No. 2-09-1060

**IN THE**
**APPELLATE COURT OF ILLINOIS**
**SECOND JUDICIAL DISTRICT**

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>vs.<br><br>JUAN A. RIVERA,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois.<br><br>No. 92-CF-2751<br><br>Honorable Christopher Starck, Judge Presiding. |

# BRIEF FOR *AMICUS CURIAE*

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## I. INTEREST OF AMICUS

The American Psychological Association (the "APA"), a voluntary nonprofit, scientific and professional organization, serves as the leading association of psychologists in the United States. The APA has more than 150,000 members and affiliates, including the majority of psychologists holding doctoral degrees from accredited universities in the country. Among the APA's major purposes is to increase and disseminate psychological knowledge of human behavior and to foster "the application of research findings to the promotion of health, education and the public welfare." American Psychological Association, *Bylaws of the American Psychological Association—Article 1: Objects.* (Retrieved from http://www.apa.org/about/governance/bylaws/index.aspx).

Division 41 of APA, the American Psychology-Law Society, focuses its work on the intersection of law and psychology. Among its purposes is to promote the contributions of psychology to the understanding of law and legal institutions through basic and applied research and to inform the legal community of current research in the field of law and psychology. As part of its work, Division 41 prepared a white paper summarizing the robust body of research that has emerged regarding the phenomenon of false confessions. Drawing on past and current police practices, laws concerning the admissibility of confession evidence in court, relevant core principles of psychology, and forensic studies involving an array of empirical methodologies, this publication summarizes much of what is known about false confessions. After extensive peer review, the white paper was published this year in the Society's flagship journal, Law and Human Behavior. *See* S.M. Kassin et al., *Police-induced confessions: Risk factors and recommendations*, 34 Law and Hum. Behav. at 3-38 (Feb. 2010).

In addition to sponsoring dozens of educational initiatives and publishing scores of scholarly and general interest books and periodicals on matters of psychology, to fulfill its mission, the APA has filed more than one hundred *amicus curiae* briefs in state and federal courts, including many in the Supreme Court of the United States. APA *amicus* briefs have addressed topics ranging from competency to stand trial, child sexual abuse, and the insanity defense, to the death penalty, mental retardation and matters involving gay and lesbian criminal and civil rights. The APA has a rigorous internal approval process for *amicus* briefs, the touchstone of which is an assessment of whether there is sufficient scientific research, data and literature to present a strong position on a question of critical importance to the court, and whether the APA can usefully contribute to a court's understanding of the issues before it. APA's *amicus curiae* briefs have been cited in a number of cases over the years. *See, e.g.*, *Graham v Florida*, No. 08-7412, _U.S. _ (May 17, 2010) , *In re Marriage Cases*, 43 Cal. 4th 757, 839-840 & n.59 (2008), *abrogated* by amendment to California Constitution; *Panetti v. Quarterman*, 551 U.S. 930, 962 (2007); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002); *Hodgson v. State of Minnesota*, 497 U.S. 417, 437 n.24 (1990); *Ohio v. Akron Center for Reproductive Health, Inc.* 497 U.S. 502, 537 n.5 (1990) (Blackmun, J., dissenting); *Kentucky v. Stincer* 482 U.S. 730, 746 n.20 (1987).

Moreover, with respect to the body of research on false confessions, the APA has submitted an *amicus curiae* brief to the Supreme Court of Pennsylvania, Eastern District, in *Wright v. Commonwealth of Pennsylvania,* E.D. Allocatur Docket 2008, No. 21 EAP 2008, an *amicus curiae* brief to the Louisiana Supreme Court in *Floyd v. Cain*, Docket No. 280-729 "C" (Sup. Ct. La., Crim. Dist. Ct. Orleans Parish, Sec. C 2010) and also has

just filed a brief in *Warney v. State of New York*, Docket No. CA 08 02261 (Supreme Court, Appellate Division, Fourth Department) explaining some of the psychological factors that enhance the risk that innocent suspects will tender false confessions and the effects of these confessions.

Before this Court is the question of whether the body of knowledge regarding false confessions is well established and widely accepted, as well as the question of whether the trier of fact would benefit from expert testimony regarding the body of research explaining the factors that increase the risk of false confession. This body of research shows that specific aspects of the police interrogation process may provoke false confessions, particularly when applied to an intellectually or psychologically vulnerable suspect, even if such confessions are judicially determined to be "voluntary" for admissibility purposes. The APA believes that this body of research is material to the issues presented in this case.

## II. SUMMARY OF THE ARGUMENT

A robust and widely accepted body of scientific research has developed over recent years regarding the phenomenon of false confessions. Much of this research was published in just the last twelve years. This research, in large part made possible by cases where DNA evidence has established the innocence of the confessor, shows that most cases of established false confessions have resulted from specific aspects of the psychological processes of police interrogation—especially as they affect suspects with specific intellectual or personal vulnerabilities. In addition, research shows that judges and juries have a hard time distinguishing a false confession from a truthful one. Because a confession is deemed to be so contrary to the suspect's self interest, these confessions are often viewed as strong evidence of guilt. Research shows that a confession not only

trumps other evidence of innocence but influences perceptions of other evidence such as eye witness testimony and can even alter expert evaluation of physical evidence.

