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The Evidence and the Expert:
Judgments of Their Relative Importance in Confession Adjudication

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Abstract

Forensic evidence is gaining prominence in both the media and in courts. As a result, the role of expert witness testimony in cases involving a disputed confession is unclear. The current study examined the effects of expert witness testimony, commonly-used interrogation tactics, and equivocal forensic evidence, on perceptions both the expert and the evidence. Results indicated perceptions of forensic evidence were a function of expert witness testimony, suggesting the influence of expert testimony on confessions is not limited to perceptions of the interrogation. In addition, evaluations of reliability and probative validity of forensic-type evidence indicated participants' difficulty in distinguishing between these concepts. Implications are discussed in terms of court proceedings and continued research on the role of the expert.

The Evidence and the Expert:
Their Relative Importance in Confession Adjudication

The Problem

Interrogations and confessions have recently received national attention. Increased public awareness of this legal and psychological process seems to stem from highly publicized cases in which questionable evidence was obtained through the interrogation process. From John Mark Karr's voluntary confession to the DNA exoneration of Jeffery Deskovic, the fact that confession evidence is problematic and unreliable cannot be ignored. The practice of interrogation in order to obtain a confession is a source of legal and psychological controversy (Kassin, 1997; Kassin, 2006; Kassin & Gudjonsson, 2004; Leo & Ofshe, 1998; Meissner & Russano, 2003). In order to understand the suspect and situation factors involved in false or unreliable confessions, continued research on custodial interrogation practices, perceptions of confessions and coercion needs to continue.

History

Interrogation tactics frequently used by investigators are psychologically coercive, yet are nonetheless legal (Leo, 1996a; Leo, 1996b). Investigators are trained to use deception (e.g., fabricating evidence) during interrogation, in the process of obtaining incriminating evidence concerning a suspects' involvement in a crime (Macdonald & Michaud, 1987). Procedurally however, courts routinely ruled on confession evidence in terms of a 'rational' confessor. If a suspect is

foolish enough to fall for police deception, they do so at their own peril (*Rhode Island v. Innes*, 1980; *State v. Jackson*, 1983).

For almost a century, case law has prohibited the use of “third-degree” tactics to elicit a confession (*Brown v. Mississippi*, 1936). Law enforcement is prohibited from physical abuse during interrogations. Due to this prohibition, investigators developed a comprehensive strategy to legally obtain information from an uncooperative suspect. Inbau, Reid, Buckley, and Jayne (2001) delineate nine steps of interrogation: 1) confront the suspect with a crime summary and evidence (real or fabricated); 2) offer possible explanations or excuses; 3) block attempts to deny with possible explanations (step 2); 4) overcome suspect explanations supporting their denials; 5) do not allow the suspect to disengage from the interrogation; 6) as suspect fatigues, maintain eye-contact and direct encourage an admission of guilt; 7) reframe the issue in terms of a good reason or bad reason to commit the crime; 8) elicit a full confession, and finally; 9) document the confession and have the suspect sign it. These steps compose a process known as the “Reid Technique”: an effective strategy to elicit confessions.

If suspects waive their *Miranda* warnings (*Miranda v. Arizona*, 1966), the interrogation can legally take place. The interrogation environment demonstrates to the suspect that they are isolated: usually taken to a predetermined ‘interrogation room’ with a specific layout: soundproof with no windows, one table, a straight-backed chair with no arm-rests, and ideally, a two-way mirror for observation. Often they will be left alone for a period of time for behavioral

observation. Isolation establishes environmental contingency management of suspects for investigators.

Confrontation takes place in several steps. The interrogation begins with an accusation of guilt that was pre-determined during the pre-interrogation interview. Confrontation includes the tactic *maximization*. Maximization generally includes the exaggeration of the seriousness of an offense, fabrication of evidence, and exaggeration of consequences. Conversely, *minimization* is used to downplay the offenses' seriousness or moral implications. Through minimization the interrogator behaves in a friendly understanding manner, offering face-saving excuses for the crime, and suggesting leniency in a confession is provided. Overall, confrontation forces the suspect to participate in the interrogation on the interrogators' terms.

Psychology and Interrogations

The conflict between obtaining a confession and protecting a suspect's rights currently has much to do with intention and veracity of law enforcement. In spite of video records made of interrogation, police use of lawful although coercive tactic occur on and off interrogation recordings. Police use of psychological deception, and expectation of lying from the suspect (Kassin, Goldstein, and Savitsky, 2003), creates an environment where factual accuracy is lost for law enforcement and sometimes the suspect's own memory (Henkel & Coffman, 2004). For example, the videotaped interrogation of Michael Crowe clearly depicts investigators telling Crowe his parents did not want to see him,

and cooperation was his best option. Given the practicalities of custodial interrogations, why would a suspect ever waive their *Miranda* rights.

Suspects erroneously believe their innocence will exonerate them (Kassin, 2005; Kassin & Norwick, 2004). To a naïve suspect (e.g., lacking “criminal sophistication”), cooperating with investigators, is intuitively the right thing to do. Cooperating can mean waiving *Miranda* and giving a truthful account of involvement, and for the truly innocent suspect – lack of involvement (e.g., in the form of an alibi). Before formal interrogation, all suspects, guilty or innocent, are interviewed first, a process whereby police formulate their impression of culpability. This process is known as the pre-interrogation interview. Because a suspect is free to leave, this process is not considered a “critical stage” of legal involvement, and can be lawfully conducted outside the protections of *Miranda*.

Innocent suspects that tell the truth are routinely judged to be guilty for reasons unrelated to guilt. Failure to maintain eye-contact and grooming behavior are often interpreted by investigators as diagnostic of deception (Meissner & Kassin, 2002). The confluence of misperceptions of deception and suspect ignorance places an innocent suspect in an unfortunate situation. During interrogations suspects are typically unaware of the “fifth prong” of *Miranda* that allows for any suspect to stop the interrogation and invoke their rights at any time (*Minnick v. Mississippi*, 1990). Lack of extrinsic evidence also imperils innocent suspects. Because this person is innocent, objective evidence is probably unavailable, and investigators have the option to lawfully lie to the suspect in the process of obtaining a confession. Indeed, if evidence of guilt

existed, an interrogation and confession would not be necessary for conviction.). Innocent suspects appear deceptive or guilty to investigators, which may increase their efforts to obtain a confession. There can be no question the nature of interrogations has changed from coercion to deception (Leo, 1992).

Jeffery Deskovic, a recent DNA exoneree, was confronted with polygraph evidence which he was lead to believe would demonstrate his guilt. He believed in the criminal justice system and, "being fearful for myself, I told them what they wanted to hear." Mr. Deskovic was incarcerated for sixteen years for a crime he did not commit (Jeffery Deskovic, personal communication, March 2007). Similarly, during the interrogation of Marty Tankleff, an investigator falsely informed him the man he was accused of brutally assaulting, his father, woke from his coma and told police Marty was the assailant. When retrospectively describing his reasoning process, Marty related that his father did not lie, so if he told police Marty was the assailant, he must have been (Kassin, 2007). With problems related to deceptive interrogations so clear, is it possible to effectively and ethically interrogate suspects? Strategic use of actual evidence may, in fact, increase the diagnosticity of interviews and custodial interrogations (Hartwig, Granhag, Strömwall, & Kronkvist, 2006).

Consistent with procedures recommended by Inbau et al., (1991), the interrogation experience is designed to be stressful (Skolnick & Leo, 1992). The environment of the interrogation room is purposely arranged to cause discomfort for the suspect. Investigators often obtain confession due to a suspects' desire to end the encounter. As a result, many confessions are recanted and the court

must apply a "totality of the circumstances" standard to evaluate the confession's validity, and the legality of tactics used to obtain it (*Columbe v. Connecticut*, 1961). Meaning, no interrogation tactic by itself is grounds for *per se* exclusion of the confession. It must be shown, given the "totality of the circumstances" that a suspect's will was lacking volitional capacity.

