community, in general (Leo, 2008).

of interrogation. W-Z currently offers workshops such as “Investigative Interviewing Techniques.” John E. Reid and Associates also offers a workshop entitled “Reid P.E.A.C.E Method of Investigative Interviewing.”

Review of Mr. Weger’s Interrogation and Confession

- 82. By way of overview, Mr. Weger, a young adult (age 21) who had spent time in the military and was married and had two children, was identified and questioned along with other park employees by the Illinois State Police.** In March 1960, shortly after the murders occurred, Mr. Weger, along with other park employees, was questioned by Illinois State Police and was subjected to six polygraph exams. Some of his clothing was examined for evidence of the crime. Mr. Weger passed all of these polygraph exams and was considered by the Illinois State Police to not be a suspect.
- 83. Mr. Weger became the sole suspect in the murders around September of 1960.** The LaSalle County State’s Attorney Harland Warren appeared to have had an epiphany about the twine allegedly found at the crime scene. He claimed to have examined the twine under a microscope and linked the twine to the lodge kitchen¹⁰ (where Mr. Weger worked as a dishwasher) and Mr. Weger’s knot-tying skills acquired while serving in the marines. According to Mr. Warren’s notes, provided in an affidavit by his daughter after Mr. Warren’s death, Mr. Warren hatched a plan to persuade Mr. Weger to confess to the murders. The notes contained phrases such as “Commence Psychological (sic.) warfare,” “Put tail on him night + day that visible, know being followed,” “Intense investigation of background. Focus on one man.” The plan also included having the deputy sheriffs pick Mr. Weger up at 5:30 or 6:00 pm and take him to the fifth floor for 15 hours of interrogation.
- 84. Mr. Weger was interrogated twice for excessively long periods.** Mr. Weger was also under surveillance for a substantial period of time between interrogations. In addition, some of Mr. Weger’s personal belongings were taken as evidence.
- 85. There is little by way of record of the nature of the numerous conversations between the authorities and Mr. Weger and the nature of the interrogations of Mr. Weger.** I know of no recordings of any of the interactions. There is a good deal of sworn testimony about the conversations and interrogations in the pretrial hearing and at Mr. Weger’s trial. The sworn

¹⁰ The connection between the twine used in the crime and the lodge kitchen – and other evidence from the crime scene – is disputed.

testimony appears to be in agreement on some important matters but in disagreement on other important matters.

- 86. With respect to agreement, the parties generally agreed on the timing of the interrogations, that Mr. Weger was not denied basic necessities during the interrogations and was permitted to smoke during the interrogations.**
- 87. With respect to disagreement, the authorities and Mr. Weger disagreed on the extent to which the authorities used threats and incentives during the interrogation and other conversations.** The authorities (e.g., the Sheriff and his deputies, staff from John E. Reid and Associates, a former Assistant State's Attorney) testified that the interrogations were free from coercive tactics, such as threats and incentives, that Mr. Weger was treated very respectfully, and that Mr. Weger provided the details contained in the confession of his own accord. Mr. Weger, by contrast, testified that he was repeatedly told by the authorities know he is guilty and lying about his innocence, that there was enough evidence to convict him, that if he continues to lie about his culpability in the murders, he will get the death penalty, and that if he told the truth (i.e., confess to the murders), he will be spared the death penalty. Mr. Weger and the deputy sheriffs also disagreed about the extent to which the deputies threatened and incentivized Mr. Weger regarding the death penalty during their visits to Mr. Weger's home for questioning and to collect evidence. Mr. Weger claimed that the details in his confession statement were provided by the deputy sheriffs and/or learned from the newspapers and from talk in the hotel kitchen. There is no independent record that establishes the ground truth of what occurred in these conversations and interrogations. I take no position on who is lying and who is telling the truth, for that is a matter for the fact finder, not the expert witness. In this section of the report, I discuss the psychological implications of various aspects of the interrogations, including matters that are not in dispute and matters that are in dispute, the latter in case the fact finder concludes that these conditions and tactics did occur.
- 88. Mr. Weger was 21 years-old at the time he was interrogated for the park murders.** While the age of 18 means adulthood in the eyes of the law, in the eyes of psychology, there is no bright line between adolescence and adulthood. Psychological development, including cognitive, social, and emotional development, is a gradual process that extends into the early and mid 20s (e.g., Fountain, Mikytyck & Woolard, 2021; Scott et al., 2016). Scott et al. (2016) maintain that "young adults occupy a transitional developmental space between adolescents and mature adults." Modern courts recognize that 16- and 17-year-olds are different than adults (e.g., Roper & Simmons, 2005). In this transitional stage, it is likely that Mr. Weger was vulnerable to social influence by authority figures and ultimately to false confession. The documents I reviewed did not allude to intellectual disabilities or mental illness possessed by Mr. Weger.
- 89. The first very lengthy encounter between authorities and Mr. Weger occurred on September 27th and 28th, 1960, about 6 months after the murders.** At about 7:00 AM on September 27, LaSalle County Deputy Sheriff William Dummett picked up Mr. Weger and drove him to the offices of John E. Reid & Associates in Chicago, about a two-hour drive. They arrived at John E. Reid & Associates' offices around 9:00 AM. Mr. Reid met with Mr. Weger from about 11:00 AM until 10:00 or 11:00 PM that evening. During this time Mr. Reid

