With the advance of more sophisticated forensic science, there is a growing awareness that false confessions can and do happen. Juries tend to give a great deal of weight to confessions and are reluctant to believe that individuals (particularly those facing the death penalty or long imprisonment) would be willing to admit to committing crimes they never committed. Nonetheless, innocent people have confessed to crimes that they did not commit and have been
convicted of those crimes. This talk will address the reasons innocent people sometimes confess to crimes and give examples of cases in which false confessions have led to convictions of individuals who have later been exonerated. It will examine common methods of interviewing suspects and discuss whether such methods may increase the likelihood of false confessions. It will discuss the ways in which courts have interpreted Fifth Amendment rights against self-incrimination and the issue of whether psychological pressure, like physical coercion, may contribute to false confessions.

False confessions fall into three general categories.

(1) **Voluntary False Confessions.** These may be given by depressed individuals to relieve feelings of guilt about real or imagined transgressions from the past. Sometimes suspects use a confession to hide a non-criminal act, like a love affair, or to pre-empt investigation of a more serious crime. They may be trying to protect a significant other or to take revenge by implicating others. Schizophrenics who cannot distinguish fact from reality may confess to imagined crimes. Sometimes individuals give false confessions to gain notoriety in high profile cases.
(2) **Coerced Internalized False Confessions.** Police coercion, often through manipulation and lying about evidence, can convince a suspect that he or she committed a crime. It is possible to construct rich false memories in suspects who trust people in authority, lack self-confidence and are highly suggestible.

(3) **Coerced Compliant False Confessions.** Unlike internalized false confessions, in which individuals become convinced that they actually committed crimes, sometimes individuals confess despite holding an internal belief that they are innocent. These suspects confess not because they believe they are guilty, but because they seek to end the stress of the interrogation. They want to go home or to please the interviewer or to avoid being locked up—often believing that the justice system will ultimately prevail and prove their innocence. Suspects who believe they are innocent, but can see no way to prove it, may seek a reduced sentence by cooperating and confessing. These coerced compliant false confessions often are quickly recanted.

Young people, individuals with a history of ADHD and poor impulse control, individuals who seek immediate gratification and short term benefits (including teens with a conduct disorder) and the
intellectually disabled are most vulnerable to making false confessions.

The existence of a confession can contaminate other aspects of the evidence. If witnesses know that a confession has been made, this knowledge can affect their willingness to identify a suspect from a lineup, can affect their opinion about whether a fingerprint or ballistics comparison is a match, and can affect their interpretation of DNA evidence. Eleven of 26 recent cases in which false confessions were shown to have been made involved DNA tests that excluded defendants from the crime scene. Prosecutors found ways to explain why the exonerating DNA evidence didn’t really exonerate the defendants at all. Perhaps there had been multiple perpetrators. Maybe the DNA sample had been degraded in some way. In one case, DNA testing had not even been attempted because there was a “known perpetrator.”

Brown v. State of Mississippi (297 U. S. 278 [1936]) established that physical coercion (in this case, whipping) is not permitted to elicit a defendant’s confession. However, U. S. intelligence agencies and police commonly use positional stress, sleep deprivation, humiliation, isolation, or prolonged interrogation without access to food, water, or
toilets to extract confessions. In the early years of the War on Terror, the Bush administration approved the use of such techniques as the Abdominal Slap, the Attention Grasp, Cramped Confinement, Dietary Manipulation, Rectal Feeding, the Facial Slap/Insult Slap, Nudity, Stress Positions, Sleep Deprivation, Wall Standing, Walling, Water Dousing and Waterboarding in interrogations of High Value Detainees. These were labeled as “enhanced interrogation techniques,” not “torture.” The enhanced interrogation techniques were based on methods devised by the Chinese during the Korean War. These methods were not intended to elicit accurate intelligence, but were devised to force false confessions that could be used for propaganda purposes. The CIA’s training manuals warn that such techniques are “likely to produce false confessions, concocted as a means of escaping from distress.” Whether harsh interrogations are effective in obtaining truthful information is a matter of debate.

A 2015 review of the literature by Philip Rumney concludes that torture is not useful in the ticking time-bomb scenario, but may help to elicit useful infrastructure intelligence. Rumney notes that there are no scientific studies that compare the effectiveness of interrogational torture to alternative interrogation methods, like rapport building. He
suggests that authorities may resort to torture in times of crisis not because they know it works, but because it fills “the need to be seen to act in order to allay public fear” or even the psychological need for those in authority to make themselves “feel powerful” by inflicting pain.

It is for this reason that the Fifth Amendment to the U. S. Constitution protects individuals from being forced to testify against themselves. To be admissible as evidence, criminal confessions must be voluntary. Under certain circumstances, a judge may rule that a confession was not made voluntarily. There is no clear definition of what makes a confession voluntary. The courts consider the totality of circumstances. How long did the interrogation last? Were Miranda warnings timely given? Was there actual physical coercion?

New York state law, for example, states that a confession or statement by a defendant “may not be received in evidence against him in a criminal proceeding if such statement was involuntarily made.” An involuntary statement is one obtained

(a) By any person by the use or threatened use of physical force upon the defendant or another person, or by means
of any other improper conduct or undue pressure which impaired the defendant’s physical or mental condition to the extent of undermining his ability to make a choice whether or not to make a statement; or

(b) By a public servant engaged in law enforcement activity or by a person then acting under his direction or in cooperation with him:

(i) by means of any promise or statement of fact, which promise or statement creates a substantial risk that the defendant might falsely incriminate himself; or

(ii) in violation of such rights as the defendant may derive from the constitution of this state or of the United States.

