

# False Confessions: Causes, Consequences, and Implications

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In the past two decades, hundreds of convicted prisoners have been exonerated by DNA and non-DNA evidence, revealing that police-induced false confessions are a leading cause of wrongful conviction of the innocent. In this article, empirical research on the causes and correlates of false confessions is reviewed. After a description of the three sequential processes that are responsible for the elicitation of false confessions—misclassification, coercion, and contamination—the three psychologically distinct types of false confession (voluntary, compliant, and persuaded) are discussed along with the consequences of introducing false-confession evidence in the criminal justice system. The article concludes with a brief discussion of the implications of empirical research for reducing the number of false confessions and improving the accuracy of confession evidence that is introduced against a defendant at trial.

*J Am Acad Psychiatry Law* 37:332–43, 2009

In recent years, the media have reported numerous high-profile cases in which individuals were convicted of and incarcerated for serious crimes they did not commit, only later to be exonerated.<sup>1</sup> Many, though not most, of these exonerations occurred after postconviction DNA evidence established innocence of those convicted.<sup>2</sup> In some of these cases, such as the Central Park Jogger case in New York City, the DNA evidence established the innocence of multiple defendants who had been wrongly prosecuted, convicted, and incarcerated. To date, more than 220 individuals have been exonerated by postconviction DNA testing and released from prison, some from death row (e.g., see the Innocence Project at [www.innocenceproject.org](http://www.innocenceproject.org)). Although researchers and scholars have long documented the problem of wrongful conviction,<sup>3</sup> the use of DNA testing to exonerate innocent prisoners and the sustained media attention that it has received has increased public recognition that the criminal justice system often convicts the wrong people.<sup>4</sup> Although the number of wrongful convictions continues to mount, the DNA exonerations represent only a small part of a much larger problem. For in most criminal cases, there was and is no DNA evidence available for testing.

Nevertheless, the DNA exonerations provide a window into the causes of erroneous prosecution and wrongful conviction. A disturbing number of these cases involved false confessions given by innocent defendants during a psychologically coercive police interrogation. In the Central Park Jogger case, for example, all five juveniles falsely confessed after lengthy unrecorded interrogations in which they were yelled at, lied to, threatened, and promised immunity in exchange for their admissions to participating in the assault and rape.<sup>5</sup> In 15 to 20 percent of the DNA cases, police-induced false confessions were the primary cause of the wrongful conviction.<sup>6,7</sup> Here too, however, the documented cases appear to represent the proverbial tip of the iceberg, as the DNA exonerations again do not include most cases in which there is no DNA to test. They also do not include false confessions that were dismissed or disproved before trial, those that resulted in guilty pleas, those given for crimes that were not subject to postconviction review (especially less serious crimes), and those given in cases that contain confidentiality provisions (e.g., juvenile proceedings).

False confessions raise important questions for social scientists, mental health professionals, policymakers, and the public. They are consistently one of the leading, yet most misunderstood, causes of error in the American legal system and thus remain one of the most prejudicial sources of false evidence that lead to wrongful convictions. In this article, I will

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review and analyze the empirical research on the causes and correlates of false confessions, the psychological logic and various types of false confession, and the consequences of introducing false-confession evidence at trials.

A false confession is an admission (“I did it”) plus a postadmission narrative (a detailed description of how and why the crime occurred) of a crime that the confessor did not commit. Although other researchers have also documented and analyzed numerous false confessions in recent years, we do not know how frequently they occur. A scientifically meaningful incidence rate cannot be determined for several reasons. First, researchers cannot identify (and thus cannot randomly sample) the universe of false confessions, because no governmental or private organization keeps track of this information. Second, even if one could identify a set of possibly false confessions, it is not usually possible as a practical matter to obtain the primary case materials (e.g., police reports, pretrial and trial transcripts, and electronic recordings of the interrogations) necessary to evaluate the unreliability of these confessions. Finally, even in disputed confession cases in which researchers are able to obtain primary case materials, it may still be difficult to determine unequivocally the ground truth (i.e., what really happened) with sufficient certainty to prove the confession false. In most alleged false-confession cases, it is therefore impossible to remove completely any possible doubts about the confessor’s innocence.

Social science research on wrongful convictions, however, has demonstrated that there are four ways to prove a confession is false: (1) when it can be objectively established that the suspect confessed to a crime that did not happen (e.g., the presumed murder victim is found alive); (2) when it can be objectively established that the defendant could not have committed the crime because it would have been physically impossible to have done so (e.g., he was in another location at the time of the crime); (3) when the true perpetrator of a crime is identified and his guilt can be objectively established; or (4) when scientific evidence, in recent years most commonly DNA evidence, conclusively establishes the confessor’s innocence.<sup>8</sup> Despite these four possibilities, only a small number of alleged false confessions contain the independent case evidence or circumstances that allow the confessor to prove his innocence beyond dispute. Nevertheless, researchers have docu-

mented approximately 300 proven false confessions in recent decades.<sup>7</sup> Researchers have also categorized cases involving likely, but nonproven, false confessions as highly probable or probable false confessions.<sup>8</sup>

Despite substantial documentation and analysis by scholars,<sup>8,9</sup> the phenomenon of police-induced false confessions remains counterintuitive to most people. Most lay people believe in what has been referred to as the myth of psychological interrogation: that an innocent person will not falsely confess to police unless he is physically tortured or mentally ill.<sup>10</sup> This belief has been noted by several scholars and documented in public surveys.<sup>7,11,12</sup> The myth of psychological interrogation persists because most people do not know what occurs during police interrogations, and because they wrongly assume that individuals do not act against their self-interest or engage in self-destructive behavior, such as falsely confessing to a crime that they did not commit.