The body of research on the causes of false confessions and their effects on trial outcomes is well established and widely accepted within the field of psychology. The research discussed below has been published in numerous peer-reviewed journals, presented by experts at scientific meetings and by professional organizations to courts. Moreover, such expert research is useful to judges and juries, because it is counterintuitive. It is often assumed that an innocent person simply would not confess to a crime he did not commit. The facts, however, demonstrate otherwise and scientific research explains some of the reasons why false confessions occur. Based on the scientific findings described in this brief, the APA thus urges this Court to hold that expert testimony regarding this evidence is admissible and should be allowed.

## III. ARGUMENT

### A. Confessions that Are Voluntary as a Matter of Law Can Be Unreliable in Fact.

Over the years, psychologists, other social scientists, and legal scholars have examined the causes, characteristics, and consequences of false confessions. This empirical literature is broadly grounded in three types of research: (1) individual and aggregated case studies of wrongful convictions involving known innocent suspects who had confessed;[1] (2) basic research on core principles of human behavior established

[1] Analyses of wrongful convictions in general are not new (e.g., see Borchard, E., *Convicting The Innocent: Errors of Criminal Justice* (New Haven: Yale University Press 1932); for a review, see Leo R., *Re-thinking The Study of Miscarriages of Justice: Developing a Criminology of Wrongful Conviction*, 21 J. Contemp. Crim. Just. 201 (2005). One study, Drizin, S. & Leo, R., *The Problem of False Confessions in the Post-DNA World,* 82 N.C. L. Rev. 891 (March 2004), focused specifically on 125 proven false confessions.

across a range of non-forensic domains of psychology;[2] and (3) laboratory and field experiments, naturalistic observation studies, and interviews and self-report surveys that specifically focus on the processes of interrogation and the elicitation of confessions.[3]

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[2] Prominent examples include the volumes of research indicating that human beings are highly responsive to reward and punishment; that behavior is influenced more by perceptions of short-term than long-term consequences; that this tendency is exacerbated in people who are cognitively and psychosocially immature, or who are subject to acute stress or fatigue; that human beings are highly vulnerable to influence from social impact agents, particularly when isolated from familiar others, often being led to engage in self- and other-defeating acts of conformity, compliance, and obedience; and that observers routinely accept confessions and other self-reports at face value, predictably underestimating the power of external social influences. These core principles can be found in virtually all modern psychology textbooks.

[3] See S. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 Law & Hum. Behav. 381 (Aug. 2007). Modern psychological theorizing on false confessions can be traced to H. Munsterberg, *On The Witness Stand* (Garden City, N.Y.: Doubleday 1908) and, more recently, to D. Bem, *Inducing Belief in False Confession*, 3 J. Personality & Soc. Psychol. 707 (1966), P.G. Zimbardo, *The Psychology of Police Confessions*, 1 Psychol. Today 17-20, 215-27 (June 1967), S. Kassin & L. Wrightsman, *The Psychology of Evidence and Trial Procedure*, in *Confession Evidence* (Kassin & Wrightsman eds. 1985) and G. Gudjonsson, *The Psychology of Interrogations, Confessions and Testimony* (Chichester, London: John Wiley & Sons 1992). For reviews and perspectives on recent research on police interrogations and why people confess, see R. Conte, *The Psychology of False Confessions,* 2 J. Credibility Assess. & Witness Psychol. 1 (1999); D. Davis and W. O'Donahue, *The Road to Perdition: "Extreme" Influence Tactics in the Interrogation Room*, in *Handbook of Forensic Psychology* 897-996 (O'Donahue, Laws & Hollin eds. Basic Books 2003); S. Drizin & R. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891 (March 2004); G. Gudjonsson, *The Psychology of Interrogations, Confessions and Testimony* (Chichester, London: John Wiley & Sons 1992); G. Gudjonsson, *The Psychology of Interrogations, and Confessions: A Handbook* (Chichester, London: John Wiley & Sons 2003); Irving & Hilgendorf, *Police Interrogation: The Psychological Approach,* Research Studies No. 1 (London, HMSO 1980); S. Kassin et al., *On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis*, 21 Law & Hum. Behav. 469 (1997); S. Kassin et al., *On the Psychology of Confessions: Does Innocence Put Innocents at Risk*, 60 Am. Psychologist 215 (2005); S. Kassin, *The Psychology of Confessions: Annual Review of Law & Social Science* (Aug. 6, 2008); S. Kassin & G. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues,* 5 Psychological Science in the Public Interest 33 (2004); S. Kassin & G. Gudjonsson, *True Crimes, False*

Collectively, these literatures provide a relatively new and strong empirical foundation concerning the phenomenon of false confessions.[4]

### 1. Innocent People Sometimes Confess to Crimes They Did Not Commit.

Although a precise prevalence rate is unknown, it is clear that false confessions occur with some degree of regularity. Within the recent and growing population of post-conviction DNA exonerations reported by the Innocence Project, false confessions were a contributing factor in nearly 25% of these cases—a sample that represents the tip of an iceberg.[5] Other less direct sources reinforce these data. For example, in Europe, 12% of prisoners, 3-4% of college students, and 1-2% of older university students who had been interrogated report that they have confessed to crimes they did not commit.[6] In the

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*Confessions: Why do Innocent People Confess to Crimes They Did Not Commit?,* Scientific American Mind (2005); G. Lassiter, *Interrogations, Confessions, and Entrapment* (Lassiter ed. New York: Kluwer Academic 2004); R. Leo, *Police Interrogation and American Justice* (Cambridge: Harvard University Press 2008); R. Leo & R. 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 (Winter 1998); R. Ofshe & R. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action,* 74 Den. U.L. Rev. 979 (1997); T. Williamson, *Investigative Interviewing: Rights, Research, Regulation* (Devon, UK: Willan Publishing 2006); Wrightsman & Kassin, *Confessions in the Courtroom* (Newbury Park, CA: Sage 1993).

