

YOU HAVE THE RIGHT TO [PLEAD GUILTY]: HOW WE CAN STOP POLICE INTERROGATORS FROM INDUCING FALSE CONFESSIONS

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I. INTRODUCTION

By all accounts, Christopher Ochoa was a good kid. In the 1980s, he was a Texas high-school honors student who worked as the editor of his school's literary magazine.¹ Then, he attended the University of Texas El Paso, where he majored in Political Science and minored in Business.² Recently in 2006, he graduated from the University of Wisconsin Law School,³ and now he operates his own law firm.⁴ Typically, students begin law school within a couple years of graduating from a four-year college or University. However, Ochoa's first lesson in American jurisprudence was

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¹ Rob Warden, Christopher Ochoa, Ctr. on Wrongful Convictions, (May 1, 2002), <http://www.law.northwestern.edu/wrongfulconvictions/exonerations/txOchoaSummary.html>.

² OCHOA & ALLEN, S.C., <http://www.ochoaallen.com/attorneys.htm> (last visited Apr. 4, 2011).

³ *Id.*; see also Henry Weinstein, *Freed Man Gives Lesson on False Confessions: An Ex-inmate Tells a State Panel How Texas Police Coerced Him into Admitting to Murder*, L.A. TIMES, June 21, 2006, at B1.

⁴ See OCHOA & ALLEN, S.C., *supra* note 2.

atypical. Unlike his classmates, Ochoa did not attend law school until decades after graduation because in 1989, he confessed to and was convicted of a crime that he did not commit: the brutal rape and murder of twenty-year-old Nancy DePriest, a crime that carried a life sentence in prison.⁵

Why did this law abiding and intelligent young man falsely confess that he and a friend tied up DePriest, repeatedly raped her, and then shot her dead,⁶ an account so gruesome that DePriest's mother left the courtroom to vomit in a restroom?⁷ The answer: American criminal interrogation procedures inherently promote false confessions.⁸

Despite the United States' many constitutional protections for defendants in the criminal justice system, mistakes can and do occur. We should punish the guilty and protect the innocent. Unfortunately, the law did not protect Ochoa, who was innocent. For most of Ochoa's life, he "trusted the police," in part because they "used to come to the schools" and talk to students.⁹ However, Ochoa's post-conviction efforts later revealed that police betrayed him by coercing him to falsely confess. For example, during an interrogation, while he repeatedly denied any involvement in the crime, a policeman continued to excessively intimidate Ochoa by slamming his fists down on the table and calling himself "the bogeyman."¹⁰ They showed Ochoa a picture of death row, and told him that this is where they would kill him and that he would never hug his family again.¹¹ Police told him, "Look, I'm going to book you. I'm going to put you in a jail cell where you'll be fresh meat."¹² Ochoa thought to himself, "[t]hey're going to rape me in jail."¹³ They also showed him autopsy pictures of DePriest, told him that if he did not confess his Hispanic race would be used against him during trial, and pointed on his arm where they would administer the lethal injection.¹⁴

⁵ See *Know the Cases: Browse Profiles: Christopher Ochoa*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Christopher_Ochoa.php [hereinafter *The Innocence Project, Christopher Ochoa*] (providing a more full account of Christopher Ochoa's story).

⁶ *Id.*; see also Weinstein, *supra* note 3.

⁷ Weinstein, *supra* note 3.

⁸ See *infra* Part III.

⁹ Christopher Ochoa, *How One Man Confessed To a Crime He Didn't Do*, NEWSDAY, Dec. 8, 2002, at A28. Ochoa also said, "My parents taught me that if I got in trouble I should go to the cops. I used to see a cop and feel safe." *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

As Ochoa's case indicates, the pursuit of a just society is not seamless; there are numerous obstacles and pitfalls where mistakes may occur during trial. Particularly, in the realm of police interrogations, one such mistake is the admission of interrogation-induced false confessions as evidence,¹⁵ which often leads to the conviction of innocent people.¹⁶ The occasional false confession is a byproduct of the American practice of interrogation, which is "stress-inducing by design," as interrogators aggressively utilize psychological tactics to manipulate suspects with the goal of eliciting incriminating statements, admissions, and ultimately—full confessions.¹⁷

False confessions would not be a problem if we could consistently identify when they occur and control them accordingly. However, numerous experiments and case studies show that the majority of people, including trained professionals, are not adept at identifying false confessions.¹⁸ Consequently, false confessions often go unnoticed by police interrogators and are admitted as evidence in trials, resulting in the contamination of the justice system as a whole.

Fortunately, almost a decade after Ochoa was sentenced to life, DePriest's true killer, Achim Joseph Marino, sent letters to then Texas Governor George W. Bush and other Texas officials to admit that he alone committed the rape and murder of DePriest.¹⁹ Because Ochoa feared that claiming his innocence would hurt his chances for parole, he maintained that he committed the crime.²⁰ However, in 1999, the true killer's multiple admissions to the crime eventually empowered Ochoa to fight his guilty verdict, and he enlisted the help of the Wisconsin Innocence Project.²¹ By request, California forensic laboratory retained sperm samples from the time of the trial²² and used new testing methods to exclude Ochoa and his

¹⁵ See Saul M. Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 4 (2010) (noting that false confessions date back to the Salem witch trials of 1692).

¹⁶ See Steven A. Drizin & Richard A. Leo, *The Problems of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 961 (2004) (examining 125 cases of proven interrogation-induced false confessions and noting that false confessors who choose to take their case to trial stand more than an eighty-percent chance of conviction).

¹⁷ Kassir et al., *supra* note 15, at 6–7, 14.

¹⁸ *Id.* at 6.

¹⁹ Warden, *supra* note 1.

²⁰ *Id.*

²¹ *The Innocence Project, Christopher Ochoa*, *supra* note 5.

²² *Id.* There was semen evidence at the time of the trial, but the lab reported that the amount was very small. *Id.* Moreover at trial, "one expert claimed that the semen on a vaginal swab was compatible with Ochoa." *Id.*

friend from sources of the semen.²³ Finally, in 2002, with DNA and other corroborating evidence, and after serving thirteen years in jail for a crime that he did not commit, Texas exonerated Ochoa.²⁴ Had the real murderer not confessed, Ochoa probably would not have asked the Wisconsin Innocence Project for help. In turn, the Wisconsin Innocence Project would not have requested the original sperm samples to be tested, and the exonerating evidence would probably never have been produced.²⁵

The stark reality, unfortunately, is that most false confessors are not as lucky as Ochoa.²⁶ Ochoa is one of few prisoners whose confessions were shown to be false. It is likely that there are many other prisoners who falsely confessed and cannot prove that they are innocent. Given that interrogation-induced false confessions do occur, that innocent people are convicted based on these confessions, and that the majority of these people cannot obtain the proper evidence to prove their innocence, a lingering question remains. How can American jurisprudence limit the occurrence of false confessions?

This Note argues that we should modify American interrogation law by shifting away from the accusatory and confrontational interrogation methods currently utilized by police interrogators, which tend to induce false confessions. Part II examines the types and occurrences of false confessions and the far-reaching effect that they have over the course of a trial. Part III explains the current American interrogation method and how it can influence suspects to falsely confess. Part IV suggests possible adjustments to American interrogation practices, including the electronic recording of interrogations, a heightened basis for assuming a suspect's guilt before actual interrogation, restrictions on using false evidence, and explains the Preparation and Planning, Engage and Explain, Account, Closure, and Evaluate (PEACE) method of interrogation used in England and argues that employing a similar method could positively reform the American system of interrogation. Finally, Part V concludes this Note.

II. INTERROGATION-INDUCED FALSE CONFESSIONS: OCCURENCES AND EFFECTS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM

A confession is a "detailed written or oral statement in which a per-

²³ *Id.*

²⁴ *Id.*

²⁵ *The Innocence Project, Christopher Ochoa, supra* note 5.

²⁶ Drizin & Leo, *supra* note 16, at 921.

son admits to having committed some transgression, often acknowledging guilt for a crime.”²⁷ American courts have established guidelines for admitting confessions as evidence at trial.²⁸ Courts consider confessions on a case-by-case basis, evaluating them by the “totality of the circumstances” and requiring that they be voluntary.²⁹ Under this standard, a confession should be excluded if it was obtained under certain involuntary instances, including for example, “if elicited by brute force,” “by threats of punishment or harm,” or “by deprivation of food [or sleep].”³⁰ Typically, judges conduct a preliminary hearing to determine if a confession is voluntary, and if deemed voluntary, a confession may then be used as evidence at trial.³¹

A false confession is “an admission to a criminal act, usually accompanied by a narrative of how and why the crime occurred, that the confessor *did not commit*.”³² Generally, there are three different types of false confessions: voluntary, internalized, and compliant.³³ Voluntary false confessions occur when innocent suspects claim “responsibility for crimes they did not commit[,] without prompting or pressure from police.”³⁴ There are various reasons why people volunteer false confessions, including pathological desires for fame, conscious or unconscious needs for self-punishment to remove feelings of guilt for prior wrongs, disconnections between reality and fantasy, or desires to protect the actual perpetrator.³⁵ Internalized false confessions occur when innocent but impressionable suspects are told that there is definitive evidence of their guilt and are persuaded to actually believe that they committed the crime in question.³⁶ Compliant false confessions occur when suspects “acquiesce[] to the demand for a confession in order to escape a stressful situation, avoid punishment, or gain a promised or implied reward.”³⁷ In this situation, suspects “bow[] to social pressures” and believe that the short-term benefit of

²⁷ Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 PSYCHOL. SCI. PUB. INT. 33, 35 (2004).