administered a polygraph to Mr. Weger and interrogated him. Mr. Weger maintained his innocence. At the conclusion of the visit to John E. Reid and Associates, Deputy Sheriff Dummett drove Mr. Weger back to LaSalle County. Assistant State's Attorney Craig Armstrong rode with Deputy Sheriff Dummett and Mr. Weger for the return trip. At the conclusion of the 19-hour trip to Chicago, instead of releasing Mr. Weger, they drove to the Ottawa courthouse, where Mr. Armstrong interrogated Mr. Weger from about 2:00 AM until about 5:30 or 6:00 AM (September 29, 1960), toward the end of which Mr. Weger participated in a lineup for eyewitness identification. Mr. Weger maintained his innocence throughout this period. These facts are generally agreed upon by the parties.

- 90. In between the two lengthy interrogations, there was an effort to continue to keep pressure on Mr. Weger via surveillance.** The surveillance period began in the second week of October and lasted until one or two days prior to Mr. Weger's arrest, according to trial testimony of Illinois State Trooper Murphy. The surveillance was 24 hours a day, 7 days a week, and Mr. Weger knew they were tailing him.
- 91. At about 6:00 pm On November 16, 1960, about 6 weeks following the visit to John E. Reid and Associates in Chicago, Deputy Sheriffs Dummett and Wayne Hess drove Mr. Weger to the Ottawa courthouse for further interrogation.** During this period, the deputies questioned Mr. Weger, obtained a warrant, charging Mr. Weger for the murders, read the warrant to Mr. Weger, and had Mr. Weger appear in another lineup. The deputies continued interrogating Mr. Weger from about 9:00 to 11:00 pm. At about 1:00 or 1:30 Sheriff Ray Eutsey and Mr. Weger's wife and parents arrived. The sheriff had conversations with Mr. Weger and his father. Mr. Weger was permitted to speak with his wife and parents in private. Mr. Weger's parents left the courthouse at about 2:00 am (November 17, 1960). These facts are generally agreed upon by the parties. The parties disagree on whether Mr. Weger had his rights and the charges explained to him by Louis Goetsch, a local grocer serving as justice of the peace. Mr. Weger testified at the pretrial hearing that he had no such interaction with Mr. Goetsch. The authorities testified that Mr. Weger was calm and collected throughout his interrogations. Mr. Weger testified that, during the November interrogations in which he confessed, he was angry and very frightened.
- 92. The parties agree that at around 2:00 am on November 17, 1960, Mr. Weger agreed to confess, after which he was brought to the county jail.**
- 93. The interrogation conditions and tactics I identified are:**
- a. length of interrogation,
 - b. isolation
 - c. sleep deprivation and fatigue,
 - d. food deprivation,
 - e. false evidence ploys
 - f. explicit threats,
 - g. other interrogation tactics.