Interrogations without deception are a reasonable alternative to current practices. In an effort to address numerous aspects of evidence collection and suspect treatment, the *Police and Criminal Evidence Act* (PACE, 1986) in England and Wales established prohibitions on investigator use of deception (lying) in the process of interrogation. To ensure compliance, audio or video records are required to provide a means for scrutinizing the interrogation (Costanzo, 2004). Such legal safeguards are necessary to protect the validity of confessions. To protect suspects in the interrogation room, however, there are no ethical safeguards. Innocent suspects routinely confess to crimes they did not commit through psychologically deceptive tactics. Laboratory findings (Kassin & Keichel, 1996; Russano, Shpurik, & Berman, G., 2005) demonstrate suspects not only falsely confess to crimes, they sometimes come to believe they are guilty. These findings suggest psychological coercion tactics place suggestible, but innocent, suspects at considerable risk during interrogations.

Confessions in Court

Over the past fifty years, there has been a shift from physically coercive interrogation methods to sophisticated psychological deception strategies (*Brown v. Mississippi*, 1936; *Ashcraft v. Tennessee*, 1944; Leo, 1992; Leo, 1996b; Moffa

& Platania, 2007c). Lawful, coercive tactics used to obtain a confession became powerful evidence to establish guilt (Driver, 1968; McCormick, 1972). Can expert witness testimony sensitize jurors to the effects of these otherwise legal interrogation tactics? Current research focuses on the educational function of an expert witness. Preliminary findings (Moffa & Platania, 2007a) indicated participant-jurors' decision-making was not significantly affected by the presence of expert testimony, when evaluating the pressure and fairness of common interrogation techniques (e.g., maximization and minimization; see Leo, 1992). Participants focused on evidence corroboration, particularly forensic type evidence (e.g., DNA or fingerprints). Interestingly, the suspect interrogated in their paradigm was confronted with *fabricated* forensic evidence; evidence that could not be produced during trial because it did not in fact, exist.

Ultimately, jurors must apply their reason and judgment to evaluate disputed confessions that were allowed into evidence. If a motion-to-suppress safeguard (Stinson, Devenport, Cutler, & Kravitz, 1997) is unsuccessful and the confession is factually inaccurate, an innocent defendant must rely primarily on defense cross-examination for protection against wrongful conviction. Given the writings on confession evidence (McCormick, 1972) we can expect jurors will perceive this evidence as probative and highly incriminating. How do modern jurors evaluate confession evidence? Given the emergence of sophisticated forensic science techniques, will jurors consider confession evidence reliable, valid, or probative? We believe forensic evidence will serve a highly persuasive function in juror decision-making (Taylor & Fiske, 1975).

Media exposure to sophisticated forensic evidence, specifically DNA, has altered public perception of forensic-type evidence's reliability and utility to demonstrate a defendant's guilt or innocence (Stinson, Smith, Patry, Fitzsimmons, & Finney, 2006; Moffa & Platania, 2007b). Given the probabilistic nature of forensic DNA analysis *error* (e.g., one in one million), this evidence is afforded a status of high reliability (Golding, Stewart, Yozwiak, Djadali, & Sanchez, 2000; Schklar & Diamond, 1999). Jurors, however, may have difficulty differentiating a highly reliable method of placing a defendant at the scene of a crime from *also* demonstrating culpability. Criminal trials involving confessions may or may not include this type of forensic evidence. Likewise, a confession's validity may or may not be called into question (e.g., motion to suppress). The potential interaction of these evidence factors raises questions regarding their importance to jurors' decision-making.

Perceptions of Confessions

The present study is based on a series of studies conducted by Moffa (2006) and Moffa and Platania (2007a & b). In the first study, (Moffa & Platania, 2007a) we examined the role of interrogation tactics and expert witness testimony on perceptions of interrogation coercion. One hundred eighty-two undergraduates read a confession summary, excerpts from a homicide trial transcript, and testimony of the interrogator and expert witness. The transcript also included interrogator testimony. Results indicated perceptions of pressure and fairness of the interrogation process was a function of the tactic used by investigators. Investigator use of maximization resulted in the fewest guilty

judgments and the most decisions of coerced confession. Participants perceived the most coercive interrogation as that which utilized maximization as the primary tactic. Our participants indicated their dissatisfaction with the lack of evidence presented in the paradigm. The expectation of tangible evidence represents an important consideration for jurors when evaluating cases with disputed confessions. Generally, there was dissatisfaction with only the confession as evidence. This suggests specific evidence types may interact with interrogation tactics and expert witness testimony.

Moffa (2006) investigated the role of *fact-witness* testimony evidence in a paradigm similar to Moffa and Platania (2007a). Preliminary results suggest this type of testimony did not moderate the efficacy of the expert witness, although ratings of pressure and fairness of the interrogation were consistent with Moffa and Platania (2007a). Results from open-ended responses concerning important factors in decision-making were consistent across studies: participant-jurors were dissatisfied with the lack of objective, forensic-type evidence. We explained these finding in terms of a *CSI* effect (Stinson et al., 2006). Overestimation of forensic evidence reliability is characteristic of Stinson's *CSI* effect. We encountered an expectation of forensic-type evidence when it was absent, rather than an overestimation of evidence reliability.

DNA Evidence/Corroboration

Recently, John Mark Karr confessed to the murder of Jon-Benet Ramsey, provoking nationwide attention for both confessions and forensic evidence. When DNA testing failed to corroborate Mr. Karr's confession, this represented a

significant obstacle in the way of a murder indictment. The confession by itself was not enough to convince law enforcement or the public. In a research paradigm with facts similar to John Mark Karr's voluntary confession, Moffa and Platania (2007b) found that manipulating the presence or absence of DNA corroboration of the confession significantly affected perceptions of the confession. Seventy percent of participants in the DNA corroboration condition believed the confession, whereas 13% believed the confession was true without DNA corroboration. Both empirical and anecdotal evidence demonstrates a shift in perceptions of confessions, calling into question a "fundamental difference" from other types of evidence (*Arizona v. Fulminante*, 1991; Kassin & Neumann, 1997). In *Arizona*, the court established a "harmless error" rule for confessions, assuming not only a fundamental 'sameness' of confession evidence to other evidence, but also 'harmlessness' (Kassin & Sukel, 1997). The *Arizona* court reasoned, even if a suspects' confession was unlawfully obtained it would be considered harmless error if sufficient extrinsic evidence of guilt existed. The court had effectively removed a coerced confession, under specific circumstances, from grounds for successful appeal. In the same decision, the *Arizona* court opined that confession evidence was not fundamentally different from other types of evidence. Research demonstrates confession evidence is treated differently than other types of evidence, and results in significantly more guilty decisions (Kassin & Sukel, 1997).

Expert Testimony

Expert witness testimony takes place during trial when a judge determines specialized knowledge would be useful for the fact-finders (e.g., judge and jurors). In *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), the Supreme Court of the United States disaggregated the requirements of *Frye* from tenets of the Federal Rules of Evidence. Most state courts relied on *Frye*, whereas the federal standard conformed to the Federal Rules of Evidence. *Daubert* cast judges into the role of “screeners” as well as “fact-finders” (Greenhouse, 1992). In June of 1993, the United States Supreme court opined that the *Frye* standard was too restrictive, and was thereby replaced in federal courts by the Rules of Evidence. The Court spelled out criteria for judges’ use in evaluating the eligibility of expert testimony evidences’ relevance (e.g., materiality) and reliability (e.g., *scientific* validity).

Although evaluating scientific issues was “far a field from the expertise of judges,” the obligation was “to become amateur scientists to perform that [gatekeeper] role” (Bottoms & Davis, 1993). Justice Rehnquist expressed skepticism, citing the lack of education judges had concerning these matters (Bersoff, 1993). Judges were assigned an additional task in *Kuhmo Tire Co. Ltd. v. Carmichael* (1999). As an extension of *Daubert* criteria, all “specialized” knowledge fell under the same scrutiny as scientific or empirical information. For evidence and experts, judges must now determine: 1) What type of evidence *is* this?; and 2) What is to be done with it?

The purpose of this type of testimony is to provide fact-finders with information, otherwise unavailable to lay persons to assist their interpretation of “contested adjudicative facts” (Vidmar & Schuller, 1989, p. 133; Leippe, 1995). Judges face a difficult task determining admissibility (Faigman, 1995). Although Justices expressed some consternation surrounding the new roles of American judges, new and more flexible criteria were spelled out for judge’s consideration in evaluating expert testimony. Judges should consider the questions, 1) has this research or concept undergone peer-review in the relevant scientific community? 2) Is this concept testable or falsifiable (e.g., has an *empirical* determination of validity been conducted)? 3) Is there an error rate, and if so what is it? 4) Has the concept or technique been applied in accordance to professional standards? All of these issues weigh on the ultimate admissibility decision (Melton, Petrila, Poythress, & Slobogin, 1997; Wrightsman & Fulero, 2005).

