

REPORT IN THE MATTER OF U.S. VS. D-1 DARIUS LOVING (Case 2:17-cr-20746)

Brian L. Cutler, Ph.D.

**Professional Background**

I am Brian L. Cutler, Ph.D., Professor in the Faculty of Social Science and Humanities at the University of Ontario Institute of Technology. Prior to joining the faculty at UOIT, I was Assistant, Associate, and Full Professor and Associate Dean at Florida International University and Professor and Chair of the Department of Psychology at the University of North Carolina at Charlotte. I have been conducting research on Forensic Psychology since 1984.

I have served as Interim Dean and Associate Dean of my current faculty, President of the American Psychology-Law Society, Division 41 of the American Psychological Association and Editor-in-Chief of the peer-reviewed journal *Law and Human Behavior*. I have authored or edited the following books:

*The APA Handbook of Forensic Psychology*  
*Conviction of the Innocent: Lessons from Psychological Research*  
*Reform of Eyewitness Identification Procedures*  
*Evaluating Eyewitness Identification*  
*Expert Testimony on the Psychology of Eyewitness Identification*  
*Encyclopedia of Psychology and Law*

I have authored 27 book chapters and 71 articles about forensic and social psychology in peer-reviewed psychology, forensic psychology, social psychology, and law journals. I have received research competitive grants from the National Science Foundation in the U.S. and the Social Science and Humanities Research Council of Canada for my forensic psychological research. I have an active and funded research program in which I and members of my research team are developing an instrument for assessing coercion in videotaped interviews and interrogations with witnesses and suspects.

I have testified in more than 50 trials, depositions, and hearings in the U.S. and consulted in many additional cases in Canada and the U.S. since 1989. I have included my CV (Appendix A), which provides the details of my publications and professional experiences.

**Opinions Sought and Terms of Remuneration**

I have been asked by attorneys from the Federal Defender Office to review the materials in Appendix B and to offer opinions about (A) the risk of false confession in general, (B) the link between false confession and wrongful conviction, and (C) situational risk factors that increase the risk of false confession. I have not been asked to provide opinions about the accuracy of statements made by the defendant. I have no independent knowledge about facts or evidence in

this case beyond what I have learned from the Detroit Police and FBI reports provided to me for review.

## **I. The Risk of False Confession**

There is a well-established field of research in the disciplines of psychology and criminology on the subject of police interrogation practices and false confessions. These topics have been the subject of research using scientific methods that are generally accepted in the social scientific community. There are several sources of scientific information and knowledge about interrogations, false confessions, and wrongful conviction. The literature includes handbooks designed for training interrogators (e.g., Inbau, Reid, Buckley, & Jayne, 2013; Zulawski, & Wicklander, 2002), law review articles (e.g., Drizin & Leo, 2004; Garrett, 2010), scientific journal articles authored by psychologists and other social scientists (e.g., Kassin, 2008; Russano, Meissner, Narchet, & Kassin, 2005), and scholarly books written or edited by psychologists (e.g., Cutler, 2011; Lassiter & Meissner, 2010), other social scientists (e.g., Huff, Rattner, & Sagarin, 1996), and law professors (e.g., Borchard, 1932; Sheck, Neufeld, & Dwyer, 2000).

The literature on interrogation and false confession is substantial in volume. The social science research on wrongful convictions uses a variety of methodologies, including archival studies of actual cases (e.g., Drizin & Leo, 2004), observational studies of police interrogation (e.g., Leo, 1996), and laboratory experiments (e.g., Russano, Meissner, Narchet, & Kassin, 2005). The knowledge base on interrogations and confessions draws on specific research on interrogations and confessions as well as on more general psychological research on such topics as social influence, behavior modification, and information processing. (Kassin et al., 2010). In addition, trainers of interrogation have provided their perspectives, which have been informed by decades of experience in criminal investigations, as summarized in interrogation training manuals (e.g., Inbau, Reid, Buckley, & Jayne, 2013; Zulawski, & Wicklander, 2002).