94. Length of Interrogation. Mr. Weger was interrogated on multiple occasions. On September 27-28, 1960, Mr. Weger was in the custody of officers from 7:00 AM on September 27 through about 6:00 AM on September 28. He was in the sheriff's custody again from about 6:00 pm on November 16, 1960 until he confessed at about 2:00 am on November 17, 1960. Thus, across these two occasions, Mr. Weger was in the sheriff's custody for 30 or more hours. Although Mr. Weger was not interrogated continuously during this time, he was interrogated and questioned for a good part of it. These facts are generally agreed upon by the parties. Such excessive lengths of interrogation are well-within the range of interrogations in known cases of false confession. In Drizin and Leo's (2004) study of 125 cases of proven false confessions, 50% lasted 12 hours or longer. Prolonged interrogations deplete self-regulation abilities, enhance the suspect's motivation to end the interrogation, and increase the risk of false confession (Davis & Leo, 2012; Leo & Davis, 2010). As noted above, interrogation trainers teach that an interrogation should last no more than three to four hours (Buckley, 2017; Inbau et al., 2013) or less (Wicklender-Zulawski, 2020), and highly discourage exceeding six hours (Blair, 2005). The likely effects of the multiple, lengthy interrogation, the questioning during multiple visits from the deputy sheriffs, and the interim period during which Mr. Weger was under surveillance represent forces that likely lead a suspect to conclude that he has no chance of establishing his innocence and to conclude that confession is his best option for mitigating punishment.

95. Isolation. During most of the lengthy periods in which Mr. Weger was interrogated, he was in the company of one or more authorities and isolated from his family. Mr. Weger had no representation from a lawyer before he confessed. For the nearly 24 hours in which Mr. Weger was taken to Chicago on September 27 and 28, 1960, he had no contact with family members or an advocate. When Mr. Weger was interrogated by the deputy sheriffs on November 16 and 17, 1960, Mr. Weger was isolated from family for about 7 hours before he was able to speak with his parents and wife, just before Mr. Weger confessed to the murders. These facts are generally agreed upon by the parties. As explained above, isolation and lack of social support heightens stress and anxiety, decreases self-confidence, depletes ability to resist social influence, and heightens distress. Prolonged isolation renders innocent suspects more vulnerable to false confession (Kassin et al., 2010; Leo, 2008; Ofshe & Leo, 1997).

96. Fatigue. On September 27, 1960, Mr. Weger was picked up at 7:00 am for the trip to Chicago. Mr. Weger was in the company of authorities and questioned for about the next 23 hours. The only indication that Mr. Weger slept during this period is ASA Armstrong's trial testimony that Mr. Weger was too tired to talk and started to nod off at about 7:30 AM on September 28, 1960. The deputy sheriffs' interrogation of Mr. Weger, which began in the early evening of November 16, 1960, also lasted well in the early morning of November 17, 1960. Mr. Weger's confession was taken around 2:00 am on November 17, 1960. Mr. Weger did make some reference in his trial testimony to falling asleep and being woken at some points, which suggests that he was highly fatigued. As noted above, fatigue impairs cognitive ability and judgment, depletes self-regulation abilities, renders people vulnerable to manipulation. Sleep deprivation is a significant risk factor for false confession (Frenda et al., 2016; Kassin et al., 2010).