[4] For a single comprehensive overview of this literature, see Redlich, Summers, & Hoover, *Self-Reported False Confessions and False Guilty Pleas among Offenders with Mental Illness*, 34 Law Hum. Behav. 70-90 (2010).

[5] This sample does not include false confessions that were rejected by police or prosecutors, often when the real perpetrator was found; those for which DNA evidence was not available; and those to lesser crimes that elicit less post-conviction scrutiny. See Drizin & Leo, *Problem of False Confessions*, *supra*, note 1; Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55 (Jan. 2008); Gross et al. *Exonerations in the United States 1989 through 2003*, 95 J. Crim. Law & Criminology 523 (2005); Scheck et al., *Actual Innocence* (Garden City, NY 2000).

[6] Gudjonsson, *A Handbook*, *supra*, note 3.

United States and Canada, 631 police investigators recently surveyed estimated that, on average, 4.78% of innocent people confess during interrogation.[7]

Proving conclusively that a confession is, in fact, false requires the existence of verifiable contrary evidence. In a study by Drizin and Leo that analyzed demographic, legal, and case-specific data from 125 cases of proven false confessions, four methods were described by which disputed confessions were classified as "proven" to be false. First, a proven false confession can occur when it can be objectively established that the confessed crime did not occur.[8] Second, a confession can be classified as false when it is established objectively that it was physically impossible for the confessor to have committed the crime (e.g., the suspect was in custody or was too young to have produced semen).[9] Third, a proven false confession can be identified when the true perpetrator is apprehended and his guilt is objectively established.[10] Fourth, a proven false confession occurs when DNA or other scientific evidence dispositively establishes the confessor's innocence.[11] Analysis of these proven false confessions forms the basis for much of the

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[7] Kassin, Leo, Meissner, Richman, Colwell, Leach, & La Fon, *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 Law Hum. Behav. 381-400 (Jan. 2007).

[8] Drizin & Leo, *The Problem of False Confessions*, *supra*, note 1 (citing Leo & Ofshe, *Consequences of False Confessions*, *supra*, note 3, at 449-50).

[9] *Id.* at 925-26 (citing Leo & Ofshe, *Consequences of False Confessions, supra*, note 3, at 450-51).

[10] *Id.* at 926 (citing Leo & Ofshe, *Consequences of False Confessions*, *supra*, note 3, at 452-53).

[11] *Id.* (citing Leo & Ofshe, *Consequences of False Confessions, supra*, note 3, at 454-55). For reviews, see Drizin & Leo, *Problem of False Confessions*, *supra*, note 3; Garrett, *Judging Innocence*, *supra*, note 5; Gudjonsson, *Psychology of Interrogations*, *supra*, note 3; Gudjonsson, *Psychology of Interrogations*, *supra*, note 3; Kassin, et al., *On*

more recent research in this area.

### 2. Some False Confessions Arise from a Defendant's Own Conduct; Others Clearly Do Not.

As a result of the foregoing methods, and in contrast to the common belief that innocent people simply will not confess to crimes they did not commit, it is clear that significant numbers of men and women have been wrongfully prosecuted, convicted, and imprisoned because of false confessions. Although the precise numbers cannot be determined, it is clear that numerous innocent people over the years have confessed in different ways and for different reasons.

In some number of cases, suspects who are not placed under legally coercive or other psychological pressure willingly volunteer false statements for what may be called self-interested or venal reasons. Over the years, this phenomenon has occurred in several high-profile cases. When Charles Lindbergh's infant son was kidnapped in 1932, approximately 200 people stepped forward to confess. More recently, in 2006, John Mark Karr voluntarily claimed responsibility for the unsolved murder of JonBenet Ramsey. There are several reasons why innocent people might confess without prompting—such as a pathological need for attention or notoriety; feelings of guilt or

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*the Power of Confession of Evidence*, *supra*, note 3; Kassin et al, *Coerced Confessions and the Jury: An Experimental Test of the "Harmless Error" Rule*, 21 Law & Hum. Behav. 27 (1997); Kassin, *The Psychology of Confessions*, *supra*, note 3; Kassin & Gudjonsson, *Psychology of Confessions*, *supra*, note 3; Kassin & Wrightsman, *Psychology of Evidence*, *supra*, note 3; Lassiter, *Interrogations, Confessions*, *supra*, note 3; Leo, *Police Interrogation*, *supra*, note 3; Leo & Ofshe, *Consequences of False Confessions*, *supra*, note 3; Wrightsman & Kassin *Confessions in the Courtroom*, *supra*, note 3.

