

Interrogations and False Confessions: A Psychological Perspective

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The advent of DNA testing has led to an “innocence movement” in North America. The work of advocacy organizations such as Canada’s Association in Defence of the Wrongly Convicted, the United States’ Innocence Project and the affiliation of more than 60 such organizations in the Innocence Network has led to the exoneration of hundreds of citizens, many of whom spent years in prison for crimes they did not commit. Journalists, scholars of law and social science, advocacy organizations, and commissions of inquiry have devoted considerable effort to gaining a better understanding of the causes of wrongful conviction and to developing remedies to reduce the risk of such miscarriages of justice. In this article we review the role of false confessions in wrongful conviction, the psychological processes that lead to coerced false confessions, and the potential remedies that have been put in place for risk reduction.

L’avènement des analyses d’ADN a conduit à l’« innocence movement » (mouvement de l’innocence) en Amérique du Nord. Le travail des organisations de défense des droits comme l’Association in Defence of the Wrongly Convicted au Canada et l’Innocence Project aux États-Unis et l’affiliation de plus de 60 de ces organisations dans l’Innocence Network ont conduit à l’exonération de centaines de citoyens, dont beaucoup ont passé des années en prison pour des crimes qu’ils n’ont pas commis. Les journalistes, les spécialistes du droit et des sciences sociales, les organisations de défense des droits et les commissions d’enquête ont déployé des efforts considérables afin d’acquérir une meilleure compréhension des causes de condamnation injustifiée et d’élaborer des solutions pour réduire le risque de telles erreurs judiciaires. Dans cet article, les auteurs examinent le rôle des faux aveux dans la condamnation injustifiée, les processus psychologiques qui conduisent à de faux aveux sous la contrainte, et les solutions possibles qui ont été mises en place afin de réduire les risques.

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1. THE ROLE OF FALSE CONFESSIONS IN WRONGFUL CONVICTIONS

Documented cases of actual innocence reveal that innocent suspects often give confessions,¹ admissions, and incriminating statements. For example, in Brandon Garrett's analysis of the first 200 cases in which a convicted individual was exonerated by DNA evidence, 16% of the cases contained false confessions and another 9% involved allegedly self-incriminating statements.² The Innocence Project reports that those rates have remained steady as the number of DNA exonerations has swelled to more than 300. As of August 2013, in 25% of DNA exoneration cases innocent defendants made incriminating statements, delivered outright confessions, or pled guilty.³ The initial report of the National Registry of Exonerations summarized 873 exonerations in the U.S. between 1989 and 2012.⁴ The cases included homicide, sexual assault, child sexual abuse, robbery, drug offences, and other violent and nonviolent crimes. Overall, false confessions occurred in 135 (15%) of these cases.⁵ Of the 135 false confession cases, the confession was clearly coerced in 60% of cases.⁶ In 59% of the false confession cases, the defendant was a juvenile, mentally disabled, or both.⁷ In 26% of the false confession cases the defendant pled guilty; in the remaining cases the defendants recanted their false confessions and were tried.⁸

False confessions are a uniquely potent type of evidence. A confession is viewed as the end of the inquiry by virtually everyone in the criminal justice system. Even defence attorneys are disheartened by confessions, notwithstanding their clients' protestations that the confession was false.⁹ Survey data show that potential

¹ Scholars distinguish between voluntary, coerced-compliant, and coerced-internalized false confessions. Voluntary confessions are those in which people claim responsibility on their own with no prompting. Coerced-compliant false confessions are those in which people succumb to coercive pressure, confess, yet continue to maintain, believe, and perhaps profess their innocence. Compliant-internalized false confessions are those in which people succumb to coercive pressure but come to believe in their own guilt. Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo, & Allison D. Redlich, "Police-induced Confessions: Risk Factors and Recommendations", (2010) 34 *Law and Human Behavior* 3.

² Brandon L. Garrett, "Judging Innocence", (2008) 108 *Columbia Law Review*, 55–142.

³ Online: Innocence Project. Understand the Causes. False Confessions <<http://www.innocenceproject.org/understand/False-Confessions.php>>.

⁴ Samuel R. Gross, & Michael Shaffer, *Exonerations in the United States, 1989–2012, Report by the National Registry of Exonerations 1* (2012), online: <www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf>.

⁵ *Ibid.* at p. 57.

⁶ *Ibid.* at p. 57.

⁷ *Ibid.* at p. 60.

⁸ *Ibid.* at p. 61.

⁹ Keith A. Findley, & Michael S. Scott, "The Multiple Dimensions of Tunnel Vision in Criminal Cases", (2005) *Wisconsin Law Review* 291.

jurors do not believe false confessions are much of a concern. Although jurors recognize that a suspect has been subjected to psychologically coercive interrogation tactics, they nonetheless do not believe that such tactics are likely to induce a false confession.¹⁰ Richard Leo attributes to the lay public *the myth of psychological manipulation*, which is the belief that an innocent person will not falsely confess unless he is tortured or mentally ill.¹¹ Moreover, when false confessors subsequently retract their confessions, the retractions are rarely credited; on the contrary, retractions are often perceived as further evidence of the defendants' deceptiveness and hence guilt.¹² The effect of a confession then compounds at each subsequent stage of the criminal justice process.¹³ Police, prosecutors, and even forensic analysts, informed of a confession, tend to seek and interpret all subsequent evidence in light of the confession. Even if other evidence emerges that suggests or proves the confession is false, police and prosecutors tend to disregard or minimize the significance of the new evidence, or work hard to interpret it in ways that can be reconciled with the confession.¹⁴ Prosecutors then tend to react more harshly in cases with a confession by adding more (and more serious) charges, opposing pre-trial release more strongly, and making fewer concessions in plea bargaining.¹⁵

False confessions also have an indirect effect on wrongful convictions through their corrupting influence on other evidence.¹⁶ For example, knowledge of a con-