97. Food Deprivation. As explained above, lack of food also depletes self-regulation abilities and increases vulnerability to influence. Both parties testified at trial that Mr. Weger was not denied food and drink. Mr. Weger stated in his confession that he was offered “stuff to eat occasionally.” Mr. Weger testified at trial that during the November 16-17, 1960 interrogation the deputy sheriffs were eating sandwiches but he did not eat. Officer Dummett testified at trial that Mr. Weger was given a sandwich at about 9:30 or 10:00 at night but did not eat it. Whether a suspect is deprived of food by others or by his own choice, the lack of food depletes a suspect’s ability to self-regulate and renders him more vulnerable to social influence (Galliot & Baumeister, 2007; Kassin et al., 2010). Thus, if Mr. Weger had gone long periods of time without eating, he would have been more vulnerable.

98. False Evidence Ploys. False evidence ploys and evidence bluffs (or baiting) are known risk factors for false confession (Kassin et al., 2010). After Mr. Weger was told that the polygraph exam showed that he was being deceptive. Mr. Reid told Mr. Weger that they may need to use a truth serum because of the polygraph results. Deputy Sheriff Hess testified that he and Deputy Sheriff Dummett took hair samples from Mr. Weger for comparison purposes on one of their visits. Mr. Weger also testified that after a lineup he was told that the kid identified him. These facts are generally agreed upon by the parties. The truth serum and hair samples are example of evidence baiting or bluffs. The use of baiting or bluffs increases the risk of false confession (Kassin et al., 2010). If Mr. Weger was innocent, the failed polygraph and the eyewitness identification would constitute false evidence ploys, another major risk factor for false confession (Kassin et al., 2010). The investigators may have used other misleading, exaggerated, or false evidence during their interrogation of Mr. Reid. Thus, if Mr. Weger was the target of false evidence ploys or bluffs, the risk of false confession would have been elevated.

99. Explicit Threats and Incentives. People are highly sensitive to threats and incentives, as explained earlier. The use of explicit threats and incentives was highly disputed in sworn testimony. The authorities testified that Mr. Weger was not threatened or promised anything during the interrogations. Mr. Weger testified at trial that he was the target of threats by Dummett, Kindig, Reid, Eutsey, Hess and Warren. Mr. Weger testified that the deputy sheriffs repeatedly threatened him with the electric chair. According to Mr. Weger, they also threatened him with never seeing his wife and kids again. ASA Armstrong testified at the pretrial hearing and at trial that, on the drive home from Chicago on September 28, 1960, Deputy Sheriff Dummett told Mr. Weger that he would “ride the thunderbolt,” which Mr. Weger understood to mean the electric chair. The word “thunderbolt” was mentioned several times by Sheriff Dummett, according to ASA Armstrong. Mr. Weger also testified at trial that he was promised a life sentence if he confessed. Mr. Weger also testified at his trial that he was told by Deputy Sheriff Dummett that if he confessed he would be out in 14 years and if he didn’t he would get the electric chair. At the pretrial hearing Mr. Weger testified that on various occasions when he was visited by the Deputy Sheriffs Hess and Dummett, they would promise him life instead of death if he confessed. Mr. Weger testified that such offers also came from Mr. Reid, Mr. Kindig, Sheriff Eutsey, and Deputy Sheriff Dummett. Mr. Weger testified that, just before he confessed, Mr. Dummett made disparaging comments about his wife, that she wasn’t raped, and he called her indescant names. Mr. Weger’s father testified at the pretrial hearing that Sheriff Eutsey told Mr. Weger’s father “You don’t want him to go to