²⁸ *Id.* at 36.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Kassin et al., *supra* note 15, at 5 (emphasis added).

³³ *Id.* at 14–15.

³⁴ *Id.* at 14.

³⁵ *Id.*

³⁶ *Id.* at 15.

³⁷ *Id.* at 14.

confession outweighs the long-term costs of denial.³⁸ Each type of false confession, if admitted as evidence, can lead to a wrongful conviction.

A. THE INFLUENCE OF CONFESSION EVIDENCE ON A JURY

Before the jury, a confession is the “most incriminating and persuasive evidence of guilt that the State can bring against a defendant,” aside from actually being captured during the commission of a crime, whether by videotape recording or physical apprehension.³⁹ Both legal scholars and the Supreme Court note that a confession is “perhaps the most powerful evidence of guilt admissible” at trial.⁴⁰ As Justice Brennan wrote in his dissent in *Colorado v. Connelly*, “[confessions] make[] the other aspects of a trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained.”⁴¹

The case of Jeff Deskovic demonstrates the highly damaging and prejudicial impact that false confessions can have on a jury. Deskovic was a sixteen-year-old high school student who falsely confessed to the rape and murder of a fifteen-year-old female classmate.⁴² The police initially suspected Deskovic because he arrived late to school on the day after the girl disappeared and was overly emotional and distraught about her death.⁴³ Notwithstanding Deskovic’s claim of innocence, the police interrogated him intensely.⁴⁴ They lied to him, told him that he failed a series of polygraph tests and that they had evidence that would prove his guilt.⁴⁵ After multiple interrogators questioned Deskovic for six hours, the extreme pressure finally broke him.⁴⁶ He confessed to the murder as he sobbed uncontrollably and in a fetal position underneath the table.⁴⁷ After the confession, semen was found on vaginal swabs of the rape kit.⁴⁸ Investigators

³⁸ *Id.*

³⁹ Drizin & Leo, *supra* note 16, at 921.

⁴⁰ See Kassen et al., *supra* note 15, at 9.

⁴¹ *Colorado v. Connelly*, 479 U.S. 157, 182 (1986) (Brennan, J., dissenting).

⁴² *The Innocence Project – Know the Cases: Browse Profiles: Jeff Deskovic*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Jeff_Deskovic.php (last visited Apr. 4, 2011) [hereinafter *The Innocence Project, Jeff Deskovic*].

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

tested the DNA before the trial commenced.⁴⁹ The results revealed that Deskovic was not the source of the semen, which supported his innocence.⁵⁰ However, by this point, Deskovic already confessed and his confession was admitted into evidence at trial.⁵¹ Although the DNA evidence should have exonerated Deskovic, the jury still found him guilty.⁵²

Thus, Deskovic's case illustrates how confession evidence may significantly bias the fact-finder's evaluation of a case in favor of the prosecution.⁵³ Even when defendants are able to show that they did not commit the crime, such as presenting DNA evidence as in Deskovic's case, jurors may still convict defendants based on confession evidence.⁵⁴ As renowned Professors Drizin and Leo demonstrated in their study of 125 interrogation-induced false confessions, false confessors whose cases go to trial have an eighty-percent chance of conviction, despite there being no reliable evidence confirming or supporting the veracity of the false confessions.⁵⁵

Jurors tend to be highly impressed by confession evidence,⁵⁶ in part, because common sense leads them to expect that people will behave in self-serving ways that would not blatantly jeopardize their health, safety, or liberty.⁵⁷ Applying this concept to confessions, common sense dictates that a person would not confess to a crime that he or she did not commit.⁵⁸ Otherwise, such behavior would be self-destructive because it would directly inculcate one's own guilt.⁵⁹ Professors Drizin and Leo call this belief "the myth of psychological interrogation."⁶⁰ According to them, most people believe that "an innocent person will not falsely confess to a serious crime unless he [or she] is physically tortured or mentally ill."⁶¹ The

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* Deskovic spent over fifteen years in jail and was finally exonerated in 2006. *Id.*

⁵³ Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 491–92 (1998).

⁵⁴ *Id.* Confession evidence is still given great weight even when elicited by coercive and deceptive methods. *Id.*

⁵⁵ Drizin & Leo, *supra* note 16, at 961.

⁵⁶ See Kassin & Gudjonsson, *supra* note 27, at 56–57.

⁵⁷ *Id.*

⁵⁸ See Drizin & Leo, *supra* note 16, at 918–19.

⁵⁹ *Id.*

⁶⁰ *Id.* at 910.

⁶¹ *Id.*

phenomenon of interrogation-induced false confessions is counterintuitive, and the majority of people are unwilling to accept that innocent people would confess to a heinous crime that they did not commit, particularly when they are aware of the drastic consequences of conviction.⁶² Additionally, social psychologists attribute this phenomenon to the “fundamental attribution error,”⁶³ in which social perceivers tend to “make dispositional attributions for a person’s actions, taking behavior at face value, while neglecting the role of situational factors.”⁶⁴ This error is a quick and “automatic dispositional inference[] from behavior,” followed by an immediate failure “to adjust or correct for the presence of situational constraints.”⁶⁵ Thus, when jurors hear a confession, their common sense leads them to trust the confession.⁶⁶ They cannot accept that the confession might be false, since they do not believe that people would confess to crimes that they did not commit.⁶⁷ Ultimately, this shows that most people are ignorant of the effect of the psychologically manipulative methods used by police interrogators.⁶⁸

Professor White further illustrates the powerful effect of confession evidence among jurors in his account of an episode of *60 Minutes*, which featured the case of Richard Lapointe.⁶⁹ Lapointe, who was brain damaged, was interrogated by police for nine hours before he confessed to raping and murdering his mother-in-law.⁷⁰ Police lied to Lapointe during the interrogation and told him that they had scientific evidence to prove that he was guilty.⁷¹ However, physical evidence from the crime scene and eyewitness accounts fully supported Lapointe’s innocence.⁷² Still, Lapointe was convicted.⁷³ When asked why they convicted Lapointe despite the overwhelming evidence showing that he was innocent, the jurors admitted that “they refused to believe that anyone would confess to a crime

⁶² *Id.* at 919.

⁶³ Kassin et al., *supra* note 15, at 64.

⁶⁴ *Id.* at 24.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See id.*; *infra* Part III.

⁶⁹ Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.-C.L. L. REV. 105, 105–06 (1997).

⁷⁰ *Id.* at 105.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

he did not commit.”⁷⁴ Lapointe’s case demonstrates that people, particularly jurors, are highly influenced by confessions, which they view as self-authenticating and dispositive evidence of guilt regardless of other contradicting evidence,⁷⁵ and convict accordingly.⁷⁶

B. THE INFLUENCE OF CONFESSION EVIDENCE ON LEGAL PROFESSIONALS

Unlike the average juror, a trained professional, such as a police interrogator or a prosecutor, would seemingly be better equipped to spot a false confession. However, numerous scholars and case studies show that this is not so.⁷⁷ In reality, trained professionals—police interrogators, attorneys, and even judges—cannot accurately distinguish truth from lies.⁷⁸ In one study, researchers videotaped interviews with male prisoners who provided both true and false confessions.⁷⁹ The researchers then showed the confessions to college students and police investigators, and asked them to judge the truthfulness of the confessions.⁸⁰ The results show that neither group was adept at recognizing a false confession, as they exhibited accuracy rates ranging from forty-two percent to sixty-four percent.⁸¹ On average, police officers were significantly more confident than students, yet only students exceeded chance level performance.⁸² In another study, researchers showed police officers videotaped press conferences of family members asking for help in finding missing relatives.⁸³ In reality, these family members had actually killed their own relatives.⁸⁴ Police officers again failed to accurately identify the deception.⁸⁵

⁷⁴ *Id.*

⁷⁵ Richard A. Leo et al., *Bringing Reliability Back in: False Confessions and Legal Safeguards in the Twenty-First Century*, 2006 WIS. L. REV. 479, 485 (2006).

⁷⁶ Kassir & Gudjonsson, *supra* note 27, at 56. In one study, a suspect was in pain and interrogated aggressively by a detective who waved his gun in a menacing manner. Kassir et al., *supra* note 15, at 24. Mock jury members still convicted at a high rate despite being admonished to disregard confessions they that were coerced. *Id.*

⁷⁷ See Kassir et al., *supra* note 15, at 24.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Kassir & Gudjonsson, *supra* note 27, at 58. On average, the investigators had a confidence level of 7.65 out of 10 with a 42.1% accuracy score. *Id.* Students, on the other hand, had an average confidence level of 6.18 out of 10, with an average accuracy rate of 53.4%. *Id.*

⁸³ *Id.* at 37.