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- ¹⁰ Iris Blandon-Gitlin, Kathryn Sperry, & Richard A. Leo, "Jurors Believe Interrogation Tactics are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?" (2011), 17:3 *Psychology, Crime & Law* 239. Danielle E. Chojnacki, Michael D. Cicchini, & Lawrence T. White, "An Empirical Basis for the Admission of Expert Testimony on False Confessions", (2008) 40:1 *Arizona State Law Journal* 1.
- ¹¹ Richard A. Leo, "False Confessions: Causes, Consequences, and Solutions" in Sandra D. Westervelt and John A. Humphrey, eds., *Wrongly Convicted: Perspectives on Failed Justice*. (Newark: Rutgers University Press, 2001), pp. 36–54.
- ¹² Richard J. Ofshe, & Richard A. Leo, "The Decision to Confess Falsely: Rational Choice and Irrational Action", (1997) 74 *Denver University Law Review* 979.
- ¹³ Richard A. Leo, "Inside the Interrogation Room", (1996) 86 *Journal of Criminal Law and Criminology* 266.
- ¹⁴ Steven A. Drizin, & Richard A. Leo, "The Problem of False Confessions in the Post-DNA World", (2004), 82 *North Carolina Law Review* 891; Richard A. Leo, & Richard J. Ofshe, "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation", (1998) 88 *Journal of Criminal Law & Criminology* 429; Saul M. Kassin, Itiel E. Dror, & Jeff Kukucka, "The Forensic Confirmation Bias: Problems, Perspectives, and Proposed Solutions", (2013) 2 *Journal of Applied Research in Memory and Cognition* 42.
- ¹⁵ Richard A. Leo, & Deborah Davis, "From False Confession to Wrongful Conviction: Seven Psychological Processes", (2010) 38/Spring-Summer *The Journal of Psychiatry & Law* 9.
- ¹⁶ Saul M. Kassin, "Why Confessions Trump Innocence", (2012) 67:6 *American Psychologist* 431.

fession has been shown to influence the interpretation of polygraph results,¹⁷ the judgments of latent fingerprint analysts,¹⁸ and eyewitness identifications by bystander eyewitnesses.¹⁹ As Saul Kassin pointed out, these various forms of evidence may be presented as independent, confirmatory evidence, but in reality, they are not independent.²⁰ Jurors, however, may be told that in light of this putatively corroborative evidence, any concerns that they might harbor about the reliability of the confession itself have been alleviated. False confessions can also enhance the risk of bad defense lawyering and prosecutorial misconduct.²¹

The power of confessions extends beyond guilty pleas and verdicts. When confessors dispute their confessions judges tend to sentence more harshly, as a sanction for what is perceived as the defendant's brazen lack of remorse.²² Appellate courts routinely cite confession evidence as establishing "overwhelming" evidence of guilt and may fail to recognize false confessions in their cases. Brandon Garrett's analysis of the first 200 DNA exoneration cases found that not a single innocent person who had falsely confessed obtained relief from his or her conviction based on a challenge to the confession evidence.²³

2. COERCED CONFESSIONS

The risk of false confession is enhanced by two sets of factors: coercion in the interrogation process and personal risk factors.

(a) Coerciveness of Interrogation

Confessions — both true and false — are more likely to occur under coercive interrogation conditions than under non-coercive conditions. What constitutes coercion during interrogation? Researchers have identified maximization and minimization techniques as critical for eliciting false confessions. Investigators are taught these techniques through workshops and manuals produced most prominently by John Reid and Associates. Their company claims to train thousands of investigators per year.²⁴ The Reid Technique makes an important distinction between an interview and an interrogation. In the initial interview the investigator appraises the suspect's truthfulness. If deceit is detected, the investigator infers that the suspect is

¹⁷ Eitan Elaad, Avital Ginton, & Gershon Ben-Shakhar, "The Effects of Prior Expectations and Outcome Knowledge on Polygraph Examiners' Decisions", (1994) 7 *Journal of Behavioral Decision Making* 279.

¹⁸ Itiel E. Dror, & David Charlton, "Why Experts Make Errors", (2006) 56 *Journal of Forensic Identification* 600.

¹⁹ Lisa E. Hasel, & Saul M. Kassin, "On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications?" (2009) 20 *Psychological Science* 122.

²⁰ *Supra* note 19.

²¹ Kassin, Dror & Kukucka, *supra* note 14.

²² Richard A. Leo, *Police Interrogation and American Justice* (London: Harvard University Press, 2008).

²³ *Supra* note 2.

²⁴ John E. Reid & Associates, Inc. *The Reid Technique*, online: <<http://www.reid.com>>.

guilty. The ensuing interrogation is designed to extract a confession. The interrogation procedure is not investigative in nature; rather, it is guilt presumptive. Its purpose is to elicit a confession from a suspect who is “known” or strongly suspected to be guilty. In the words of Inbau et al. (2013), “An interrogation is conducted only when the investigator is reasonably certain of the suspect’s guilt . . . Interrogation should not be used as a primary means to evaluate a suspect’s truthfulness; in most cases, that can be accomplished during a non-accusatory interview”. Thus, with reasonable certainty of the suspect’s guilt having been established, interrogation is designed to elicit a confession from a guilty suspect.²⁵

Maximization refers to a cluster of techniques that have the purpose of persuading the suspect that the investigator already has ample proof of his guilt, that this belief will not waiver, and that failure to admit guilt will make the consequences of the inevitable conviction worse. Maximization techniques include repeated and forceful accusations of guilt, interruptions and rejections of the suspect’s denials, the claim of real (or manufactured) evidence of the suspect’s guilt, the bluff that inculpatory evidence is forthcoming, and the implicit or explicit threat of more serious consequences if the suspect continues to deny his or her guilt. The purpose of maximization techniques is to enhance the suspect’s sense of the dire consequences that he will face if he does not confess and to make the suspect feel trapped, helpless, and convinced that confessing is in his best interest.

While maximization techniques provide the pressure to confess, minimization techniques help ease the way. Research shows that minimization techniques provide moral justifications for the suspect’s actions or suggest reduced consequences for the confessor. An investigator using minimization may suggest to the suspect that the crime is less serious than it actually is, thus making confession appear more palatable. Minimization techniques include expressions of sympathy, statements of empathy for the suspect’s situation, and conveying the belief that the crime was a normal reaction that anybody (including the investigator) would have committed under the suspect’s circumstances. The investigator might offer the suspect alternative, more socially acceptable explanations for his role in the crime. Although such explanations do not explicitly offer leniency in exchange for a confession, the suspect is likely to infer on his own that he will receive more lenient treatment if he confesses.

The Reid Technique is believed to be highly effective at securing confessions among guilty suspects, hence its dominance in training programs worldwide. While securing confessions from guilty suspects may be desirable for a variety of reasons, the Reid Technique also enhances the risk of procuring false confessions from innocent suspects. In the following section we review the psychological mechanisms that can lead an innocent suspect to confess in response to coercive interrogation.

²⁵ The Reid Technique involves nine steps: (1) direct confrontation, (2) theme development, (3) handling denials, (4) overcoming objections, (5) procurement and retention of suspect’s attention, (6) handling the suspect’s passive mood, (7) presenting an alternative question, (8) having the suspect orally relate various details of the offense, and (9) converting an oral confession into a written confession. The sequence is suggested but not fixed, and steps may be skipped if not needed. Scholars who write about the Reid Technique typically summarize techniques into categories of maximization and minimization as we have defined here.