delusions of involvement; the perception of tangible gain; or the desire to protect a parent, child, or someone else.[12]

In contrast to these instances, in the case of other individuals, especially those with specific psychological vulnerabilities and impairments, false confessions have resulted not from venal motives, but from the specific psychological processes that impose social influence during police interrogation. Recent research has also shown that in addition to the use of explicit threats and promises, which would often produce confessions ruled inadmissible, certain psychologically-based interrogation tactics, even when not legally coercive, can lead even individuals without psychological vulnerabilities or impairments who are innocent to capitulate and make a false admission in order to extricate themselves from an aversive situation. *See* S.M. Kassin et al., *Police-induced confessions: Risk factors and recommendations*, 34 Law and Hum. Behav. at 3-38 (Feb. 2010).[13]

**B. Certain Factors Predictably Increase the Risk of False Confessions.**

In a vast majority of known cases, false confessions are induced by the processes of persuasion that characterize interviewing and interrogation. In this setting, two types of factors may increase the risk that an innocent person would confess. First, certain interrogation tactics—especially when used in the extreme—can lead people not otherwise suffering psychological vulnerabilities or impairments to become confused or capitulate in order to extricate themselves from an unpleasant situation. Second, some individuals, as a matter of disposition, are particularly vulnerable to influence and

[12] For a discussion of such false confessions, see Kassin & Wrightsman, *Psychology of Evidence*, *supra*, note 3; Gudjonsson, *A Handbook*, *supra*, note 3; and Kassin & Gudjonsson, *Psychology of Confessions, Review of the Literature*, *supra*, note 3.

[13] This article is an official White Paper of Division 41 of the APA.

malleable in the face of pressure.

### 1. Police Interrogation Involves a Multi-step Set of Processes.

Police interrogation involves a multistep process designed to elicit incriminating admissions and full narrative confessions from suspects who are presumed guilty. In theory, this occurs by increasing the anxiety associated with denial and reducing the anxiety associated with confession.[14] Clearly, these objectives can be achieved through unlawful threats, promises, and physical mistreatment. The literature on wrongful convictions, however, supported by empirical research, confirms that even lawful interrogation tactics will lead not only guilty perpetrators but also some innocent suspects to confess.[15]

To achieve their goals, police investigators are advised to isolate the suspect in a private room, without family or friends, which increases the suspect's anxiety and his or her need for relief. In the process that ensues, the trained interrogator employs both positive and negative incentives. First, they confront the suspect in custody with strong accusations of guilt, without opportunity for denial, and may bolster these assertions by citing incriminating evidence, either real or manufactured. As the suspect is led to feel trapped by the weight of evidence, interrogators may then offer sympathy and moral justification, normalizing and minimizing the crime and leading the suspect to see confession as an expedient way out of his or her unpleasant predicament. Once the suspect is persuaded to admit guilt, the interrogators seek to convert that admission into a

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[14] F.E. Inbau, J.E. Reid, J. Buckley & B. Jayne, C*riminal Interrogation and Confessions* (4th ed. Boston: Jones and Barlett 2004).

[15] For an analysis of the suspect's decision-making process in this situation, Ofshe & Leo, *The Decision to Confess Falsely*, *supra*, note 3.

full narrative confession—on tape or in writing.[16] Both observational studies and self-report surveys of police confirm that these techniques are routinely employed.[17]

### 2. Certain Lawful Police Interrogation Tactics Increase the Risk of Eliciting False Confessions.

Aside from certain unlawful interrogation techniques such as physical abuse, threats of punishment, or promises of leniency or relief, other methods that have been upheld by the courts as lawful can elicit false confessions by altering a suspect's perceptions and motivations.[18] Three aspects of the interrogation process in particular can increase the risk.

The first risk factor for yielding a false confession concerns time. Most interrogations last from thirty minutes to two hours. Indeed, from a law enforcement training perspective, it has been suggested that interrogators will seldom require more than four hours to obtain a confession from an offender, even in cases of a very serious

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[16] Inbau et al., *Criminal Interrogation and Confessions*, *supra*, note 14.

[17] For example, see Leo, *Inside the Interrogation Room,* 86 J. Crim. L. & Criminology 266 (Winter 1996), Feld, *Police Interrogations of Juveniles: An Empirical Study of Policy and Practice,* 97 J. Crim. Law & Criminology 219 (2006); Kassin et al., *Police Interviewing and Interrogation*, *supra*, note 3; for an overview, see Leo, *Police Interrogation*, *supra*, note 3.