Among the most influential reports on the science related to false confessions is a 2010 scientific review paper authored by several of the leading scholars in the field, Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard Leo and Allison Redlich. This report was the second scientific review paper endorsed by the American Psychology-Law Society, Division 41 of the American Psychological Association. The process of developing this scientific review paper was elaborate (Thompson, 2010). Dr. Kassin proposed the review paper in 2005. The Society's Scientific Review Paper Committee endorsed the proposal and nominated a drafting committee. The Society's Executive Committee approved the proposal in 2006. The authors selected for the committee represented diverse scholarly orientations, and each had considerable experience with interrogations and confessions. The paper was completed in 2008 and posted on the Society's website for comments and critique. Open hearings were held at the Society's conferences in 2008 and 2009 for additional comments and suggestions. The Society appointed an Advisory Board of three eminent psychologist-scientists, Drs. Daniel Schacter of Harvard University, Richard Petty of Ohio State University, and Laurence Steinberg of Temple University, to review the draft and offer additional comments and suggestions. The paper was then submitted to the Society's peer-reviewed journal, *Law and Human Behavior*, and was reviewed by four anonymous reviewers, an Associate Editor, and the Editor (disclosure: I

was Editor at the time). Reviewers made additional comments and suggestions. The final version was reviewed and approved by the Society's Executive Committee in June of 2009. Accordingly, I rely on the Scientific Review Paper as well as other research in this area when forming my opinions.

The idea that an innocent person would confess to a crime he or she did not commit is counterintuitive. Considerable research in social psychology has been devoted to the process by which people attribute causality for behavior. Heider (1958) maintained that we tend to see our own behavior as caused by the situation we are in, whereas we see others' behaviors as caused by their internal states. Thus, when people evaluate confessions, they assume that the person confessed because he or she is guilty. The discounting of the interrogation context when evaluating a confession is consistent with the general tendency of people to discount situational influences when attributing the causes of others' behaviors. This tendency has been called the "fundamental attribution error" (Ross, 1977), a well-established phenomenon in social psychology (Myers, 2002). People tend to believe that confessions represent guilt, even when they learn that confessions were coerced (Kassin & Sukel, 1997).

One potential explanation for why people might discount situational pressures when evaluating confessions is that they do not understand the nature of the suspect interrogation process and its powerful effects on pressure to confess. Modern interrogation practices (e.g., Inbau et al., 2013; Zulawski & Wicklander, 2002) are complex and require the interrogator to be trained in the stages of interrogation, the tactics that are permissible, the tactics that are not permissible by law, risk factors for false confession, and how to corroborate without contaminating a confession. The Reid Institute maintains that even experts frequently get it wrong when describing interrogation techniques, as they explain in a position paper posted on the company's website (<http://www.reid.com/pdfs/20180126.pdf>). Consistent with the point that people may not understand interrogation pressure, authors of one study of jurors from a Southern California court concluded that their sample underestimated the coercive influence of positive confrontation statements and promises of leniency (Blandon-Gitlin, Sperry, & Leo, 2011).

The psychological literature on false confessions typically distinguishes between three types of false confessions: voluntary, compliant, and internalized (Kassin et al., 2010). Voluntary false confessions are those in which an individual, without prompting or pressure, admits to committing a crime of which he or she is in fact innocent. For example, about 200 people offered voluntary false confessions in the kidnapping of Charles Lindbergh's infant in 1932. According to Kassin et al. (2010), people may offer voluntary false confessions to obtain notoriety, for self-punishment, because of their inability to distinguish fact from fantasy, or as a means of protecting the actual perpetrators.

Compliant false confessions are those in which the pressures of interrogation lead the suspect to admit to having committed a crime of which he or she is innocent. The use of powerful persuasion and behavior-shaping techniques by interrogators provides the pressure to confess, and factors such as time and fatigue can diminish a suspect's ability to resist pressure. The suspect who offers a compliant false confession agrees to confess in order to escape the stressful interrogation despite the long-term potential negative consequences of the confession.

Privately, however, the suspect knows that the confession is false and continues to maintain his or her innocence.

Internalized false confessions are those in which an individual admits to a crime of which he or she is innocent but is persuaded that he or she committed the crime. The suspect may initially proclaim his innocence but over time and through persuasion comes to distrust his memory and accepts the possibility of his culpability.

## **II. Link Between False Confessions and Wrongful Conviction**

The link between false confession and wrongful conviction is not a newly established phenomenon. False admissions and confessions have been repeatedly identified as a contributing factor in known cases of wrongful conviction. Several cases described in the 1932 book *Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice*, authored by Edwin Borchard, former Professor of Law at Yale University, involved false confessions produced by the “third degree or undue influence.” Borchard wrote, “While confessions may often seem conclusive, they must be carefully examined. Persons charged with crimes are not infrequently of defective or inferior intelligence, and, even without the use of formal third-degree methods, the influence of a stronger mind upon a weaker often produces, by persuasion or suggestion, the desired result.” (pp. 371-372).