⁸⁴ *Id.*

⁸⁵ *Id.*

In the field, police detectives conduct interrogations themselves as opposed to watching pre-recorded interrogations or reading transcripts as done in experiments. Still, direct involvement in the conduction of interrogations does not increase the detection of false confessions.⁸⁶ In one study, observers watched videotaped conversations between participants, one of whom was instructed to lie.⁸⁷ As opposed to participants who were directly involved in the conversation, observers were more accurate in assessing whether the target was lying.⁸⁸ Actually being involved in the conversation did not provide any significant advantage in detecting deception.⁸⁹ In another study, researchers had participants commit a mock crime.⁹⁰ One set of police officers then personally interviewed guilty and innocent participants, while another set of officers observed videotapes of the interviews.⁹¹ The officers who personally conducted the interview were not more accurate than those who just observed them, which demonstrates that personally conducting an interrogation, as opposed to observing an interrogation, does not lead to higher levels of accuracy.⁹² Professional authorities claim that with proper training, investigators can be trained to judge truth and deception at an eighty-five percent level of accuracy.⁹³ In contrast, these studies as well as many others tend to show that people, including trained professionals, perform no better than chance levels at judging deception, discerning lies from the truth, or recognizing false confessions.⁹⁴

Legal scholars caution that interrogators, despite their confidence in their interrogation skills, must be “taught that they cannot reliably intuit whether a suspect is innocent or guilty based on hunches about the meaning of a suspect’s demeanor, body language and/or non-verbal behaviors.”⁹⁵ Professors Drizin and Leo call this a “folk psychology of human

⁸⁶ *Id.* at 37–38.

⁸⁷ *Id.* at 37.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 38.

⁹² *Id.*

⁹³ *Id.* at 37. Professors Kassin and Gudjonsson question whether Fred Inbau, a respected criminologist who developed the main system of interrogation used in the United States, is correct when he claimed that investigators could be trained to detect deception, particularly since this judgment determines whether a suspect is further interrogated or released. *Id.*

⁹⁴ *Id.*; see *supra* text accompanying notes 71–78.

⁹⁵ Drizin & Leo, *supra* note 16, at 1001.

lie-detection” that is based on myth, superstition, and pseudo-science.⁹⁶ Citing to numerous studies showing the low accuracy rates of detecting false confessions, they describe police interrogation methods as flawed and highly prone to error, and they worry that when interrogators “wrongly (but confidently) presume a suspect is guilty,” the investigation then becomes a matter of eliciting a confession, as opposed to what it really should be—fact-finding.⁹⁷

An interrogator’s confidence about a suspect’s guilt increases the occurrence and danger of false confessions.⁹⁸ As studies indicate, police interrogators on average cannot accurately identify whether the confession of an innocent suspect is false.⁹⁹ Yet once interrogators are convinced of a suspect’s guilt, they become intent on proving that guilt by eliciting a confession.¹⁰⁰ At this point, interrogators often become fixated on making an arrest and, consequently, resort to improperly using psychological interrogation techniques that coerce a suspect into confessing.¹⁰¹ When this happens, interrogators refuse to “even-handedly evaluate new evidence or to consider the possibility that a suspect may be innocent,” despite the existence of evidence that “overwhelmingly demonstrate[s] that the confession is false.”¹⁰² Once a suspect confesses, even if it is false and there is evidence that shows it is false, interrogators become blind to the possibility that the pressures of the interrogation might have induced the confession.¹⁰³ Moreover, once a suspect confesses, investigators cease any further exploration of the case and work only to obtain a conviction.¹⁰⁴ Lost in all this is the possibility that a suspect’s confession is completely false, and, because the investigation ceased, chances of bringing this falsity into light become remote.¹⁰⁵

Several scholars describe this as a form of “tunnel vision.”¹⁰⁶ Tunnel

⁹⁶ *Id.* They further go on to compare it to the “witch-finding techniques of the 1690s.” *Id.*

⁹⁷ *Id.* at 1002.

⁹⁸ See Leo & Ofshe, *supra* note 53, at 440.

⁹⁹ Kassir & Gudjonsson, *supra* note 27, at 37–38.

¹⁰⁰ Leo & Ofshe, *supra* note 53, at 440.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 400–01.

¹⁰⁵ See *id.*

¹⁰⁶ Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 292 (2006) (analyzing how tunnel vision is attributed to a host of cognitive biases—confirmation bias, hindsight bias, and outcome bias—as well as to institutional pressures on the police, prosecutors, and defense lawyers).

vision is a “compendium of common heuristics and logical fallacies” that affects everyone and causes reluctance in individuals to consider alternatives to their preferred line of thinking.¹⁰⁷ Accordingly, tunnel vision causes police interrogators to “focus on a suspect, select and filter the evidence that will build a case for conviction, while ignoring or suppressing evidence that points away from guilt.”¹⁰⁸ As a result, interrogators, armed with the conclusion that a suspect is guilty, filter evidence through the lens of their presumed conclusion.¹⁰⁹ Any evidence that supports that conclusion is “elevated in significance,” considered consistent with all other evidence in the case, and “deemed relevant and probative.”¹¹⁰ In contrast, evidence that is inconsistent with the initial determination of guilt is either “overlooked or dismissed as irrelevant, incredible, or unreliable.”¹¹¹

Illustrating the problem of tunnel vision in false confessions is the Central Park Jogger case.¹¹² In that case five teenage boys between the ages of fourteen and sixteen were interrogated for the brutal rape and assault of a female jogger.¹¹³ The police suspected that the boys were guilty because the jogger was found near the location where the boys harassed several other people earlier that night.¹¹⁴ Ultimately, after interrogations that lasted from fourteen to thirty hours, the five boys confessed to the rape of the jogger, four of which confessions were videotaped.¹¹⁵ The confessions were admitted as evidence even though they were inconsistent with one another on virtually every major fact of the rape—the time, location, and participants.¹¹⁶ Years later, Matias Reyes, a convicted rapist and murderer, confessed to authorities that he alone raped the female jogger.¹¹⁷ DNA testing, which matched semen found on the jogger, further con-

¹⁰⁷ *Id.* (quoting Diane L. Martin, *Lessons About Justice from the “Laboratory” of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. REV. 847, 848 (2002)).

¹⁰⁸ *Id.* (quoting Martin, *supra* note 107, at 848).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 305.

¹¹³ *The Innocence Project – Know the Cases: Browse Profiles: Yusef Salaam*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Yusef_Salaam.php (last visited Apr. 4, 2011) [hereinafter *The Innocence Project, Central Park Jogger*].

¹¹⁴ *Id.*

¹¹⁵ *Id.* Only the confessions were videotaped; the hours leading up to the confessions were not. Findley & Scott, *supra* note 106, at 306.

¹¹⁶ *The Innocence Project, Central Park Jogger*, *supra* note 113.

¹¹⁷ *Id.*

firmed Reyes' confession.¹¹⁸ No DNA evidence linked the boys to the jogger.¹¹⁹ Incredibly, in the face of the inconsistent confessions and Reyes' admission to committing the crime, prosecutors and police still disputed the defendants' claims of innocence and "sought to discredit Reyes' detailed confession and offered several theories to explain how the boys might have committed the crime with Reyes."¹²⁰ Thus, the police and prosecutors focused solely on the boys as suspects to obtain a confession, and dismissed any evidence to the contrary.

C. MISCONCEPTIONS ABOUT THE RATE OF FALSE CONFESSIONS

In addition to popular denial that interrogations can induce false confessions, numerous scholars¹²¹ and even the Supreme Court have asserted that the occurrence of false confessions is rare.¹²² John Henry Wigmore, a recognized and respected evidence scholar, emphasized that false confessions are an atypical occurrence in the matter of interrogations.¹²³ At the time that he made the claim, police interrogation methods were even less humane and driven more by physical coercion than the psychological methods employed today.¹²⁴ Similarly, the Supreme Court in *Schlup v. Delo* assumed that the erroneous conviction of the innocent is "extremely rare."¹²⁵ These assumptions led to the traditional belief that the criminal justice system does all that it can to accurately and effectively determine guilt.¹²⁶ In fact several prominent scholars, who developed the most widely used interrogation manual in the United States,¹²⁷ concluded that their interrogation techniques, when properly utilized, do not produce false confessions.¹²⁸ However, a growing body of scholarly and empirical evidence, particularly the growing number of discovered wrongful convictions in the last two decades, casts doubt on these popular beliefs.

According to the Innocence Project, an organization committed to

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Findley & Scott, *supra* note 106, at 307.

¹²¹ See White, *supra* note 69, at 108.

¹²² See Findley & Scott, *supra* note 106, at 291–92.

¹²³ White, *supra* note 69, at 108.

¹²⁴ *Id.*

¹²⁵ Findley & Scott, *supra* note 106, at 291–92 (quoting *Schlup v. Delo*, 513 U.S. 298, 321 (1995)).

¹²⁶ *Id.* at 291.

¹²⁷ See *infra* note 160.