In terms of applying *Daubert* criteria to the issue of interrogations and confession, two important questions emerge. First, what are the identifiable clinically (e.g., suspect intoxication) and empirically-based (e.g., deception) issues? Second, how will *this current judge* evaluate the potential testimony in terms of the probative versus prejudicial outcome on the jury? The specificity (e.g., video records, suspect testimony) whereby the issue arises will likely determine the ultimate admissibility of the expert. Does the judge believe the issue raised concerning the confession reaches a threshold for including an expert? Will the exclusion of the expert constitute “reversible error” by an

Appellate court? All of these questions serve as extra-scientific factors for inclusion criteria.

Empirical Expert Testimony

Expert witness testimony addressing the merit of interrogations and confessions faces many obstacles, similar to eyewitness or even forensic testimony (Kovera & McAuliff, 2000). According to Ivcović and Hans (2003), both judges and jurors consider evaluating expert testimony a difficult task. Likewise, in a confession case the expert has a difficult educational and persuasive role. In terms of the social psychology of confessions, the expert's task is to relate comparatively complex and abstract information (e.g., acquiescence or suggestibility; see Gudjonsson, 2003). Different factors contribute to the difficulty of the expert's task, and research suggests gender moderates the cognitive method of processing the testimony evidence (Voss & Van Dyke, 2001). Men tend to process this information heuristically, focusing on evidence to organize the task, whereas women process more holistically with a focus on narrative fidelity (Kuhn, 2001). A reasonable *a priori* assumption would be women tend to be receptive to effective witness communication, whereas men would respond better to the application of information (research) to the facts of the case.

Boccaccini and Brodsky (2002) investigated factors involved in believability of expert witness testimony. Results from a telephone survey of over four-hundred community members indicated "academic" expert witnesses were not as believable as practicing clinicians (7% versus 82%). This finding is especially problematic for confession experts who are likely academic social

psychologists, although external validity of findings is questionable. The majority of studies evaluating the efficacy of expert testimony utilize eyewitness paradigms, perhaps due to the widespread representation in the literature (Cutler, Penrod, & Dexter, 1989a; Kassin & Bardollar, 1992; Loftus, 1980).

What expert testimony characteristics are most pragmatically effective? Kovera, Gresham, Borgida, and Grey (1997) investigated different types of expert witness testimony in order to gauge relative effectiveness. They differentiated between standard (e.g., summary of research), repetitive (e.g., summary of research with additional summary), and concrete (e.g., summary of research plus hypothetical linking research to case facts). Two hundred eighty-nine students watched a 3.5 hour videotaped trial simulation that included expert testimony. Results demonstrated the efficacy of repetitive and concrete expert witness testimony to significantly affect verdict. In terms of expert witness persuasiveness, results from Brekke and Borgida (1988) coincide with Kovera et al., confirming the efficacy of concrete testimony. Additionally, concrete testimony had the greatest effect when presented early during the trial.

These results may have limited applicability to confession experts for several reasons. First, it can be difficult for experts to testify at all, and admissibility has been successfully challenged (*New Jersey v. Free*, 2002). Second, the state of the science on interrogations and confessions, as well as proscription spelled out in the Federal Rules of Evidence present significant legal obstacles for the use of “hypotheticals” for applying expert testimony to case facts. Moreover, experts testify at the *end* of a trial, a factor affecting the

ecological validity of the 'order-of-testimony' finding. Overall, the expert witness should be more probative than prejudicial and avoid ultimate issue testimony. As related to interrogations and confessions, the expert assumes the role of educator, and provides the judge and jury with information otherwise unavailable. Judge's decide if this information is "beyond the ken" of jurors (Schmechel, O'Toole, Easterly, & Loftus, 2006).

Clinical Expert Testimony

Given that expert witness testimony sensitizes jurors to eyewitness evidence (Cutler, Dexter, & Penrod, 1989b), what benefit can expert witness testimony provide the jurors in terms of clinical factors associated with unreliable confession evidence? Weiss (2003) discusses clinical factors associated with invalid or unreliable confessions, as well as the *Miranda* waiver process that precedes custodial interrogation (Leo, 1996a). Using the mnemonic *MIRANDA*, Weiss described individual suspect factors associated with both unreliable confessions and relevant issues for expert testimony. The first factor, *Mental Illness* has several demonstrable facets. In terms of major Axis I diagnoses, depressive disorders may be accompanied by feeling of guilt and helplessness, and under severe stress, hallucinations (American Psychiatric Association, 2000; DSM-IV-TR). Only in the latter case (e.g., Major depression with psychosis) could voluntariness be mitigated by the disorder. Schizophrenia, especially paranoid type with delusions, seems likely to contribute to factually inaccurate confessions. If a confessor does not share 'consensual reality' with investigators, it seems difficult to hold individuals legally responsible for their incriminating

statements. Ultimately, mental illness will be a factor for determining “the totality of the circumstances” surrounding the confession.

In *Colorado v. Connelly* (1986), Connelly voluntarily reported a homicide he had committed to Denver police. He waived his *Miranda* warning prior to confessing, and by all outward appearances, his confession was knowing, voluntary, and intelligent. Upon psychiatric evaluation, it was shown that Connelly was suffering from active psychotic symptoms at the time of his *Miranda* waiver and confession. From a clinical perspective, Connelly’s judgment was grossly impaired and cast doubt on the fidelity of the waiver and confession. The Supreme Court granted *certiorari* and held that neither Connelly’s 5th nor 14th Amendment due process right had been violated, and furthermore, lack of coercive interrogation practices demonstrated free will. Not all schizophrenics lack criminal responsibility, and likewise, not all schizophrenics lack autonomy of will in the eyes of the law. Therefore, mental status or diagnosis is not dispositive for questions of voluntariness.

The second factor identified by Weiss is *Intoxication*. Crime routinely coincides with substance use, and interrogations involving impaired suspects casts doubt on a knowing, voluntary, and intelligent waiver. Investigators may actually attempt to capitalize on a suspect’s vulnerability. Whereas intoxication is not a defense to a crime, it cannot be cause for exclusion of confession evidence. Intoxication does, however, call into question the validity of the confession and waiver of *Miranda* rights.

The third factor, perhaps most pervasive, is Mental *Retardation*. Although the term is pejorative, it fits the acronym and is a robust risk factor. Clinical and empirical findings contribute to understanding how borderline intelligence (*FSIQ* < 70) is defined. Acquiescence to authority or the propensity to behave in an agreeable or yea-saying manner when interacting with authority is characteristic of lower intelligence (Nowak, Vallacher, & Miller, 2003; Appelbaum, 1994). These individuals are especially vulnerable if defense council is not made available to them prior to questioning. Interrogation of suspects with lower *FSIQ*, raises questions regarding comprehension and waiver of *Miranda*. Findings suggest both juveniles and suspects with low IQ do not understand the implications of *Miranda* waivers.

The fourth factor, acquiescence, which is a characteristic of suspects with lower IQ, also applies to other suspects in the interrogation room. The tendency to answer questions in the affirmative, regardless of context, is a substantial factor in unreliable confessions. Acquiescence to authority often entails the syllogistic reasoning, a) the police are authority; b) the police are good; therefore, c) obeying the police is good. Acquiescence is a difficult clinical construct to measure, although the consequences are discernable in an *ex post facto* analysis. According to Weiss, evidence of acquiescence is revealed by affirmative answers to contradictory questions.

The fifth factor, *Narcotic withdrawal*, usually refers to withdrawing from heroin or opioids (e.g., oxycodone), or benzodiazepines (e.g., diazepam). The consequences of this withdrawal can entail desire for the drug that overshadows

a suspect's ability to act in their best interests legally. If the tactic minimization was employed by police, offers of treatment could potentially induce a suspect to *trade* the confession for secondary gain (e.g., methadone treatment). Weiss assert the adage *in vino veritas* as intuitive rationale for law enforcement to obtain accurate incriminating statements with less resistance. From a clinical perspective, suspects' statements during periods of intoxication or withdrawal are likely unreliable (Antick & Goodale, 2003).