The National Registry of Exonerations is a database that was founded by the University of Michigan Law School in conjunction with Northwestern University’s School of Law. The National Registry of Exonerations identifies and provides details about 1,588 exonerations in the United States since 1989. In a report entitled “Exonerations in the United States, 1989-2012” ([http://www.law.umich.edu/special/exoneration/Documents/exonerations\\_us\\_1989\\_2012\\_full\\_report.pdf](http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf)), the Registry analyzed 873 exonerations and found that false confessions by defendants were present in 25% of homicide cases and between 3% and 15% in other types of cases. As of June 18, 2018, the National Registry had accumulated 2,231 exonerations and reported that false confessions were contributing factors in 13% of those cases. Perjury and false accusations were present in 57% of cases. The Innocence Project, founded in 1992 by attorneys Peter Neufeld and Barry Scheck at the Cardozo School of Law, has, as of June 13, 2018, accumulated 358 DNA-based exonerations and reported that false confessions or incriminating statements were present in 25% of their cases.

### III. Situational Risk Factors for False Confession

Interrogation is a technique that, as noted above, is the subject of extensive training in the law enforcement arena. Interrogation techniques are like many other forensic techniques (photo array identification tests, forensic tests), and similarly, they have error rates. If investigators only interrogated guilty people, then a successful outcome would be a confession, and an error would be the failure to obtain a confession. Conversely, a successful outcome when interrogating an innocent person would be denial of guilt, while an error would be obtaining a false confession. Interrogation is often trained (Inbau et al., 2013) as a guilt-presumptive technique. When the investigator decides to move from an interview to an interrogation, the investigator assumes for the purpose of interrogation that the suspect is guilty and behaves accordingly. The stated goal of the interrogation is to learn the truth (Inbau et al., 2013), but because interrogation is only used on people believed to be suspicious, once the investigator decides to interrogate, the objective is to secure a confession. Naturally, the strength of the investigator's belief in the suspect's guilt can be expected to affect the interrogator's determination and resolve to obtain a confession. Thus, an investigator who believes that the suspect might be guilty may press ahead and interrogate the suspect as if he is guilty but may back off if met with signs of innocence (Inbau et al., 2013). In contrast, an investigator who strongly believes in a suspect's guilt may ignore or misinterpret signs of innocence and persist in using more rigorous strategies to obtain a confession. Ironically, innocent people sometimes behave in such a way as to appear more suspicious and invoke more rigorous interrogation strategies by the interrogator (Kassin, 2005).

The scientific research regarding interrogation and false confession comes into play in several ways. Below, I discuss interrogation tactics, which, if used on guilty suspects, increase the likelihood of true confessions, but if used on innocent suspects, increase the risk of false confessions.

Understanding the influence of the interrogation setting and tactics benefits from an appreciation of the science of social influence. Social psychology, a core subfield of psychology, is the scientific study of how people think about, influence, and relate to one another. Since the 1930s, social psychologists have conducted scientific research and developed well-established scholarly literatures on such topics as conformity, social comparison, social cognition, obedience, compliance, and persuasion. Social psychology is the subject of undergraduate courses and a focus of graduate study. Peer-reviewed psychology journals are devoted to publishing social psychological research on the above-noted topics. These journals include the *Journal of Personality and Social Psychology* and *Personality and Social Psychology Bulletin*.

Social psychological theory and research may help to explain how beliefs (including beliefs about our experiences) can be influenced by our conversations and dealings with other people. People, as social beings, are sensitive to the approval of others, fearful of social rejection, and look to the views and behaviors of others to guide their own thinking and behavior and for social proof in understanding ambiguous situations. As such, we are often susceptible to influences from others who seek our compliance or who attempt to persuade us. Peoples' susceptibility to social influence is documented in classic studies of normative and information influence (e.g., Asch, 1956) that show that peoples' perceptual judgments can be influenced by

social pressure. Theory and research on persuasion (e.g., Petty & Cacioppo, 1986) explains and demonstrates how such factors as source credibility, message quality, motivation and bias interact to influence changes in our beliefs. Research on compliance shows how systematic and strategic attempts to influence our behaviors and choices can get us to do things that, when left to our devices, we might not otherwise do (e.g., Cialdini, 2009).