[18] Leo, *Police Interrogation*, *supra*, note 3; *see also* Leo & Ofshe, *Consequences of False Confessions, supra*, note 3, at 470 (detailing Luis Roberto Benevidez's confession as motivated by police officers' threats that they would put girlfriend in prison and baby in foster care if he did not confess and *the* judge's subsequent determination that the confession was admissible). Also see *Commonwealth v. Eiland,* 450 Pa. 566, 573-575 (1973) (overturning lower court's finding of voluntariness where confession was by a 20 year old with a tenth grade education who was isolated for several periods of time, who upon his initial interrogation refused to admit his involvement in the shooting but after eleven hours when told by police that he would get more lenient treatment if he confessed, he signed an incriminating statement, and who was not arraigned until twenty-five hours after arrest).

nature.[19] Yet in contrast to these parameters, in a large sample of proven false confessions in which time records were available, 34% lasted 6 to 12 hours, 39% lasted 12 to 24 hours, and the average was 16.3 hours.[20]

There are two psychological reasons why the risk of false confession increases over time despite repeated denials. First, research shows that people under stress seek to affiliate with others for the psychological, physiological, and health benefits that social support provides.[21] Hence, prolonged isolation from significant others constitutes a form of deprivation that can heighten a suspect's distress *and increase the urgency to escape the situation.* Second, depending on the hours and conditions of interrogation, sleep deprivation is often a source of concern. Laboratory experiments have shown that sleep deprivation heightens susceptibility to influence and impairs decision-making.[22] Indeed, performance decrements during sleep deprivation have also been observed in medical interns, motorists, and F-117 fighter pilots. Combining the results of numerous studies,

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[19] Inbau et al., *Criminal Interrogation and Confessions, supra,* note 14, at 310.

[20] Drizin & Leo, *Problem of False Confessions, supra,* note 1.

[21] See Schachter, *The psychology of affiliation: Experimental studies of the sources of gregariousness* (Stanford, CA: Stanford University Press) (1959); Rofe, *Stress and affiliation: A utility theory,* 91 Psychological R. 235-250 (1984); Uchino, Cacioppo, & Kiecolt-Glaser, *The relationship between social support and physiological processes: A review with emphasis on underlying mechanisms and implications for health,* 119 Psych. Bulletin 488-531 (1996).

[22] For a review, see Harrison & Horne, *The Impact of Sleep Deprivation on Decision Making: A Review,* 6 J. Experimental Psychol.: Applied 236 (2000).

researchers have concluded that: "overall sleep deprivation strongly impairs human functioning."[23]

A second interrogation tactic that can induce confessions from innocent people involves the presentation of false evidence, a method of confrontation by which interrogators may allege to have incontrovertible proof of the suspect's guilt—such as a fingerprint, blood or hair sample, eyewitness, or failed polygraph—even if that allegation is untrue. This tactic was employed in numerous proven false confession cases.[24] From a convergence of sources--including laboratory experiments and individual case studies—there is strong support for the proposition that this type of deception, while only sparingly used, puts innocent suspects at greater risk to confess by fostering confusion and by leading them to feel trapped by the weight of the case against them.[25] Hence, the National Research Council Committee to Review the Scientific Evidence on the Polygraph (2003) recently expressed concern over the risk of false confession that is produced by telling suspects they had failed the polygraph.[26]

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[23] Pilcher & Huffcut, *Effects of Sleep Deprivation on Performance: A Meta-Analysis* (1996).

[24] In 1989, for example, a detective told 17 year-old Marty Tankleff (accused of murdering his parents in the absence of any evidence) that his hairs were found on his mother, that a "humidity test" indicated he had showered (hence, the lack of blood on him), and that his hospitalized father had emerged from his coma to say that Marty was his assailant—all were lies. Tankleff confessed and spent nineteen years in prison before his conviction was vacated and the charges dropped in 2008. Kassin, *The Psychology of Confessions* at 13.

[25] For a review, see Kassin & Gudjonsson, *Psychology of Confessions, Review of the Literature*, *supra* note 3.

[26] National Research Council, Committee to Review the Scientific Evidence on the Polygraph, 2003. *The Polygraph and Lie Detection.* (Washington, DC: National Academies Press).

A third interrogation tactic that poses risk if used in the extreme is minimization, whereby a sympathetic interrogator minimizes the crime through "theme development," suggesting to suspects that their actions were spontaneous, accidental, provoked, peer-pressured, or otherwise justifiable by external factors. Analyses of numerous tape-recorded interrogations and transcripts have revealed these techniques are often used to imply promises and threats.[27] Indeed, research confirms that minimization tactics lead people to infer that they would be treated with leniency upon confession even when no explicit promises are made.[28] In one controlled experiment, for example, this tactic led 18% of innocent college students to confess that they cheated on an experimental problem that they were supposed to solve without assistance, a possible violation of the university honor code.[29]

### 3. Certain Suspects Are More Vulnerable to Influence and at Greater Risk Than Others.

It is clear that some suspects are dispositionally more vulnerable to influence than others, and hence at greater risk for false confessions. For example, youth is a risk factor for false confessions. Statistics show a disproportionate number of juveniles in the population of false confessors. In the Drizin and Leo database of 125 proven false confessions described earlier, for example, 35% involved juveniles, most of whom had

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[27] Ofshe and Leo, *The Decision to Confess Falsely, supra*, note 3.

[28] Kassin & McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15 Law & Hum. Behav. 233 (1991).