The first phase of the Reid Technique is the Behavior Analysis Interview, during which the investigator determines whether the suspect is deceptive and thus likely to be the perpetrator. As explained above, if the determination is positive, the suspect is interrogated using the guilt-presumptive, 9-step Reid Technique. How reliable are police investigators' judgments of deception? Decades of research on people's abilities to distinguish truth from lies shows lay people and professionals perform, at best, slightly better than chance.²⁶ Research specifically comparing police officers', students', and trained students' abilities to discriminate between true and false confessions shows that none of the groups performed much above chance, and police officers had an accuracy rate of 50%. Despite this, police officers were more likely to label a suspect as deceptive and were more confident in their judgments than were the student groups.²⁷ Thus, the investigator's early use of indicators of deception to conclude that a suspect is the perpetrator — the foundation upon which the interrogation is built — is of questionable accuracy and puts innocent suspects at high risk.

Decades of psychological research on expectancy effects, self-fulfilling prophecies, and confirmation bias shows that people act in accordance with their beliefs and in so doing influence others in such a way that the behavior of the others confirms the harbored beliefs.²⁸ In an interrogation context, investigators who were led to believe a suspect was guilty asked more guilt-presumptive questions, used more coercive techniques, and made suspects more anxious than did investigators who were led to believe the suspect was innocent.²⁹ Confirmation biases have also been demonstrated in case studies. Steve Drizin and Richard Leo scrutinized 125 cases of interrogation-induced false confessions in order to better understand how those in the justice system respond to confession evidence. In their sample, a false confession resulted in a wrongful conviction 81% of the time.³⁰ One of the pivotal beliefs that guide interrogations is the notion that interrogation tech-

²⁶ Charles F. Bond Jr., & Bella M. DePaulo, "Accuracy of Deception Judgments", (2006) 10 *Personality and Social Psychology Review* 214; Bella M. DePaulo, James J. Lindsay, Brian E. Malone, Laura Muhlenbruck, Kelly Charlton, & Harris Cooper, "Cues to Deception", (2003) 129 *Psychological Bulletin* 74; Aldert Vrij, Pär Anders Granhag, & Stephen Porter, "Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection", (2010) 11:3 *Psychological Science in the Public Interest* 89; Kerry Watkins, & John Turtle, "Investigative Interviewing and the Detection of Deception: Who is Deceiving Whom? (Problems with Deception)", (2003) *Canadian Journal of Police and Security Services* 115.

²⁷ Marianna E. Carlucci, Nadja S. Compo, & Laura Zimmerman, "Lie Detection During High-stakes Truths and Lies", (2013) 18 *Legal and Criminological Psychology* 314; Saul M. Kassin, Christian A. Meissner, & Rebecca J. Norwick, "'I'd know a false confession if I saw one': A comparative study of college students and police investigators", (2005) 29:2 *Law and Human Behavior* 211.

²⁸ Saul M. Kassin, "On the Psychology of Confessions: Does Innocence put Innocents at Risk?", (2005) 60 *American Psychologist* 215.

²⁹ Saul M. Kassin, Christine C. Goldstein, & Kenneth Savitsky, "Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt", (2003) 27 *Law and Human Behavior* 187.

³⁰ Drizin & Leo, *supra* note 14.

niques do not lead to false confessions. Successive editions of the Reid manual repeatedly assure the reader that false confessions are highly unlikely. For example, the 5th edition contains the following assertion: “. . . *none of what is recommended is apt to induce an innocent person to offer a confession!*”³¹ Investigators who believe that interrogations do not produce false confessions may be predisposed to misinterpret an innocent suspect’s behavior. For example the anxiety that results from confrontational accusations of guilt may be misconstrued as evasiveness. The interrogator’s misplaced belief that innocent suspects are immune to the ploys of the Reid technique may cause him to simply prolong the interrogation if a confession is not forthcoming. The ensuing confession, if there is one, authenticates the validity of the interrogation techniques, and also corroborates, in the eyes of the investigators, the legitimacy of the cues to deceit that they used to infer guilt in the first place. Jurors find confessions very convincing. If a conviction is obtained the merit of the entire exercise that preceded it is reconfirmed. The downside to this cascade of confirmation biases is a misplaced perception of “success.”

In sum, investigators have no demonstrable ability to detect deception or discriminate true from false confessions at levels much above chance, yet they are biased toward labeling a suspect as deceptive, and they show unwarranted high levels of confidence in their judgments. They begin the interrogation process by presuming the suspect’s guilt. This presumption creates expectancies that guide the investigator’s behavior. Armed with a belief in the suspect’s guilt, a high level of confidence, and the Reid Technique, the investigator employs coercive techniques, discounts and manages the suspect’s denials, increases the suspect’s anxiety, and, in the case of an innocent suspect, may fulfill the prophecy by securing a false confession.

The preceding paragraphs focus on the psychological processes experienced by the investigator. We now focus on the psychological processes experienced by the suspect in the face of coercion. One of the first tenets of the Reid Technique is to isolate the suspect. The interrogation takes place in a small room with one or more investigators. Forced isolation can be stressful and can lead one to the desire to escape. Stress may be further exacerbated by the fatigue occasioned by a prolonged interrogation. Decision-making abilities become compromised, and susceptibility to social influences is heightened.³²

Various psychological principles are at play during coercive interrogation, including reward and punishment and social influence. Confronting the suspect with accusations of guilt, interrupting the suspect’s denials, and overcoming the suspect’s objections are punishing experiences. In some cases the investigator’s accusations of guilt are accompanied by claims of evidence of guilt. The investigator may deceptively inform the suspect that he has highly incriminating evidence, such

³¹ Fred E. Inbau, John E. Reid, Joseph P. Buckley, & Brian C. Jayne, *Criminal interrogation and confessions (5th ed.)*. (Gaithersburg, MD: Aspen, 2012).

³² Deborah Davis, & Richard A. Leo, “Interrogation-related Regulatory Decline: Ego Depletion, Failures of Self-Regulation, and the Decision to Confess”, (2012) 18 *Psychology, Public Policy, and Law* 4 673. See also Max Gueyff, Stephanie Madon, Yueran Yang, Daniel G. Lannin, Kyle Scherr, & Sarah Greathouse, “Innocence and Resisting Confession During Interrogation: Effects on Physiologic Activity”, (2013) 5 *Law and Human Behavior* 366; Kassin, *supra* note 28.

as an eyewitness or hair or fingerprints left by the suspect at the scene of the crime. The investigator may stop short of asserting or manufacturing false evidence but may bluff by informing the suspect about an eyewitness who will testify to the suspect's culpability or that items found at the scene of the crime have been sent to the crime lab for forensic tests that will surely implicate the suspect.