A long history of social psychological research shows that attitudes and beliefs are susceptible to change through persuasion, particularly when the source of persuasion is high in credibility. One of the earliest demonstrations of persuasion showed that when people read a lecture arguing for more lenient treatment of juvenile offenders, they were more persuaded to change their attitudes when they believed the speaker to be a judge as compared to a convicted drug dealer (Kelman & Hovland, 1953). Subsequent, more recent research continues to show that source credibility is associated with persuasion (Pornpitakpan, 2004). Source credibility can be partitioned into factors such as competence and trustworthiness. High credibility sources are influential because they have the relevant expertise. We are persuaded by our doctors because of their medical training, knowledge and experience. We attend more carefully to arguments by knowledgeable others as compared to less knowledgeable others (Tobin & Raymundo, 2009). We are more persuaded by sources whom we regard as trustworthy – sources whom we believe will accurately report the truth. In a 2011 survey conducted by the Gallup Organization, 1000 Americans were asked to rate the trustworthiness of people in various occupations. According to Kassin, Fein, and Markus (2011), police officers were ranked sixth with respect to trustworthiness, behind clergy, high school teachers, medical doctors, pharmacists, and nurses (54% of the respondents rated police officers as high or very high in trustworthiness).

Peoples' abilities to process and scrutinize persuasive messages are dependent upon motivation and ability to process information (Petty & Cacioppo, 1986). When we are motivated and have the requisite knowledge and skills, we can scrutinize the contents of persuasive messages and characteristics of persuasive sources in evaluating attempts to persuade us. Factors such as stress or fatigue may interfere with our cognitive processing and limit our abilities to carefully scrutinize persuasive messages; in these situations, we may accept persuasive messages uncritically (for example, from high credibility sources) or reject messages without consideration (for example, from low credibility sources).

In sum, social psychology provides a framework for understanding how a suspect could come to utter admissions and details – in a convincing manner -- without believing the details. Social psychology – particularly the social psychology of self-regulation (e.g., Baumeister & Vohs, 2007) also provides a framework for understanding susceptibility to social influence. Self-regulation involves controlling one's emotions, thoughts and behaviors toward a desired goal, such as establishing innocence in an interrogation setting. A large body of social psychological research has examined the physiological factors, cognitive, and social factors that influence ability to self-regulate (e.g., Baumeister & Vohs, 2007).

While in some instances suspects have of their own volition provided false confessions (voluntary false confessions, as discussed above), more commonly false confessions are the product of persuasion and even coercion (Leo, 2008). Let us consider how social influence operates in interrogation settings. Considerable observational (e.g., Leo, 1996) and archival

(e.g., Ofshe & Leo, 1997) research examines the conditions to which suspects are sometimes subjected during interrogation and their effects on the pressure to confess, regardless of actual culpability for the crime under investigation. The unrepresented suspect is distinctly disadvantaged when isolated in a room with a detective armed with modern psychological methods of interrogation. The suspect might be a healthy, intelligent adult who has agreed to sign a waiver and speak with investigators without his lawyer present. Or, the suspect may be a youth, mentally ill, or developmentally disabled, or possess a combination of these factors that render him particularly susceptible to social influence, as discussed above. The suspect is ill-prepared for the subsequent onslaught of guilt-presumptive accusations, attacks on denials, deception, interpersonal pressure, inducement -- and sometimes even threats and promises -- designed to produce high levels of anxiety, deplete the suspect's mental resources, and lead the suspect to conclude that his choices are ultimately to confess and minimize his damage or to be found guilty by other means (Ofshe & Leo, 1997).

Sources vary in their use of labels for commonly used interrogation tactics.<sup>1</sup> In places I point out the similarities and differences in use of terminology, but my main goal is to explain the techniques and their effects. Early on in the interrogation the investigator may express a very high level of confidence that the suspect is guilty and that the purpose of the interrogation is not to determine whether the suspect is guilty but rather to find out why he committed the crime (or the details, or who else was involved, or what other crimes the suspect has committed). These unwavering expressions of confidence in the suspect's guilt are called direct positive confrontation (Inbau et al., 2012), confrontation (Kassin et al., 2010), and accusation (Ofshe & Leo, 1997; Zulawski & Wicklander, 2002). It is important to note that these statements are often exaggerations or strategic deceptions. The investigator sometimes has concluded that the suspect is guilty based on inferences about the suspect's verbal or nonverbal behavior prior to the interrogation (Kassin et al., 2010; Leo, 2008; Zulawski & Wicklander, 2002). The expression of confidence in the suspect's guilt, however, is a tactic designed to convince the suspect that he is

