

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**ABU AGILA MOHAMMAD
MAS’UD KHEIR AL-MARIMI,**

Defendant.

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Case No. 22-cr-392 (DLF)

**GOVERNMENT’S MOTION TO PRECLUDE
THE TESTIMONY OF DEFENSE EXPERT DR. BRIAN CUTLER**

The United States of America, moving by and through its undersigned counsel, respectfully submits this motion seeking to preclude the proposed expert testimony of Dr. Brian Cutler. The defense has noticed its intention to call Dr. Cutler as an “expert on false confessions to assist the jury in understanding the facts and the law as applied to statements of an accused.” The Court should preclude Dr. Cutler’s testimony because his expert notice is inadequate, his research fails to satisfy *Daubert*, and the danger of unfair prejudice substantially outweighs the testimony’s probative value.

Dr. Cutler’s false confession testimony fails to satisfy *Daubert*. Indeed, Dr. Cutler’s false confession testimony is “nothing more than guesswork.” *United States v. Deuman*, 892 F. Supp. 2d 881, 888 (W.D. Mich. 2012) (precluding the testimony of false confessions expert). Dr. Cutler’s work “provides neither a useful nor appropriate basis to assist a jury in assessing whether a particular confession, or even incriminating statement, was false.” *Id.* at 886. Dr. Cutler’s testimony would “introduce the jury . . . to a kind of faux science.” *United States v. Phillipos*, 849 F.3d 464, 472 (1st Cir.), *as clarified on denial of reh’g*, 869 F.3d 15 (1st Cir. 2017) (quoting the district court decision, and affirming the decision to preclude expert’s testimony). Accordingly, this Court should preclude Dr. Cutler’s testimony.

Background

On November 25, 2025, the defense sent the government a letter purporting to be expert notice for Dr. Brian Cutler. See Exhibit 1. The letter is a mere list of testimony topics. The letter fails to describe Dr. Cutler's opinions or the bases and reasons for his opinions. Indeed, the portion of the letter describing Dr. Cutler's testimony consists of a single sentence. That single sentence indicates that, "Dr. Cutler will inform the factfinder about the psychology of coercion, true confessions, and false confessions, even though the term true confessions is used sparingly." *Id.* at 3. The letter goes on for 25 pages describing all the factors that can lead to false confessions, such as the defendant's state of mind and coercive techniques. It also discusses the different types of false confessions. There is no mention of what the defendant's state of mind was in 2012, or how his state of mind made him more susceptible to giving a false confession. Additionally, the letter fails to identify what coercive tactics were present in the defendant's interview. Moreover, the letter provides no indication that Dr. Cutler has the requisite training or experience to diagnose a person's personality traits and characteristics, let alone that Dr. Cutler has ever met the defendant such that he could begin to make such a diagnosis.

Also, while the notice incorporates by reference Dr. Cutler's curriculum vitae, it is unclear whether the curriculum vitae includes all his publications from the past ten years. The notice does not indicate *any* trials and depositions in which he has testified as an expert. Because the notice is inadequate, the witness should be precluded from testifying.

ARGUMENT

Dr. Cutler's testimony should be precluded. The defense's expert notice is insufficient, the research underlying the witness's testimony fails to satisfy *Daubert*, and his testimony carries a danger of unfair prejudice that substantially outweighs any probative value.

I. Defendant's Notice for Dr. Cutler Is Inadequate.

Defendant's expert notice is insufficient. The notice contains only a single sentence describing Dr. Cutler's testimony. That single sentence is a mere list of topics. It fails to describe Dr. Cutler's opinions or the bases and reasons for his opinions. Accordingly, the notice is deficient, and preclusion is warranted.

"Rule 16(b)(1)(C) of the Federal Rules of Criminal Procedure requires the defendant to provide, at the government's request, 'a written summary of any testimony the defendant intends to use' as evidence at trial under Rules 702, 703 or 705 of the Federal Rules of Evidence." *United States v. Naegele*, 468 F. Supp. 2d 175, 176 (D.D.C. 2007) (quoting Fed. R. Crim. P. 16(b)(1)(C)); *see also United States v. Rogers*, 2006 WL 5249745, at *2 (D.D.C. July 17, 2006).

A mere "list of testimony topics" is insufficient notice under Rule 16. *Rogers*, 2006 WL 5249745 at *3 (string citations omitted); *United States v. Duvall*, 272 F.3d 825, 828 (7th Cir. 2001) ("The Rule requires a summary of the expected testimony, not a list of topics"); *see also United States v. Beavers*, 756 F.3d 1044, 1054 (7th Cir. 2014) (noting that expert notice was "insufficient[]" as it provided only a "general list of examination topics" and one sentence, conclusory in nature, about one opinion the witness would offer at trial); *United States v. Concessi*, 38 F. App'x 866, 868 (4th Cir. 2002) (upholding district court decision to exclude expert testimony where notice was provided late and "failed to describe the witnesses['] opinions or provide the bases and reasons for the witnesses' opinions"); *United States v. Ulbricht*, 858 F.3d 71, 115 (2d Cir. 2017) (affirming that expert notices were "plainly inadequate" because they "merely listed general and in some cases extremely broad topics on which the experts might opine"), *abrogated on other grounds by Carpenter v. United States*, 138 S. Ct. 2206 (2018).

Proper expert notice must “describe the witness’s opinions” and describe “the bases and reasons for these opinions.” *Naegele*, 468 F. Supp. 2d at 176 (quoting Fed. R. Crim. P. 16(b)(1)(C)). The primary purpose of Rules 16(b)(1)(B) and (C) is to prevent unfair surprise at trial and to permit each party “to prepare rebuttal reports and to prepare for cross-examination at trial.” *Id.* “Rule 16(b)(1)(C) is ‘intended to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert’s testimony through focused cross-examination.’” *Id.* (quoting Fed. R. Crim. P. 16 advisory committee’s note). A defendant is “not entitled to surprise the government with ill-defined expert testimony.” *Beavers*, 756 F.3d at 1054.