These techniques are meant to create feelings of hopelessness and despair in the suspect, extinguish his denials, and move him toward confessing. Offering the suspect themes or excuses that help justify the crime, showing sympathy and understanding for the suspect's predicament, and offering the suspect face-saving explanations for committing the crime positively reinforce admissions and move the suspect toward full confession. Put simply, the interrogator shapes the suspect's behavior from denial to confession through reward and punishment. A long history of psychological research on learning behavior shows that people are responsive to reward and punishment.³³ Social psychological research also shows that people are susceptible to social influence in the form of compliance to persuasion, conformity to peer and group pressure, and obedience to authority, all of which come into play in the interrogation scenario.³⁴

It is important to recognize that the social influences are bi-directional. Once the suspect capitulates and decides that it is in his best interests to confess he may use information in his confession that has unintentionally been provided by the interviewer. This information is revealed in various ways, but one way is by leading questions. The suspect may take facts that were contained in the questions and subsequently mention that information in his narrative. If there is a time gap between the investigator's leak and the suspect's adoption of the leaked information, the interviewer may forget that the leaked information originated with him. The suspect may also make an educated guess about other crime details that were not provided. The interviewer, again unconsciously, responds differently to correct details compared to incorrect ones. The suspect is sensitive to the interviewer's differential response style and can accurately judge the correctness (or lack thereof) of his statements. The confirmation bias causes the interviewer to remember the correct details and forget or ignore the wrong ones. This reciprocal (and largely unconscious) process shapes the narrative and gives the investigator the false impression that the suspect has revealed information that only a guilty culprit would possess.

Brandon Garrett's analysis of the first 250 DNA exoneration cases confirms this process. Garrett found that, in the 40 cases in which the wrongly convicted individual allegedly provided a full confession, police claimed that 38 (95%) of the

³³ Leonard Green, Astrid F. Fry, & Joel Myerson, "Discounting of Delayed Rewards: A Life-span Comparison", (1994) 5 *Psychological Science* 33; Edward Lee Thorndike, *Human learning* (New York: Appleton-Century-Crofts, 1931); Edward Lee Thorndike, *The Fundamentals of Learning* (New York: Bureau of Publications, Teachers College, Columbia University, 1932).

³⁴ Robert B. Cialdini, *Influence: The Psychology of Persuasion* (New York: Harper Collins, 2007); Robert B. Cialdini, & Noah J. Goldstein, "Social Influence: Compliance and Conformity", (2004) 55 *Annual Review of Psychology* 591; Robert B. Cialdini, & Melanie R. Trost, "Social Influence: Social Norms, Conformity, and Compliance" in Daniel T. Gilbert, Susan T. Fiske, & Gardner Lindzey eds., vol. 2 *The Handbook of Social Psychology* (4th ed.) (New York: McGraw-Hill, 1998) pp. 151-192.

false confessions included “key details about the crime, including facts that matched the crime scene evidence, or scientific evidence, or accounts by the victim” that the suspect could not have known unless he was guilty.³⁵ Because DNA proved that these confessions were all false, the suspects could not have had independent knowledge of those facts. Almost all of those facts had to have come from police during the interrogations. Yet in these cases police “also claimed they assiduously avoided contaminating the confession by not asking leading questions, but rather allowing the suspect to volunteer each of the crucial facts”.³⁶

Researchers appreciate that “objectivity” is not a state of mind. Good intentions alone will never provide adequate protection against biases and expectations, most of which are not consciously recognized anyway. True objectivity is achieved by designing investigative procedures that protect investigators from their own inadvertent preconceptions. Double blind testing was one of the recommendations that Gary Wells and his colleagues made to the U. S. Department of Justice when they were crafting national standards for the collection of eyewitness evidence.³⁷ The double blind recommendation was excluded from the guide initially because the police were insulted by the implication that they couldn’t be trusted to conduct their own investigations. Their objection missed the point. A double-blind control is a protection against *involuntary* influences and is a recognized mainstay of research protocol in many disciplines.³⁸

Leo and Davis³⁹ described other psychological processes at work in the interrogation room and in the investigation writ large. Appealing to the research on motivated cognition, they observed that one’s goal-directed behavior directs attention, information processing, the interpretation of events, and memory. They further noted that an explicit goal of the Reid Technique is to control the course of the interrogation and to shift the suspect’s goal from establishing innocence to minimizing consequences. Given unwavering assertions of guilt and implied — though not explicit — treatment of leniency in exchange for confession through minimization techniques, the suspect eventually abandons the goal of establishing his innocence and strives for the next best outcome — minimizing consequences — which may be achieved through cooperation and confession.

Emotions are also at play. The Reid Technique is designed to heighten the suspect’s stress. Stress-induced confessions are “those in which the suspect has become so distressed (tired, fearful, anxious, or distressed by the aversiveness of the interrogation) that he becomes willing to do or say anything — including giving a

³⁵ Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Cambridge, MA: Harvard University Press, 2011); Brandon L. Garrett, “The Substance of False Confessions”, (2010) 62 *Stanford Law Review* 1051.

³⁶ *Ibid.*

³⁷ Gary L. Wells, et al. “From the Lab to the Police Station: A Successful Application of Eyewitness Research”, (2000) 55 *American Psychologist* 581.

³⁸ The objection against double-blind lineups has been dropped in many departments that have revised their eyewitness identification procedures in an attempt to reduce the risk of false identification.

³⁹ Leo & Davis, *supra* note 15.

false confession — to escape the interrogation.”⁴⁰ Stress and the perceived lack of control can induce confession through the narrowing of attention, which in turn may cause long-term interests to be ignored. Research on comprehension of *Miranda* rights shows that the stress of accusation undermines peoples’ understanding.⁴¹ The narrowing of attention can cause a suspect to focus on the short-term goal of escaping an aversive interrogation rather than the long-term goal of obtaining the best possible position to minimize legal consequences.

(c) Risk Factors for False Confession

The research on false confessions demonstrates that a significant portion of well-adjusted, intelligent adults (i.e., university students) will succumb to the influence of coercive interrogation techniques and confess to transgressions that they did not commit.⁴² The nature (and number) of the tactics that are used in a research context pale in comparison to those that are used in actual practice. Moreover, these research participants had no dispositional vulnerabilities, cognitive deficits, or mental defects. They were not hungry, fatigued, drug impaired, or acutely anxious. This point is important because it demonstrates that it is the interrogation tactics themselves that confer unreliability on the admissions that they elicit. It is these psychologically influential techniques that constitute the problem, not the idiosyncratic vulnerabilities of the suspects upon whom it is used.