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<sup>1</sup> Throughout this section I frequently reference Zulawski and Wicklander's (2002) training manual. Wicklander-Zulawski Associates, however, in 2017 announced that will "no longer offer training in the controversial Reid Method in their public-sector training seminars" (see <https://www.w-z.com>). On their website, they elaborate as follows: "Beginning a conversation with a confrontation almost always results in an emotional denial by the subject. From a guilty subject the denial is a lie, and from an innocent subject the denial stems from fear of being disbelieved. Either way, the conversation has begun with emotional pressure on the subject resulting in an adversarial relationship with the interviewer. A more effective way to identify the truth is through a variety of non-confrontational techniques that allow the conversation to remain cordial without pushing the subject into an emotional or defensive state. Our focus is on providing investigators with methods that are aimed at identifying the truth and obtaining reliable information through ethical, moral and legally acceptable techniques. This focus has been supported by multiple non-confrontational methods taught to our attendees for the past 35 years. The high risk of false confessions, potential for incorrect or unreliable information, and ultimately the misapplication of confrontational techniques are all reasons why WZ has chosen to no longer offer the confrontational approach in its course selections. The goal of any interviewer should be to identify the truth. Unfortunately, investigators have sometimes felt pressure to obtain a confession or may have biases based on the investigation that direct their focus on the wrong subject. Our mission at WZ is to provide investigators with a variety of tools to obtain truthful, reliable information as a part of their investigation. WZ is also dedicating time during training to discuss precautions for investigators to take in an effort to prevent false confessions and ultimately substantiate any admissions made by the subject."

caught and that he has no chance of persuading the investigator of his innocence (Inbau et al., 2012; Zulawski & Wicklander, 2002).

Investigators may use another tactic: falsely stating or implying that they have evidence of the suspect's guilt or that evidence of guilt will soon be in hand (Inbau et al., 2012; Zulawski & Wicklander, 2002). The investigator may assert that there is another eyewitness, a co-defendant who flipped, or forensic evidence found at the scene that has since been sent to the lab and has irrefutably established or will (in the case of a bluff) undoubtedly establish the suspect's guilt or knowledge of the crime. The investigator may have a large file or set of files before him designed to give the suspect the impression that the files contain evidence. Decades of research in social and cognitive psychology shows that misleading people renders them vulnerable to manipulation (Kassin et al., 2010).

Investigators are taught that the more frequently a suspect denies his involvement and professes his innocence, the more difficulty a suspect will have changing his story from denial to confession. Investigators are taught, therefore, to try to prevent the suspect from denying guilt (Inbau et al., 2013; Zulawski & Wicklander, 2002). It is not uncommon, for example, for the investigator to do most of the talking in the early part of the interrogation. This is not an accident, but rather a tactic. When a suspect tries to speak up and deny guilt, the investigator may interrupt him or her and tell him or her to wait until the investigator is finished with what he has to say. The investigator will likely also challenge the suspect's denials as illogical, implausible and/or contradicted by existing evidence. When the suspect does get a word in, it might be to explain why he or she could not have committed the crime. Investigators are trained to overcome these objections by identifying reasons for which the objections might not hold water, pointing out contradictions, and repeating the accusations and excuses (Inbau et al., 2013; Zulawski & Wicklander, 2002). These tactics are meant to strengthen the suspect's belief that he is irreversibly caught and that his only reasonable option, under the circumstances, is to stop denying and start confessing. In order to drive this point home, the investigator at some point may ask forced-choice, guilt presumptive questions, sometimes called "alternative questions" (Inbau et al., 2013) or "assumptive questions" (Zulawski & Wicklander, 2002). For example, did you have sex with her because you thought she was interested and willing or because you were determined to get off regardless of what she wanted? Do you break into houses frequently, or was this just a one-time thing meant to solve a difficult problem?

Whereas accusations, attacks on denials, evidence ploys and interpersonal pressure are designed to cause the suspect to perceive that he is caught and resistance is futile, minimization tactics and other inducements are designed to motivate the suspect to stop denying and start admitting guilt (Ofshe & Leo, 1997). One common form of minimization is the offering of rationales and excuses that seemingly justify the crime and imply that the suspect is guilty. These techniques are sometimes called "theme development" (Inbau et al., 2013) or "rationalizations" (Zulawski & Wicklander, 2002) in police manuals and as scenarios by scholars (Leo, 2009). The motives and explanations are presented as reasonable or even morally (and sometimes even legally) justifiable excuses, such as you recently lost your job, your only source of income, and you have a wife and kid to take care of. Or, the act was impulsive. Or, the victim deserved what he got. It is easier to adopt these sorts of themes as compared to a theme in which the suspect is painted as an incorrigible, lazy thug with no moral principles. Minimization



may also involve down playing the consequences the suspect will face and sympathizing with the suspect's situation. Most interrogators know that they cannot explicitly tell a suspect that he will be treated more leniently if he confesses, but they can say things that will make the suspect reach this conclusion on his own (Inbau et al., 2013). And that's the effect that minimization often has. By adopting a morally, psychologically and/or legally defensible justification and confessing, the suspect is encouraged to infer (without being explicitly told) from the interrogators' statements and suggestions, that he or she will receive more lenient treatment – maybe even immunity -- than if he or she refuses to confess and is found guilty (Inbau et al., 2013). The use of minimization techniques that imply leniency increase the risk of eliciting a false confession (Kassin et al., 2010).