[29] Russano et al., *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 Psychol. Sci. 481 (2005).

confessed, often in vivid detail, to brutal murder.[30] As to what makes juveniles more vulnerable in this regard, developmental psychology research indicates that adolescents are not only more compliant and suggestible than adults but that their decision making is characterized by an "immaturity of judgment"—a pattern of behavior marked by impulsivity, a focus on immediate gratification, and a diminished capacity for perceptions of risk. To the adolescent not sufficiently focused on long-term consequences, confession may thus serve as an expedient way out of a stressful interrogation.[31] To further exacerbate matters, the National Center for Mental Health and Juvenile Justice estimates that the vast majority of justice-involved youth have diagnosable psychological disorders, also a risk factor for false confessions.[32]

Research shows that people who are intellectually impaired are also more vulnerable to influence in an interrogation. In the Drizin and Leo sample of false confessors, at least 22% were diagnosed with mental retardation, as measured by conventional intelligence tests.[33] This proportion is understandable. Often people with mental retardation exhibit a high need for approval, particularly in the presence of authority figures, and an acquiescence response bias by which they answer "yes" to a

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[30] Drizin & Leo, *Problem of False Confessions*, *supra*, note 3. Comparatively, of all persons arrested for murder, only 8% are juveniles (Snyder, *Juvenile Arrests 2004* (Washington, D.C.: Office of Juvenile & Delinquency Prevention, Office of Justice Programs 2006).

[31] For a review, see Owen-Kostelnik et al., *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 Am. Psychol. 286 (2006).

[32] See Redlich, *False Confessions and False Guilty Pleas, in Interrogations and Confessions: Current Research, Practice and Policy* (Lassiter & Meissner eds. Washington D.C.: APA Books (in press).

[33] Drizin & Leo, *Problem of False Confessions*, *supra*, note 3.

wide range of questions—even when an affirmative response is incorrect, inappropriate, or absurd.[34] Those with mental retardation are also highly suggestible, as measured by their susceptibility to leading and misleading questions. Indeed, research shows that people with mental retardation score higher than average on the Gudjonsson Suggestibility Scale, a psychological test commonly used to measure interrogative suggestibility.[35] Importantly, this suggestibility reflects an intellectual weakness, not a motive to lie or deceive others. In *Atkins v. Virginia,* (2002), the U.S. Supreme Court cited the possibility of false confession as a reason for its decision to exclude this group categorically from capital punishment.[36]

Finally, people with a history of serious mental health problems are also at increased risk of providing a false confession. Over the years, forensic clinical psychologists and psychiatrists have studied individuals with personality traits and mental disorders that may put them at risk. As psychopathology often involves such symptoms as distorted perceptions of reality, a proneness to confusion, anxiety, mood disturbances, lack of assertiveness, and feelings of guilt, persons with mental illness are over-represented in the population of false confessions.[37] At present, there is little research to show how specific disorders (such as anxiety, depression, and schizophrenia) impair an innocent suspect's ability to withstand interrogation. More important is that among prisoners who had been interrogated by police, those with diagnosed mental illness self-

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[34] Finlay & Lyons, *Acquiescence in Interviews with People Who Have Mental Retardation,* 40 Mental Retardation 14 (2002).

[35] Gudjonsson, *A Handbook, supra*, note 3.

[36] *Atkins v. Virginia*, 536 U.S. 304, (2002).

[37] For a review, see Gudjonsson, *A Handbook, supra*, note 3.

report a 22% lifetime false confession rate, a percentage that is higher than has been found in other populations.[38]

### C. Judges, Juries and Others in the Criminal Justice System Cannot Reliably Identify a False Confession, which if Admitted May Have a Disproportionate Effect on the Outcome.

The problem that people sometimes confess to crimes they did not commit is exacerbated to the extent that these false confessions are not readily detected or corrected by authorities. There is a commonsense assumption that judges, juries, and others can distinguish with accuracy between true and false confessions and discount the latter in their decision making, which will serve as a safety net for the innocent defendant. Yet recent research along with proven false confession cases has consistently failed to support this assumption.[39]

Part of the problem is that human beings are generally not adept at distinguishing truth and deception. Moreover, as a matter of common sense they reasonably trust confessions and other statements that are counter to the defendant's self-interest.

#### 1. False Confessions Can Corrupt Other Evidence, Creating an Illusion of Corroboration.

Another reason it can be difficult for judges and juries to identify false confessions, even in the context of a full trial, is that these confessions can taint other evidence, creating an illusion of corroboration. This phenomenon is grounded in a large body of psychological research on "behavioral confirmation bias," the tendency for

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[38] See Redlich, *Double jeopardy in the interrogation room: Young age and mental illness* 62 American Psychologist 609-611; also see Redlich, Summers & Hoover, *Self-reported false confessions*, *supra*, note 4.

[39] Kassin & Gudjonsson, *True Crimes*, *supra*, note 3.

people to alter their decisions and behaviors in ways that fit with their expectations.[40] Recent empirical studies have demonstrated the problem as well. In one experiment, for example, researchers presented five latent fingerprint experts with pairs of prints from a crime scene and suspect in an actual case in which they had previously made a match or exclusion judgment. The prints were accompanied either by no extraneous information, an instruction that the suspect had confessed (suggesting a match), or an instruction that the suspect was in custody while the crime was committed (suggesting an exclusion). Strikingly, the misinformation produced a change in 17% of the original, previously correct judgments.[41] In a second study, research participants witnessed a staged theft and made photographic identification decisions from a photographic lineup. One week later, individual witnesses, depending on the experimental condition to which they were randomly assigned, were told that the person they had identified denied guilt, or that he confessed, or that a specific other lineup member confessed. Influenced by this information, many witnesses went on to change their identification decisions. Among those who had made a selection but were told that another lineup member confessed, 61% changed their identifications to the confessor—and did so with confidence. Among those who had not made a previous identification, 50% erroneously went on to select the

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[40] For reviews, see R.S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 Review of Gen. Psychol. 175-220 (1998); R. Rosenthal, *Covert Communication in Classrooms, Clinics, Courtrooms, and Cubicles*, 57 American Psychologist 839–849 (2002).