The sixth factor, *Deception*, represents one of the most problematic tactics employed, although not the most frequent according to detective self-report (Kassin, 2007; Kassin, et al., 2007). We know the tactic maximization (e.g., fabricating evidence) and minimization (e.g., feigning friendship) are perceived by experimental participants as inherently coercive and pragmatically effective in generating confessions (Kassin & McNall, 1991; Moffa & Platania, 2007). Case law supports the legality of deceptive interrogation practices (*U.S. v. Ferrara*, 1967; *Frazier v. Cupp*, 1969; *Illinois v. Perkins*, 1990). Characteristically, the courts' rationale is if a suspect is foolish enough to fall for the deception, then it is at their own peril. In terms of "totality of the circumstances" evaluations of confessions (*Columbe v. Connecticut*, 1961), the facts must demonstrate the suspects will was overborne (Weiss, 2003).

The final factor making up the *MIRANDA* mnemonic is *Abuse*. The *Brown* decision in 1936 established that physical abuse violates the 4th amendment. At the time, the court reasoned an interrogation was a kind of search, and psychological coercion was not "reasonable". Clinically, physical abuse can result in a fight-or-

flight reaction, or more likely an acquiescent or “learned-helplessness” response (Seligman, 1975). If suspects believe confessing will end the abuse, then providing a confession becomes a reasonable alternative. Substantive and procedural due process protections were applied in *Miranda* (Samaha, 2002).

In summary, the *MIRANDA* mnemonic is useful for consulting psychologists and attorneys to identify factors associated with unreliable confessions. We know interrogation is inherently stressful to suspects and perceived as coercive by participant-jurors (Moffa & Platania, 2007a). Moreover, the values of psychologists differ in fundamental ways for the legal system (Melton, Petrila, Poythress, and Slobogin, 1997). The identification and communication of these clinical factors to the court may be an effective safeguard due to the clinical nature of the expert testimony (Boccaccini & Brodsky, 2002; Ivković & Hans, 2003). Clinical evidence, however, must maintain the same evidence fidelity as research-based findings in terms of methods and testimony in court (Kassin, 1998).

In order for courts’ to ensure the appropriateness of expert witness testimony, criteria must be in place to evaluate the message and the messenger. For seventy years, the *Frye* test served as one criterion for some courts in the United States to evaluate expert testimony (*Frye v. United States*, 1923; Wrightsman & Fulero, 2005). This test took into consideration the well-recognized standards for principles or evidence in a certain field being, “sufficiently established to have gained general acceptance in the particular field to which it belongs” (Melton, Petrila, Poythress, & Slobogin, 1997, p. 20). In

Frye, the polygraph was at issue and failed to achieve the general acceptance standard for use as lie-detection evidence. Critics of this test cited the conservative nature of the standard, thereby limiting cutting-edge or state-of-the-science concepts or procedures that would reasonably be acceptable testimony. Moreover, some concept can be *erroneously* accepted by the relevant community, and ultimately cause harm the standard seeks to avoid.

Recent DNA exonerations confirm empirical and anecdotal evidence concerning false confessions. False confessions take place in this country, and innocent people are incarcerated for crimes they did not commit. With the effective use of safeguards, including expert witness testimony, it is possible to reduce the problem of wrongful convictions. Until widespread recognition of interrogations, confessions, and wrongful convictions takes place, continued research is necessary to provide credibility for system variables we can improve for arrival at best practices.

The current study examined participant-jurors' perception of interrogation tactics and expert testimony in a paradigm that included forensic-type trace evidence: blood from the victim and another source that may or may not be the defendant. We were interested in how participant-jurors evaluated this equivocal forensic evidence? Research suggests the *CSI* effect (tendency to overestimate the reliability of forensic evidence) is more pervasive than only inflating perceptions of reliability (Moffa & Platania, 2007b; O'Neil, 2007). In both studies, participants evidenced a "pro-prosecution" or conviction bias when evaluating evidence: when forensic-type evidence exculpated, rather than incriminated a

defendant, it was less important to the decision-making process. When exposed to coercive interrogation tactics and expert testimony, how will participants evaluate the reliability and validity of forensic-type evidence? Validity, used in this current evidentiary context, refers to the objective reality of an evidences' ability to prove defendant culpability (hereinafter probative-validity). Evidence with probative-validity is not only reliably obtained; it is also accurate (valid and probative) in demonstrating culpability.

The present study measured participant-jurors' perception of reliability and probative-validity of forensic type evidence, as well as coerciveness (pressure and fairness) of a custodial interrogation. Additionally, we tested the effect of expert witness testimony on critical interrogation (pressure and fairness) and evidence factors (reliability and probative-validity).

Hypothesis 1: We predicted a significant Tactic \times Expert interaction on ratings of interrogation pressure and fairness, and evaluations of probative validity of evidence.

Hypothesis 2: Verdict preference and decisions of voluntary or coerced confession will be a function of Interrogation Tactic.

Hypothesis 3: Perceptions of the interrogating detective and ratings of the strength of the defense and prosecution's case will be a function of interrogation tactic and expert testimony.

Method

Participants

One hundred eighty-nine undergraduates participated in this study either for extra credit or as fulfillment of research obligation for course credit. Thirty-eight percent were male, and 63% reported their political views as liberal or slightly liberal. All participants were treated in accordance with APA ethical considerations. See Appendix A for approved Human Subjects Review Board application.

Materials

A trial transcript similar to Moffa and Platania (2007a) was used, depicting a fact summary, interrogation excerpt, and trial excerpt. Presence or absence of expert testimony about interrogations and confessions, and interrogation tactic varied. Expert testimony took the form of “concrete” testimony, containing a summary of research and the application to case facts (Kovera, Gresham, Borgida, & Gray, 1997). Interrogations depicted detective use of one of three tactics: *maximization* (e.g., presentation of false evidence, “scare” tactics); *minimization* (e.g., down-playing moral responsibility, “befriending” the suspect); or, a *length* of interrogation manipulation (e.g., the entire interrogation lasted 10 hours and 10 minutes, with no breaks).

Forensic evidence, the victim’s blood, was included in this paradigm in all conditions. In order to determine the importance of this evidence to jurors, and to test the *CSI* effect, the forensic evidence was ambiguous (Kassin, Reddy, & Tulloch, 1990) concerning the defendant’s guilt (blood only matched the victim).

Design and Procedure

After participants provided written consent, they responded to items concerning demographic information and read a transcript. After reading a transcript containing a fact summary, interrogation, confession, and trial excerpt, all participants responded to a 40-item questionnaire. These items measured perceptions of important trial factors: pressure and fairness of the interrogation, credibility and accuracy of detective and expert, importance of forensic evidence, verdict, and voluntariness of the confession. Transcripts varied based on the type of interrogation tactic and presence or absence of expert testimony. Transcripts represented a 3 (Tactic: maximization, minimization, or length) x 2 (Testimony: expert or no expert) between-subjects factorial design. See Appendix B for all stimulus materials.

Results

Hypothesis 1

A multivariate analysis of variance was performed to investigate the effects of interrogation tactics and expert testimony on perception of the interrogation process. Two dependent variables were used: pressure to confess and fairness of interrogation procedure. The independent variables were interrogation tactic and expert testimony. Preliminary assumption testing was conducted to check for normality, linearity, univariate and multivariate outliers, homogeneity of variance-covariance matrices, and multicollinearity with no serious violations noted. There was a significant effect for tactic on the combined dependent variables; $F(4, 364) = 8.25, p < .0001, \text{Wilks' Lambda} = .84; \text{partial eta}$

squared = .083. Tests of between-subjects effects revealed a significant effect of tactic on “pressure on the defendant to confess”, $F(2, 183) = 14.05, p = .000, \eta^2 = .13$. Scheffé’s test of multiple comparisons indicated maximization differed from minimization at $p < .0001$ ($M_s = 5.91$ versus 4.79 , respectively). Minimization also differed from the length condition at $p = .004$ ($M_s = 5.52$ versus 4.79 , respectively). Ratings for measures were scaled 0 (not at all) to 7 (completely).