that little green room” and “Go up and talk to him and tell him to tell the truth.” Mr. Weger also testified that he was told in various ways that his best interests would be served by confessing and that, if he confessed, he would be spared the death penalty and his wife and kids would be taken care of. Mr. Weger’s father testified that Sheriff Eutsey said “The State’s Attorney has enough evidence on Chester to convict him, and I know he has done it. He is lying and not telling the truth. If he would tell the truth and say he did it, there’s a lot of obstacles in the way, I guarantee that if he will tell you the truth, I will do everything in my power to clear the obstacles, to clear him from this little green room.” Threats of punishment for maintaining innocence and promises of leniency in exchange for confession are recipes for increasing the risk of false confession (Kassin et al., 2010; Leo, 2008) and for having confessions suppressed in court (Inbau et al., 2013). Indeed, in Reid’s own words, published in 1967: “Under any test of confession admissibility – whether prior to or subsequent to the *Miranda* decision – a confession was legally invalid if it had been obtained after a suspect has been led to believe that unless he confessed he was in danger of loss of life or bodily harm. . . . In the application of this test a confession is obviously inadmissible if obtained as a result of telling a suspect that unless he confessed he would be hanged, shot, or delivered to a mob outside the jail” (Inbau & Reid, 1967, p. 187-188). The most recent edition (Inbau et al., 2013) considers threats or incentives involving any real consequences (e.g., to the suspect’s health or freedom) to be improper.

100. Other Interrogation Tactics. In the absence of a recording and certainty about what occurred during the interrogation, the interrogation methods trained and used in the 1960s (e.g., Inbau & Reid, 1967; *Miranda v. Arizona*, 1966) provide insights into what likely occurred in the interrogations of Mr. Weger. Inbau and Reid (1967) taught the following are strategic and successful interrogation tactics: displaying confidence in the suspect’s guilt, accusing the suspect of the crime and of lying, pointing out evidence of the suspect’s guilt, sympathizing with the suspect by normalizing the crime, minimizing the moral seriousness of the crime, suggesting excuses or rationales that seemingly justify the crime, appealing to the suspect’s pride, and pointing out the futility of maintaining innocence. There is evidence that some of this occurred. For example, Mr. Weger’s father testified at the pretrial hearing that he heard Deputy Sheriff Dummett tell Chester, at least 20 times “You know you did it; why don’t you come clean and say you done it? Why do you want to treat your wife and children like that, and why do you want to treat your father and mother like that? Come clean and tell us about that.” The interrogation tactics taught by Inbau and Reid were also cited in *Miranda* but in a much more damning manner. As explained above, the use of these tactics diminishes the suspect’s abilities to self-regulate, leads suspects to conclude that they have no chance of establishing their evidence, and to instead focus on mitigating damage and on the short-term (e.g., ending the oppressive interrogation) rather than the long-term (consequences of confession). The use of such minimization tactics, as explained above, leads suspects to conclude that they will receive more lenient treatment by confessing, even if not promised explicitly. Ultimately, these tactics can render suspects vulnerable to social influence and false confession. Indeed, Mr. Weger testified in the pretrial hearing that he was frightened, believed he had no other choice but to confess, and believed he would get the electric chair whether he was guilty or innocent.

Content of the Confession, Contamination, and Criteria for Evaluating the Confession's Truthfulness

101. While the conditions under which a confession was taken are relevant to evaluating the veracity of a confession, trainers (Inbau et al., 2013) and social scientists (Kassin et al., 2010; Leo, 2008) agree that the truth of a confession should be assessed by examining the content of the confession and its relation to the evidence in the case, as explained above. Trainers of interrogation (Inbau et al., 2013) and social scientists (e.g., Kassin et al., 2010; Leo, 2008) maintain that the sign of a true confession is that the confession contains inculpatory details that had not be guessed, had not been leaked by the interrogators, and had been corroborated by evidence in the case. If the confession lacks unique, inculpatory details that the suspect brought up independently, one should be suspicious of the confession's veracity.
102. Without a recording or reliable record of the interrogation, it is impossible to know the extent to which the statements attributed to Mr. Weger originated with Mr. Weger's direct experience (i.e., if he was the crime perpetrator) or from other sources, such as the crime scene photos that Mr. Weger claims were shown to him during his interrogation (which the Deputy Sherriff Dummett denied), information in the news media, or what he may have learned from others as the lodge. Further, Mr. Weger claims that, after he agreed to confess and before he gave his statement with the court reporter present, the deputy sheriffs showed him pictures to point out various options and to note things from the pictures. He testified that Deputy Sheriff Dummett "went over the story, he went over the story of what happened or what was supposed to have happened down there, and he asked me if I done it." Mr. Weger testified at his trial that most of the stuff in his confession he learned from Dummett the newspapers, and the talk in the kitchen at Starved Rock. The deputy sheriffs denied contaminating Mr. Weger's confession. As explained above, research on the content of false confessions shows that they can be richly detailed and compelling because of contamination by the interrogators.
103. The extent to which any inculpatory details in Mr. Weger's statement originated with him and are consistent with other evidence in the case is outside my purview, but these matters addressed elsewhere in this petition. The fact finder should consider that, in known cases of false confession and wrongful conviction, the false confessions were found to have been contaminated by facts and ideas suggested by the detectives who took the confessions (Appleby et al., 2013; Garrett, 2010, 2015; Kassin et al., 2010), as explained above.