[41] Dror and Charlton, *Why Experts Make Errors,* 56 J. Forensic Identif. 600 (2006).

confessor, again doing so with confidence.[42]

### D. An Admissible False Confession Should Not Bar Expert Testimony.

In contrast, many individuals ultimately proven innocent make false confessions due to the nature of the interrogation they faced (length of time, misrepresentation of evidence, minimization) or their own dispositional vulnerabilities (age, intellectual disabilities, mental illness) or, in many cases, both. Research indicates that some number of suspects—despite initial and often prolonged protestations of innocence—are induced over time to confess, less as a result of their own conduct and more as a result of the interrogation. In many of these instances, the confessions were particularly persuasive, containing crime facts that were not in the public domain and therefore were known only to the real perpetrator and police.

The plight of the innocent person induced to confess through interrogation is a difficult one. A suspect who confesses, even if that confession is false, will be treated more harshly throughout the process.[43] In many cases, once a suspect confesses, investigators tend to "close the investigation, clear the case as solved, and make no effort to pursue other possible leads."[44] Prosecutors often charge defendants who have confessed with the highest number of offenses and do not accept plea bargains.[45] Moreover, judges rarely suppress confessions and juries typically disbelieve claims of

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[42] Hasel & Kassin, *On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications,* Psychol. Sci (2008) (in press).

[43] Drizin & Leo, *Problem of False Confessions*, *supra*, note 1.

[44] *Id.*

[45] *Id.*

innocence made by defendants who have confessed.[46] When subsequently proven false confessors pled not guilty and proceeded to trial, the jury conviction rates ranged from 73%[47] to 81%.[48] If a confessor is convicted, he is then typically sentenced more harshly than other defendants.[49] In sum, a false confession may "contaminate the perception and treatment of a case as it makes its way through the entire criminal justice process."[50]

Despite its limitations, confession evidence is so powerful that "the introduction of a confession makes the other aspects of a trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained."[51] An analysis of case outcomes illustrates the point. In a study that examined proven false confession cases in the United States from 1971 to 2002, roughly four out of five innocent confessors who went to trial were convicted.[52] Confession evidence has thus been described as "inherently prejudicial and highly damaging" even when it is not supported by other evidence or later disproved beyond a reasonable doubt by DNA tests.[53]

Controlled mock jury research reinforces these case outcome data by showing that confession evidence typically has more impact on jurors than other potent forms of

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[46] *Id.*

[47] Leo & Ofshe, *Consequences of False Confessions, supra*, note 3.

[48] Drizin & Leo *Problem of False Confessions, supra*, note 1, at 961.

[49] *Id.* at 923.

[50] *Id.*

[51] *Colorado v. Connelly,* 479 U.S. 157, 182 (1986) (citation omitted).

[52] Drizin & Leo, *Problem of False Confessions, supra*, note 1.

[53] *Id.* at 961.

evidence and that people do not fully discount confessions even if it is logically or legally appropriate to do so.[54] In one experiment, participants were significantly prompted to vote guilty by a defendant's confession to police that was indisputably induced by an explicit promise of leniency.[55] In a second experiment, participants were significantly influenced by an indirect or "secondary confession" reported by an accomplice or jailhouse informant—even when told that this cooperating witness had a personal incentive to claim that the defendant had confessed.[56] In a third experiment, the presence of a confession significantly boosted the conviction rate even among jurors who perceived it to be coerced, among those specifically admonished to disregard such confessions, and among those who later reported that the confession did not influence their decisions.[57]

### E. The Research Regarding False Confessions Discussed Herein Is the Product of Well-Established Scientific Research Methods and Has Been Accepted in the Field of Psychology.

The body of research regarding false confessions that the APA is presenting to the court is the product of well established methods of scientific research such as case studies, surveys, controlled experiments and empirical analysis and the results have been widely accepted within the field of psychology.

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[54] Kassin et al., *On the Power of Confession Evidence, supra*, note 3.

[55] Kassin & Wrightsman, *The Psychology of Evidence*, *supra*, note 3.

[56] Neuschatz et al., *The Effects of Accomplice Witnesses and Jailhouse Informants on Jury Decision Making,* 32 Law & Hum. Behav. 137 (2008).

[57] Kassin et al., *Coerced Confessions, supra*, note 11.

### 1. Peer Review and Editorial Acceptance.

Most journals in which research on false confessions is published are peer reviewed (as in other sciences), highly selective (as measured by rejection rates), and high in impact (as measured by citation counts). As used by the National Science Foundation and other government agencies to make funding decisions, peer review is what distinguishes science from other means of acquiring knowledge. Peer review is a process that requires researchers to employ generally accepted methods of data collection, to analyze the results using generally accepted statistical analyses, and ultimately to draw the appropriate conclusions. Thus publication in a premier peer-reviewed journal, such as Law and Human Behavior, represents validation of the methods employed to produce the results. The scientific journals cited in this brief are all peer reviewed publications.