Univariate ANOVA revealed a significant main effect of Expert on perceptions of the probative validity of blood evidence., $F(1, 183) = 10.25, p = .002$, partial eta squared = .05. Ratings of probative validity were significantly higher for participants exposed to expert testimony compared to those not exposed (3.00 v. 1.94 , respectively). Ratings were scaled 0 (not at all probative) to 7 (very probative). Responses on this dependent measure were not normally distributed: 67% of responses were between 0-3 range. See Figure for mean ratings of probative validity as a function of interrogation tactic and expert testimony.

Hypothesis 2

Hypothesis 2 received partial support. Log-linear analysis revealed a tactic * confession association (IV/DV) approaching significance: $\chi^2(2, N = 189) = 5.58, p = .06$. Pearson Chi-Square indicated ninety-two percent of participants exposed to maximization believed the confession was coerced, compared to minimization (77%) and length manipulation (73%), $\chi^2(2, N = 189) = 7.37, p = .025$.

Hypothesis 3

MANOVA revealed significant effects of tactic on three items measuring perceptions of the detective's testimony: $F(6, 364) = 3.99, p = .001$, Wilks' Lambda = .88; partial eta squared = .062. Tests of between-subjects effects revealed a significant effect of tactic on perceptions of the detective's credibility, $F(2, 183) = 5.55, p = .005, \eta^2 = .07$, accuracy of detective testimony, $F(2, 183) = 11.39, p < .001, \eta^2 = .11$, and consistency of detective testimony: $F(2, 183) = 7.60, p = .001, \eta^2 = .07$. in all instances, ratings were highest when participants were exposed to the length manipulation: ($M_s = 4.13$ v. 4.46 v. 4.76 , respectively). When unlawful interrogation tactics were portrayed, participant's ratings of detective credibility, accuracy, and consistency were the lowest: ($M_s = 3.06$ v. 3.01 v. 3.56 , respectively).

Separate univariate ANOVA's revealed no significant differences in ratings of the strength of prosecution and defense case as a function of tactic and expert.

The CSI effect

Finally, we examined the relation between participant perceptions of reliability and probative validity of forensic type evidence. These items were significantly correlated, $r(189) = .49, p = .000$. Using Multiple Regression Analysis, the items "how likely is it that the defendant committed the crime", "how important was the prosecution's evidence", "a confession is more probative than DNA evidence", and "reliability of blood evidence" served as predictors and were tested for their contributions to the criterion variable "probative-validity".

Predictor variables were chosen based on their differential importance to the evaluation of probative-validity. The model obtained was significant, $F(4, 184) = 16.20, p = .000, R^2 = .24$. When examining individual predictor contributions, it was noted that only the item “reliability of blood evidence” achieved individual significance, $t(184) = 7.33, p = .000$. The “reliability of blood evidence” predictor explained 22% of the model’s entire variance, suggesting a either a prominent role for perceptions of evidence “reliability”, or inability to distinguish between the concepts of “reliability” and “probative-validity”.

Due to the importance of perceptions of reliability on judgments of probative-validity, additional regression analyses were conducted. Using the predictors “strength of the prosecution’s case”, “importance of prosecution’s evidence”, “importance of defense’s evidence”, and “accuracy of the detective’s testimony”, a significant model was obtained, $F(4, 184) = 4.28, p = .002, R^2 = .09$. The predictor accounting for most variance explained was “importance of the prosecution’s evidence”, and individually explained 3% of the variance. Of note, the predictor “accuracy of detective testimony” approached significance, $t(184) = 1.78, p = .07$.

Discussion

Overall, we received partial support for our hypotheses, with two important findings. First, we replicated Moffa and Platania’s (2007) results regarding perceptions of interrogation tactics and increased effect size for that finding. Participants exposed to interrogation tactics differentiated between levels of coercion, indicated by post-hoc comparisons. Additionally, we were able to

discern differences in proportions for ratings of voluntariness of confession as a function of interrogation tactic. Maximization was perceived as more coercive than minimization, but not more coercive than length of interrogation manipulation. Participants seem to intuit coercion from prolonged periods of isolation. This finding was demonstrated across experimental settings (Russano, Shpurik, Kassin, & Berman, 2006). Related to interrogation tactic, accuracy of detective's testimony was again a function of tactic, with lowest ratings of accuracy for maximization. In this paradigm, the detective's testimony was somewhat evasive (e.g., failure to admit any wrongdoing), suggesting that testimony should be honest and forthcoming. These participants indicated in open-ended responses dissatisfaction with the detective's "lying about the fact of interrogation." These findings suggest interrogating detective testimony should provide jurors with some admission of pressure, as limited by current laws. Conversely, cross examination should accentuate areas where interrogators minimize the effect or use of a specific, psychologically-coercive interrogation tactic.

The second important finding involves the expert witness. In previous studies (Moffa, 2006; Moffa & Platania, 2007a), there was some difficulty finding an effect for the expert witness. When forensic evidence was included in the paradigm, a main effect for the expert emerged. Overall, ratings of forensic evidence probative-validity were lower when participants were exposed to expert witness testimony on *confessions*. Whereas ratings of pressure and fairness of interrogation remain unaffected by the expert, forensic evidence factors show significant differences. It is possible the expert's testimony sensitized jurors to

the effects of specific tactics (e.g., maximization) and their psychological effects in the interrogation room, while simultaneously modifying perceptions of other types of evidence. Additionally, evaluation of forensic evidence, in terms of interrogation tactic, revealed interesting findings. Probative-validity ratings were lowest when exposed to both maximization and expert testimony. Participants likely ascertained the difference between fabricated evidence (presented during the interrogation) and actually, although equivocal, evidence presented at trial. This difference resulted in *less* belief or reliance on *real* evidence. These implications for actual trials involving confessions and other evidence deserve further empirical investigation. Interestingly, the smallest difference for probative-validity ratings across expert testimony condition was for the length manipulation. Given that no interrogation tactics were portrayed, the expert testimony was least applicable, although length is mentioned as a factor involved in known false confessions (www.innocenceproject.org).

We believe our findings are in line with Kassin and McNall's (1991) explanation of participant-juror perceptions of minimization: no harsh interrogation tactics were necessary when actual evidence existed. This is reflected by our highest mean rating of probative-validity occurring in the minimization condition. We know maximization is perceived as coercive by participant-jurors. *Minimization* is the tactic that seems most amenable to expert witness testimony influence. Given the preliminary confirmation of Kassin and McNall's explanation of participant-jurors' evidence perception for minimization, this expert witness finding begs further investigation. In terms of the present

research, both the evidence and the expert demonstrate differential importance when examined in isolation, as well as together. Meaning, expert testimony on interrogations and confessions affected participant perceptions of different types of evidence relevant to the adjudication process: the interrogation process and confession evidence, as well as forensic-type trace evidence. This finding stands to reason, due to intricate way actual and fabricated evidence may be employed in confession adjudication. These findings demonstrate the potential efficacy of expert witness testimony on interrogations and confessions to fundamentally undermine perceptions of reliability and validity of real, probative trace evidence, when police have previously misled a suspect to believe some other fabricated evidence would incriminate him. These findings also demonstrate the complex interrelations of evidence types with one another, and with tactics and testimony.

Given the emerging effect of expert testimony on interrogations and confession, as well as evidence factors, perceptions of reliability and probative-validity are important to understand. Meaning, how do these factors relate to one another, in addition to the evidence they are used to describe? The quality of evidence is intrinsically neutral outside of individual perceptions and evaluations stemming from perceptions. All evidence offered at trial could be differentially perceived as highly probative or reliable for reasons entirely unrelated to empirically derived measures of reliability, or scientific studies on accuracy. Most jurors probably do not take into account statistical or quantitative evaluations, based on existing data. Rather, they assign subjective and qualitative evaluations, based on their personal exposure to stimulus making up cognitive

schemata that govern idiosyncratic evaluations. Amount of variance evidenced for qualitative evaluations of evidence as a function of differential evidence quality, compared to pre-existing belief is an empirical question relating to the relative contributions of beliefs and case-specific factors to qualitative evaluations. Which is more salient, new information or previously held attitudes? Do evaluations become governed by *states*, or current facts, or are they predetermined by specific *traits*, preexisting before exposure to any kind of evidence? Future research should investigate juror characteristics, as related to decision-making processes. Specific measures, like the forthcoming *CSI* scale should be utilized to better understand the nuances of specific factors concerning this multifaceted decision-making process.