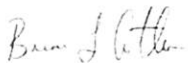
Summary

104. Mr. Weger, a young adult at the time of the investigation (and therefore vulnerable), became the sole suspect in the investigation about 6 months after the crime. Mr. Weger was subjected to extraordinary pressure during the murder investigation in September-November of 1960. He was subjected to questioning, a polygraph exam, surveillance, and two lengthy interrogations. Evidence baiting and bluffs were used during the interrogations and investigation (though they were not labeled as such by the authorities). Those facts are agreed

upon by the parties. Mr. Weger claims to have been threatened with the death penalty if he did not confess and offered a life sentence if he did confess on numerous occasions during the questioning periods and interrogations -- and by numerous authorities -- a fact disputed in the testimony of the authorities. The sheer pressure of the weight of suspicion, the multiple questionings and lengthy interrogations, the likely tactics used during the interrogations, alone create a grave risk for false confession. If false evidence ploys were used, the risk of false confession would be magnified. The use of explicit threats and incentives, historically and contemporarily eschewed by trainers of interrogation and courts, alone greatly increases the risk of false confession. If used against Mr. Weger, they were in combination with other oppressive tactics. If innocent, Mr. Weger was in grave risk of being coerced into a false confession. Mr. Weger's detailed confession statement might be the product of contamination from multiple sources, including the deputy sheriffs, the newspapers, and the talk around the lodge. The disputed facts, the source of the details in Mr. Weger's confession, and the extent to which those details are corroborated by the evidence in the case are matters for the fact finder to determine.

The opinions I provided in this report are my own professional opinions based upon my education, experience, knowledge, and training as a social psychologist and are rendered to a reasonable degree of scientific certainty. If additional relevant information becomes available after the submission of this report, I reserve the right to incorporate such information as necessary. I also may incorporate additional information in response to any expert report or opinions proffered on behalf of any other party to this case.

Dated: January 15, 2023



Brian L. Cutler, Ph.D.

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Appendix A

Materials Reviewed

Weger Pretrial Hearing Transcript

Weger Trial Transcript

Petition for Executive Clemency Before the Illinois Prisoner Review Board, + Addendum April 2005

Motion to Quash Warrant of Arrest, December 16, 1960

Harlan Warrant Handwritten Notes and Transcription

Photo of Lineup

NewsTribune online article, "Attorney Sheds New Light on Starved Rock Murders" November 13, 2002

The Daily Times article "Victims' Husbands Voice Their Relief" November 18, 1960

The Times article "Warren, Two Deputies To Keep Reward Money" August 3, 1963

"Tale of the Twine"

Anne Warren Affidavit

Police Reports of Initial Interviews with Chester Weger

Illinois State Police Report, April 8, 1960

"Counsel Says Weger Not Park Slayer", The Pantagraph, November 20 1960

Article in the Chicago Tribune, October 13, 1960

Exhibit A-G (Twine Exhibits)