¹²⁸ White, *supra* note 69, at 108.

exonerating the wrongfully convicted, there have been 266 post-conviction DNA exonerations in the history of the United States.¹²⁹ The benefits of DNA exoneration cases are three-fold: first, these cases provide the wrongfully convicted with scientific evidence that proves their innocence; second, they provide reliable numerical measures of wrongful convictions in the criminal justice system; and third, they have led to a surge in scholarly, scientific, and institutional inquiry into the causes of wrongful convictions and reforms that might prevent future occurrences.¹³⁰ It is important to note that DNA evidence exists in only a small minority of cases, as it is not always available nor is it always preserved for post-conviction testing.¹³¹ Yet without DNA evidence innocence is exceptionally difficult to prove.¹³² As such, these known DNA exonerations reflect “only the tip of a very large iceberg,” as there are many more wrongfully convicted inmates with no outlet to even begin to prove their innocence.¹³³

Of the 266 post-conviction DNA exonerations, the Innocence Project notes that about twenty-five percent involved a false confession by means of incriminating statements, outright confessions, or guilty pleas.¹³⁴ Scholars confirmed this rate with similar results.¹³⁵ Researchers that examined the first 200 DNA exoneration cases found that sixteen percent of the cases involved false confessions.¹³⁶ Similarly, in a study of 125 cases of proven interrogation-induced false confessions, researchers found that anywhere from fourteen to twenty-five percent of the sample cases were at-

¹²⁹ *The Innocence Project – Know the Cases*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/> (last visited Apr. 4, 2011) [hereinafter *The Innocence Project, Cases*].

¹³⁰ See, e.g., Brandon L. Garrett, *Judging Innocence*, 108 COLUM. L. REV. 55 (2008) (empirical examination of the occurrence of wrongful convictions in the criminal justice system through the use of DNA exoneration testing).

¹³¹ Findley & Scott, *supra* note 106, at 291.

¹³² *Id.*

¹³³ *Id.* “Most false confessions are not easily discovered [without DNA evidence] and are rarely publicized.” Drizin & Leo, *supra* note 16, at 921.

¹³⁴ *The Innocence Project – Under the Causes: False Confessions/Admissions*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/False-Confessions.php> (last visited Apr. 4, 2011) [hereinafter *The Innocence Project, False Confessions*].

¹³⁵ The differing rates are not due to a discrepancy in occurrences of false confessions, but to the difficulty of gauging the exact rate of occurrence. Only a few studies systematically aggregated, quantified, and analyzed the rate of false confessions in wrongful conviction cases. Moreover, numerous factors contributing to the wrongful conviction may be simultaneously present in a single case—for example, eyewitness misidentification or improper forensic science. See Drizin & Leo, *supra* note 16, at 906.

¹³⁶ Garrett, *supra* note 130, at 76.

tributable to false confessions.¹³⁷ Therefore, these studies show that false confessions are a significant cause of wrongful convictions.¹³⁸

To a society that places great weight on confession evidence, the high rate of false confessions leading to wrongful convictions should be alarming. As numerous studies indicate, lay persons as well as trained professionals treat confession evidence with greater deference than warranted,¹³⁹ but do not discount the reliability of confessions.¹⁴⁰ Confession evidence severely biases jurors towards conviction, even when there is contradicting evidence pointing to a defendant's innocence or when the confession is clearly coerced.¹⁴¹ False confessions place suspects at an immediate disadvantage, and they are treated "more harshly at every stage of the investigative and trial process."¹⁴² Worse, false confessions are likely to lead to wrongful convictions because whether true or false they "set[] in motion a virtually irrefutable presumption of guilt among criminal justice officials, the media, the public and lay jurors."¹⁴³

III. PAST AND PRESENT AMERICAN INTERROGATION TECHNIQUES AND HOW THEY LEAD TO FALSE CONFESSIONS

A. THE THIRD DEGREE METHOD

At the outset of American interrogation practice, police detectives routinely employed an extreme form of interrogation called the "Third Degree [method]."¹⁴⁴ The Third Degree involved "methods which inflict[ed] suffering, physical or mental, upon a person in order to obtain information about a crime."¹⁴⁵ Interrogators created an "environment in which police could inflict punishment and terror virtually without re-

¹³⁷ Drizin & Leo, *supra* note 16, at 907.

¹³⁸ *Id.* at 906. Other significant causes of false confessions include eyewitness identification (75%) and un-validated or improper forensics (50%). *The Innocence Project – Under the Causes: Eyewitness Identification*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php> (last visited Jun. 27, 2011); *The Innocence Project – Under the Causes: Unreliable/Limited Science*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/Unreliable-Limited-Science.php> (last visited Jun. 27, 2011).

¹³⁹ Leo & Ofshe, *supra* note 53, at 494.

¹⁴⁰ Kassin et al., *supra* note 15, at 24.

¹⁴¹ Drizin & Leo, *supra* note 16, at 923.

¹⁴² Leo et al., *supra* note 75, at 519.

¹⁴³ *Id.*

¹⁴⁴ RICHARD A. LEO, POLICE INTERROGATION AND AMERICAN JUSTICE 46 (2008).

¹⁴⁵ *Id.*

straint.”¹⁴⁶ Police commonly used physical force along with psychological duress, torture, prolonged confinement and isolation, explicit threats of harm, and deprivation of sleep and food.¹⁴⁷ Because of their extreme, unrestricted nature, Third-Degree methods resulted in large numbers of interrogation-induced false confessions.¹⁴⁸ Accordingly, American police forces, aware of these negative effects, reformed their interrogation practices and developed psychological techniques that were initially thought to be more effective and humane.¹⁴⁹

B. PSYCHOLOGICAL INTERROGATION: THE REID TECHNIQUE

Modern interrogation involves “a sequenced, multistep influence process through which detectives seek to persuade a suspect that he or she is indisputably caught, and that the most viable way to mitigate punishment or to escape the situation is to agree with the interrogator’s proposed scenario and confess.”¹⁵⁰ The interrogation involves two main stages: an interview stage followed by the actual interrogation.¹⁵¹ In the interview stage, interrogators aim to “obtain the truth through non-accusatorial, open-ended questioning in order to gather general information in the early stages of a criminal investigation.”¹⁵² At this stage, interrogators work to determine whether they believe the suspect is guilty.¹⁵³ Through conversation and questioning, interrogators generate a judgment of truth or deception. If interrogators believe that the suspect being questioned is guilty, they then begin the actual interrogation.¹⁵⁴ This second stage of the interrogation is meant to “elicit incriminating statements, admissions and/or confessions through the use of psychological methods that are explicitly confrontational, manipulative, and suggestive.”¹⁵⁵ Interrogated only when

¹⁴⁶ *Id.*

¹⁴⁷ See Kassir & Gudjonsson, *supra* note 27, at 41; Kassir et al., *supra* note 15, at 6; LEO, *supra* note 144, at 46.

¹⁴⁸ Kassir et al., *supra* note 15, at 6. The 1931 Wickersham Commission Report exposed the wide practice and prevalence of the Third Degree, which impacted both public and police perception towards such methods. LEO, *supra* note 144, at 78.

¹⁴⁹ Drizin & Leo, *supra* note 16, at 909–10.

¹⁵⁰ Leo et al., *supra* note 75, at 516.

¹⁵¹ See Kassir & Gudjonsson, *supra* note 27, at 36.

¹⁵² Drizin & Leo, *supra* note 16, at 911.

¹⁵³ *Id.* This stage of the interrogation can also be called the “pre-interrogation interview.” Kassir & Gudjonsson, *supra* note 27, at 36.

¹⁵⁴ Drizin & Leo, *supra* note 16, at 911.

¹⁵⁵ *Id.*

they are presumed guilty,¹⁵⁶ suspects at the interrogation stage are thus subject to a “guilt-presumptive” process,¹⁵⁷ in which interrogators hold an “a priori belief” that suspects are guilty.¹⁵⁸ The goal then is not a matter of finding facts or evidence but instead getting the suspect to confess.¹⁵⁹

In an effort to streamline the interrogation process, a group of researchers developed what would become the most influential interrogation approach: the Reid Technique.¹⁶⁰ Simply, the Reid Technique is “[d]esigned to overcome the anticipated resistance of individual suspects who are presumed guilty and to obtain legally admissible confessions.”¹⁶¹ To achieve this, interrogators utilize numerous tactics that are intentionally structured to promote “isolation, anxiety, fear, powerlessness, and hopelessness.”¹⁶² Some of these tactics include physical isolation, accusations, attacks on suspects’ alibi claims, and confronting suspects with both true and false incriminating evidence.¹⁶³ Interrogators also employ techniques that rely on both negative and positive incentives.¹⁶⁴ As negative incentives, interrogators create situations that lead suspects to feel that confessing is the only plausible course of action. For example, they confront suspects with real or manufactured evidence and accusations of guilt, identify contradictions in suspects’ side of the story, and refuse to accept alibis or denials.¹⁶⁵ As positive incentives, interrogators create situations that lead suspects to feel that they will feel better or will receive some sort of benefit if they confess. For example, they appeal to suspects’ self-interest, minimize and normalize the seriousness of their alleged offenses, and offer sympathy and moral or legal justification.¹⁶⁶

¹⁵⁶ *Id.*

¹⁵⁷ Kassir & Gudjonsson, *supra* note 27, at 41. The guilt-presumptive approach can and often does influence an investigator’s interactions with suspected offenders. *Id.* Specifically, for investigators interrogating suspects that they already presume are guilty, they selectively “seek and interpret new data in ways that verify the[ir] belief.” *Id.* This “distorting cognitive bias” contributes greatly to the occurrence of false confessions. *Id.*

¹⁵⁸ *Id.* This harkens back to the concept of “tunnel vision,” as the interrogator is strictly focused on the suspect’s guilt and acts only to officially establish that guilt through obtaining a conviction. See *supra* text accompanying notes 99–104.