### **The Causes of False Confession: Misclassification, Coercion, and Contamination**

There is no single cause of false confession, and there is no single logic or type of false confession. Police-induced false confessions result from a multi-step process and sequence of influence, persuasion, and compliance and usually involve psychological coercion.<sup>13</sup> Police are more likely to elicit false confessions under certain conditions of interrogation, however, and individuals with certain personality traits and dispositions are more easily pressured into giving false confessions. To understand why criminal suspects give false confessions, we must first understand how police investigators target criminal suspects and how police interrogation works as a psychological process, before eliciting a suspect’s admission and in the postadmission stage of interrogation.

There are three sequential errors, which occur during a police-elicited false confession, that lead to a wrongful conviction. Investigators first misclassify an innocent person as guilty; they next subject him to a guilt-presumptive, accusatory interrogation that invariably involves lies about evidence and often the repeated use of implicit and explicit promises and threats as well. Once they have elicited a false admission, they pressure the suspect to provide a postadmission narrative that they jointly shape, often sup-

plying the innocent suspect with the (public and nonpublic) facts of the crime. These have been referred to as the misclassification error, the coercion error, and the contamination error.<sup>7</sup>

### **The Misclassification Error**

The first mistake occurs when detectives erroneously decide that an innocent person is guilty. As Davis and Leo point out, “the path to false confession begins, as it must, when police target an innocent suspect. . . . Once specific suspects are targeted, police interviews and interrogations are thereafter guided by the presumption of guilt” (Ref. 14, p 124). Whether to interrogate or not is therefore a critical decision point in the investigative process. If police did not erroneously interrogate innocent people, they would never elicit false confessions. Because misclassifying innocent suspects is a necessary condition for all false confessions and wrongful convictions, it is both the first and the most consequential error that police make.

There are many cognitive errors that lead police to classify an innocent person mistakenly as a guilty suspect. Perhaps the most prominent stems from poor and erroneous investigation training. American police are taught, falsely, that they can become human lie detectors capable of distinguishing truth from deception at high, if not near perfect, rates of accuracy. (The Chicago-based firm Reid and Associates, for example, claims that detectives can learn to discriminate truth and deception accurately 85 percent of the time, although this rate seems to be represented in their training seminars as 100 percent.<sup>7</sup>) Detectives are misleadingly taught, for example, that the subject who averts his gaze, slouches, shifts his body posture, touches his nose, adjusts or cleans his glasses, chews his fingernails, or strokes the back of his head is likely to be lying and thus is guilty.<sup>7</sup> The subject who is guarded, uncooperative, and offers broad denials and qualified responses is also believed to be deceptive and therefore guilty. However, social scientific studies have repeatedly demonstrated across a variety of contexts that people are poor human lie detectors and thus are highly prone to error in their judgment about whether an individual is lying or telling the truth. Most people get it right at rates that are no better than chance (i.e., 50%) or the flip of a coin.<sup>15</sup> Moreover, specific studies of police interrogators have found that they cannot reliably distinguish between truthful and false denials of guilt

at levels greater than chance; indeed, they routinely make erroneous judgments.<sup>16,17</sup> The method of behavior analysis taught by the police training firm Reid and Associates has been found empirically to lower judgment accuracy, leading Kassin and Fong to conclude that “the Reid technique may not be effective—and, indeed, may be counterproductive—as a method of distinguishing truth and deception” (Ref. 17, p 512). The Reid-based Behavioral Analysis Interview, which primarily consists of asking 15 to 20 questions designed to evoke particular behavioral (verbal, nonverbal, and paralinguistic) responses from which the interrogator can allegedly discern whether a suspect is telling the truth or lying, has its origins in the polygraph and like the polygraph has been empirically shown to have high rates of error.<sup>7</sup> As Kassin and Gudjonsson note,<sup>12</sup> police detectives and other professional lie-catchers are accurate only 45 to 60 percent of the time.

Innocent persons may be mistakenly targeted for suspicion and misclassified as guilty suspects for other reasons. The suspect may, for example, simply be the most readily noticed person who fits a very general description given by an eyewitness or others. Although many may fit the description, the target may be chosen simply because he happens to be noticed by the police, reported by someone who had seen a police sketch or falsely identified from a mug shot or lineup, or he fits an official profile of the perpetrator. A suspect may also be targeted based on widespread crime-related schemas, including likely motives for the crime as well as the perpetrators likely to have such motives.<sup>18</sup> Family members, for example, have been led to confess falsely to murdering wives, children, or parents, largely because police start with the assumption that most such murders are committed by family and proceed by ruling out family before looking for other suspects.