“A failure to comply with these Rules may result in the exclusion of the proffered evidence.” *Naegele*, 468 F. Supp. 2d at 176 (citing Fed. R. Crim. P. 16(d); *United States v. Barile*, 286 F.3d 749, 758–59 (4th Cir. 2002); *United States v. Day*, 433 F. Supp. 2d 54, 57 (D.D.C. 2006)).

Here, the defense has provided a mere list of topics. The defense has failed to describe the witness’s opinions. The defense has also failed to provide any of the bases and reasons for the witness’s opinions. “[E]xperts’ opinions are worthless without data and reasons.” *United States v. Mamah*, 332 F.3d 475, 478 (7th Cir. 2003) (quoting *Kenosha v. Heublein*, 895 F.2d 418, 420 (7th Cir. 1990)). Accordingly, the defense’s expert notice is deficient. Because the defense has failed to provide sufficient expert notice, Dr. Cutler should be precluded from testifying.

II. Dr. Cutler’s Testimony on False Confessions Fails to Satisfy *Daubert*.

Even assuming, arguendo, that the defense had provided sufficient expert notice, Dr. Cutler’s testimony must still be precluded because it fails to satisfy *Daubert*.

Dr. Cutler's testimony is appropriately analyzed pursuant to *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and Federal Rule 702. Federal Rule of Evidence 702 provides:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

In *Daubert*, the Supreme Court of the United States established the trial judge as the gatekeeper of expert testimony under Federal Rule of Evidence 702. 509 U.S. at 589-90. The *Daubert* Court directed the trial judge to employ a two-prong analysis when assessing the admissibility of expert opinion. Under that analysis, courts are to examine (1) whether the expert is offering scientifically reliable and valid opinions and (2) whether such opinions are relevant and will assist the trier of fact in understanding or determining a fact in issue. *Id.* at 590-91. The Court recognized that the application of these standards "on occasion will prevent the jury from learning of authentic insights and innovations. . . . That, nevertheless, is the balance struck by the Rules of Evidence, designed not for the exhaustive search for cosmic understanding but for the particularized resolution of legal disputes." *Id.* at 597. The proponent of the testimony must establish its admissibility by a "preponderance of proof." *Id.* at 592 n.10.

A. *Daubert* Prong #1: Dr. Cutler's False Confession Testimony Does Not Consist of Scientifically Reliable and Valid Opinions.

"Most circuit courts to directly consider the admission of expert testimony on false confessions have determined such testimony is inadmissible." *United States v. Rodriguez-Soriano*, 2017 WL 6375970, at *2 (E.D. Va. Dec. 11, 2017) (citing *United States v. Hill*, 749 F.3d 1250, 1258 (10th Cir. 2014); *United States v. Dixon*, 261 F. App'x 800, 810 (5th Cir. 2008); *Mamah*,

332 F.3d at 478); *see also United States v. Phillipos*, 849 F.3d 464, 471 (1st Cir.), *as clarified on denial of reh'g*, 869 F.3d 15 (1st Cir. 2017), *and cert. denied*, 138 S. Ct. 683 (2018) (affirming district court's order excluding expert from testifying as an expert on false confessions); *United States v. Redlightning*, 624 F.3d 1090, 1112 (9th Cir. 2010) (affirming district court's order excluding expert from testifying as an expert on false confessions); *Dixon*, 261 F. App'x at 804 (affirming district court's order excluding proffered expert testimony on false confessions); *Mamah*, 332 F.3d at 478 (same); *United States v. Benally*, 541 F.3d 990, 994 (10th Cir. 2008) (same); *United States v. Mazzeo*, 205 F.3d 1326, 1326 (2d Cir. 2000) (same).

Dr. Cutler cannot opine that any specific technique or tactic is likely to elicit a false confession, nor can he opine what the likelihood is of eliciting a false confession using any particular technique. Likewise, a federal district court judge opined that the “false confession testimony of the kind [the expert] can offer is nothing more than guesswork.” *United States v. Deuman*, 892 F. Supp. 2d 881, 888 (W.D. Mich. 2012). That court found that “research on false confessions and theories based on that research are not sufficiently reliable to be of assistance to the jury in understanding the evidence or determining a fact in issue in a particular case.” *Id.* at 886. The work “provides neither a useful nor appropriate basis to assist a jury in assessing whether a particular confession, or even incriminating statement, was false.” *Id.*

Yet another district court judge found that expert opinions on false confessions failed to satisfy *Daubert*. *See United States v. Phillipos*, 849 F.3d 464, 471 (1st Cir.), *as clarified on denial of reh'g*, 869 F.3d 15 (1st Cir. 2017) (discussing district court case). The district court found that there was “no indication that there is a body of reliable material that constitutes understanding in this area,” and that the testimony would “introduce the jury . . . to a kind of faux science.” *Id.* at 471-72 (quoting the district court decision, and affirming that decision); *see also Washington v.*

Rafay, 285 P.3d 83, 112 (2012) (no abuse of discretion where “Leo was unable to testify about any meaningful correlation between specific interrogation methods and false confessions or provide any method for the trier of fact to analyze the effect of the general concepts on the reliability of the defendants’ confessions”).

Because Dr. Cutler’s false confession testimony amounts to “faux science” and “nothing more than guesswork” that is “unreliable at every stage,” his testimony fails to satisfy *Daubert* and must be precluded.

B. *Daubert* Prong #2: Dr. Cutler’s False Confession Testimony Is Not Relevant to the Instant Case and Would Not Assist the Trier of Fact in Understanding or Determining a Fact in Issue.

Dr. Cutler’s testimony should also be precluded because it is not relevant to the instant case and would not assist the trier of fact. Dr. Cutler’s testimony is not relevant, as the defense has failed to proffer any connection between Dr. Cutler’s research and the facts of this case. Dr. Cutler’s testimony would not assist the trier of fact because his research fails to support “any meaningful correlation between specific interrogation methods and false confessions.” *Rafay*, 285 P.3d at 112.