¹⁵⁹ *Id.*

¹⁶⁰ Kassir et al., *supra* note 15, at 7. See FRED E. INBAU, JOHN E. REID, JOSEPH P. BUCKLEY & BRIAN C. JAYNE, CRIMINAL INTERROGATION AND CONFESSIONS 79–178 (2004), for a full account of the Reid Technique.

¹⁶¹ Kassir et al., *supra* note 15, at 7.

¹⁶² Drizin & Leo, *supra* note 16, at 911.

¹⁶³ *Id.* at 911–12.

¹⁶⁴ Kassir et al., *supra* note 15, at 7.

¹⁶⁵ *Id.*; Drizin & Leo, *supra* note 16, at 912.

¹⁶⁶ Kassir et al., *supra* note 15, at 7; Drizin & Leo, *supra* note 16, at 912.

Other scholars also note that interrogators often employ techniques that involve both “maximization” and “minimization” of the seriousness of suspects’ alleged offenses.¹⁶⁷ Maximization involves scare tactics that are designed “to intimidate a suspect by making him believe that the magnitude of the charges and the seriousness of the offense will be exaggerated if he does not confess.”¹⁶⁸ Minimization involves tactics designed to “lull a suspect into believing that the magnitude of the charges and the seriousness of the offense will be downplayed or lessened if he confesses.”¹⁶⁹ For example, in the Central Park Jogger case,¹⁷⁰ each suspect minimized his own involvement in the crime and accused the others of having more responsibility.¹⁷¹ They also each revealed that the police officers gave them the impression that they would be allowed to go home if they confessed.¹⁷²

Armed with this assortment of psychological tactics, interrogators typically employ the Reid Nine Steps of Interrogation.¹⁷³ Before beginning, interrogators are advised to isolate the suspect in a “small, barely furnished, soundproof room housed within the police station.”¹⁷⁴ Such an environment removes the suspect from familiar surroundings, creates a feeling of isolation, and heightens the suspect’s anxiety.¹⁷⁵ Within this setting of isolation and anxiety, interrogators begin the Nine Steps. In step one, interrogators confront suspects with firm assertions of guilt.¹⁷⁶ In step two interrogators develop themes that psychologically, morally, or legally justify or excuse the crime.¹⁷⁷ In step three interrogators block any effort from suspects at denying guilt.¹⁷⁸ In step four, interrogators attempt to bypass suspects’ factual, moral, or emotional objections.¹⁷⁹ Then in step five interrogators attempt to procure suspects’ full attention, especially if they

¹⁶⁷ See Kassin et al., *supra* note 15, at 12; Drizin & Leo, *supra* note 16, at 912.

¹⁶⁸ Drizin & Leo, *supra* note 16, at 912.

¹⁶⁹ *Id.*

¹⁷⁰ See *supra* text accompanying notes 107–114.

¹⁷¹ Kassin et al., *supra* note 15, at 4.

¹⁷² *Id.*

¹⁷³ See INBAU, REID & BUCKLEY, *supra* note 160, at 79–178.

¹⁷⁴ Kassin & Gudjonsson, *supra* note 27, at 42. Additionally, interrogators are advised to “seat the suspect in hard, armless, straight-backed chair; keep light switches, thermostats, and other control devices out of reach; and encroach upon the suspect’s personal space over the course of the interrogation.” *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See INBAU, REID & BUCKLEY, *supra* note 160, at 79.

¹⁷⁷ *Id.* at 79–80.

¹⁷⁸ *Id.* at 80

¹⁷⁹ *Id.*

begin to mentally withdraw or tune out.¹⁸⁰ In step six, if suspects are passive, interrogators show sympathy and understanding, urging the suspects to cooperate.¹⁸¹ In step seven, interrogators present alternative explanations of the act under investigation.¹⁸² In step eight interrogators bring suspects into the conversation by encouraging them to recount details of the crime.¹⁸³ Finally, in step nine, interrogators record suspects' admissions into full written or oral confessions.¹⁸⁴

By increasing the anxiety associated with denial, plunging suspects into a state of despair, and minimizing the consequences of a confession, the Reid Technique can effectively lead suspects to incriminate themselves.¹⁸⁵ The creators of the Reid Technique, however, insisted that the psychologically coercive methods do not compel the innocent to confess.¹⁸⁶ In fact, when asked if the Reid Technique might cause innocent people to confess, creator Joseph Buckley replied, "No, because [investigators] don't interrogate innocent people."¹⁸⁷ However, well-established scientific research on interrogation-induced false confessions show that the innocent confess at alarming rates.¹⁸⁸ Although intended for the guilty, modern interrogation techniques are "psychologically powerful enough to elicit confessions from the innocent."¹⁸⁹

C. WHY INNOCENT PEOPLE CONFESS: DISPOSITIONAL AND SITUATIONAL RISKS

It was easy to recognize how the Third Degree method of physical violence, torture, and explicit threats of harm resulted in interrogation-induced false confessions.¹⁹⁰ But with the more sophisticated and subtler forms of psychological interrogation, it is no longer as apparent how or why interrogation might lead to false confessions.¹⁹¹ Scholars now

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 80–81.

¹⁸⁴ *Id.* at 81. See also INBAU, REID & BUCKLEY, *supra* note 160, at 79–178, for a complete account on conducting the Nine Steps.

¹⁸⁵ Kassin & Gudjonsson, *supra* note 27, at 43.

¹⁸⁶ Drizin & Leo, *supra* note 16, at 919.

¹⁸⁷ Kassin & Gudjonsson, *supra* note 27, at 36.

¹⁸⁸ See Drizin & Leo, *supra* note 16, at 919.

¹⁸⁹ *Id.* at 918.

¹⁹⁰ *Id.* at 908.

¹⁹¹ *Id.* at 910.

attribute the occurrence of false confessions to the use of improper coercive techniques.¹⁹² Through a combination of persuasion and coercion, modern interrogation makes “the irrational (admitting to a crime that will likely lead to punishment) appear rational (if the suspect believes that he is inextricably caught or perceives his situation as hopeless and cooperating with authorities as the only viable course of conduct).”¹⁹³ There are two main factors that contribute to the occurrence of a false confession: dispositional risk factors and situational risk factors.

1. Dispositional Risk Factors

Dispositional risk factors are personal characteristics that influence how people react to the pressures of interrogation.¹⁹⁴ These characteristics include personality, age, intelligence, and psychopathology.¹⁹⁵ Individuals differ in their ability to withstand the pressures of interrogation and thus also differ in their susceptibility to making false confessions.¹⁹⁶ Generally, individuals who are “highly suggestible or highly compliant” are more likely to confess in response to interrogative pressure.¹⁹⁷ The two most commonly cited dispositional risk factors are an individual’s age and mental impairment.¹⁹⁸

Numerous studies indicate that minors are at a high-risk of falsely confessing during interrogation.¹⁹⁹ Young age is often associated with numerous characteristics that put people at a high-risk of confessing falsely, such as suggestibility, heightened obedience to authority figures, and decreased decision-making abilities.²⁰⁰ Moreover, researchers have shown that “children and adolescents are cognitively and psychosocially less mature than adults—and that this immaturity manifests in impulsive decision-making, decreased ability to consider long-term consequences, engagement in risky behaviors, and increases susceptibility to negative influ-

¹⁹² *Id.* at 918.

¹⁹³ *Id.* at 919.

¹⁹⁴ Kassir & Gudjonsson, *supra* note 27, at 51.

¹⁹⁵ *Id.*

¹⁹⁶ Leo et al., *supra* note 75, at 518.

¹⁹⁷ *Id.*

¹⁹⁸ Kassir et al., *supra* note 15, at 48. Of the first 200 DNA exonerations in the United States, people who were under the age of 18, or who had a developmental disability, or both, accounted for 35% of false confessions. *Id.* at 48.

¹⁹⁹ *See id.* at 51–53.

²⁰⁰ *Id.*

ences.”²⁰¹ Recalling the Central Park Jogger case, each suspect was between the ages of fourteen and sixteen.²⁰² Young and unable to withstand the pressures of the interrogation, each suspect actually believed that they would be freed if they confessed.²⁰³

Also, people with mental disabilities are at high-risk of giving false confessions,²⁰⁴ as they tend to be cognitively deficient with limited social skills, which contribute to a wide variety of mental impairments, such as lower intellectual functioning, limited social intelligence and understanding, lack of self-confidence, and lower problem-solving abilities.²⁰⁵ Moreover, they are likely to be more compliant, suggestible, and highly submissive to authority figures, having a lower ability to withstand the same level of pressure, distress, and anxiety as other individuals.²⁰⁶ For these reasons, people with mental disabilities, particularly those with mental illnesses, often struggle to accurately communicate with interrogators, which makes them disproportionately more likely to falsely confess.²⁰⁷

The case of Earl Washington illustrates how the mentally disabled are vulnerable to false confessions.²⁰⁸ Washington, who had a general I.Q. in the range of sixty-nine,²⁰⁹ falsely confessed to five crimes, including the rape and murder of Rebecca Lynn Williams.²¹⁰ Originally arrested for burglary and malicious wounding, Washington remained in police custody as they interrogated him for two days.²¹¹ In the course of the interrogation, however, Washington could not provide even the most basic details of the crime, such as the race of the victim, the location of her killing, or the fact that she was even raped.²¹² Additionally, most of his statement was inconsistent with the evidence.²¹³ Still, because he confessed, he was convicted

²⁰¹ Kassir et al., *supra* note 15, at 50.