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Appendix A

ROGER WILLIAMS UNIVERSITY
HUMAN SUBJECT REVIEW BOARD
COVER SHEET FOR NEW INDIVIDUAL RESEARCH PROJECT PROPOSALS

Name of Principal Investigator: Morgan Moffa
Co-Investigator: Judith Platania, Ph.D.
Date of Submission: July 27, 2007
Department: Psychology
School: College of Arts and Sciences
Names of Principal Investigators: Morgan Moffa
Name of Faculty Advisor: Judith Platania, Ph.D.
(required for students)
Title of Research Project: The Evidence and the Expert: Their Relative Importance in Confession Adjudication
Grant funding supporting this research: None

Researcher code of ethics: I declare that I have read the Roger Williams University Statement of Researchers' Ethical Principles for the Protection of Human Subjects of Research and am familiar with my obligations hereunder. Furthermore, I agree to abide by that Statement of Ethical Principles adopted by Roger Williams University as part of the Human Subject Review Board Policy.

Morgan Moffa
Investigator's signature

Review status sought by principle investigator - Circle one using the guidelines published by the HSRB. Note that the HSRB may change the status of the review.

EXEMPT EXPEDITED FULL

For HSRB Board use only:

Committee decision regarding review status:

EXEMPT ✓ EXPEDITED FULL
✓ Approved Judith Platania 8/17/07
Resubmit Signature of Chairperson Date
Isaura de Abreu 8/22/07
Signature of Chief Academic Officer Date

Appendix B

Informed Consent Form

Title of Study: The Evidence and the Expert: Their Relative Importance in Confession Adjudication

Principal Investigator: Morgan S. Moffa, B.A., B.S.
Co-Investigator: Judith Platania, Ph.D.

- 1. Purpose of the Study: This study will examine juror perceptions of justice issues. A minimum of 200 participants will be included in this study.
2. Procedures Experienced by Participants: By participating in this study, you will be asked to view a videotaped interrogation and trial summary. You will then fill out a questionnaire on your response to the situation presented. Participation should take approximately twenty to thirty minutes, and the questionnaires will be completed in the given time today.
3. Confidentiality and Anonymity: Only the investigators listed above will have access to your responses, which will ensure your confidentiality. Additionally, your name will only be written on your consent form, which will be collected and maintained separately from your questionnaire. Thus, your responses will remain anonymous.
4. Your Rights: You have the right to decline participation without any penalties or prejudice because participation is strictly voluntary. Additionally, at any point in the study if you do not feel comfortable or no longer want to participate, you have the right to withdraw from the study without prejudice or penalty. You may also ask questions at any time during the course of the study and you may contact the primary investigator (whose name, email address and telephone number appear at the bottom of this form) at any time after you have participated in the study.
5. Compensation for Participation: There will be no compensation for your participation in this study given by the principal investigator. An individual professor at his/her discretion may give compensation if this study was solicited during his/her course.
6. Risks and Benefits of being a Participant: No physical, psychological, or emotional risks are associated with this study. At any time during your participation, you are allowed to withdraw from this study without facing any penalties. A potential benefit is that you might have a better understanding of how psychological research is conducted.

More Information: After participation, please feel free to contact Dr. Judy Platania in FCAS 122, by email at jplatania@rwu.edu, or telephone 254-5738 should you have any additional questions.

This certifies that I _____ have given my full consent to
Print your name
participate in this study. I am at least 18 years of age or older. I have read this form and fully understand the content.

Participants Signature Date

This certifies that I have defined and informed the participant named above of all elements pertaining to this research study.

Principal Investigator Date

Debriefing Statement

We appreciate your participation in our study on juror perception. The responses you provided will be coded and analyzed in order to determine the efficacy of an expert witness in criminal cases involving a disputed confession. For additional information about confession evidence, the following is an excellent resource:

Kassin, S. M., & Gudjonsson, G. H. (2004). The psychology of confessions: A review of the literature and issues. *Psychological Science in the Public Interest*, 7(2), 3-68.

If you have any concerns regarding this study, please feel free to contact Dr. Judith Platania in the Feinstein College of Arts and Sciences Building Office 106, via e-mail at jplatania@rwu.edu or at 401-254-5738. Thank you for your participation. *If you are experiencing stress and need assistance, please contact the Roger Williams University Counseling Center at (401) 254-3124.

Tactic

- 1 = Maximization
- 2 = Minimization
- 3 = Length

Expert Testimony

- 1 = Expert
- 2 = No Expert

Denotes experimental condition identifiers starting on page 47.

SUPERIOR COURT OF THE STATE OF RHODE ISLAND
FOR THE COUNTY OF BRISTOL

DEPARTMENT NO. 101 HON. RICHARD C. SHAWCROSS, JUDGE

THE PEOPLE OF THE STATE OF RHODE ISLAND,

PLANTIFF,

VS.) NO. CZ103609832

GARY HALL,
DEFENDANT.

REPORTER'S PARTIAL TRANSCRIPTS OF PROCEEDINGS
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DAY	DATE	SESSION
MONDAY	MARCH 8, 1999	A.M.

MICHAEL B. STEVENS, CSR#3140
OFFICIAL REPORTER



1/1

The following is a summary of *United States v. Hall*, a homicide case. The State alleges the defendant, Gary Hall, stabbed his estranged ex-girlfriend Susan Watson on the night of August 25th outside Shooters bar. The same evening Officer McKinnon went to Hall's residence to find out where he was at the time of the incident. Hall couldn't provide an alibi, stating that after arriving home from work, he ate dinner and then watched television until the police arrived. Officer McKinnon requested that Hall come to the station for further questioning.

At the police station Hall was led to a small, windowless room where he met homicide detectives David Chen and Martin Fuller. From the beginning of the interview, detectives told Hall he was the focus of the investigation, due to motive (jealousy about Watson's seeing another man) and opportunity (he knew her place of employment and shift schedule). At 10:30 pm police read Hall his *Miranda* warnings, which he said he understood and then waived. At that time, the custodial interrogation began.

Detective Fuller engaged Hall with hostility and harsh, directed questioning. He asked Hall, "Do you have any idea how serious this is?" Hall expressed confusion. Fuller told Hall it was pointless being evasive, and anything besides cooperation meant little chance of plea-bargaining. "We're your only chance at lenience; you'd better fucking talk to us!" Then, Fuller continued insisting Hall sign a confession; Fuller told him, "We have eyewitnesses that will testify you did this." Several times Hall resisted and asserted his innocence. Fuller said Gary's "hollow lies" wouldn't help him, and police had enough evidence to convict him. Chen was yelling at this point, "There's just no way in hell you can explain away a knife *you* used in this murder!" Fuller continued, "We've got the knife, you're fucked, buddy." When Hall began to disengage, Fuller reminded Hall of the victim and her family, stating they requested a sentence of death. Hall again tried to assert his innocence, and he was interrupted and reminded of the serious nature of his decisions, and anything short of full confession would not be in his best interests.

The interrogation ended when Gary Hall signed a typed confession. Hall asserted he stabbed Susan Watson, but could not provide any specific details of the event.

Prosecution Opening Statement

Members of the jury my name is John Callahan. The testimony you hear will reveal the truth about what happened August 25th, the night Ms. Susan Watson was killed. Her life was taken from her at a very young age, in a cruel and violent fashion. We are all here to see that this woman receives the justice we all deserve. Likewise, it is our duty to render that same justice through this honorable court. The state has the most powerful method to prove that Gary Hall did in fact commit this homicide. By his own confession, we know that he had the motive and wherewithal to kill, and after hearing detective testimony, I am confident that you will provide a verdict of guilty. Please pay close attention to Timothy West's testimony and blood analysis. The defense will ask you to focus on what they claim is a lack of evidence. They will say that Gary's confession is not a smoking gun and trace evidence is inconclusive. I ask you use common sense in evaluating the merit of the defense's arguments, and use that same common sense when reaching a decision.

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Ladies and gentlemen, my name is William Toulan and I represent Gary Hall. I ask one thing from you throughout this trial. Hold the prosecution to the standard by which you would expect to be judged. Make them prove their case. They will talk about motive and revenge. These inferences are only as credible as the people who make them. There is no question a homicide took place. It is important, however, to let the facts of the case and investigation, speak for itself. There is simply no physical evidence that objectively establishes the guilt of Mr. Hall. Detectives did not find Susan's blood on Gary or in his apartment. They have a murder weapon, but without Gary's fingerprints. The circumstantial evidence is a hair away from speculation; lovers become estranged all the time, and there is no homicide. When we examine in detail all that's taken place, I am certain you will decide Mr. Hall's confession does not reflect the truth of this event.