1. *Dr. Cutler’s Research Cannot Be Reasonably Applied the Instant Case with any Assurance of Scientific Validity.*

Dr. Cutler’s research is not relevant to the instant case. “Most circuit courts to directly consider the admission of expert testimony on false confessions have determined such testimony is inadmissible.” *United States v. Rodriguez-Soriano*, 2017 WL 6375970, at *2 (E.D. Va. Dec. 11, 2017) (string cite omitted). Testimony of this sort would “introduce the jury . . . to a kind of faux science” and is inappropriate for trial. *United States v. Phillipos*, 849 F.3d 464, 472 (1st Cir.), *as clarified on denial of reh’g*, 869 F.3d 15 (1st Cir. 2017) (quoting the district court decision and affirming the decision to preclude the testimony of a purported false-confessions expert).

Furthermore, at least one case cited deals with Dr. Cutler specifically. *United States v. Rodriguez-Soriano*, 2017 WL 6375970, at *2 (E.D. Va. Dec. 11, 2017). The court in *Rodriguez-Soriano* precluded Dr. Cutler from testifying on multiple grounds. One basis for excluding his testimony was that “the science of false confessions is unreliable.” *Id.* at *2. (citing Mem. Op., *United States v. Yazzie*, No. 1:11-cr-01876-WJ, Doc. 145 at 4-5 (D.N.M. Sept. 17, 2012)). The court noted that there is no “known or potential error rate” that can be attributed to false confession studies. *Id.* The court also noted that, during a colloquy, Dr. Cutler acknowledged that he would be unable to offer an opinion as to whether any particular statement by that defendant “or any other person” was in fact false. *Id.*

In addition to questioning the reliability of false-confession science in general, the court in *Rodriguez-Soriano* expressed serious doubts about the reliability of Dr. Cutler’s testimony in particular. The court noted that “Dr. Cutler’s understanding of this subject matter appears to be substantially derivative of Dr. Richard. A. Leo’s research in this field” and that “numerous courts have excluded as unreliable testimony from Dr. Leo that is similar to the proffered testimony here.” *Id.*

2. *The Testimony Is Not Relevant. No Connection Has Been Alleged Between Dr. Cutler’s Proposed Testimony and the Facts of this Case.*

Dr. Cutler’s testimony should also be excluded because the defense has provided no indication that the techniques or conditions referenced in the expert notice were ever used in this case. *See United States v. Redlightning*, 624 F.3d 1090, 1110 (9th Cir. 2010) (affirming the district court decision to exclude expert’s testimony and quoting with approval the district court’s statement that “the court, as gatekeeper, cannot permit Dr. Leo to testify regarding the possibility of a false confession due to police interrogation techniques when he can point to no evidence in the record that any of these techniques are present in this case”). In its letter, the defense proffers

that Dr. Cutler's testimony "will inform the factfinder about the psychology of coercion, true confessions, and false confessions, even though the term true confessions is used sparingly." However, the letter does not identify how the psychology of coercion is related to this case. Moreover, the notice fails to allege that such techniques were used during the interviews of the defendant. In short, the defense has proffered no connection between Dr. Cutler's testimony and the facts of this case. Accordingly, his testimony should be excluded.

Dr. Cutler's testimony is also not relevant or helpful for the jury because the defense has provided no indication how any coercion referenced in the letter is relevant to this case. The defense does not identify any such coercive tactic that was present here. The defense also does not allege that the defendant was at risk for giving a false confession. Moreover, there is no indication that Dr. Cutler has ever met the defendant or that he has the necessary training and expertise to diagnose the defendant's psychology. Again, because the defense has proffered no connection between Dr. Cutler's testimony and the specific facts of this case, his testimony should be excluded.

3. The Testimony Would Not Assist the Trier of Fact.

Dr. Cutler's testimony should also be excluded because it would not assist the trier of fact. Dr. Cutler's research has no scientifically-validated predictive power in showing that specific techniques are more likely to lead to false confessions than true ones. *See, e.g., Washington v. Rafay*, 285 P.3d 83, 112 (2012). His research fails to support "any meaningful correlation between specific interrogation methods and false confessions." *Id.* In addressing the relevance of his testimony in a previous case, another expert conceded that "[t]he police interrogation techniques [he] identified as being associated with *false confessions*" were also "associated with *true confessions*." *People v. Kowalski*, 492 Mich. 106, 147 (Mich. 2012) (Markman, J. concurring in

part and dissenting in part) (emphasis in original). Accordingly, Dr. Cutler's proposed testimony is not relevant "in any way to the jury in deciding whether [a particular] *defendant* was a false confessor or nonfalse confessor." *Id.* (emphasis in original). Because his testimony would not assist the trier of fact in understanding or determining a fact in issue, Dr. Cutler's testimony should be precluded.

III. Dr. Cutler's Testimony Creates a Risk of Unfair Prejudice that Substantially Outweighs its Probative Value. His Testimony Should Be Precluded Accordingly.

Dr. Cutler's testimony should also be precluded because its probative value is substantially outweighed by a danger of unfair prejudice and misleading the jury. *See* Fed. R. Evid. 403. Even if testimony complies with *Daubert*, it can still be precluded under Federal Rule of Evidence 403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Daubert*, 509 U.S. at 594. "[B]ecause '[e]xpert evidence can be both powerful and quite misleading,' a court has greater leeway in excluding expert testimony under Rule 403 than it does lay witness testimony." *Parsi v. Daiouleslam*, 852 F. Supp. 2d 82, 86 (D.D.C. 2012) (quoting *Daubert*, 509 U.S. at 595 (second alteration in original)); *United States v. Bikundi*, No. 14-CR-030 (BAH), 2015 WL 5915481, at *3 (D.D.C. Oct. 7, 2015); *Daniels v. District of Columbia*, 15 F. Supp. 3d 62, 67 (D.D.C. 2014).