### **The Coercion Error**

Once detectives misclassify an innocent person as a guilty suspect, they often subject him to an accusatorial interrogation. Getting a confession becomes particularly important when there is no other evidence against the suspect, especially in high-profile cases in which there is great pressure on police detectives to solve the crime, there is no other source of potential evidence to be discovered,<sup>19</sup> and typically there is no credible evidence against an innocent but misclassified suspect. It is perhaps not surprising that

most documented false confessions occur in homicides and high-profile cases.<sup>2,5</sup>

Once interrogation commences, the primary cause of police-induced false confession is psychologically coercive police methods.<sup>20</sup> Psychological coercion can be defined in two ways: police use of interrogation techniques that are regarded as inherently coercive in psychology and law, or police use of interrogation techniques that, cumulatively, cause a suspect to perceive that he has no choice but to comply with the interrogators' demands. Usually these amount to the same thing. Psychologically coercive interrogation techniques include some examples of the old third degree, such as deprivations (of food, sleep, water, or access to bathroom facilities, for example), incommunicado interrogation, and induction of extreme exhaustion and fatigue. In the modern era, however, these techniques are rare in domestic police interrogations. Instead, when today's police interrogators employ psychologically coercive techniques, they usually consist of (implicit or express) promises of leniency and threats of harsher treatment. As Ofshe and Leo have written, "the modern equivalent to the rubber hose is the indirect threat communicated through pragmatic implication" (Ref. 21, p 1115). Threats and promises can take a variety of forms, and they are usually repeated, developed, and elaborated over the course of the interrogation. Most documented false confessions in recent decades have been directly caused by or have involved promises or threats.<sup>5,8</sup>

The second form of psychological coercion, causing a suspect to perceive that he has no choice but to comply with the wishes of the interrogator, is not specific to any one technique but may be the cumulative result of the interrogation methods as a whole. If one understands the psychological structure and logic of contemporary interrogation, it is not difficult to see how it can produce this effect. The custodial environment and physical confinement are intended to isolate and disempower the suspect. Interrogation is designed to be stressful and unpleasant, and it is more stressful and unpleasant the more intense it becomes and the longer it lasts. Interrogation techniques are meant to cause the suspect to perceive that his guilt has been established beyond any conceivable doubt, that no one will believe his claims of innocence, and that by continuing to deny the detectives' accusations he will only make his situation (and the ultimate outcome of the case against him) much

worse. The suspect may perceive that he has no choice but to comply with the detectives' wishes, because he is fatigued, worn down, or simply sees no other way to escape an intolerably stressful experience. Some suspects come to believe that the only way they will be able to leave is if they do what the detectives say. Others comply because they are led to believe that it is the only way to avoid a feared outcome (e.g., homosexual rape in prison). When a suspect perceives that he has no choice but to comply, his resultant compliance and confession are, by definition, involuntary and the product of coercion.<sup>20</sup>

#### *Vulnerable Suspects*

Even though psychological coercion is the primary cause of police-induced false confessions, individuals differ in their ability to withstand interrogation pressure and thus in their susceptibility to making false confessions.<sup>9</sup> All other things being equal, those who are highly suggestible or compliant are more likely to confess falsely. Individuals who are highly suggestible tend to have poor memories, high levels of anxiety, low self-esteem, and low assertiveness, personality factors that also make them more vulnerable to the pressures of interrogation and thus more likely to confess falsely.<sup>12</sup> Interrogative suggestibility tends to be heightened by sleep deprivation, fatigue, and drug or alcohol withdrawal.<sup>22,23</sup> Individuals who are highly compliant tend to be conflict avoidant, acquiescent, and eager to please others, especially authority figures.<sup>9</sup>

Highly suggestible or compliant individuals are not the only ones who are unusually vulnerable to the pressures of police interrogation. So are the developmentally disabled or cognitively impaired, juveniles, and the mentally ill. The developmentally disabled are more likely to confess falsely for a variety of reasons.<sup>24,25</sup> First, because of their subnormal intellectual functioning, low intelligence, short attention span, poor memory, and poor conceptual and communication skills, they do not always understand statements made to them or the implications of their answers. They often lack the ability to think in a causal way about the consequences of their actions. Their limited intellectual intelligence translates into a limited social intelligence as well: they do not always fully comprehend the context or complexity of certain social interactions or situations, particularly adversarial ones, including a police interrogation. They are not, for example, likely to understand that

the police detective who appears to be friendly is really their adversary or to grasp the long-term consequences of making an incriminating statement. They are thus highly suggestible and easy to manipulate. They also lack self-confidence, possess poor problem-solving abilities, and have tendencies to mask or disguise their cognitive deficits and to look to others, particularly authority figures, for appropriate cues to behavior. It is therefore easy to get them to agree with and repeat false or misleading statements, even incriminating ones.