What happens, then, when we deviate from the profile of well-adjusted, intelligent adults? Are less well-adjusted or less intelligent adults more willing to falsely confess? Are youth more likely than adults to falsely confess? Considerable research has been devoted to identifying the personal factors that enhance the risk of false confession.

Intellectual disability or cognitive impairment is one such risk factor. People with cognitive impairments have a high need for social approval from authority figures.⁴³ They are less able to anticipate the long-term consequences of their decisions⁴⁴ and more susceptible to leading questions.⁴⁵ Consequently, people who are

⁴⁰ *Ibid.*, p. 39.

⁴¹ Kyle C. Scherr & Stephanie Madon, “You Have the Right to Understand: The Deleterious Effect of Stress on Suspects’ Ability to Comprehend Miranda”, (2012) 36 *Law and Human Behavior* 275.

⁴² Saul M. Kassin, & Katherine L. Kiechel, “The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation”, (1996) 7 *Psychological Science* 125; Melissa B. Russano, Christian A. Meissner, Fadia M. Narchet, & Saul M. Kassin, “Investigating True and False Confessions in a Novel Experimental Paradigm”, (2005) 16 *Psychological Science* 481.

⁴³ William Finlay & E. Lyons, “Acquiescence in Interviews with People who have Mental Retardation”, (2002) 40 *Mental Retardation* 14.

⁴⁴ Solomon M. Fulero & Caroline Everington, “Mental Retardation, Competency to Waive Miranda Rights, and False Confessions” in G.D. Lassiter, ed., *Interrogations, Confessions, and Entrapment* (New York: Kluwer Academic, 2004), pp. 163–179.

⁴⁵ Nitza B. Perlman, Kristine I. Ericson, Victoria M. Esses & Barry J. Isaacs, “The Developmentally Handicapped Witness: Competency as a Function of Question Format”, (1994) 18 *Law and Human Behavior* 171.

intellectually impaired are over-represented in cases of wrongful conviction.⁴⁶ In related research, *Miranda* comprehension studies have found that people with intellectual impairments are less likely to comprehend their rights and understand how to apply them.⁴⁷

Mental illness is another risk factor for false confession.⁴⁸ In a recent study of 1,249 offenders with serious mental illness in the U.S., nearly a quarter of these individuals reported having falsely confessed to crimes that they did not commit.⁴⁹ People with mental disorders are less likely than their healthy counterparts to understand their *Miranda* rights, particularly versions of *Mirada* rights that require higher levels of reading comprehension.⁵⁰ People with mental illness may have poor reality monitoring, impaired judgments, anxiety, mood disturbances, a lack of self-control, feelings of guilt, rash and impulsive behavior, delusions, disorganized thought patterns, hopelessness, and despair,⁵¹ all of which may heighten the risk of false confession.

Youthfulness is a third important risk factor for false confession.⁵² Youth under age 15 are more likely than older youth and adults to believe that they should waive their rights and disclose their actions to authorities.⁵³ In a case study of proven false confessions, Drizin and Leo found that 71 out of 113 (63%) false confessions were given by people under the age of 25.⁵⁴ Juveniles are impulsive, are not able to fully understand the gravity of their situations, and make decisions that are not in their best interests.⁵⁵ Youth are more likely to be emotionally volatile

⁴⁶ Drizin & Leo, *supra* note 14.

⁴⁷ Caroline Everington & Solomon M. Fulero, "Competence to Confess: Measuring Understanding and Suggestibility of Defendants with Mental Retardation", (1999) 37 *Mental Retardation* 212; Solomon M. Fulero & Caroline Everington, "Assessing Competency to Waive Miranda Rights in Defendants with Mental Retardation", (1995) 19 *Law and Human Behavior* 533; Michael J. O'Connell, William Garmoe & Naomi E. Sevin Goldstein, "Miranda Comprehension in Adults with Mental Retardation and the Effects of Feedback Style on Suggestibility", (2005) 29 *Law and Human Behavior* 359.

⁴⁸ Virginia G. Cooper & Patricia A. Zapf, "Psychiatric Patients' Comprehension of Miranda Rights", (2008) 32 *Law and Human Behavior* 390.

⁴⁹ Allison D. Redlich, Alicia Summers & Steven Hoover, "Self-reported False Confessions and False Guilty Pleas Among Offenders with Mental Illness", (2010) 34 *Law and Human Behavior* 79.

⁵⁰ Richard Rogers, Kimberly S. Harrison, Lisa L. Hazelwood & Kenneth W. Sewell, "Knowing and Intelligent: A Study of Miranda Warnings in Mentally Disordered Defendants", (2007) 31 *Law and Human Behavior* 401.

⁵¹ Robert J. Norris & Allison D. Redlich, "At-risk Populations Under Investigation and at Trial" in B. L. Cutler ed., *Conviction of the Innocent: Lessons from Psychological Research* (Washington, DC: American Psychological Association, 2012) pp. 13–32; Rogers et al., *supra* note 50.

⁵² Jessica Owen-Kostelnik, N. Dickon Reppucci & Jessica R. Meyer, "Testimony and Interrogation of Minors: Assumptions about Maturity and Morality", (2006) 61 *American Psychologist* 286.

⁵³ Kassin et al., *supra* note 1.

⁵⁴ Drizin & Leo, *supra* note 14.

⁵⁵ Owen-Kostelnik et al., *supra* note 52.

and susceptible to pressure and influence, particularly from authority figures.⁵⁶ Juveniles are less able than adults to assist their attorneys in their own defenses.⁵⁷ In the first 200 exoneration cases from the Innocence Project, approximately 50 cases involved false confession, 35% of which involved juveniles or individuals with mental impairments.⁵⁸

Ironically, innocence itself turns out to be a fourth important risk factor.⁵⁹ Innocent people are more likely to waive their rights to counsel and silence⁶⁰ and to attempt to cooperate with the police.⁶¹ Innocent people are more likely to offer alibis,⁶² which of course can be mined for inaccuracies and inconsistencies. Additionally, innocent people are overconfident in the likelihood of their exoneration and less likely than guilty people to accept guilty pleas.⁶³ Based on extensive research on interrogation dynamics, Kassin has concluded that innocence is a state of mind that leads people to trust investigators during interrogation.⁶⁴ When confronted with an interrogator's claim that forthcoming evidence will prove their guilt, innocent people are more likely to confess, due to the naïve belief that the forthcoming evidence will exonerate them and negate their confessions.⁶⁵ The suspect's innocence also influences the behavior of the interrogator. During guilt-presumptive interrogations, interrogators use more pressure-filled interrogation tactics when the suspect is in fact innocent than when the suspect is guilty.⁶⁶

Sometimes unique aspects of the crime and the specialized circumstances in which it occurs create an elevated risk of false confessions. Shaken Baby Syndrome (SBS) (now often referred to less specifically as Abusive Head Trauma (AHT)) is a

⁵⁶ Allison D. Redlich & Saul M. Kassin, "Police Interrogation and False Confessions: the Inherent Risk of Youth" in Bette L. Bottoms, ed., *Children as Victims, Witnesses and Offenders* (New York: The Guilford Press, 2009).