As described above, Dr. Cutler's testimony has little if any probative value. His testimony is *not* based on reliable sources and methods. *See, e.g., Kowalski*, 492 Mich. at 133. The research underlying his testimony is *not* applicable to the facts of this case. *Cf. United States v. Redlightning*, 624 F.3d 1090, 1110 (9th Cir. 2010) (affirming preclusion of expert testimony where, as here, the defense had failed to show a factual connection between his testimony and the case at hand). And his research *lacks* any predictive power to assist a jury in deciding whether a

particular defendant was a false confessor or nonfalse confessor. *Rafay*, 285 P.3d at 112; *Kowalski*, 492 Mich. at 147. Besides, a jury is fully capable of assessing the truthfulness of the defendant's statements without expert testimony. *See Rodriguez-Soriano*, 2017 WL 6375970 at *3 (holding that a jury is fully capable of assessing the truthfulness of the defendant's confession without expert testimony on false confessions). In sum, the probative value is nil.

By contrast, the danger of unfair prejudice is substantial. This prejudice stems, in part, from the fact Dr. Cutler will be testifying as an "expert," thereby carrying a label of authority unavailable to most other witnesses at the trial. Accordingly, jurors may give his testimony more weight than it merits.

The danger of unfair prejudice also stems from the emotional salience of the subject matter. Testimony of false confessions and coerced confessions will stoke jurors' passions and sympathies, especially given the recent popularity of podcasts and Netflix programs on false confessions and wrongful convictions.

The danger of unfair prejudice also stems from the risk of confusing the jury. Testimony about false confessions and coerced confessions will necessarily suggest to the jury that the defendant in this case may have been coerced and/or provided a false confession. Even if Dr. Cutler were to identify a specific interview technique or techniques used with the defendant—and he has yet to identify any such technique — Dr. Cutler is unable to provide any meaningful correlation between specific interrogation methods and false confessions. The jury is very likely to be confused if his speculative and unreliable testimony is presented to them.

The danger of prejudice and confusion also stems from the fact that jurors may be willing to give Dr. Cutler's testimony more credit than it merits based on other false markers of authority. For example, Dr. Cutler has a PhD. and has published numerous articles and other works. Yet,

quantity is not evidence of quality. If Dr. Cutler is permitted to testify, it would be a time-consuming but necessary task for the government to demonstrate to the jury, article by article, the strength of the unavoidable conclusion that numerous courts have already reached — that Dr. Cutler’s research is not worth crediting.

In sum, the danger of unfair prejudice and confusing the issues substantially outweighs the probative value of such testimony.

CONCLUSION

For the foregoing reasons, the defense should be precluded from presenting Dr. Cutler’s proposed testimony at trial.

Respectfully submitted,
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November 25, 2025

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Re: United States v. Abu Agila Al-Marimi - 1:22-cr-392-DLF

Dear Counsel:

We write pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C) to provide the following disclosures on behalf of our client, Abu Agila Al-Marimi. Pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C) and the Court's October 2, 2025, Minute Order, we provide the following disclosures regarding the expert testimony that we expect Mr. Al-Marimi may present at trial in support of his case-in-chief.

Qualifications

Mr. Al-Marimi may adduce testimony from Dr. Brian Cutler whose specific qualifications are set forth in the attached curriculum vitae.

For more than 35 years, Dr. Cutler has 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 his roles as a university professor, Dr. Cutler has taught a variety of psychology and criminology courses at the undergraduate and graduate levels and has supervised undergraduate, master's and doctoral students in research. Dr. Cutler also taught continuing legal education workshops. Since 1983, Dr. Cutler conducted research on various forensic and social psychology topics and has active research programs on eyewitness memory, interrogations, and police psychology, from social and cognitive psychological perspectives. Dr. Cutler has held research grants from the National Science

Foundation of the United States and Social Science & Humanities Research Council of Canada. He has 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*. Dr. Cutler has 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. Dr. Cutler has been active in professional associations as well. He has 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. He is also a Distinguished Member of the American Psychology-Law Society and Fellow of the Association for Psychological Science.

Further, Dr. Cutler has been engaged with the research on interrogations and false confessions in various ways since the 1990s. He has served as a peer-reviewer for manuscripts on this topic submitted to scientific journals. In his role as Editor of *Law and Human Behavior*, Dr. Cutler oversaw the peer review process for many manuscript submissions on this topic. Some of the books he has 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, Dr. Cutler 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, Dr. Cutler has authored or co-authored 3 book chapters and 6 peer-reviewed articles on interrogations and false confessions. He has 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. Dr. Cutler consulted in more than 140 cases involving contested confessions and testified as an expert in court on this subject about 25 times.

Summary of opinions and bases and reasons for opinions:

If called, Dr. Cutler will testify as an expert on false confessions to assist the jury in understanding the facts and the law as applied to statements of an accused.

- *Distinguishing Confession Coercion and Veracity*

It is important to clarify the distinction between coercion and false confessions. Coercion and false confessions are independent potential outcomes of an investigation. In the context of interrogation, coercion, which has no universal legal or psychological definition (Kaplan et al., 2019), generally refers to the use of tactics that erode the suspect's defenses and ability to maintain innocence and leads the suspect to confess under duress. Coercion may depend on both the behaviors of an interrogator and the disposition and mental state of the suspect. With respect to the former, some tactics used in interrogation are more coercive than others. With respect to the latter, some people (e.g., youth, people with mental illness or intellectual disabilities) are more easily coerced than others. These assertions and the scientific support for them are reviewed below.

Coercion should not be equated with false confession. Coercion may be part of the process that effects a confession. The veracity of the confession, by contrast, depends on whether the suspect is in fact innocent or guilty. Put another way, an investigator may coerce a true confession (if the suspect subjected to coercion is in fact the offender) or may coerce a false confession (if the suspect subjected to coercion is in fact not the offender).

In sum, although coercion is a known risk factor for false confession (Kassin et al., 2010; see below), coercion and confession are independent concepts. A coerced confession may be true or false, depending on the culpability of the suspect for the crime under investigation. Moreover, the assessment coercion and the assessment of confession veracity require different methods, as explained below. Assessing coercion requires the development of an understanding of the vulnerability of the suspect to social influence and the tactics used by the investigators to secure the suspect's confession. Assessing the veracity of the confession requires the examination of the substance of the confession and its relation to known evidence in the case.