²⁰² See *supra* text accompanying notes 112–120, 170–172.

²⁰³ See *supra* text accompanying notes 170–172.

²⁰⁴ Drizin & Leo, *supra* note 16, at 919.

²⁰⁵ Leo et al., *supra* note 75, at 518.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 518–19.

²⁰⁸ *The Innocence Project – Know the Cases: Browse Profiles: Earl Washington*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Earl_Washington.php (last visited Apr. 4, 2011) [hereinafter *The Innocence Project, Earl Washington*].

²⁰⁹ Mental retardation is defined by an IQ score of seventy or below. Kassir et al., *supra* note 15, at 54.

²¹⁰ *The Innocence Project, Earl Washington*, *supra* note 208.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

and sentenced to death.²¹⁴ Later, psychological analysis of Washington showed that, because of his mental disability, he often deferred to the police interrogators and affirmatively answered leading questions to gain their approval.²¹⁵

2. Situational Risk Factors

While characteristics such as young age and mental disability contribute to incidences of false confessions, the vast majority of reported false confessions are from “cognitively and intellectually normal individuals.”²¹⁶ That is, most innocent suspects confess not because of dispositional risk factors but because of the circumstances and pressures of interrogation.²¹⁷ Even the Supreme Court, in the seminal case *Miranda v. Arizona*, acknowledged that “in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.”²¹⁸ These “inherently compelling pressures” create a situation that is so intimidating that a fully cognitive and functioning person, overcome by isolation, anxiety, and fear, could reasonably falsely confess.²¹⁹

The setting and the length of an interrogation also contribute to the anxiety felt by suspects, who may falsely confess to alleviate these stress factors.²²⁰ Police detectives conduct the interrogation in a special interrogation room designed to heighten suspects’ discomfort.²²¹ Such a setup removes suspects from familiar surroundings and isolates them, which increases their “anxiety and incentive to extricate” themselves from the situation.²²² Furthermore, although most interrogations are brief,²²³ false confession cases tend to have much longer interrogation periods.²²⁴ In their study of 125 proven false confessions, Professors Drizin and Leo found

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Drizin & Leo, *supra* note 16, at 920.

²¹⁷ *Id.*

²¹⁸ *Miranda v. Arizona*, 384 U.S. 436, 467 (1966).

²¹⁹ *Id.*

²²⁰ Kassin et al., *supra* note 15, at 6.

²²¹ *Id.*

²²² Kassin & Gudjonsson, *supra* note 27, at 42.

²²³ The majority of interrogations last approximately from thirty minutes to two hours. Kassin et al., *supra* note 15, at 40.

²²⁴ *Id.*

that the mean interrogation time was 16.3 hours,²²⁵ which is substantially longer than the 4-hour interrogation time suggested by the Reid Technique.²²⁶ Thus, the long interrogation time combined with isolation, hunger, and sleep deprivation can lead to false confessions.²²⁷

Moreover, interrogators seek to convince suspects that their situation is hopeless and that a guilty verdict is inevitable. The most effective technique to shift suspects from “confident to hopeless” is to confront them with “seemingly objective and incontrovertible evidence” of their guilt, whether or not such evidence actually exists.²²⁸ Said differently, *police lie about evidence*. As psychologists demonstrated, once individuals believe that a result is inevitable, their cognitive and motivational forces tend to promote an acceptance of, compliance with, and even approval of the outcome.²²⁹ Evidence, even false evidence such as fabricated eyewitnesses, fake fingerprints, and phony polygraph results, convey to suspects that a case against them is “so compelling and immutable” that their guilt can be established beyond any reasonable doubt, and that arrest and conviction are inevitable.²³⁰ Consequently, suspects feel as if they have no choice but to admit to some version of the crime, because to them, resistance is futile.²³¹ Although lying about evidence seems to contradict the concept of legal fairness, the Supreme Court officially sanctioned this deception and made it permissible for police to outright lie to suspects about the evidence.²³² A minimization tactic that may lead to false confessions is “theme development” in which interrogators provide moral or legal justification for the crime, which makes confessing seem like a beneficial means of escape.²³³ Interrogators suggest to suspects that their actions were “spontaneous, accidental, provoked, peer-pressured, drug-induced, or otherwise justifiable by external factors.”²³⁴ Such tactics lead suspects to infer that they will be treated with leniency if they confess, although no

²²⁵ *Id.*

²²⁶ *See id.*

²²⁷ *Id.*

²²⁸ Drizin & Leo, *supra* note 16, at 915.

²²⁹ Kassir et al., *supra* note 15, at 15–16.

²³⁰ Drizin & Leo, *supra* note 16, at 915.

²³¹ *Id.* at 915–16.

²³² Kassir & Gudjonsson, *supra* note 27, at 60 (citing *Frazier v. Cupp*, 394 U.S. 731 (1969) (ruling that a police officer’s misrepresentations during the interrogation did not make a confession inadmissible)).

²³³ Kassir et al., *supra* note 15, at 14; *see supra* text accompanying notes 165–69.

²³⁴ *Id.* at 13.

explicit promise was made.²³⁵ Minimization tactics, therefore, can ultimately lead innocent people to confess falsely.²³⁶ One study showed that confession rates, both true and false, occur more often when leniency was promised and when minimization was used (81% of guilty suspects, 18% of innocent suspects), than when neither of these tactics was employed (46% of guilty suspects, 6% of innocent suspects).²³⁷ The significance of utilizing such techniques is that it provides interrogators with a loophole, bypassing court rules that prohibit the use of *explicit* promises of leniency but have allowed *implicit* promises and minimization tactics.²³⁸ Allowing interrogators to use this “implicit but functional equivalent to a promise of leniency” consequently puts innocent suspects at risk of falsely confessing.²³⁹

In addition to the above interrogation techniques, innocent suspects might also confess because they believe that if they cooperate fully with the interrogators, “truth and justice will prevail and that their innocence will become transparent to investigators, juries, and others.”²⁴⁰ This faith in the criminal justice system instills a feeling of reassurance that the trial process will favor or protect innocent suspects.²⁴¹ Such a way of thinking, however, may be an “illusion of transparency.”²⁴² Some argue that people have a general tendency to “overestimate the extent to which their true thoughts, emotions, and other inner states can be seen by others.”²⁴³ This illusion is exacerbated by interrogators’ initial presumption of guilt, which is reinforced when suspects cooperate by incriminating themselves.

To summarize, scholars agree that modern police interrogation, although no longer having the physical nature of Third Degree methods, can still lead to false confessions. Psychological interrogation is inherently coercive, by inducing suspects to confess falsely for numerous reasons: when suspects believe that it will be beneficial to do so; when they perceive that evidence, true or false, against them is strong; when they are severely overwhelmed by the pressures of confinement; and when they can

²³⁵ Kassin & Gudjonsson, *supra* note 27, at 60. One study showed that minimization techniques lowered sentencing expectations. Kassin et al., *supra* note 15, at 18.

²³⁶ Kassin et al., *supra* note 15, at 18.

²³⁷ *Id.* at 18.

²³⁸ Kassin & Gudjonsson, *supra* note 27, at 60.

²³⁹ Kassin et al., *supra* note 15, at 18–19.

²⁴⁰ *Id.* at 22.

²⁴¹ *Id.*

²⁴² *Id.* at 23.

²⁴³ *Id.*

no longer withstand interrogative pressures and are coerced to confess.²⁴⁴ Despite these coercive tactics, courts have been far less condemnatory of psychological interrogation techniques than physical ones, as they often permit evidence obtained through various psychologically coercive techniques.²⁴⁵ Until restrictions are placed on some of these tactics, false confessions will continue to occur, and innocent suspects will be convicted and sentenced by what is supposed to be a just system.

IV. RECOMMENDATIONS FOR LIMITING OCCURRENCES OF FALSE CONFESSIONS

In the realm of police interrogations, a major issue is how American jurisprudence can eliminate or at least limit false confessions.²⁴⁶ Numerous scholars suggested various reforms, including accounting for dispositional and situational factors, setting a higher standard for presuming a suspect's guilt, and electronically recording interrogations.

A. SPECIAL PROTECTIONS FOR VULNERABLE POPULATIONS

As mentioned above, juveniles and people with mental disabilities are particularly susceptible to falsely confessing when under interrogative pressure because, compared to average people, they are more suggestible, more compliant, and less able to recognize and weigh the risks involved in decision-making.²⁴⁷ Therefore, given their vulnerability to suggestive questioning and deference to authority, special precautions must be afforded to this at-risk group.²⁴⁸ One suggestion is to have an attorney present at all times during interrogation.²⁴⁹ Attorneys can ensure that both juveniles and people with mental disabilities can properly assert their constitutional rights during interrogation.²⁵⁰ Additionally, interrogators should receive "specialized training in how to interrogate [these at-risk populations],"²⁵¹ focusing on the added risks particular to "individuals who are

²⁴⁴ Kassin & Gudjonsson, *supra* note 27, at 46.

²⁴⁵ Kassin et al., *supra* note 15, at 27.

²⁴⁶ See Leo & Ofshe, *supra* note 53, at 492.

²⁴⁷ See *supra* text accompanying notes 194–215.