⁵⁷ Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppuci & Robert Schwartz, "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants", (2003) 27 *Law and Human Behavior* 333.

⁵⁸ Norris & Redlich, *supra* note 51.

⁵⁹ Kassin, *supra* note 28.

⁶⁰ Saul M. Kassin & Rebecca J. Norwick, "Why People Waive their Miranda Rights: The Power of Innocence", (2004) 28 *Law and Human Behavior* 211; Timothy E. Moore & Karina Gagnier, "'You Can Talk If You Want To': Is the Police Caution on the 'Right to Silence' Understandable?" 51 *Criminal Reports*, 233.

⁶¹ Maria Hartwig, Pär Anders Granhag & Leif A. Strömwall, "Guilty and Innocent Suspects' Strategies During Police Interrogations", (2007) 13 *Psychology, Crime & Law* 213.

⁶² Elizabeth A. Olson & Steve D. Charman, "'But Can You Prove It?' — Examining the Quality of Innocent Suspects' Alibis", (2012) 18 *Psychology, Crime & Law* 453.

⁶³ Avishalom Tor, Oren Gazal-Ayal & Stephen M. Garcia, "Fairness and the Willingness to Accept Plea Bargain Offers", (2010) 7 *Journal of Empirical Legal Studies* 97.

⁶⁴ Kassin, *supra* note 28.

⁶⁵ Jennifer T. Perillo & Saul M. Kassin, "Inside Interrogation: The Lie, the Bluff, and False Confessions", (2011) 35 *Law and Human Behavior* 327.

⁶⁶ Kassin, Goldstein & Savitsky, *supra* at note 29.

medical diagnosis purporting to account for infant deaths that arise from non-accidental trauma caused by excessive shaking or sometimes shaking with impact. A caretaker (often a parent) is assumed to have lost his or her temper or run out of patience with a crying child and, in a fit of frustration, shaken the child so violently that the ensuing internal brain injuries were fatal. Empirical support for the validity of the diagnosis is not strong.⁶⁷ A recent appraisal of SBS noted that there is “. . . currently disagreement within the medical community on what scientific evidence is necessary to establish that SBS caused a particular death . . . and even whether SBS is a classifiable syndrome at all.”⁶⁸

The SBS diagnosis provides investigators with a potent weapon. If medical science “proves” the cause of death, an investigator interrogating the suspected abuser can (and will) confront the accused with this irrefutable evidence of culpability.⁶⁹ A parent struggling with the distress of his or her child’s death now has the added shock of being accused of causing that death. Guilt, despair, and self-reproach could plunge an anguished parent into a state of despondency in which he or she internalizes responsibility. A “confession” would make sense to both the accuser and the accused. The confession, even if false, combined with medical “evidence,” would be very compelling to a jury. Indeed, the aforementioned National Registry of Exonerations contains eleven Shaken Baby Syndrome cases.

3. LOOKING FORWARD

In *R. v. Oickle*⁷⁰ the Supreme Court explicitly recognized the problem of false confessions and in so doing cited with approval many of the preceding research articles that we have referred to in this review. More recently, the Federal/Provincial/Territorial Heads of Prosecutions Sub-committee on the Prevention of Wrongful Convictions released a 2011 report entitled “The Path to Justice: Preventing Wrongful Convictions”⁷¹ [Henceforth the FPT Report]. It has since been cited at all levels of Court, including the Supreme Court of Canada, the Ontario Court of Appeal, Ontario Superior Court of Justice and the Quebec Superior Court, among others. In the context of false confessions, the authors recommended that custodial interviews of a suspect at a police facility in investigations involving

⁶⁷ Faris A. Bandak, “Shaken Baby Syndrome: A Biomechanics Analysis of Injury Mechanisms”, (2005) 151:1 *Forensic Science International* 71; J.F. Geddes & J. Plunkett, “The Evidence Base for Shaken Baby Syndrome”, (2004) 328 *British Medical Journal* 719; Deborah Tuerkheimer, “The Next Innocence Project: Shaken Baby Syndrome and the Criminal Courts”, (2009) 87 *Washington University Law Review* 1; Keith A. Findley et al., “Shaken Baby Syndrome, Abusive Head Trauma, and Actual Innocence: Getting It Right”, (2012) 12 *Houston Journal of Health Law & Policy* 209.

⁶⁸ Rachel Burg, “Un-convicting the Innocent: The Case for Shaken Baby Syndrome Review Panels”, (2012) 45:3 *University of Michigan Journal of Law Reform*, 658, at 660.

⁶⁹ Findley et al., *supra* note 67, at 256–61.

⁷⁰ *R. v. Oickle*, 2000 SCC 38, 2000 CarswellNS 257, 2000 CarswellNS 258, [2000] 2 S.C.R. 3, 147 C.C.C. (3d) 321, 36 C.R. (5th) 129.

⁷¹ The Path to Justice: Preventing Wrongful Convictions, online: <<http://www.ppsc-sppc.gc.ca/eng/pub/ptj-spj/ptj-spj-eng.pdf>>.

offences of significant personal violence (e.g., murder, sexual assault) be video recorded and that such recordings include the entire interview.

The advantages of electronic recordings are numerous. The objective record provides protection for both parties from claims of harassment or coercion or that might be misinterpreted by police officers relying on their memories to describe the interrogation and confession. The recording makes available a full picture of nuances of speech, body language and meaningful pauses between questions and answers that would be lost in written notes. Judges and juries can be aided in determining voluntariness if they can be shown what to look for with the help of lawyers and expert witnesses. In a mock juror study half the participants saw only the final confession while the others viewed an edited version of the preceding interrogation plus the confession. Jurors who saw the full interrogation were less likely to convict innocent confessors, but not less likely to convict the guilty ones.⁷² Videotaping holds police officers accountable since they are aware that their actions may be viewed later by others and it thereby has a deterrent effect against the most obvious coercive and improper interrogation tactics. Feedback from law enforcement personnel is generally supportive of the practice and has been credited with encouraging officers to prepare well for their interrogations.⁷³ The police themselves have reported that videotaping interrogations has resulted in diminished allegations by defense attorneys of police oppression of their clients.⁷⁴ Apart from the immediate benefits, when DNA testing shows confessions to have been false, the electronic record of the interrogations provides a valuable database for researchers and scholars who are interested in analyzing and understanding the causes of false confessions.