Science is orderly thanks to peer review. A well conducted study is published; if it is important, others will seek to replicate and extend the results. Once a body of research has grown in this way, the literature is summarized in comprehensive review in articles and books. The publication of scholarly books pertaining to false confessions thus provides yet another metric of general acceptance. In recent years, a number of books exclusively or substantially dedicated to this research area have been published, including the following:

> Gudjonsson, G. H. (1992). *The psychology of interrogations, confessions, and testimony.* London: Wiley.
>
> Gudjonsson, G. H. (2003). *The psychology of interrogations and confessions: A handbook.* Chichester, England: Wiley.
>
> Lassiter, G. D. (Ed.) (2004). *Interrogations, confessions, and entrapment.* New York: Kluwer Academic.

Lassiter, G.D., & Meissner, C.A. (Eds.) (2010). Interrogations and confessions: Research, practice, and policy. Washington, DC: American Psychological Association.

Williamson, T. (Ed.) (2006). *Investigative interviewing: Rights, research, regulation.* Devon, UK: Willan Publishing.

Wrightsman, L.S., & Kassin, S.M. (1993). *Confessions in the courtroom.* Newbury Park, CA: Sage Publications.

In addition, chapters on false confessions have been published by editors of several important scholarly archives, such as the *International Encyclopedia of the Social and Behavioral Sciences*, *Encyclopedia of Psychology and Law*, *Annual Review of Law and Social Science*, and *Encyclopedia of Forensic Science*.

### 2. Institutional Indicators of General Acceptance Within the Scientific Community.

The research regarding the phenomenon of false confession is generally accepted within the scientific community. This is evidenced in several ways by actions of major institutions within the field of psychology.

The American Psychology-Law Society ("AP-LS") ( Division (41) of the APA specializes in forensic psychology. AP-LS currently has more than 1,100 regular members who specialize in this area. AP-LS publishes *Law and Human Behavior,* its flagship journal, which has featured a number of articles pertaining to false confessions. In 2010, AP-LS published the official White Paper on the subject, which also formed the basis for a peer reviewed article published this year.

The Association for Psychological Science ("APS") was founded in 1988 to advance scientific psychology and its representation as a science on the national level. APS has demonstrated by its favorable editorial decisions that this research literature is generally accepted. In 2004, APS published "The Psychology of Confession Evidence: A

Review of the Literature and Issues," by Kassin and Gudjonsson, in its lead publication, *Psychological Science in the Public Interest.* Entire issues of this journal are devoted to single articles which, according to the editorial board (as set forth on the inside cover of each edition of the journal), are commissioned by the editors and then peer-reviewed "only after careful vetting of both the topic and the authors."

Finally, APA itself has sought to bring this body of research to the attention of courts through its amicus briefs. APA is the oldest and largest professional and scientific organization within psychology. As a scientific and educational organization, APA's mission is in part to promote the best research methods and to advance the application of research findings to the public welfare. American Psychological Association, *Bylaws of the American Psychological Association—Article 1: Objects.* (Retrieved from http://www.apa.org/about/governance/bylaws/index.aspx.) To this end, APA publishes many influential peer-reviewed journals in the field. Moreover, in recent years, APA has submitted amicus briefs in four state appellate cases advising the courts of the body of research regarding false confessions. APA's amicus briefs are submitted only after a rigorous three-tiered review process that assures, among other things, that the research on point that will be submitted to the court is sound and well-established.

### 3. Because Research Regarding False Confessions Is Counterintuitive, It Is Useful to the Trier of Fact.

As discussed above, the recent body of research regarding false confessions shows that triers of fact may not be able to rely on their common sense or intuition when evaluating a confession for its truth or falsity. It is common to wonder why an innocent person would confess, and that possibility is likely discounted by judges and juries. Extensive research using widely accepted scientific methods, however, shows that

innocent people *do* confess, and are more likely to do so when the factors discussed herein are present. Understanding this body of scientific knowledge can only assist the judge and the jury in evaluating the evidence.

## IV. CONCLUSION

Empirical research conducted over recent years has transformed our understanding of false confessions, how they occur, and why. This research has identified different types of false confessions as well as the dispositional and situational factors that increase their risk, many of which seem to be clearly present in this case. APA believes that this body of research is directly relevant to the question before this Court. Based on the scientific findings described above, the APA believes this Court should hold that the body of research regarding false confessions is well established and widely accepted within the filed of psychology and expert testimony about the research should be admissible.

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**CERTIFICATE OF COMPLIANCE**
**PURSUANT TO SUPREME COURT RULE 341**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 25 pages.

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## CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that on July 12, 2010, I filed this Brief for *Amicus Curiae* American Psychological Association by sending same by Federal Express overnight delivery to:

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Appellate Court Building
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And that I served this Brief for *Amicus Curiae* American Psychological Association upon the attorneys of record herein, sealed in a postage prepaid envelope and deposited in the U.S. Mail at Chicago, Illinois, to such attorneys at their business addresses as follows:

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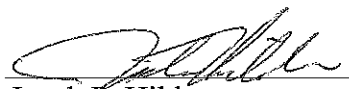

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