Direct Examination of Detective Fuller

Q: Mr. Fuller, how long have you been a homicide investigator?

A: Twelve years.

Q: How many investigations have you conducted?

A: This case is the twenty-third.

Q: Did Mr. Hall waive his *Miranda* rights?

A: Yes.

Q: Was he threatened?

A: No.

Q: Did you interrogate Mr. Hall?

A: Yes.

Q: During the interrogation did you threaten him?

A: No.

Q: Did you make him any promises?

A: No.

Q: Did Mr. Hall confess to killing Susan Watson?

A: Yes.

Q: During the interrogation did you offer Gary something to drink?

A: Yes.

Q: Did you allow him to take a break to use the facilities?

A: Yes.

Cross Examination of Detective Fuller

Q: The recording of Mr. Hall's interrogation shows you were quite intimidating, is that true?

A: Yes.

Q: Did you threaten Mr. Hall?

A: No.

Q: So when you lied to him about evidence and eyewitnesses, that wasn't a threat?

A: Absolutely not.

Q: So, presenting faked incriminating and incontrovertible evidence isn't threatening?

A: If he was innocent, he would know it's fake.

Q: So, when you told him that the family wanted a death sentence, that wasn't a threat either?

A: No.

Q: Mr. Fuller, does the State of Rhode Island employ the death penalty?

A: No.

Q: So your purpose was intimidation or you were insulting Mr. Hall's intelligence?

A: My purpose, councilor, was to obtain Mr. Hall's confession.

Q: The interrogation record shows you exclusively relied on scare tactics, is that right?

A: It's part of a routine.

Q: Is use of deception also routine?

A: Yes.

Q: How do you feel about manipulating a suspect who's innocent until proven guilty?

A: I don't feel anything. It's my job.

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Q: Where did you discover these jeans?

A: In a dumpster behind the club.

Q: Did your laboratory examine the blood found on the jeans?

A: Yes.

Q: Were you able to match the blood to the victim?

A: Yes.

Q: Did you find any other evidence on the jeans?

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Q: Do you believe that it belongs to the killer?

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A: No.

Q: For what reason?

A: The blood was partially exposed to chemicals which were also in the dumpster.

Q: That exposure serves to confound the identification?

A: Yes.

Q: So you cannot match the blood evidence to Mr. Hall?

A: Not in the condition we found it in, no.

Q: But you assume that the blood belongs to the killer?

A: In a stabbing, an intimate crime, it's very probable the blood belongs to the killer.

Q: But you cannot objectively connect the blood to Mr. Hall?

A: No.

Q: Thank you.

Direct Examination of Expert Witness

Q: Doctor Reid, would you please describe your credentials?

A: I earned my undergraduate degree at State University and then earned a Ph.D. in social psychology. My specialization is in interrogations and confessions.

Q: Do police use psychologically-oriented tactics during interrogations?

A: Yes they do.

Q: Please describe them.

A: Two psychological strategies used by police, 'interrogation tactics' if you will, are maximization and minimization. Maximization is the process of emphasizing the seriousness of the crime and the strength of the evidence, fake or real. Psychological coercion comes from the communication that punishment will be especially severe if the suspect does not provide an admission of guilt or a confession.

Q: And minimization?

A: Another interrogation approach would be minimization. The psychological coercion results from police explaining to suspects that their crimes were understandable or justifiable. Oftentimes, police suggest to suspects morally justifiable motives for committing the crime, and convince them that anyone, in the same or similar circumstances would do the same thing.

Q: Briefly explain how these tactics can be legal and coercive at the same time?

A: In the laboratory, maximization and minimization are perceived as coercive. These strategies allow police the use of psychologically-coercive tactics in the boundaries of the law. No direct threats or promises are introduced during interrogation. Rather, maximization *implies* a threat of swift and severe punishment, and minimization *implies* a promise of leniency, justification or less severe punishment.

Q: Does research support the claim police use of these tactics are experienced as coercive by suspects they interrogate?

A: Yes. Maximization and minimization operate as the functional equivalents of threats

and promises.

Q: What other important factors influence an interrogation and confession?

A: The age of the suspect, his or her criminal sophistication, IQ, and length of the interrogation.

Q: Which of those factors applies to the interrogation and confession of Gary Hall?

A: Gary Hall is a relatively unsophisticated in terms of general criminality. What mattered most in his interrogation, as it related to psychological coercion, was detective use of maximization.

Q: How so?

A: Detectives characterized the interrogation as a no-win situation for Mr. Hall. He was presented with numerous veiled threats. The record shows detectives lied about eyewitnesses, the murder weapon, and the possible sentence. The fact the death sentence ploy wasn't immediately contested by Hall shows his lack of criminal sophistication and the effectiveness detectives had in ultimately breaking his will to resist them.

Q: Dr. Reid, are their sufficient interrogation factors in place to realistically suggest Mr. Hall's confession was coerced?

A: It is my opinion that detectives used a sufficient amount of psychologically-coercive factors during Gary Hall's interrogation.

Q: Thank you.

Cross Examination of Expert Witness

Q: Doctor, can you quantify the amount of coercion necessary to elicit a false confession?

A: No.

Q: That would be impossible, wouldn't it?

A: Individual differences would make quantification problematic.

Q: An objective determination of a psychological-coercion threshold is impossible?

A: Yes.

Q: How can you ever know if a confession is coerced?

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Q: So the determination is subjective.

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Q: Why should this jury believe your opinion, given the state of the science?

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Q: Is it not your opinion that Gary Hall provided a confession that was coerced?

A: In my opinion, Gary Hall's confession has several markings of a coerced confession.

Q: So your opinion can distinguish a false confession from a truthful one?

A: No it cannot.

Q: No further questions.

Prosecution Closing Statement

Ladies and gentlemen, you heard testimony from a veteran homicide investigator. Remember that Mr. Hall waived his *Miranda* warnings and volunteered to be questioned. Remember that he signed a confession and admitted his guilt. Use your common sense. Why would an innocent man incriminate himself if he had no involvement? It's crazy; and it's also crazy to believe that detectives somehow caused him to confess against his will. You heard the detective's testimony. At no time was Mr. Hall physically abused. He wasn't hit, slapped, or shoved. He wasn't threatened. There were no promises. So, there can be no question: Mr. Hall confessed because Mr. Hall committed the homicide. Use your common sense - It's as simple as that. Don't be deceived by a lack of easy answers. Police may not have all the physical methods to prove Gary Hall's involvement, but I ask you, remember Susan and provide the justice she deserves.

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Ladies and gentlemen of the jury, please do not equate justice for Susan Watson with the condemnation of Gary Hall. For over ten hours, Gary was indoctrinated with stories of how he might have acted, with a motivation he might have acted on. Listen to the evidence and ask yourself what you believe. Wouldn't Gary have left behind evidence? Wouldn't he have brought evidence of his involvement back to his apartment? To focus on his confession is to ignore objectivity. Sure he signed a piece of paper. Wouldn't you if you had to endure such a lengthy ordeal? Detectives showed a single-minded focus when they concentrated solely on Gary Hall. All they had was a jealous ex-boyfriend with no criminal record. The detectives don't care about the reliability of this confession. When they obtained it the case was finished. I ask you now to critically evaluate what you have heard, and let your conscience guide your decision. With such a lack of

evidence, please consider Gary's future and the consequences of your decision carefully. Thank you.

Jury Instructions

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

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In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

1/2

The following is a summary of *United States v. Hall*, a homicide case. The State alleges the defendant, Gary Hall, stabbed his estranged ex-girlfriend Susan Watson on the night of August 25th outside Shooters bar. The same evening Officer McKinnon went to Hall's residence to find out where he was at the time of the incident. Hall couldn't provide an alibi, stating that after arriving home from work, he ate dinner and then watched television until the police arrived. Officer McKinnon requested that Hall come to the station for further questioning.

At the police station Hall was led to a small, windowless room where he met homicide detectives David Chen and Martin Fuller. From the beginning of the interview, detectives told Hall he was the focus of the investigation, due to motive (jealousy about Watson's seeing another man) and opportunity (he knew her place of employment and shift schedule). At 10:30 pm police read Hall his *Miranda* warnings, which he said he understood and then waived. At that time, the custodial interrogation began.