As the interrogation wears on, the suspect may be become worn down. He or she has been accused. He or she has been offered a myriad of excuses and justifications meant to feel like his or her actions were understandable, and perhaps not even criminal (as for example when interrogators suggest that merely being present at a crime doesn't mean you committed it). His or her attempts to deny involvement have been stopped in their tracks. His or her objections or arguments regarding why he or she could not have committed the crime – were met with counterarguments at every step. He or she folds his arms across his chest, slouches, and becomes quiet. Rather than concluding that the suspect is cognitively and emotionally worn out and that the interrogation should be temporarily suspended, the investigator may take actions to keep the suspect engaged (Inbau et al., 2013; Zulawski & Wicklander, 2002). The investigator may move his or her chair closer to the suspect. He or she may attempt to engage him by establishing eye contact. He or she may begin using visual aids, such as by drawing diagrams of the crime scene. He or she may interject some rhetorical questions.

In sum, interrogation is more than the sum of its techniques. Perhaps most fundamentally, it operates as a two-step psychological process of pressure and persuasion that is strategically directed toward moving a suspect from denial to admission (Ofshe & Leo, 1997). The first psychological step is to convince the suspect that he or is caught, that the evidence irreversibly establishes his guilt, and that it is therefore pointless for him or her to resist because conviction is inevitable. The goal of the second step of interrogation is to convince the suspect that, given his or her situation and available options, it is in his or her best interest to stop denying and start admitting if he or she wishes to minimize his or her damage and put an end to the interrogation before the opportunity disappears (Ofshe & Leo, 1997). Indeed, the opportunity to confess is sometimes presented to the suspect as a time-limited offer.

Much of the preceding explanation has focused on the behavior of the interrogator seeking a confession from a suspect. Here I focus on the impact of the interrogation on the suspect's psychological state. From the outset, isolation enhances anxiety. Interrogation rooms are specifically designed to create a sense of isolation, for they are relative barren and free from communication devices. The absence of an advocate or support person and the presence of one or more investigators further enhances feelings of isolation and anxiety.

The interrogation draws upon well-understood behavior modification and social influence processes. Being confronted and interrupted is punishing. Being positively reinforced for admitting information is rewarding. The investigator is an authority figure who elicits

obedience. The feigned omniscience by the investigator further encourages obedience. The continued pressure of confrontation and other tactics heightens the suspect's anxiety. When the suspect begins to become convinced that his or her guilt has already been established, he or she may experience feelings of hopelessness, despair, and diminished will to continue to maintain his or her innocence. When the interrogation is intense and/or lengthy, the suspect's mental resources become taxed and eventually diminished, thus rendering the suspect more susceptible to influence. Ultimately, the stress of interrogation can lead to what Leo and Davis (2010) refer to as a "stress-induced confession." Stressed-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 or she becomes willing to do or say anything—including giving a false confession—to escape the interrogation". Factors such as stress, hunger, fatigue, discomfort, and constant persuasion can deplete the suspect's ability to self-regulate (in the service of establishing innocence) and ultimately lead to capitulation to the perceived goals of the interrogator (confession).

Following the admission, the next phase of the interrogation involves converting the admission into a full-fledged confession that contains details, motives, explanations, expressions of voluntariness and/or emotions that make it more compelling to third parties and factfinders. Eventually, the suspect may provide a richly detailed narrative of how he or she committed the crime. The narrative may include motives, details about the victim or other people at the crime scene, emotions experienced, and ideally, details that only the true perpetrator and the police would know. Such "guilty knowledge" may be very compelling when conveyed to the prosecutor, judge, and jury. The guilty knowledge is most informative when the suspect was the first to offer up the details and least informative when communicated first by the investigator.

False confessions can be detailed and compelling. In a study of the first two-hundred and fifty (250) post-conviction DNA exonerations of innocent prisoners in the American criminal justice system, Garrett (2010) demonstrated that contamination was present in 95% of the false confession cases in this data set (38 of 40 cases). In other words, in the overwhelming majority of these proven false confession cases, police interrogators fed the suspect unique non-public facts that "only the true perpetrator would know," but the prosecutor erroneously alleged that the suspect volunteered these facts and that the suspect thereby corroborated the reliability of his confession. But because the jury in each case mistakenly believed the prosecutor rather than the defense, each of the confessors was convicted, and in each of these cases the defendant's innocence (and the falsity of the confession) was only proven many years later by DNA.