While the Reid technique has been on the receiving end of numerous well-deserved criticisms in recent years,⁷⁵ there is no legal prohibition against its use.

⁷² Caroline Crocker & Saul M. Kassin, "Juror Perceptions of Confessions: Effects of Perceived Coercion and Guilty Knowledge", Presented at the Meeting of the American Psychology-Law Society, Miami, FL: 2011.

⁷³ Thomas P. Sullivan, Andrew W. Vail & Howard W. Anderson, "The Case for Recording Police Interrogation", (2008) 34(3) *Litigation* 1; Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, "Police-Induced Confessions, Risk Factors, and Recommendations: Looking Ahead", (2010) 34 *Law and Human Behavior* 49.

⁷⁴ William A. Geller, *Videotaping Interrogations and Confessions*, National Institute of Justice, US Department of Justice, Office of Justice Programs, 1–11. (NCJ 139962) (1993).

⁷⁵ D. Davis & W. O'Donohue, "The Road to Perdition: 'Extreme Influence' Tactics in the Interrogation Room", in W. O'Donohue, P. Laws & C. Hollin eds., *Handbook of Forensic Psychology* (New York: Basic Books, 2003) pp. 897–996; Gisli H. Gudjonsson, "False Confessions and Correcting Injustices", (2013) 46 *New England Law Review* 688; Saul M. Kassin, "A Critical Appraisal of Modern Police Interrogations" in T. Williamson, ed., *Investigative interviewing: Rights, Research, Regulation* (Devon, UK: Willan Publishing, 2006) pp. 207–228; Saul M. Kassin & Gisli H. Gudjonsson, "The Psychology of Confession Evidence: A Review of the Literature and Issues", (2004) 5 *Psychological Science in the Public Interest* 33; Kassin, *supra* note 28; Timothy E. Moore & Lindsay Fitzsimmons, "Justice Imperiled: False Confessions and the Reid

The admissibility of a confession is determined on a case-by-case basis. Some judges are less tolerant of aggressive interrogation tactics than others. In *R. v. Peters*⁷⁶ the trial judge noted that the detective, trained in the Reid technique, had engaged in high pressure tactics: cutting off the accused from making exculpatory utterances; physically crowding him; forcefully raising his voice and suggesting he was a mass murderer, a pathological fire setter, someone with a sexual pathology, a sadist or a madman, or a father who wanted to hurt his family. The judge viewed the cumulative effect of this approach as creating an atmosphere of oppression tending to undermine the accused's free will to make choices in relation to his right to remain silent. The judge was not satisfied beyond a reasonable doubt that the accused's statements were voluntary. The statements were not admitted into evidence. In *R. v. Chapple*⁷⁷ Finkel J. excluded the so-called confession and stated: "I denounce the use of this technique [Reid] in the strongest terms possible and find that its use can lead to overwhelmingly oppressive situations that can render false confessions and cause innocent people to be wrongfully imprisoned".

Although the Reid technique is in widespread use throughout North America, there are viable alternative interviewing methods. There are also different ways of detecting deceit that do not rely on invalid markers of deceit (i.e., behavioral cues). Subsequent to some high profile wrongful convictions in the U.K. about 20 years ago, confrontational interrogations were abandoned and fundamental reforms were instigated. The PEACE approach⁷⁸ advocates the use of investigative interviewing as opposed to coercive interrogation. The acronym refers to the five stages through which an officer proceeds in an investigative interview: 1) Preparation and Planning; 2) Engage and Explain; 3) Account; 4) Closure; and 5) Evaluation. The approach is a major departure from the Reid technique. It is designed to get the suspect talking, without depending on behavioral signs of deception. PEACE recommends that the detection of deceit is better achieved if investigators pay closer attention to what the suspect says, and less attention to how he or she looks. Reviews of PEACE reveal that the clearance rates in England and Wales are as

Technique", (2011) 57:4 *Criminal Law Quarterly* 509; Allison D. Redlich & Christian A. Meissner, "Techniques and Controversies in the Interrogation of Suspects: The Artful Practice Versus the Scientific Study" in J. L. Skeem, K. S. Douglas & S.O. Lilienfeld, eds., *Psychological Science in the Courtroom* (NY: Guilford Press, 2009); Richard A. Leo & Steven A. Drizin, "The Three Errors: Pathways to False Confession and Wrongful Conviction" in D. Lassiter and C. Meissner, eds., *Interrogations and Confessions: Current Research, Practice, and Policy Recommendations* (Washington: American Psychological Association, 2010); Kassin et al., *supra* note 1.

⁷⁶ 2000 CarswellOnt 4209 (Ont. C.J.)

⁷⁷ 2012 ABPC 229, 2012 CarswellAlta 1667 (Prov. Ct.); see also *R. v. S. (M.J.)*, 2000 ABPC 44, 2000 CarswellAlta 339, 32 C.R. (5th) 378 (Prov. Ct.).

⁷⁸ Rebecca Milne & Ray Bull, *Investigative Interviewing: Psychology and Practice* (Chichester: Wiley, 1999); Brent Snook, Joseph Eastwood, Michael Stinson, John Tedeschi & John C. House, "Reforming Investigative Interviewing in Canada", (2010) 52:2 *Canadian Journal of Criminology and Criminal Justice* 203; see also Laurence J. Alison et al. "Why Tough Tactics Fail and Rapport Gets Results: Observing Rapport-based Interpersonal Techniques (ORBIT) to Generate Useful Information from Terrorists", (2013) 19:4 *Psychology, Public Policy, and Law* 411.

high as they ever were prior to the implementation of PEACE.⁷⁹ Moreover, PEACE is grounded in empirical research. PEACE moves the focus away from obtaining a confession to getting a full account of the event. The account may reveal innocence or guilt. Obvious lies or contradictions can illustrate guilt regardless of whether the suspect verbalizes it. A confession is a bonus, but it is not the primary objective.