Many of the research findings summarized below are couched in terms of their coercive effects on the risk of false confessions. Many of the same research factors would have coercive effects on the risk of true confessions. This is because researchers are particularly interested in false confessions, for false confessions defy commonsense and have been proven to lead to miscarriages of justice. Many empirical studies of coercion and confession, particularly earlier ones (e.g., Kassin & Kiechel, 1996) examined false confessions but not true confessions. Later studies tended to (e.g., Meissner et al., 2014; Russano et al., 2005) examine both true and false confessions. Some studies (e.g., Kaplan et al., 2023; King & Snook, 2009) examine coerciveness without reference to confession veracity. Dr. Cutler will inform the factfinder about the psychology of coercion, true confessions, and false confessions, even though the term true confessions is used sparingly.

- *Functional Knowledge on Interrogations, Coercion, and False Confessions*

The knowledge base on interrogations, coercion, 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.

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., 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 interview and interrogation 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.

The social science research on interrogation, coercion and false 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, 2022; King & Snook, 2009; Leo, 1996), surveys of professional populations (e.g., Cleary & Warner, 2016; Kassin et al., 2007; Reppucci et al., 2010; Kaplan et al., 2020), laboratory experiments (e.g., Horgan et al, 2012; Klaver et al., 2008; Russano, Meissner, Narchet, & Kassin, 2005), and meta-analysis (Meissner et al., 2014).

The research on interrogation, coercion, and false 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.

Several professional associations have in various ways embraced and endorsed the research on interrogations, coercion, 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). 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. 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.

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*

When parties proffer expert testimony on false confessions, courts are tasked with determining its admissibility. The purpose of expert psychological testimony on false confessions is to educate the factfinder 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 factfinders 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).

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.

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; Kassin 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 December 9, 2022, the National Registry had accumulated 3,303 exonerations and reported that false confessions were contributing factors in 393 (12%) of those cases. That many of the false confessors were convicted by triers of fact suggests that the proposition that an innocent person would confess falsely to a crime they did not commit is strongly counter-intuitive—that is, not a matter of common sense. False confessions lead to erroneous verdicts and wrongful convictions because false confessions are compelling, believable, and defy common sense (Kassin, 2008).

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, false confessions, and risk factors are not within the ken of laypeople. The inclusion of learning materials on these topics 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.

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; by contrast, 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).

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; yet, these tactics are considered to be risk factors for false confession among psychological experts (Kassin et al., 2010; 2018; 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 phenomenon of wrongful conviction (Mindthoff et al., 2018). 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; 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).

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 was more effective in aiding mock jurors in identifying and weighing the factors associated with false confessions.

The third method involves examining peoples' abilities 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 tests of their abilities to discern between true and false confessions. For example, Honts et al. (2014) asked their participants to judge the veracity of 3,208 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 do not outperform laypeople in distinguishing between true and false confessions. 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. The investigators were asked 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.

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 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*

The research literature on false confessions typically distinguishes between three types of false confessions: voluntary, compliant, and internalized (Kassin et al., 2010).

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.

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.

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 Dr. Cutler 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*

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

1. Classification Errors in Investigations

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 investigation techniques and lie detection failures.

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.

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).

2. Coercion Errors in Investigations

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. Dr. Cutler's use of the term "coercion" 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 recently published chapter (Kaplan et al., 2019), Dr. Cutler and his colleagues 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." Our definition is similar to that of Luna (2022, p. 7), who defined coercion as "the use of power to constrain an individual's situation, to impose one's will on that individual via the use of force or conditional proposals (to include both threats and offers)."

a. Coercion Errors and Individual Risk Factors for False Confession

Youth is a well-established risk factor for false confession. Using several different methodologies (e.g., DNA exoneration cases and exonerations achieved by other means, self-report studies, laboratory incidents of wrongdoing, and hypothetical vignettes), researchers have converged on the finding that, compared to adults, youth are particularly vulnerable to coercion and providing false confessions (e.g., Drizin & Leo, 2004; Goldstein et al., 2003; Gross et al. 2005; Gross & Shaffer, 2012; Malloy et al., 2014; Pimentel et al., 2015; Redlich & Goodman, 2003).

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 have 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.

The presence of an intellectual disability further increases the risk of false confession. Those with intellectual disabilities are highly overrepresented among false confessors who have been wrongfully convicted (Garrett, 2008; Gross et al., 2004). Impaired social skills and ability to communicate can make it much more difficult for suspects with intellectual disabilities to explain or defend themselves against accusations (Bhaumik et al., 2011). Similar to juveniles, individuals with intellectual disabilities also tend to be much more suggestible (Gudjonsson & Henry, 2003), and are more vulnerable to bending to social pressure, especially when that pressure is being applied by authority figures (Finlay & Lyons, 2002), as they tend to show a higher degree of trust in authority figures.

It is important to note that, although you, individuals with mental illnesses, and individuals with developmental disabilities, are particularly at risk for false confession, the absence of these personal risk factors does not make suspects immune to false confession. Intelligent, mentally healthy, adults are at risk for false confession in high pressure interrogations.

Certain mental states can increase the risk of false confession. Factors such as fatigue, hunger, intoxication, 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, render individuals more susceptible to social influence during interrogation, and increase the risk of false confession (Davis & Leo, 2010; Kassin et al., 2010).

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 been shown to impair job performance in medical interns and surgeons. A literature review authored by Pilcher and Huffcutt (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 to have been deprived of sleep for 24 hours or more." (p. 16). In a laboratory experiment, Frenda et al. (2016) provided direct evidence that sleep-deprived suspects were more likely to falsely confess than rested suspects.

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 one 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).

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 in their attempts to convince the interrogators of their innocence, but failing, the suspect’s resources become depleted over time (Guyl 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.

b. Coercion Errors and Situational Risk Factors for False Confession

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.

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, 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).

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, 1996) 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 (Wicklender-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).

The tactics used during an interrogation can increase the risk of false confession. The most egregious tactic used in interrogation is physical abuse. 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). 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 declined between the 1930s and 1960s and was declared virtually non-existent by a presidential commission in 1967 (Zimring & Hawkins, 1986).