In a follow-up study of more recent false confession DNA exonerations, Garrett (2015) found that another 21 of 23 (91%) were contaminated. A study by Appleby, Hasel and Kassin (2011) analyzed 20 false confessions from the Innocence Project's database of DNA exonerations and found that the confessions were similar in structure, explaining the who, what, when, and why the crimes were committed. The confessions cited the time and location of the crimes. They contained visual details and details about the victim's behavior. Often the confessions contained details about other people, including the victims' appearances and mental states. The confessions included details about things the victim said and made references to the defendant's own mental states, reflections, and motives. Leo (2008) previously referred to this as scripting confessions as police investigators seek to construct a suspect's culpability.

When confessions contain non-public details, one should ask how the suspect came to possess those details. Research shows that police sometimes convey the details during the course of the interrogation, and the suspect repeats those details in the confession. The term “contamination” refers to when police leak or disclose crime scene details to the suspect (Ofshe & Leo, 1997). The investigator may not be aware that he is contaminating a confession by inadvertently conveying details. In most of the cases analyzed in Garrett’s (2010, 2015) studies, the police denied providing critical details to the suspect and claimed that the suspect independently volunteered the details. In most of the false confession DNA exoneration cases, the officers testified under oath that they did not provide the confession details to the suspect (Garrett, 2015).

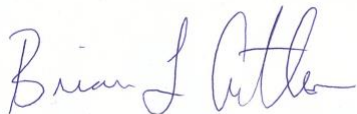
The inadvertent conveying of information during interrogation is illustrated in an article written by former Washington, DC detective James Trainum (2006). Trainum was an experienced police officer when he interrogated a woman suspected of murder. Trainum and his team secured a confession: “The suspect said she had beaten the man to death and dumped his body by a river. She said she made purchases with the man’s credit card and tried to withdraw cash using his ATM card. Surveillance video from the ATM showed a woman who resembled the suspect, and an expert said the signature on the credit card receipts was consistent with the suspect’s handwriting. Even the suspect’s attorney later told me she believed her client was guilty, based on the confession.” Trainum and his team later discovered that the suspect could not have committed the murder because she had an ironclad alibi. The suspect was in a homeless shelter where she lived when the murder occurred, and the shelter’s record indicated that she was in the shelter at the time of the murder. Years later Trainum reviewed the taped interrogation and discovered that they revealed the crime details during the interrogation. They conveyed the details without realizing it, and the suspect adopted them. In contemporary practice investigators may determine at the outset and document the information that they will withhold from the suspect (referred to as “holdback”) in order to avoid contaminating the suspect’s statement.

The reliability of a suspect’s confession can be evaluated by analyzing the fit (or lack thereof) between the descriptions in his or her post-admission narrative (the account a suspect gives after saying the words “I did it”) and the crime facts, the extent to which the suspect’s post-admission narrative reveals the presence (or absence) of guilty knowledge, and the extent to which the suspect’s account is corroborated (or disconfirmed) by objective evidence (Inbau et al., 2013; Ofshe & Leo, 1997). If the suspect committed the crime, he or she will possess personal (i.e., non-public) knowledge about both dramatic and mundane crime facts that are known only by the perpetrator, the police and/or the victim (e.g., the location of the weapon, items taken during the crime, and specific aspects of the crime scene such as the color of paint on the wall or a pattern in the carpet). If the suspect did not commit the crime, he or she will not possess personal knowledge of the crime details unless he or she has pre-existing knowledge (e.g., from media coverage) or the police have “contaminated” him or her (i.e., educated him about the crime scene facts) during the interrogation process. Assuming that the suspect does not possess pre-existing knowledge and has not been contaminated by police suggestion, the probative value of crime facts and details accurately provided in the suspect’s post-admission narrative is directly proportionate to the likelihood that such details could have been guessed by chance (Ofshe & Leo, 1997).