Despite the constitutional requirements and state evidentiary laws barring behaviors that might lead to coerced false confessions, The Innocence Project estimates that 25 percent of the cases in which it has used DNA evidence to exonerate individuals who have been wrongly convicted of serious crimes, including individuals who have been sentenced to death for crimes they did not commit, involved false confessions.
Is the use of psychological factors to pressure individuals any less coercive than the use of physical threats or physical force? Perhaps not, but use of psychological pressures is generally legal. Judges may hear testimony as to whether a confession was given voluntarily. Sometimes expert opinions on the voluntariness of confessions are allowed. Sometimes they are not because the judge may decide that no expertise is required to understand whether a confession was voluntary. Most often, confessions are deemed admissible to juries, who are allowed to assign whatever weight they feel is appropriate. Juries give great weight to confessions, even forced or coerced confessions, because common sense tells jurors that confessions must be true.

A widely used method of police interrogation generally follows what is known as the “Reid technique,” developed and taught by John E. Reid and Associates. The Reid website summarizes the technique as having three phases: (1) Fact Analysis; (2) the Behavior Analysis Interview; and (3) the Reid Nine Steps of Interrogation.

In the Behavior Analysis Interview, or Pre-Interrogation Interview, police question an identified suspect to assess whether the suspect is telling the truth. They ask behavior-provoking questions
and observe the suspect’s verbal and nonverbal reactions (eye contact, pauses, qualified denials, posture, and fidgeting). Many police officers have great confidence in their ability to detect lies, and the Reid technique depends in part on this. Proponents of the Reid technique contend that several studies support the theory that police have special ability to assess truthfulness, especially in high stakes situations. Critics point to other studies that indicate police are actually no better at telling truth from lies than are psychologists and that most of us, with few exceptions, are simply not that good at evaluating people’s truthfulness. Yet during the pre-interrogation period, police officers decide whether they think a suspect is telling the truth or not. Their decisions will determine whether a suspect is released or subject to further interrogation.

The Nine Steps of Interrogation are designed to overcome the resistance of suspects who are already presumed to be guilty (often police will opine that they never interrogate innocent people). Police isolate the suspect in a small, windowless room, a non-supportive environment from which the suspect wants to escape. Police then use a combination of maximization and minimization to break down
the suspect's will and convince the suspect that cooperation is the best approach.

1. The suspect is told that the police have evidence that has led them to consider him a suspect. He is offered a chance to explain his side of the story.

2. The suspect is encouraged to shift the blame onto another person or set of circumstances that provides psychological justification for the suspect's having committed the crime.

3. The interrogators aim to minimize the frequency of the suspect's denials.

4. At this point the suspect will likely give reasons why he could not or would not have committed the crime. The interrogators will try to use this exchange to move toward an acknowledgment of what the suspect has done.

5. The interrogators will reinforce sincerity to ensure the suspect’s being receptive to what will be said next.

6. The suspect is likely to become quieter. The interrogator then moves toward offering alternatives. If the suspect cries, the interrogator will infer guilt.
7. The interrogator will posit an alternative question, giving two choices (both of which involve guilt.) One alternative will be more socially acceptable than the other, and the suspect will probably choose the more socially acceptable answer. Either alternative will cause the suspect to admit guilt.

8. The interrogator will lead the suspect to repeat the admission of guilt in front of witnesses and develop corroborating information to validate the confession.

9. The interrogator will document the suspect’s statement through the use of audio or video recording or writing.

What is the matter with this technique? Its proponents argue that, properly used, it will lead to a case being solved and a guilty person being taken off the streets. Proponents of the Reid technique contend that the technique is “specifically designed to do everything possible to protect against a person making a false confession.” Reid training materials caution interrogators against using coercive techniques or leading questions.

The Reid website offers a sensible list of “do’s and don’t’s” for obtaining a reliable confession—reminding interrogators that “physical coercion, torture, duress, denial of rights, threats and
promises of leniency are the poison pills of legally admissible, reliable and voluntary confessions.” Interrogators have a duty to “size up” the suspect for intellectual capacity and emotional maturity and to conduct interrogations appropriate to the age and sophistication of the suspect. Interrogators are cautioned to avoid feeding the suspect details about the crime scene or asking leading questions, such as “You broke in through the sliding glass door at the rear of the residence, right?” Instead, interrogators should ask, “Where did you enter the house?” This is certainly sound advice. Importantly, interrogators are reminded that simply eliciting an admission of guilt may not be sufficient to establish the substance or foundation of a crime. Interrogators are encouraged to work instead to obtain a comprehensive confession that “without prompting, affirmatively provides details of a crime that only the actual offender would know.”

Despite the Reid website’s admonitions against coercive techniques, critics contend that the Reid technique encourages the use of deception and pressure specifically aimed at eliciting confessions. It is one thing to say, as the Reid website does, that presented with two incriminating choices, suspects can always just choose the third option and continued to profess their innocence. It is
another thing for suspects under the pressure of lengthy interrogations not to give in to that pressure. Training materials may caution against pressuring vulnerable suspects into false admissions or using leading questions. But after sizing up an individual’s vulnerability, what is to stop an interrogator convinced that the suspect is guilty and eager to solve a crime from using that vulnerability against the suspect? Facing real world pressures to close cases, critics argue that too many interrogators may be tempted to take short cuts or to misuse the Reid technique to obtain false confessions through deception, coercion and manipulation of vulnerable suspects.

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