Second, as many researchers have noted, the developmentally disabled are eager to please.<sup>26</sup> They tend to have a high need for approval and thus are prone to being acquiescent. They have adapted to their cognitive disability by learning to submit to and comply with the demands of others, again especially those of authority figures.<sup>27</sup> Because of their desire to please, they are easily influenced and led to comply in situations of conflict. Some observers refer to this as “biased responding.”<sup>26</sup> The developmentally disabled answer affirmatively when they perceive a response to be desirable and negatively when they perceive it to be undesirable. They literally tell the person who is questioning them what they believe the questioner wants to hear. A related trait is the cheating-to-lose syndrome. The developmentally disabled eagerly assume blame or knowingly provide incorrect answers to please, curry favor with, or seek the approval of an authority figure. It is not difficult to see how their compliance and submissiveness, especially with figures of authority, can lead the developmentally disabled to make false confessions during police interrogations.

Third, because of their cognitive disabilities and learned coping behaviors, the developmentally disabled are easily overwhelmed by stress. They simply lack the psychological resources to withstand the same level of pressure, distress, and anxiety as mentally normal individuals.<sup>26,27</sup> As a result, they tend to avoid conflict. They may experience even ordinary levels of stress, far below that felt in an accusatorial police interrogation, as overwhelming. They are therefore less likely to resist the pressures of confrontational police questioning and more likely to comply with the demands of their accusers, even if this means knowingly making a false confession. The point at which they are willing to tell a detective what he wants to hear to escape an aversive interrogation is often far lower than that of a mentally normal indi-

vidual, especially if the interrogation is prolonged. There have been numerous documented cases of false confessions from the developmentally disabled in recent years.<sup>5</sup>

Youth is also a significant risk factor for police-induced false confessions.<sup>28,29</sup> Many of the developmental traits that characterize the developmentally disabled may also characterize young children and adolescents. Many juveniles too are highly compliant. They tend to be immature, naively trusting of authority, acquiescent, and eager to please adult figures. They are thus predisposed to be submissive when questioned by police. Juveniles also tend to be highly suggestible. Like the developmentally disabled, they are easily pressured, manipulated, or persuaded to make false statements, including incriminating ones. Youth (especially young children) also lack the cognitive capacity and judgment to understand the nature or gravity of an interrogation or the long-term consequences of their responses to police questions. Like the developmentally disabled, juveniles also have limited language skills, memory, attention span, and information-processing abilities compared with normal adults. And juveniles too are less capable of withstanding interpersonal stress and thus are more likely to perceive aversive interrogation as intolerable. All of these traits explain why they are more vulnerable to coercive interrogation and more susceptible to making false confessions.

Finally, people with mental illness are also disproportionately likely to make false confessions,<sup>30</sup> especially in response to police pressure. The mentally ill possess a range of psychiatric symptoms that make them more likely to agree with, suggest, or confabulate false and misleading information and provide it to detectives during interrogations. These symptoms include faulty reality monitoring, distorted perceptions and beliefs, an inability to distinguish fact from fantasy, proneness to feelings of guilt, heightened anxiety, mood disturbances, and a lack of self control.<sup>9,12</sup> In addition, the mentally ill may suffer from deficits in executive functioning, attention, and memory; become easily confused; and lack social skills such as assertiveness.<sup>30</sup> These traits also increase the risk of falsely confessing. While the mentally ill are likely to make voluntary false confessions, they may also be easily coerced into making compliant ones. As Salas points out: “Mental illness makes people suggestible and susceptible to the slightest form of pressure; coercion can take place much more eas-

ily, and in situations that a ‘normal’ person might not find coercive” (Ref. 31, p 264). As a result, “the mentally ill are especially vulnerable either to giving false confessions or to misunderstanding the context of their confessions, thus making statements against their own best interests that an average criminal suspect would not make” (Ref. 31, p 274).

It is important to emphasize, however, that police elicit most false confessions from mentally normal individuals.<sup>5,8</sup> For example, Drizin and Leo,<sup>5</sup> in a study of 125 proven false confessions, showed that more than 70 percent were given by mentally normal individuals (i.e., neither developmentally disabled nor mentally ill).

### **The Contamination Error**

Psychologically coercive police methods (and how they interact with an individual’s personality) may explain how and why a suspect is moved, often painstakingly, from denial to admission, but a confession is more than an “I did it” statement. It also consists of a subsequent narrative that researchers have referred to as the postadmission narrative.<sup>8</sup> The narrative contextualizes and attempts to explain the “I did it” statement and transforms the fledgling admission into a fully formed confession. The postadmission narrative makes the story appear, at least on its face, to be a compelling account of the suspect’s guilt. The content of and rhetorical force of a suspect’s postadmission narrative explains, in part, why confessions are treated as such powerful evidence of guilt and sometimes lead to the prosecution and conviction of the innocent.<sup>7</sup>

Police detectives understand the importance of the postadmission phase of interrogation. They use it to influence, shape, and sometimes even script the suspect’s narrative. The detective’s goal is to elicit a persuasive account that successfully incriminates the suspect and leads to his conviction. For example, in false-confession cases, interrogators have been adept at inventing, suggesting, or eliciting an account of the suspect’s motivation; indeed, they often use scenario-based inducements as a method of attributing a motive to the suspect, typically one that minimizes his culpability, one that the suspect agrees to and then repeats, even if it is completely inaccurate. [In the case of *Lowery v. County of Riley*, 522 F.3d 1086 (10th Cir. 2008), who was accused and ultimately convicted of raping an elderly woman and was exonerated by DNA evidence many years later, police

pressured Lowery to admit to having committed the rape because he had recently discovered that his wife was having an affair with another man, and they promised him psychological counseling in lieu of prison, if he admitted to that motive].<sup>7</sup> In addition, interrogators encourage the suspect to attribute the decision to confess to an act of conscience and urge him to express remorse about committing the crime. They may provide vivid scene details that appear to corroborate the suspect’s guilty knowledge and thus confirm his culpability. Interrogators may also try to make the admission appear to be voluntary, portraying the suspect as the agent of his own confession and themselves merely as its passive recipient.