As evidenced by the Jon Burge-related cases in Chicago in the 1980s and 1990s, 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).

The links between physical means of interrogation, overbearing of a suspect’s will, violation of suspects’ rights, and the risk of unreliable or false confession were enshrined in the 1931

Wickersham Committee Report, which was established by the federal government to assess the state of the criminal justice system during prohibition. The outlawing of physical means of interrogation led to the development psychological techniques of interrogation in the 1950s, with Reid and Associates leading the field (Inbau et al., 2013). Psychological interrogation, such as the Reid Technique (described below), is believed to be effective at securing confessions from guilty suspects. Indeed, these techniques have evolved and been refined to enhance effectiveness in the past 70 years. Both scholars of interrogation and false confessions (e.g., Kassin et al., 2010) and trainers of interrogation (e.g., Inbau et al., 2013) acknowledge that psychological interrogation carries a risk of false confession when used with innocent suspects. Repeated and forceful accusations, use of evidence ploys (including false evidence ploys), explicit or implicit offers of leniency in exchange for confessions, and use of these and other techniques with vulnerable suspects can overbear a suspect's will in the absence of physical interrogation, as explained further in the following paragraphs.

Modern interrogation techniques can be classified as accusatory or information-gathering (Meissner, Redlich, Bhatt, & Brandon, 2012). The "Reid Technique of Interrogation" and variations of it are accusatory interrogation methods. Accusatory interrogation is often trained as a guilt-presumptive technique (Inbau et al., 2013). When the investigator decides to move from an interview to an interrogation, the investigator assumes for the purpose of interrogation that the suspect is guilty and behaves accordingly. 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).

Sources vary in their use of labels for commonly used interrogation tactics. For example, the Reid Technique of Interrogation uses labels such as "Direct Positive Confrontation" to refer to tactics such as accusations of guilt, accusations of deception, and expressions of omniscience by the investigators and "Theme Development" to refer to tactics such as offering rationales and excuses for committing the crime (Inbau et al., 2013). Observational research on the interrogation process has developed various coding schemes for labeling interrogation tactics and recording instances of their use (e.g., Bull & Soukara, 2010; Feld, 2013; Kelly et al., 2013, 2016; King & Snook, 2009; Leo, 1996; Pearse & Gudjonsson, 1999).

In Dr. Cutler's research on the development of the Interview and Interrogation Instrument (Kaplan et al., 2019), he and his colleagues drew on interrogation scholarship and interrogation training manuals and derived a list of 194 interrogation tactics. Included in their list were 98 tactics that spanned the domains identified by Kelly et al. (2013), 65 suspect behaviors, 18 environmental

factors, and 13 suspect characteristics. Dr. Cutler and his colleagues then conducted a series of studies designed to (1) reduce items, (2) assess inter-rater reliability among graduate students trained in the use of the Instrument, and (3) test validity of the Instrument against expert evaluations of a set of interrogations. The reliability and validity tests supported the Instrument's psychometric properties.

Through these Instrument development studies Dr. Cutler and his colleagues derived a set of 36 interrogation tactics divided into five domains, that closely mapped onto the categories of Kelly et al. (2013). The Instrument also includes items for assessing personal risk factors and the interrogation environment.

- **Rapport-Building Domain.** The Rapport-Building Domain consists of 5 tactics through which the interrogator attempts to establish a social connection with the suspect. The tactics are (1) engaging in small talk; (2) minimizing the investigator's law enforcement role; (3) expressing sympathy toward the suspect and their situation; (4) offering concessions, such as food or a beverage, and (5) offering material incentives in exchange for a confession.
- **Evidence-Based Domain.** The Evidence-Based Domain consists of 9 tactics in which evidence and perceptions of proof are in some way leveraged against the suspect. The tactics are: (1) presenting evidence; (2) challenging contradictions; (3) citing the suspect's past acts (e.g., crimes); (4) transition statements (designed to transition the conversation from culpability to providing more inculpatory information); (5) requesting the suspect submit to a polygraph; (6) using a polygraph ploy (i.e., exaggerating or fabricating the results of a polygraph test); (7) presenting exaggerated or false evidence; (8) evidence baiting (i.e., asking about or suggesting what future evidence will demonstrate); and (9) emphasizing evidence (i.e., citing or inflating the strength of existing evidence).
- **Social and Psychological Manipulation.** The Social and Psychological Manipulation Domain consists of tactics that leverage non-material outcomes. This includes explicitly or implicitly imply that confession will influence the suspect's reputation (e.g., with family or within the community) or psychological well-being, or that the crime victim will benefit from the suspect's confession. The 5 tactics in this domain are: (1) increasing the suspect's guilt (i.e., shaming the suspect); (2) accusing the suspect of crimes other than the one under investigation; (3) shifting emotions (the investigator demonstrates unexpected and erratic shifts in emotion, such as from calm to anger); (4) use of graphic imagery (e.g., crime photos); and (5) expressing impatience, frustration or anger at the suspect or insulting the suspect.
- **Consequence-Based Domain.** The Consequence Domain consists of tactics that create contingencies for maintaining innocence and non-cooperating with the interrogators. The 11 tactics in this domain are: (1) legal obligations (e.g., ignoring the suspect's invocation of their rights or denying the suspect access to necessities); (2) staring at the suspect in silence; (3) trapping the suspect (i.e., informing the suspect that they cannot leave until they confess); (4) physical aggression; (5) expressing certainty of conviction (i.e., stating or implying that the courts will not believe in the suspect's innocence); (6) accusations of culpability; (7) expertise or authority (i.e., the interrogator leverages their expertise or

authority); (8) information derogation (e.g., dismissing or derogating information provided by the suspect, accusing the suspect of being deceptive); (9) alternate questions (i.e., forced-choice, guilt-presumptive questions, such as did you commit the crime for this reason or that reason?); (10) emphasizing seriousness of the crime (e.g., by describing or exaggerating criminal justice consequences of being found guilty); and (11) making direct threats if the suspect doesn't confess.