Verbal lie detection is a promising means for detecting deceit. One such tactic makes strategic use of evidence (SUE).⁸⁰ The essential assumption is that if the suspect can be persuaded to provide a narrative, a guilty suspect may talk himself into a corner. He may not necessarily confess, but his contradictions can be evidence of guilt. Suppose there is a missing person. The police have a suspect. The evidence is sparse, but also very probative. A strand of hair was found in the trunk of the suspect's car that is a DNA match to the missing person. The interviewer engaged the suspect in a long chat about his car and its use. The car had been bought new before the victim disappeared. He was the sole driver of the car. No one had borrowed it. He had not lost his keys, nor had the car ever been stolen or broken into. He had not transported any luggage. The interviewer reviews these facts with the suspect to remove any possible misunderstandings. Eventually the suspect is informed of the evidence and asked to explain it. He has himself closed off a number of avenues of defence.⁸¹ A similar approach was used during the interview of David Russell Williams conducted by Detective Smyth of the OPP on February 7, 2010. Williams was a suspect in the disappearance of a 27-year old

⁷⁹ Snook et al., *ibid.*

⁸⁰ Maria Hartwig, Pär Anders Granhag, Leif A. Strömwall & Aldert Vrij, "Detecting Deception Via Strategic Disclosure of Evidence", (2005) 29:4 *Law and Human Behavior* 469; Maria Hartwig, Pär Anders Granhag, Leif A. Strömwall & Ola Kronkvist, "Strategic Use of Evidence During Police Interviews: When Training to Detect Deception Works", (2006) 30:5 *Law and Human Behavior* 603. There are numerous other lie-detecting tactics. Here we illustrate just one of an array of approaches. See, for example, Pär Anders Granhag & Maria Hartwig, "A New Theoretical Perspective on Deception Detection: On the Psychology of Instrumental Mind-reading", (2008) 14:3 *Psychology, Crime and Law* 189; Maria Hartwig, Pär Anders Granhag & Leif A. Strömwall, "Guilty and Innocent Suspects' Strategies During Police Interrogations", (2007) 13:2 *Psychology, Crime and Law* 213; Aldert Vrij, Sharon Leal, Pär Anders Granhag, Samantha Mann, Ronald P. Fisher, Jackie Hillman, & Kathryn Sperry, "Outsmarting the Liars: The Benefit of Asking Unanticipated Questions", (2009) 33:2 *Law and Human Behavior* 159; Aldert Vrij, Ronald P. Fisher, Samantha Mann & Sharon Leal, "A Cognitive Load Approach to Lie Detection", (2008) 5:1 and 2 *Journal of Investigative Psychology and Offender Profiling* 39; Aldert Vrij, Samantha Mann, Ronald P. Fisher, Sharon Leal, Rebecca Milne & Ray Bull, "Increasing Cognitive Load to Facilitate Lie Detection: The Benefit of Recalling an Event in Reverse Order", (2008) 32:3 *Law and Human Behavior* 253; Aldert Vrij, Samantha Mann, Sharon Leal & Ronald P. Fisher, "'Look Into My Eyes': Can an Instruction to Maintain Eye Contact Facilitate Lie Detection?" (2010) 16:4 *Psychology, Crime & Law* 327.

⁸¹ This example is taken from Ivar A. Falsing & Asbjorn Rachlew, "Investigative Interviewing in the Nordic Region" in Tom Williamson, Becky Milne & Stephen P. Savage, eds., *International Developments in Investigative Interviewing* (Willan: Portland, USA, 2009).

Belleville, Ontario woman. Smyth was soft-spoken and respectful throughout the interview, which was not accusatory, confrontational, or coercive. Meticulous preparation helped structure the interchange. Williams learned, gradually, but fairly early on, a fair amount about the strength of the evidence against him, but not before he first made the situation difficult for himself. He was asked about his recent activities: “Has there been a time . . . that your vehicle has left that road for any reason whatsoever? Have you driven into a field with your vehicle at all for any reason that you can think of?” “Is there anything you can remember doing that . . . would cause you to drive off the road?” “. . . do you have any recollection at all of being off that road?” To all these queries, Williams answered “No”. Then he learns that the tire tracks in the snow near the victim’s house and the width of the wheel base are a match with his own vehicle. He learns that there were search warrants for his cottage, his vehicle, and his wife’s house, all of which were ultimately shown to contain incriminating evidence. After about five hours Williams confessed and provided extensive details about the crimes. The perceived weight of the evidence against the suspect is one of the most important factors preceding a confession.⁸²

4. CONCLUSION

The long-standing status of traditional interrogation tactics does not justify their continuation. In *R. v. Trochym*,⁸³ the Canadian Supreme Court reversed prior authority and determined that hypnotically refreshed witness’ testimony did not satisfy the test for admissibility set out in *R. c. J. (J.-L.)*⁸⁴ because of the unreliability of the procedure. The justices noted that “. . . the scientific community continues to challenge and improve upon its existing base of knowledge. As a result, the admissibility of scientific evidence is not frozen in time”. In other words, prior acceptance of a procedure is no guarantee of its continued acceptance. The courts are not going to grandfather in a bad idea just because it was not recognized as a bad idea when it was first implemented. Experts are increasingly being required to point to the empirical foundation for their opinion, especially since the Goudge⁸⁵ inquiry and the FPT⁸⁶ report. The same will be asked of forensic practitioners, including the police. Personal experience and tradition can be valuable, but alone are insufficient to justify any particular practice. The cultivation of a research culture and the

⁸² Gisli H. Gudjonsson, “The Psychology of Interrogations and Confessions” in T. Williamson ed., *Investigative Interviewing: Rights, Research, Regulation* (Devon, UK: Willan Publishing, 2006) pp. 207–228.

⁸³ 2007 SCC 6, 2007 CarswellOnt 400, 2007 CarswellOnt 401, [2007] 1 S.C.R. 239, 216 C.C.C. (3d) 225, 43 C.R. (6th) 217.

⁸⁴ 2000 SCC 51, 2000 CarswellQue 2310, 2000 CarswellQue 2311, [2000] 2 S.C.R. 600, 148 C.C.C. (3d) 487, 37 C.R. (5th) 203.

⁸⁵ Stephen Goudge, “Inquiry into Pediatric Forensic Pathology in Ontario”, The Honourable Stephen T. Goudge, Commissioner. (Toronto: Ontario Ministry of the Attorney General, Queen’s Printer for Ontario, 2008).

⁸⁶ *Supra* note 71.

encouragement of evidence based practices that drive police investigations⁸⁷ is a positive development from which all participants in the criminal justice system will benefit. Applied to interrogation practices, they can produce improved results both for convicting the guilty and exonerating the innocent.

⁸⁷ Kassin et al., *supra* note 14; Kerry Watkins, Gail Anderson, Vincenzo Rondinelli & Warren Bulmer, *Evidence and Investigation: From the Crime Scene to the Courtroom* (Toronto: Emond Montgomery, 2013).

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