Interrogators help create the false confession by pressuring the suspect to accept a particular account and by suggesting facts of the crime to him, thereby contaminating the suspect’s postadmission narrative. Unless he has learned the details of the crime scene from community gossip or the media, an innocent person would not know either the mundane or the dramatic details of the crime.<sup>8</sup> The innocent suspect’s postadmission narrative should therefore be replete with errors when he responds to questions for which the answers cannot easily be guessed by chance, unless, of course, the answers are implied, suggested, or explicitly provided to the suspect, which, in fact, does occur, whether advertently or inadvertently, in many false-confession cases.<sup>8,32</sup> If the entire interrogation is captured on audio or video recording, then it may be possible to trace, step by step, how and when the interrogator implied or suggested the correct answers for the suspect to incorporate into his postadmission narrative. If, however, the entire interrogation is not recorded—and most documented false-confession cases are not—then there may be no objective way to prove that the interrogator contaminated the suspect’s postadmission narrative.

The contamination of the suspect’s postadmission narrative is thus the third mistake in the trilogy of police errors that, cumulatively, lead to the elicitation and construction of a suspect’s false confession.

### **The Different Types of False Confession**

In 1985 social psychologists Saul Kassin and Lawrence Wrightsman,<sup>33</sup> drawing on case studies and social psychological theories of attitude change, first identified three distinct types of false confession, which they called voluntary (occurring “in the ab-

sence of elicitation”), coerced-compliant (occurring when “the suspect publically professes guilt in response to extreme methods of interrogation, despite knowing privately that he or she is truly innocent”), and coerced-internalized (occurring when the suspect “actually comes to believe that he or she committed the offense”). Ofshe and Leo<sup>20</sup> extended and modified the initial typology of Kassin and Wrightsman<sup>21</sup> to include five distinct types of false confession: voluntary, stress-compliant, coerced compliant, coerced-persuaded, and noncoerced-persuaded. This classification scheme most accurately captures the psychological logic and variation in false confessions. For simplicity, researchers have dropped the various prefixes and simply refer to voluntary, compliant, and persuaded false confessions.<sup>7</sup> It is important to understand that there are three conceptually distinct psychological processes at work in the production and elicitation of false confessions.

### **Voluntary False Confessions**

Kassin and Wrightsman<sup>33</sup> initially defined a voluntary false confession as one that is offered in the absence of police interrogation. Voluntary false confessions are thus explained by the internal psychological states or needs of the confessor<sup>9</sup> or by external pressure brought to bear on the confessor by someone other than the police.<sup>34</sup> Most voluntary false confessions appear to result from an underlying psychological disturbance or psychiatric disorder. As Kassin and Wrightsman<sup>33</sup> point out, individuals volunteer false confessions in the absence of police questioning for a variety of reasons: a desire for notoriety or fame, the need to expiate guilt over imagined or real acts, an inability to distinguish between fantasy and reality, or a pathological need for acceptance or self-punishment. But voluntary false confessions need not be rooted in psychological maladies. A person may, for example, provide a voluntary false confession out of a desire to aid and protect the real criminal,<sup>35</sup> to provide an alibi for a different crime or norm violation,<sup>36</sup> or to get revenge on another person.<sup>9</sup> High-profile crimes, such as the Lindbergh kidnapping in the 1930s, the Black Dahlia murder in the 1940s, and the JonBenet Ramsey and Nicole Brown Simpson murders in the 1990s, tend to attract a large number of voluntary false confessions.<sup>37</sup> Detectives tend to be far more skeptical and less accepting of voluntary false confessions than of police-induced false confessions. Put differently, police

more readily recognize and discount voluntary false confessions than those they elicit.<sup>9</sup>

### **Compliant False Confessions**

A compliant false confession is one given in response to police coercion, stress, or pressure to achieve some instrumental benefit—typically either to terminate and thus escape from an aversive interrogation process, to take advantage of a perceived suggestion or promise of leniency, or to avoid an anticipated harsh punishment.<sup>20</sup> Perhaps the most distinct aspect of compliant false confessions is that they are made knowingly: the suspect admits guilt with the knowledge that he is innocent and that what he says is false. Compliant false confessions are typically recanted shortly after the interrogation is over.