- **Minimization Domain.** The minimization domain consists of tactics that imply that confession is a means to mitigate punishments, such as minimizing the nature of the crime in some way such as offering justifications for having committed it or downplaying the seriousness of the crime. The 6 tactics in this domain are: (1) appealing to the suspect's self-interest; (2) downplaying the seriousness of the crime; (3) offering justifications or excuses; (4) degrading others (e.g., blaming the victim or a co-accused); (5) good character (e.g., complimenting the suspect on their prosocial nature); and (6) making explicit promises of leniency.

In addition to the domains of interrogation tactics, the Instrument includes items for assessing the suspect's behavior during the interrogation. In one section, the suspect's demeanor is observed and rated on the dimensions of: (1) fearful; (2) anxious/agitated; (3) withdrawn/defeated/depressed; (4) calm/neutral; and (5) defiant/belligerent. In another section, the suspect's behaviors are coded on 10 items: (1) emotional loss of control (e.g., crying); (2) physical loss of control (e.g., vomiting, losing consciousness); (3) disposal (e.g., the suspect seeks information about their status); (4) requesting a lawyer; (5) requesting social support; (6) denial; (7) objection (e.g., offering alibis, accusing others); (8) admission/confession; (9) rationalizing or minimizing the crime; and (10) offering inculpatory information about the crime.

Last, the Instrument contains a section for offering miscellaneous tactics not captured in our list of tactics and sections for assessing personal risk factors (e.g., age, developmental disabilities, mental illnesses, fatigue, hunger, discomfort) and the interrogation context (e.g., location and length of the interrogation, whether the suspect was handcuffed).

The assessment of coercion in interrogations using the IAI or similar method requires an accurate record of the interrogation. The best record of what occurred is a video recording of the full interrogation (Kassin et al., 2010). In the absence of a recording, the factfinder may rely on the memories of the interrogator(s) and suspect. Human memory has been the subject of psychological study for more than 100 years. It is well-accepted that memory is fallible and subject to distortion, even under the best of circumstances. In contested confession cases, the suspect's memory for the interrogation is likely impaired by the stress experienced by the suspect. An interrogator who uses coercive tactics may choose not to report the use of those tactics.

Reliance on officer notes of interviews (Gregory et al., 2011; Lamb et al., 2000; Warren & Woodall, 1999) does not serve as an adequate substitute for a video recording of an interrogation. Research on officers' notes shows substantial gaps in completeness of notes taken from witness interviews. Research on the accuracy of investigator notes of their interviews showed that the notes were often significantly incomplete, misrepresented the structure of the interviews, and misclassified responses given to directed questions as having been given in response to open-ended

questions.

c. Psychological Impact of Interrogation

Many psychological phenomena are relevant to interrogations and false confessions, 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 such as those discussed above. 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.

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.

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). 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.

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 mobilizes 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.

Another important implication of Guyll et al. (2013)'s study 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 status (Kassin, 2012).

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).

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 (Maddon 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 (Maddon 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."

Social influence, obedience to authority, stress, self-regulatory decline are general psychological phenomena that can affect suspect reactions to interrogation and the risk for false confessions. As

explained, certain interrogation tactics can have specific psychological effects as well. In this section we review the interrogation tactic domains identified above and explain their effects on suspects during interrogation.

- **Rapport-Building Domain.** Trainers of interrogation (and many forms of interviewing) recommend that the interrogator take efforts to establish rapport with the suspect in the service of making the suspect comfortable disclosing personal information with interrogator (e.g., Inbau et al., 2013). Psychological research on persuasion demonstrates that persuasion is more effective when the source of persuasion expresses empathy, commonality, and liking for the target of persuasion (Cialdini, 2001). Thus, engaging in small talk, sympathizing with the defendant, and finding common ground enhance persuasion. Offering another person a concession, such as a stick of gum, enhances compliance (Burger et al., 2006). Thus, some forms of rapport-building have the ironic effects of, on the one hand, making an interrogation seem less oppressive or coercive, but on the other hand, enhancing the interrogator's persuasive influence over the suspect. Research has also demonstrated that rapport-based tactics enhance the suspect's susceptibility to misleading information (e.g., Saurland et al., 2018; Vallano & Schreiber Compo, 2015; Wright, Nash, & Wade, 2015). Some commentators (Crough et al., 2021) have argued that the establishment of rapport during the adversarial context of a suspect interview is inherently deceptive and is independent of—and often in opposition to—the suspect's best interests. Perhaps the most notable example of a problematic tactic falls under the tactic of minimizing the interrogator's role. Investigators have been observed at times portraying themselves as suspects' lifelines and portraying their roles in the interrogations as ones meant to facilitate helping suspects (Kaplan & Cutler, 2022). Premising interrogations on seeking to help suspects is discouraged in interrogation training manuals and literature (Carr, 2015; Inbau et al., 2013; Wicklander-Zulawski, 2020).
- **Evidence-Based Domain.** Evidence-based tactics are designed to convince the suspect that they have no chance of convincing the interrogator, the D.A., or the factfinder of their innocence. Such tactics have several psychological effects, including psychological reframing and depleting the suspect's ability to self-regulate. Cognitive reframing during the interrogation 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). Put another way, the use of evidence-based tactics (and other tactics as described below) represents 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 (as a result of minimization tactics, as described below), the seemingly irrational solution—falsely confessing—appears to be the most rational course of action (Leo, 2008). The suspect's reduced ability to self-regulate translates into a reduced capacity to argue innocence during interrogation, as explained earlier in this report. Although evidence-based tactics have the general effects of putting pressure on suspects to confess (Inbau et al., 2013), falsely stating or implying that they have evidence of the suspect's guilt or that evidence of guilt will soon be in hand (evidence-baiting) is known in

the research to enhance the risk of false confession (Kassin et al., 2010). Decades of research in social and cognitive psychology has shown that misleading people renders them vulnerable to manipulation (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).