²⁴⁸ Kassin et al., *supra* note 15, at 29. Even Fred Inbau, co-creator of the Reid Technique, cautioned interrogators that special protections should be afforded to juveniles and the mentally disabled. *Id.* at 30.

²⁴⁹ *Id.* at 30. Professor Kassin argues that a parent or guardian is not enough, as they are neither aware of their relevant rights nor cognizant of police interrogation methods. *Id.*

²⁵⁰ *Id.*

²⁵¹ Drizin & Leo, *supra* note 16, at 1003–04.

young, immature, mentally retarded, psychologically disordered, or in other ways vulnerable to manipulation.”²⁵²

B. REDUCE SITUATIONAL RISKS

To produce accurate outcomes, interrogative procedures should account for various situational risks, namely custody and interrogation time, presentation of false evidence to suspects, and the use of minimization tactics.²⁵³ Research shows that prolonged isolation deprives suspects of several basic human needs—belonging, affiliation, and social support—thereby heightening their distress, which increases their incentive to alleviate pressures by cooperating and falsely confessing.²⁵⁴ Keeping suspects isolated in an interrogative setting deprives them of breaks, sleep, and food, and eventually fatigues them.²⁵⁵ Interrogation time should be limited, and suspects should be given periodic breaks from questioning for rest and meals.²⁵⁶

In addition, the tactic of confronting suspects with false evidence should be prohibited, or at least restricted. Such evidence is often an outright lie. Take for example situations when interrogators tell innocent suspects that there was an eyewitness who identified them when no such identification was made.²⁵⁷ In such instances, suspects feel trapped, subjecting themselves to a risk of falsely confessing.²⁵⁸ As research indicates, innocent suspects generally tend to cooperate when they believe that authorities have strong evidence against them.²⁵⁹ Isolated, they begin to feel hopeless and see false confession as their only way out.²⁶⁰ For a society that places great weight on preserving the values of justice, allowing police to lie runs counter to the concept of fairness.

Lastly, scholars have argued that the law regarding minimization tactics should be scrutinized.²⁶¹ Courts tend to exclude confessions extracted

²⁵² Kassir et al., *supra* note 15, at 30. *See also* Drizin & Leo, *supra* note 16, at 1004–06 (detailing Broward County’s policy for interrogating juveniles and those with developmental disabilities).

²⁵³ Kassir et al., *supra* note 15, at 28–30.

²⁵⁴ *Id.* at 28.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 29.

²⁵⁹ Kassir & Gudjonsson, *supra* note 27, at 60.

²⁶⁰ *See id.*

²⁶¹ *Id.* at 60.

by direct threats or promises. However, they have not taken the same stance against confessions drawn with implied threats and promises.²⁶² Numerous studies show that implicit promises lead innocent people to confess by “leading them to perceive that the only way to lessen or escape punishment is to comply with the interrogator’s demand for confession,” and to “believe that their continued denial is futile and that prosecution is inevitable.”²⁶³ One possible reform is to permit moral or psychological minimization but prohibit legal minimization tactics that implicitly communicate promises of leniency.²⁶⁴

C. HEIGHTENED STANDARD FOR PRESUMING GUILT

Because of the guilt-presumptive nature of interrogations, innocent suspects at the interrogation stage are at a great disadvantage in proving their innocence. Once interrogators are convinced of a suspect’s guilt, they will act and think in ways that verify that belief.²⁶⁵ Interrogators ask more guilt-presumptive questions, use more psychologically manipulative techniques, and exert more pressure to obtain a confession.²⁶⁶ Therefore, it is important that interrogators be sure that suspects are guilty before moving into the interrogation stage. Otherwise, police enter the interrogation under a false premise and position innocent suspects to make false confessions. Scholars suggest that to protect innocent individuals, interrogators should abandon subjective determinations in favor of a “reasonable basis for believing in the probability of [a suspect’s] guilt.”²⁶⁷

D. VIDEO RECORDING OF INTERROGATIONS

Scholars and researchers examining interrogation-induced false confessions agree that “[t]o accurately assess a confession, police, judges, lawyers, and juries should have access to a videotape recording of all interviews and interrogations in their entirety.”²⁶⁸ Video-recording interrogations would provide several advantages that could limit the occurrence and acceptance of false confessions. For one, it makes interrogations transparent, thereby deterring interrogators from conducting overly lengthy inter-

²⁶² *Id.*

²⁶³ Kassin et al., *supra* note 15, at 29.

²⁶⁴ *Id.* at 30.

²⁶⁵ Kassin & Gudjonsson, *supra* note 27, at 41.

²⁶⁶ *Id.* at 42.

²⁶⁷ Drizin & Leo, *supra* note 16, at 1002.

²⁶⁸ Kassin & Gudjonsson, *supra* note 27, at 60–61

rogations or utilizing egregious methods.²⁶⁹ This transparency leads to a higher level of scrutiny by police departments, as interrogators are less likely to resort to improper practices to obtain a confession.²⁷⁰ Moreover, this would provide an “objective, comprehensive, and reviewable record of the interrogation.”²⁷¹ Such a record would eliminate problems of “swearing contests” between defendants and police, parties claiming that they forgot what transpired, and self-serving distortions in memory, as there would be complete documentation of the interrogation.²⁷² Taken together, video-recording interrogations would increase the fact-finding accuracy of both judges and juries, which in turn could greatly limit the acceptance of false confessions when they occur.²⁷³

Yet despite the fact that video-recording interrogations would be the most accurate way for attorneys, judges, and juries to learn the truth of how confessions were obtained, only two state supreme courts, Alaska and Minnesota, require law enforcement officers to electronically record interrogations.²⁷⁴ Such a policy continues to evoke strong resistance from the law enforcement community as they argue that video-recording interrogations are costly, distract interrogators from the process, and that technical and operating difficulties might complicate the interrogation and lead to suppressing confessions.²⁷⁵ However, despite this resistance and due to a rising concern about false confessions, there has been a renewed push for recording requirements.²⁷⁶ Six additional states, Illinois, Maine, New Mexico, New Jersey, Wisconsin, North Carolina, and the District of Columbia, now require custodial interrogations to be recorded.²⁷⁷ The supreme courts of New Hampshire and Massachusetts also issued strongly worded opinions that endorse the video-recording of interrogations.²⁷⁸ Accordingly, numerous law enforcement agencies throughout the country have also begun to record interrogations.²⁷⁹ The majority of these departments found costs to be minimal and the practice useful, noting that video-

²⁶⁹ *Id.* at 60.

²⁷⁰ Drizin & Leo, *supra* note 16, at 997–98.

²⁷¹ *Id.* at 997.

²⁷² Kassin & Gudjonsson, *supra* note 27, at 60–61.

²⁷³ *Id.* at 61.

²⁷⁴ Kassin et al., *supra* note 15, at 26.

²⁷⁵ Thomas P. Sullivan, *Recording Federal Custodial Interviews*, 45 AM. CRIM. L. REV. 1297, 1321–24, 1327–30 (2008).

²⁷⁶ Kassin et al., *supra* note 15, at 26.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

recording increases the accountability of detectives and allows them to focus on suspects rather than on taking notes and to also review suspects' statements after the interrogation.²⁸⁰

When instituting the policy of video-recording interrogations, the whole interrogation should be recorded as opposed to only the confession itself.²⁸¹ A partial recording would not provide a full account of the interrogation and may mask improper interrogation methods that led up to the actual confession.²⁸² Furthermore, the camera should adopt a neutral "equal focus" perspective that shows both the accused and interrogators.²⁸³ Otherwise, an imbalanced focus might lead jurors to underestimate the amount of pressure exerted by the interrogator.²⁸⁴

Video-recording interrogations would provide attorneys, judges, and jurors with an objective and comprehensive account of the interrogation.²⁸⁵ Although this would aid in identifying occurrences of false confessions, video-recording would not control the actual methods and tactics employed by interrogators, which are what ultimately lead innocent people to confess. To better control interrogation-induced false confessions, an even stronger position for reform might be necessary—that is, a move from the current accusatory approach towards an information-gathering and non-confrontational approach.

E. INFORMATION-GATHERING AND NON-CONFRONTATIONAL APPROACH

The objective of interrogation is to gather information and to secure confessions from suspects who are guilty, not to elicit a confession based on the suspect's presumed guilt. Current interrogation in the United States employs guilt-presumptive, accusatory, and confrontational methods.²⁸⁶ Numerous scholars and researchers have shown that this can, and often does, lead to false confessions.²⁸⁷ A model system currently in practice that utilizes an information-gathering and non-confrontational approach is the Police and Criminal Evidence Act (PACE) of England, which employs

²⁸⁰ Kassir & Gudjonsson, *supra* note 27, at 61.

²⁸¹ See Drizin & Leo, *supra* note 16, at 1000; Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1113.

²⁸² Drizin & Leo, *supra* note 16, at 1000.

²⁸³ Kassir & Gudjonsson, *supra* note 27, at 61.

²⁸⁴ *Id.*

²⁸⁵ See *supra* text accompanying notes 271–272.

²⁸⁶ See *supra* text accompanying notes 150–159.