There are several reasons that suspects give compliant false confessions. Kassin and Wrightsman first suggested that compliant false confessions arise “through the coerciveness of the interrogation process” (Ref. 33, p 77). In the pre-modern era of American interrogation, physical coercion, the so-called third degree, was the primary cause of such confessions. Innocent suspects knowingly falsely confessed to avoid or end physical assaults, torture sessions, and the like.<sup>38</sup> In the modern era, psychological coercion is the primary source of compliant false confessions. Psychologically oriented interrogation techniques are just as capable of eliciting compliant false confessions as are physical ones. Ofshe and Leo<sup>20</sup> have identified “classically coercive influence techniques” (i.e., threats and promises, explicit or implied) as the root cause of most compliant false confessions in the modern era.

Coerced-compliant false confessions are the most common type of false confession. As Kassin notes, “the pages of legal history are filled with stories of coerced-compliant confessions” (Ref. 39, p 225). Compliant false confessions occur as a result of the sequenced influence process through which detectives seek to persuade a suspect that he is indisputably caught and that the most viable way to mitigate his punishment and escape his otherwise hopeless situation is by confessing.<sup>40</sup> As has been well documented, American police use interrogation techniques that are designed, on the one hand, to convince a suspect that he is caught and that it is futile for him to deny the crime and, on the other hand, techniques that are designed to motivate him to perceive that it is in his interest to confess.

The most potent psychological inducement is the suggestion that the suspect will be treated more leniently if he confesses and more punitively if he does not. Unlike most police interrogation techniques, promises and threats are neither standard nor legal; rather, they are regarded as coercive in both psychology and law.<sup>41</sup> It is not hard to understand why such threats and promises in combination with standard interrogation techniques, such as repeated accusations, attacks on a suspect's denials, lies about non-existent evidence, pressure, and inducements, may cause a suspect to confess knowingly to a crime he did not commit. Put simply, the suspect comes to perceive that the benefits of confessing (e.g., release from custody, mitigated punishment) outweigh the costs of denial (e.g., arrest, aggravated punishment). This may be especially true for those suspects who naively believe that the fact of their innocence will, in the end, exonerate them.<sup>42</sup>

Although psychologically coercive threats and promises may be the primary sources of compliant false confessions, they are not the only ones. Stress<sup>20</sup> and police pressure<sup>9</sup> are also causes. Custodial interrogation is inherently stressful, anxiety-provoking, and unpleasant. The interrogator's interpersonal style may also be a source of distress: he may be confrontational, insistent, demanding, overbearing, deceptive, hostile, and manipulative. His accusatorial techniques are also designed to induce distress by attacking the suspect's self-confidence, by not permitting him to assert his innocence, and by causing him to feel powerless and trapped. The interrogation may span hours, as often occurs with compliant false confessions, weakening a suspect's resistance, inducing fatigue, and heightening suggestibility.

The combined effect of these multiple stressors may overwhelm the suspect's cognitive capacities such that he confesses simply to terminate what has become an intolerably stressful experience. Facing an overbearing interrogator who refuses to take no for an answer, he may reason that telling the interrogator what he wants to hear is the only way to escape.<sup>21</sup>

### **Persuaded False Confessions**

Persuaded false confessions occur when police interrogation tactics cause an innocent suspect to doubt his memory and he becomes temporarily persuaded that it is more likely than not that he committed the crime, despite having no memory of committing it.<sup>20</sup> Persuaded false confessions typically

unfold in three sequential steps. First, the interrogator causes the suspect to doubt his innocence. This is typically a by-product of an intense, lengthy, and deceptive accusatorial interrogation in which the interrogator repeatedly accuses the suspect of committing the crime, relentlessly attacks the suspect's denials (as implausible, illogical, contradicted by the known facts, or simply wrong because of the interrogator's alleged superior knowledge or authority) and repeatedly confronts the suspect with fabricated (but allegedly irrefutable) evidence of his guilt. When first accused, the innocent suspect thinks that his interrogators are genuinely mistaken, and he counters by attempting to reason with them and persuade them of his innocence. At some point, however, the suspect realizes that they are not going to credit his assertions of innocence. He may then begin to experience dissonance because he cannot reconcile the obvious contradiction between his knowledge that he is innocent and his belief that the police are truthfully reporting unmistakable evidence of his guilt. The suspect offers up the remaining basis for his belief in his innocence: that he has no memory of committing the crime.

To convince the suspect that it is plausible, and likely, that he committed the crime, the interrogators must supply him with a reason that satisfactorily explains how he could have done it without remembering it. This is the second step in the psychological process that leads to a persuaded false confession. Typically, the interrogator suggests one version or another of a "repressed" memory theory. He or she may suggest, for example, that the suspect experienced an alcohol- or drug-induced blackout, a "dry" blackout, a multiple personality disorder, a momentary lapse in consciousness, or posttraumatic stress disorder, or, perhaps most commonly, that the suspect simply repressed his memory of committing the crime because it was a traumatic experience for him.