- **Social and Psychological Manipulation.** Social and psychological manipulation tactics heighten emotional distress, contribute to self-regulatory decline, interfere with cognitive processing and decision-making and render suspects more vulnerable to social influence (Davis & Leo, 2012; Kaplan et al., 2019). Some of the manipulation tactics, such as shaming the suspect, emotional shifts, and expressing frustration or belligerence toward the suspect occur when the suspect is denying guilt and can serve the psychological effect of punishment for undesired behavior, which in turn moves the suspect closer to the desired behavior of confession.
- **Consequence-Based Domain.** Like evidence-based tactics, consequence-based tactics in various ways put pressure on suspects to confess. Accusations of guilt and deception, derogating information provided by the suspect, emphasizing the seriousness of the crime, leveraging expertise, trapping the suspect, showing nonverbal signs of aggression, such as staring, and asking guilt-presumptive questions reinforce the idea that the suspect has no chance of establishing their innocence and create punishments (both distal and proximal) for continued denial.
- **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. 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 moving the suspect's stance from denial to 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 (Inbau et al., 2013).
- **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, and the ability to see one's friends and family. 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.

- **Minimization Domain.** The offering of rationales and excuses that imply guilt but justify having committed the crime is sometimes called “theme development” by trainers (Inbau et al., 2013). 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 much more devious 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 and treated more harshly, the allure of confessing to the minimized version of the crime increases (mindt & Alceste, 2020; Redlich, Shteynberg, & Nirider, 2020).
- Minimization tactics may also involve downplaying the consequences the suspect will face. Interrogators are trained not to explicitly tell a suspect that they will be treated more leniently if they confess, but interrogators can—and are encouraged to—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. The suspect is encouraged to infer (without being explicitly told) that if they adopt a morally, psychological, or legally defensible justification (one suggested by the investigator), the suspect 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).
- 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.
- Similar points can be made about other tactics, such as threats and incentives. While trainers and factfinders may draw distinctions between implicit and 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.

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.

3. Contamination Errors in Investigation

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 a written statement 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).

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 tactics or as a way of proving their claimed omniscience. Alternatively, 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).

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 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.

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.

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.

Appleby, Hasel and Kassin (2011) 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).

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.

The reliability of a suspect's confession can be evaluated by analyzing the fit (or lack thereof) between the details 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). 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).

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 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).

- *The Aftermath of Coerced and/or False Confessions*

The aftermath of coerced and/or false confessions can be observed in several ways: (1) The suspect tends to repeat rather than retract the confession; (2) The confession tends to taint other evidence in the case, and (3) The confession carries significant weight in court.

1. Confession Persistence

For several reasons, the suspect who is coerced into giving a true or false confession may persist in adopting the confession narrative and repeating it to others, such as to other investigators, a prosecuting attorney, and in court. First, as noted above, in the case of internalized false confessions, the suspect may come to belief in his own culpability or at least doubt his innocence (Kassin et al., 2010; Leo, 2008).

Second, coercive interrogations, by design, lead suspects to believe that they have no chance of proving their innocence during and beyond the interrogation, and that their best hope of mitigating the severity of their punishment is to confess to an excusable or rationalized version of the crime (e.g., Kassin et al., 2010; Leo 2008). Relevant here is the well-established, social psychological concept of “belief perseverance” (Anderson, Lepper, & Ross, 1980). People tend to persevere in their erroneous beliefs, even in the presence of significant contrary evidence.

Third, the suspect may not appreciate the nuanced roles of interrogators, prosecutors, judges, and juries. A suspect knowledgeable about the criminal justice and judicial systems understands that the police, prosecutors, judges, and juries have distinct and independent roles from one another. A suspect with little knowledge, such as a youth or an individual with intellectual disabilities, may see the independent parties as part of the same authority structure. Even a suspect who understands the theoretical difference between the various roles may harbor substantial cynicism against state actors and believe that they are in cahoots to convict the suspect. Thus, a suspect subjected to a highly coercive interrogation may not feel free to complain about his treatment to a prosecutor or judge.

Fourth, as explained earlier in this report, suspects—like people in general—are highly sensitive to incentives, rewards, and punishments. The suspect who believes that confession will lead to less harsh treatment will maintain the confession in anticipation of the desired outcome. As evidence of the power of such incentives, individuals convicted on the basis of false confessions have repeated their false confessions before parole boards under the beliefs that admitting to the crime and showing remorse will increase the likelihood of a favorable outcome, whereas claiming innocence will lead to an unfavorable outcome (Medwed, 2008).

2. Confession Taints Other Evidence

Psychological research shows that confession evidence leads to confirmation bias when interpreting other case evidence. For example, knowing that a suspect confessed increases the likelihood that an eyewitness will falsely identify the innocent suspect (Hasel & Kassin, 2009). Confession evidence has also been shown to contaminate analyses of deception in polygraph charts (Elaad et al., 1994) and latent fingerprint comparisons (Dror & Charlton, 2006).

3. False Confessions Are Believed in Court

Considerable research has examined the impact of confessions on jury decision-making. Using trial simulation methods, research shows that juries are not sensitive to the effects of coercive interrogation tactics. Juries did not discount confessions given under highly coercive circumstances (Kassin & Sukel, 1997; Kassin & Wrightsman, 1980; Woody et al., 2018). Trial simulation research shows that juries are also insensitive to personal risk factors. Juries did not discount confession evidence when they learned that the suspect was a youth (Redlich et al., 2008), suffered from mental illness (Henkel, 2008), or was sleep-deprived (Shifton, 2019). Simulation research shows that confession evidence is believed in the face of other evidence that suggests caution in the evaluation of the confession. Research shows that juries did not discount confessions when the confessions were contradicted by DNA evidence (Appleby & Kassin, 2016) or incentivized jailhouse informant testimony (Neuschatz & Golding, 2022).

Dr. Cutler's opinions are based upon his 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, Dr. Cutler will incorporate such information as necessary. Dr. Cutler also may incorporate additional information in response to any expert report or opinions proffered on behalf of any other party to this case.

Sincerely,



Laura Koenig
Whitney Minter
Brooke Rupert
Assistant Federal Public Defenders



Brian L. Cutler, Ph.D.

Enclosure

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