²⁸⁷ See *supra* text accompanying notes 134–138.

the PEACE approach.²⁸⁸

Initially, justices of the peace in England and Wales possessed inquisitorial and magisterial responsibilities.²⁸⁹ Eventually the police force acquired the inquisitorial tasks, including questioning suspects.²⁹⁰ Little guidance existed for police officers on how to conduct interrogations.²⁹¹ In 1984, after a number of high-profile false confession cases, including the “Guildford Four” and the “Birmingham Six,”²⁹² the British government passed the PACE.²⁹³ PACE instituted a legislative framework to govern the exercise of police authority, which significantly reformed police practices,²⁹⁴ including interrogations.²⁹⁵

In regards to interrogations, PACE initially instituted several procedural rules. All interrogations that occur at a police station must be audio-recorded.²⁹⁶ There is a time limit on the length of interrogations and a requirement that suspects receive periodic breaks from questioning for rest and meals.²⁹⁷ The prosecution has an affirmative burden of proof to show that a confession was not obtained “by oppression or in consequence of anything said or done which was likely to render the confession unreliable.”²⁹⁸ Interpreting this law, English courts declared that the misrepresen-

²⁸⁸ See generally *Police and Criminal Evidence Act 1984 (PACE) and Accompanying Codes of Practice*, HOME OFFICE, <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/> (last visited Apr. 11, 2011) [hereinafter *PACE Codes*]. Code C sets out the requirements for the detention, treatment, and questioning of suspects not related to terrorism in police custody by police officers. Code C: Code for the Detention, Treatment and Questioning of Persons by Police Officers (promulgated under the Police and Criminal Evidence Act 1984, c. 60, § 67, pt. VI (Eng.)), available at <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c?view=Binary> (last visited May 23, 2011) [hereinafter *Code C*].

²⁸⁹ MARY SCHOLLUM, *INVESTIGATIVE INTERVIEWING: THE LITERATURE* 43 (2005).

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² Findley & Scott, *supra* note 106, at 378 (two different groups of men who falsely confessed to separate bombing attacks and whose convictions were later overturned due to unsafe interrogation methods).

²⁹³ Kassir et al., *supra* note 15, at 13. See *PACE Codes*, *supra* note 288.

²⁹⁴ Kassir et al., *supra* note 15, at 13. The Act empowered the Home Secretary to issue Codes of Practice, which provide detailed regulations for police procedure. See *PACE Codes*, *supra* note 288.

²⁹⁵ See *Code C*, *supra* note 288.

²⁹⁶ See *Code E: Code of Practice on Audio Recording Interviews with Suspects* (promulgated under the Police and Criminal Evidence Act 1984, c. 60, § 67, pt. VI (Eng.)), available at <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-e?view=Binary> [hereinafter *Code E*]. There is no video recording requirement. *Id.*

²⁹⁷ *Code C*, *supra* note 288, §§ 8.6, 12.2.

²⁹⁸ Craig M. Bradley, *Interrogation and Silence: A Comparative Study*, 27 WIS. INT’L L.J.

tation of available evidence and other types of deceit are not permissible.²⁹⁹

Despite the changes instituted by PACE, British interrogation, like modern American interrogation, remained confrontational, as police officers had little guidance on how to properly conduct interviews.³⁰⁰ Gradually, stricter controls exposed gaps in interview techniques, which led to a surge in research on interrogation tactics.³⁰¹ “In 1991, the Home Office set up a steering group on [interrogation], compris[ed] of members of the police service, the Home Office and the Crown Prosecution Service.”³⁰² Tasked with reforming the interrogation approach, the group developed PEACE in 1993, which is an “interviewing model aimed at offering a more effective and ethical alternative to persuasive interviewing,”³⁰³ a type of “investigative interviewing” that is more conversational and based on obtaining information.³⁰⁴ In contrast to the Reid Technique, PEACE employs an “ethical and inquisitorial frame of mind,” in which “the purpose is clearly communicated to the suspect, rights are properly administered, rapport is established, and a conversation is engaged between the lead investigator and suspect.”³⁰⁵ Simply put, PEACE abandons the accusatory confrontational approach and its use of trickery and deceit, and instead employs a less oppressive approach for interviewing suspects, which asks them what happened rather than asking them to confess.

However, preliminary evaluations of the PEACE model showed that it had not fully lived up to expectations.³⁰⁶ The problems of the model may have been due to the initial obstacles of launching a high-profile program and a lack of resources, as opposed to an actual failure of the program itself. Upon release, PEACE received “minimal support from management, lack of buy-in from supervisors, inconsistent implementation, and limited resources to develop and maintain the [program].”³⁰⁷ Further, a Home Of-

271, 287 (2009) (citing PACE § 76(2)).

²⁹⁹ Christopher Slobogin, *An Empirically Based Comparison of American and European Regulatory Approaches to Police Investigation*, 22 MICH. J. INT’L. L. 423, 443 (2001).

³⁰⁰ SCHOLLUM, *supra* note 289, at 43.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ LEO, *supra* note 144, at 326.

³⁰⁵ Findley & Scott, *supra* note 106, at 378 (internal quotation marks omitted) (quoting Richard A. Leo, *The Third Degree and the Origins of Psychosocial Interrogation in the United States*, 20 INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 37, 99 (G. Daniel Lassiter ed., 2004)).

³⁰⁶ SCHOLLUM, *supra* note 289, at 48.

³⁰⁷ *Id.* at 53.

fice evaluation found that information and skills were poorly transferred from the classroom—where police officers were given PEACE training—to the actual interrogation room, and that there was minimal supervision of the interviews.³⁰⁸ Officers received limited training and were expected to learn on the job or by observing experienced interviewers.³⁰⁹ Moreover, officers tended to show poor questioning techniques, deficient interpersonal skills, and a lack of quality control over interviews.³¹⁰ When interrogations broke down, interviewers often resorted to the “question and answer routine” previously utilized, in contrast to the PEACE conversational method.³¹¹

Despite the poor initial evaluations, research conducted in England after the implementation of both PACE and PEACE suggests that, overall, PEACE has been a success.³¹² Interrogation methods improved greatly, by becoming less coercive and more ethical.³¹³ More importantly, even though interrogations are less coercive, the confession rate in England has not gone down.³¹⁴ In fact it is still higher than the American rate.³¹⁵ Contrary to the belief that switching to a non-confrontational approach would lead to too many guilty suspects avoiding conviction,³¹⁶ an approach based on non-confrontation and fact-finding succeeded in the absence of psychological manipulation.

V. CONCLUSION

While one of the tenets of the American system of criminal justice is to convict the guilty, American jurisprudence must also aim to protect the innocent from false confessions. The accusatory and confrontational approach to interrogation in the United States encourages a “blood sport attitude,”³¹⁷ in which interrogators aim strictly to obtain a confession at whatever cost. The consequence, then, is that innocent suspects who are presumed guilty stand at a high-risk of confessing falsely. Confession evi-

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 48.

³¹⁰ *Id.*

³¹¹ *Id.* at 50. This “question and answer routine” refers to the accusatory confrontational approach, reflective of current American interrogation. *See id.*

³¹² *See Findley & Scott, supra* note 106, at 379.

³¹³ SCHOLLUM, *supra* note 289, at 51.

³¹⁴ Findley & Scott, *supra* note 106, at 379.

³¹⁵ LEO, *supra* note 144, at 326.

³¹⁶ *See Findley & Scott, supra* note 106, at 377.

³¹⁷ Leo & Ofshe, *supra* note 53, at 493.

dence biases fact-finders' evaluation of a case in favor of the prosecution, even when there exists exonerating evidence, and even when it was obvious that a confession was coerced.

Scholars have suggested that the United States might gain by implementing an approach similar to PEACE.³¹⁸ The United States faces a similar set of problems as England, and might be able to learn from the successes and failures of how PEACE was implemented.³¹⁹ PEACE is not a perfect system and it could benefit from a more comprehensive training program and an ongoing support and guidance system. Moreover, the United States has different values, traditions, and crime problems, so an exact duplication of the English system, without adjustments, would not be ideal.³²⁰ For example, American interrogation might benefit by borrowing the English rule for recording interrogations but mandate both video and audio recording. At the very least, PEACE, as well as PACE, might serve as a blueprint for how to modify current interrogation procedures and ultimately provide a way to limit interrogation-induced false confessions.

A change towards a more non-confrontational, fact-finding approach to interrogation would limit the occurrence of false confessions by reducing coercion and psychological pressures. While DNA evidence has been crucial in informing us of the risks of accusatory and confrontational interrogation methods, it is not always available. Christopher Ochoa, although freed because of preserved DNA evidence, only got a chance at testing because the real killer came forward.³²¹ What then of the myriad of other innocent suspects, some on death row, who are not as fortunate as Ochoa and have no outlet to prove their innocence? Adopting a non-confrontational and non-accusatory approach would help to prevent false confessions in the first place and protect innocent people from wrongful convictions.

³¹⁸ See SCHOLLUM, *supra* note 289, at 44.

³¹⁹ *Id.*

³²⁰ Additionally, unlike U.S. criminal justice procedures, which are defined at the state level, subject to constitutional minimums, England has a centralized policing system under the supervision of Home Secretary and no system of constitutional review. See Mark Berger, *Legislating Confession Law in Great Britain: A Statutory Approach to Police Interrogations* 24 U. MICH. J.L. REFORM 1, 58 (1990).

³²¹ See *supra* text accompanying note 21.