The suspect can only be persuaded to accept responsibility for the crime if he regards one of the interrogators' explanations for his alleged amnesia as plausible. Once the suspect is convinced, he comes to believe that it is more likely than not that he committed the crime. The suspect remains in an uncertain belief state, because he still has no memory of committing the crime. Despite his lack of memory, once the suspect is over the line,<sup>21</sup> he is ready for the third and final step in the making of a persuaded false confession: the construction of the postadmission

narrative. Once the suspect has accepted responsibility for the crime, the interrogator pushes him to supply the details of how and why he did it. The suspect does not know the facts; he is in the paradoxical situation of believing he committed an act that he wants to confess to but cannot remember. He may believe that if he thinks hard enough, searches his mind, or tries to imagine himself committing the crime, he will somehow be able to remember it and supply the desired details; but he does not remember the crime. Instead, the suspect either guesses or confabulates about how the crime could have occurred, repeats the details that the police have suggested to him, knowingly makes up the details, or tries to infer them from the interrogators' suggestions.

Usually, the persuaded false confessor's postadmission narrative is replete with errors. Reasoning from inference rather than actual knowledge, his confession is given in hypothetical, tentative, and speculative language.<sup>9,21</sup> His use of equivocal language reflects his uncertain belief state, confusion, and lack of memory. Assuming that the suspect is lying, however, the interrogators sometimes reject his speculations and pressure him to use declarative rather than conditional language and to provide the details of the crime that they continue to believe he knows. Some persuaded false confessors bend to the demands of their interrogators and confess in declarative language (e.g., "I did" instead of "I must have done"), even though they lack any knowledge or memory of the crime; others continue to use equivocal, speculative, and uncertain language ("I must have done it," "I probably did it," "I guess I did it," "I could have done it"), insisting that they still do not know or remember the details. Ofshe and Leo<sup>20</sup> have called this the grammar of confabulation. This language of uncertainty is present in all persuaded false confessions. Usually, the persuaded false confessor recants either during the interrogation or shortly after being removed from the interrogation environment.

Persuaded false confessions appear to occur far less often than compliant false confessions. They also tend to occur primarily in high-profile murder cases and to be the product of unusually lengthy and psychologically intense interrogations.<sup>7</sup> Once he is removed from the interrogation environment and its attendant influences and pressures, the persuaded false confessor typically recants his confession.<sup>9,20</sup> Some recant even before the interrogation termi-

nates. Regardless, ordinary police interrogation is not strong enough to produce a permanent change in the suspect's beliefs.<sup>20</sup>

### The Consequences of Police-Induced False Confessions

Confessions are the most incriminating and persuasive evidence of guilt that the state can bring against a defendant. False confessions are therefore the most incriminating and persuasive false evidence of guilt that the state can bring against an innocent defendant. Former U.S. Supreme Court Justice William Brennan's observation that "no other class of evidence is so profoundly prejudicial"<sup>43</sup> is amply supported by social science research.<sup>44</sup> Confessions exert a strong biasing effect on the perceptions and decision-making of criminal justice officials and lay jurors alike because most people assume that a confession, especially a detailed confession, is, by its very nature, true. Confession evidence therefore tends to define the case against a defendant, usually overriding any contradictory information or evidence of innocence.<sup>8</sup>

A suspect's confession sets in motion a seemingly irrefutable presumption of guilt among justice officials, the media, the public, and lay jurors.<sup>8</sup> This chain of events in effect leads each part of the system to be stacked against the individual who confesses, and as a result he is treated more harshly at every stage of the investigative and trial process.<sup>45</sup> He is significantly more likely to be incarcerated before trial, charged, pressured to plead guilty, and convicted. Moreover, the presence of a confession creates its own set of confirmatory and cross-contaminating biases,<sup>46,47</sup> leading both officials and jurors to interpret all other case information in the worst possible light for the defendant. For example, a weak and ambiguous eyewitness identification that otherwise may have been quickly dismissed in the absence of a confession is treated instead as corroboration of the confession's underlying validity. As the case against an innocent false confessor moves from one stage to the next in the criminal justice system, it gathers more collective force, and the error becomes increasingly difficult to reverse.

This chain reaction starts with the police. Once they obtain a confession, they typically close their investigation, clear the case as solved, and make no effort to pursue any exculpatory evidence or other

possible leads, even if the confession is internally inconsistent, contradicted by external evidence, or the result of coercive interrogation.<sup>45</sup> Even when other case evidence subsequently emerges suggesting or demonstrating that the suspect's confession is false, police almost always continue to believe in the suspect's guilt and the underlying accuracy of the confession.<sup>5,8</sup> American police interrogators are poorly trained about the risks of psychological interrogation and the phenomenon of police-induced false confession,<sup>8,40</sup> and, like most people, they tend to assume that virtually all confessions are true and thus assume that virtually all who confess are guilty.<sup>7</sup>

The presumption of guilt and the tendency to treat more harshly those who confess extends to prosecutors, defense attorneys, and judges as well. Like police, prosecutors rarely consider the possibility that an entirely innocent suspect has falsely confessed; some prosecutors are so skeptical of the idea of police-induced false confession that they stubbornly refuse to admit that it occurred, even after DNA evidence has unequivocally established the defendant's innocence.<sup>48</sup> Once a suspect has confessed, prosecutors tend to charge him with the highest number and types of offenses<sup>49</sup> and set his bail at a higher amount<sup>50</sup> (especially in serious or high profile cases), and they are far less likely to initiate or accept a plea bargain to a reduced charge.<sup>21</sup> The confession becomes the centerpiece of the prosecution's case against the defendant. Even defense attorneys treat suspects who confess more harshly, often pressuring them to accept a guilty plea to a lesser charge to avoid the higher sentence that will inevitably follow from a jury conviction.<sup>51,52</sup> As the California Supreme Court has noted, "the confession operates as a kind of evidentiary bombshell which shatters the defense."<sup>53</sup> American judges too tend to presume that a defendant who has confessed is guilty and, accordingly, treat him more punitively. Conditioned to disbelieve defendants' claims of innocence or police misconduct, judges rarely suppress confessions, even highly questionable ones.<sup>54</sup>