Absent pre-existing knowledge or contamination, the post-admission narratives of the guilty true confessor and innocent false confessor will therefore look different (Ofshe & Leo, 1997). The guilty suspect's post-admission narrative will likely demonstrate personal knowledge of crime facts; will be able to lead police to new, missing and/or derivative crime scene evidence; will be able to provide them with missing information; will be able to explain seemingly anomalous or otherwise inexplicable crime facts; and will likely be corroborated by existing objective evidence. By contrast, the innocent suspect made to falsely confess will not be able to supply accurate crime details in his post-admission narrative unless he or she guesses them by chance; will not be able to lead police to new, missing or derivative evidence; will not be able to explain crime scene anomalies or other unique or unlikely aspects of the crime; and his or her post-admission narrative will not be corroborated by existing objective evidence. Instead, the innocent false confessor's post-admission narrative is likely to be replete with guesses and errors and will be either inconsistent with or contradicted by the objective case evidence. In short, the post-admission narrative of a suspect who is confessing truthfully will tend to fit with the crime facts and objective physical evidence, whereas the post-admission narrative of an innocent suspect who is confessing falsely will not. Analyzing the fit of the suspect's post-admission narrative with crime facts and the existing objective case evidence therefore provides a standard in many cases against which to evaluate the statement's likely reliability.

The details of the confession therefore provide signs of its reliability. How much new detail did the suspect provide? Did the details provided independently by the suspect match non-public facts or evidence that the investigators already knew (e.g., the victim's injuries)? Did the new details provided by the suspect lead to discovery of new inculpatory evidence (e.g., where the weapon or stolen goods were hidden)? Are there parts of the confession that were inconsistent with or even contradicted by known evidence or facts? A reliable confession is one in which the suspect produces details (not suggested by the interrogator or learned elsewhere), and the details are corroborated by non-public evidence in hand or obtained following the confession. Trainers of interrogation (Inbau et al, 2013) maintain that confessions that cannot be corroborated may be unreliable.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Brian L. Cutler". The signature is written in a cursive, flowing style.

Brian L. Cutler, Ph.D.  
June 13, 2018

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Appendix A

Brian L. Cutler, Ph.D.

Curriculum Vita

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**Education in Psychology:** BA, U of Rochester '82; MA, SUNY Geneseo '84; PhD, U of Wisconsin '87

**Employment History**

2016 – 2017 Interim Dean, Faculty of Social Science & Humanities, University of Ontario Institute of Technology  
2010 – 2016 Associate Dean, Faculty of Social Science & Humanities, University of Ontario Institute of Technology  
2008 – Present Professor of Social Sciences & Humanities, University of Ontario Institute of Technology  
2002 – 2008 Professor of Psychology and Department Chair, University of North Carolina at Charlotte  
1992 – 1998 Associate Dean, College of Arts & Sciences, Florida International University  
1987 – 2002 Assistant, Associate, Full Professor of Psychology, Florida International University

**Other Professional Appointments and Activity**

2014 – 2016 Council Representative for Division 41, American Psychological Association  
2010 – 2013 President Elect, President, and Past President of the American Psychology-Law- Society (Division 41, American Psychological Association)  
2005 – 2011 Editor-in-Chief, *Law and Human Behavior*  
1989 – Consultant and Expert Witness in U.S. State Courts (AL, FL, GA, IL, IN, MA, MD, MI, NY, NC, SC, UT, VA, WI), U.S. Federal Courts (FL, GA, DC, VA) and Canadian Courts

**Professional Affiliations**



- 2009 – American Psychological Association
- 2002 – Association for Psychological Science (Fellow, 2003 – Present)
- 1983 – American Psychology-Law Society (Distinguished Member, 2006 – Present)

### **Research Grants**

Cutler, B. L., Leach, A. M., & Marion, S. (2016-2018). Development and validation of the Coercion Assessment Instrument for witness and suspect interviews. *Social Science and Humanities Research Council* (\$65,126).

Marshall, A. M., & Cutler, B. L. (2011). Future directions in law and social science. *National Science Foundation* (\$36,076).

Kovera, M. B., & Cutler, B. L. (2000-2002). Investigator bias in identification Procedures: Mechanisms and safeguards. *National Science Foundation* (\$191,682).

Cutler, B. L., & Kravitz, D. K. (1996-1997). Supplemental request to Validity of intuitive theories underlying legal safeguards in cases involving eyewitness identification. *National Science Foundation* (\$30,570).

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**Books**

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**Books Chapters**

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- American Sociological Association
- Association of Heads of Departments of Psychology
- Canadian Society of Criminology
- Eastern Psychological Association
- Florida Conference on Cognition, Sensation, Perception, and Action
- European Conference on Psychology and Law
- International Association for Applied Psychology
- International Conference on Practical Aspects of Memory
- International Psychology-Law Conference (AP-LS, EAPL)
- Law and Society Conference
- Midwestern Psychological Association
- Psychonomic Society
- Society for Police and Criminal Psychology
- Southeastern Psychological Association
- Southeastern Society for Social Psychology