If the defendant's case goes to trial, the jury treats the confession as more probative of the defendant's guilt than any other type of evidence (short of a videotape of the suspect committing the crime), especially if, as in virtually all high profile cases, the confession receives pretrial publicity.<sup>8,44,55</sup> False confessions are highly likely to lead to the wrongful conviction of the innocent. In their study of 60 false

confessions, Leo and Ofshe<sup>8,56</sup> found that 73 percent of all false confessors whose cases went to trial were erroneously convicted; this number went up to 81 percent in the study of Drizin and Leo<sup>5</sup> of 125 false confessions. Taken together, these studies demonstrate that a false confession is a dangerous piece of evidence to put before a judge or jury, because it profoundly biases their evaluation of the case in favor of conviction, so much so that they may allow it to outweigh even strong evidence of a suspect's factual innocence.<sup>8</sup> The Leo and Ofshe<sup>8,56</sup> and Drizin and Leo<sup>5</sup> studies show that real-world jurors simply fail to discount false-confession evidence appropriately, even when the defendant's uncorroborated confession was elicited by coercive methods and the other case evidence strongly supports his innocence. Thus the false-confession evidence is highly, if not inherently, prejudicial to the fate of any innocent defendant in the American criminal justice system. As Welsh White notes, "the system does not have safeguards that will prevent the jury from giving disproportionate weight to such confessions" (Ref. 41, p 155).

The findings from these field studies of aggregated false-confession cases are consistent with those from experiments and public opinion surveys. They all converge on the same conclusion: that, as the U.S. Supreme Court stated in the case of *Arizona v. Fulminante*, "a confession is like no other evidence."<sup>57</sup> It is "uniquely potent"<sup>58</sup> in its ability to bias the trier of fact in favor of the prosecution, overwrite contradictory or exculpatory case evidence, and lead to the wrongful conviction of the innocent.<sup>8</sup> Researchers have demonstrated that mock jurors find confession evidence more incriminating than any other type of evidence.<sup>44,58</sup> Kassin and Sukel<sup>55</sup> found that confessions powerfully increased the conviction rate even when mock jurors viewed the confession as coerced, even when they were instructed to disregard the confession as inadmissible, and even when they reported that it had no influence on their verdict. Confessions, especially detailed confessions, are devastating to a defendant's case because, as Welsh White notes, "jurors are often unwilling to believe that anyone would confess to a crime that they did not commit" (Ref. 59, p 134).

## Conclusions

As this article has shown, empirical researchers have documented and analyzed how and why con-

temporary methods of psychological interrogation can, and sometimes do, lead innocent individuals to confess falsely to serious crimes. The consequences of these false confessions are disastrous for innocent individuals who are wrongfully convicted and incarcerated. As a result, empirical researchers have also suggested ways to minimize both the number of false confessions that police elicit and the number of false confessions that, once elicited, lead to wrongful convictions. Mandatory electronic recording of police interrogations in their entirety is the single most important policy reform available because it creates an objective, comprehensive, and reviewable record of the interrogation that all parties—police, prosecutors, defense attorneys, judges, juries, and even the public in high-profile cases—can review. Although 10 states (Alaska, Minnesota, Illinois, Maine, New Mexico, Wisconsin, New Jersey, North Carolina, Maryland, and Nebraska) and the District of Columbia now require that police record interrogations in their entirety in some or all criminal cases, most police departments, as well as the FBI, still do not record interrogations, and there remains resistance to the idea in many quarters of law enforcement.<sup>60</sup> Researchers have proposed other reforms as well, including improved police training about false confessions, pretrial reliability hearings to exclude false-confession evidence, putting time limits on interrogations, prohibiting certain interrogation techniques, greater provision of expert witness testimony and cautionary jury instructions at trial, and providing additional safeguards for vulnerable populations such as the developmentally disabled and juveniles.<sup>7</sup>

Such reforms, however, are likely to occur slowly in the United States. Great Britain has adopted several reforms, based on growing documentation and awareness of the problem of false confessions.<sup>9</sup> American law enforcement, however, remains steeped in the use of investigative methods and interrogation techniques that continue to cause the three errors that produce false confessions, and the American public continues to believe in the myth of psychological interrogation. Until the misconception that innocent suspects do not confess in response to psychological interrogation is dispelled, police detectives will continue to elicit false confessions that lead to wrongful convictions. As a result, social scientists and mental health professionals must continue to conduct empirical research and educate the public about

the increasing documentation of false confessions and the interrogative influences that promote them and ultimately lead to the conviction of the innocent.

### Acknowledgment

I thank Alan Law for research assistance.

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