Detective Fuller engaged Hall with hostility and harsh, directed questioning. He asked Hall, "Do you have any idea how serious this is?" Hall expressed confusion. Fuller told Hall it was pointless being evasive, and anything besides cooperation meant little chance of plea-bargaining. "We're your only chance at lenience; you'd better fucking talk to us!" Then, Fuller continued insisting Hall sign a confession; Fuller told him, "We have eyewitnesses that will testify you did this." Several times Hall resisted and asserted his innocence. Fuller said Gary's "hollow lies" wouldn't help him, and police had enough evidence to convict him. Chen was yelling at this point, "There's just no way in hell you can explain away a knife *you* used in this murder!" Fuller continued, "We've got the knife, you're fucked, buddy." When Hall began to disengage, Fuller reminded Hall of the victim and her family, stating they requested a sentence of death. Hall again tried to assert his innocence, and he was interrupted and reminded of the serious nature of his decisions, and anything short of full confession would not be in his best interests.

The interrogation ended when Gary Hall signed a typed confession. Hall asserted he stabbed Susan Watson, but could not provide any specific details of the event.

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Detective Fuller engaged Hall with sympathy, explaining he wanted to help and expressed understanding of Hall's feelings and situation. He offered assurance the police did not believe Hall was an evil person, and told Hall he did not believe he acted with intent to kill, but was probably drinking and got carried away – something that anyone was capable of doing. Fuller said, "Sometimes, in the heat of the moment we do things we later come to regret." Hall told detectives he had no memory for the homicide he was accused of committing. Fuller asked Hall, "Have you ever experienced black-outs?" Chen commented Hall could probably benefit from post-traumatic stress counseling, and after Hall's confession they could refer him for treatment. The conversation shifted to Gary's relationship with Susan. Chen commented, "Sometimes women drive you crazy; I can relate to that." When Hall expressed his confusion concerning what to do, he was told to listen to his conscience, and detectives would collaborate with him towards his best interests. Fuller said, "Look, you did this in the heat of passion, so you're not in that bad of shape." Chen commented, "Given the relationship you had with Susan, you're practically justified."

The interrogation ended when Gary Hall signed a typed confession. Hall asserted he stabbed Susan Watson, but could not provide any specific details of the event.

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A: Yes.

Q: During the interrogation did you offer Gary something to drink?

A: Yes.

Q: Did you allow him to take a break to use the facilities?

A: Yes.

Cross Examination of Detective Fuller

Q: The interrogation record shows you told Mr. Hall it was in his best interest to confess, is that right?

A: No.

Q: You said you would be his advocate?

A: No, not really.

Q: How would you characterize the method you used to get the confession?

A: We were nice to Mr. Hall and then he confessed.

Q: You assumed Mr. Hall was guilty?

A: Yes I did.

Q: So, when you told Gary you wanted to help him, was that you lying to him?

A: I chose to pursue the confession through reasoning with Mr. Hall.

Q: So, you began to manipulate him right from the beginning of the interrogation?

A: I suggested possible explanations for his behavior.

Q: His behavior meaning you suggested explanations for the guilt you *assumed* he had?

A: Yes.

Q: You're confident Mr. Hall's confession was accurate?

A: Yes.

Q: Is that why he was the exclusive focus of your investigation?

A: He was the focus because of his relationship with the victim and his obvious reasons for killing her.

Q: Obvious because of the confession or because of evidence?

A: There's plenty of circumstantial evidence, but the confession is our lynchpin.

Q: Did you discover evidence at his apartment?

A: We found Susan's hair and DNA.

Q: In the context of their relationship, the trace evidence is understandable?

A: Yes.

Q: No further questions.

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Q: Does research support the claim police use of these tactics are experienced as coercive by suspects they interrogate?

A: Yes. Maximization and minimization operate as the functional equivalents of threats and promises.

Q: What other important factors influence an interrogation and confession?

A: The age of the suspect, his or her criminal sophistication, IQ, and length of the interrogation.

Q: Which of those factors applies to the interrogation and confession of Gary Hall?

A: My opinion is that Mr. Hall's lack of criminal sophistication and detective's use of minimization are operating factors. According to my review of the transcript, Mr. Hall was offered morally justifiable motivations for his alleged act, and was offered counseling if willing to confess. They suggested that conditions surrounding the homicide would provide an excuse for his behavior, and all throughout the interrogation, detectives presented with sympathy, empathy, and understanding.

Q: Can the tactics of minimization be so coercive to affect the validity of a confession?

A: Yes they can.

Q: How exactly?

A: The psychological issue is the implied communication of leniency. If a suspect is manipulated into believing that the police need a confession in order to provide a 'best case scenario', an innocent person may tell the police what they want to hear in order to put themselves into the 'ideal situation' offer that detectives implicitly introduced.

Q: Thank you sir.

Cross Examination of Expert Witness

Q: Doctor, can you quantify the amount of coercion necessary to elicit a false confession?

A: No.

Q: That would be impossible, wouldn't it?

A: Individual differences would make quantification problematic.

Q: An objective determination of a psychological-coercion threshold is impossible?

A: Yes.

Q: How can you ever know if a confession is coerced?

A: Analysis of the confession itself reveals the type and amount of coercion.

Q: So the determination is subjective.

A: Yes.

Q: Why should this jury believe your opinion, given the state of the science?

A: My role is to provide the jury with information they would not have otherwise had.

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A: No it cannot.

Q: No further questions.

Prosecution Closing Argument

Ladies and gentlemen, you heard testimony from a veteran homicide investigator. Remember that Mr. Hall waived his *Miranda* warnings and volunteered to be questioned. Remember that he signed a confession and admitted his guilt. Use your common sense. Why would an innocent man incriminate himself if he had no involvement? It's crazy; and it's also crazy to believe that detectives somehow caused him to confess against his will. You heard the detective's testimony. At no time was Mr. Hall physically abused. He wasn't hit, slapped, or shoved. He wasn't threatened. There were no promises. So, there can be no question: Mr. Hall confessed because Mr. Hall committed the homicide. Use your common sense - It's as simple as that. Don't be deceived by a lack of easy answers. Police may not have all the physical methods to prove Gary Hall's involvement, but I ask you, remember Susan and provide the justice she deserves.

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Ladies and gentlemen of the jury, please do not equate justice for Susan Watson with the condemnation of Gary Hall. For over ten hours, Gary was indoctrinated with stories of how he might have acted, with a motivation he might have acted on. Listen to the evidence and ask yourself what you believe. Wouldn't Gary have left behind evidence? Wouldn't he have brought evidence of his involvement back to his apartment? To focus on his confession is to ignore objectivity. Sure he signed a piece of paper. Wouldn't you if you had to endure such a lengthy ordeal? Detectives showed a single-minded focus when they concentrated solely on Gary Hall. All they had was a jealous ex-boyfriend with no criminal record. The detectives don't care about the reliability of this confession. When they obtained it the case was finished. I ask you now to critically evaluate what you have heard, and let your conscience guide your decision. With such a lack of evidence, please consider Gary's future and the consequences of your decision carefully. Thank you.

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Detective Fuller engaged Hall with sympathy, explaining he wanted to help and expressed understanding of Hall's feelings and situation. He offered assurance the police did not believe Hall was an evil person, and told Hall he did not believe he acted with intent to kill, but was probably drinking and got carried away – something that anyone was capable of doing. Fuller said, "Sometimes, in the heat of the moment we do things we later come to regret." Hall told detectives he had no memory for the homicide he was accused of committing. Fuller asked Hall, "Have you ever experienced black-outs?" Chen commented Hall could probably benefit from post-traumatic stress counseling, and after Hall's confession they could refer him for treatment. The conversation shifted to Gary's relationship with Susan. Chen commented, "Sometimes women drive you crazy; I can relate to that." When Hall expressed his confusion concerning what to do, he was told to listen to his conscience, and detectives would collaborate with him towards his best interests. Fuller said, "Look, you did this in the heat of passion, so you're not in that bad of shape." Chen commented, "Given the relationship you had with Susan, you're practically justified."

The interrogation ended when Gary Hall signed a typed confession. Hall asserted he stabbed Susan Watson, but could not provide any specific details of the event.

Prosecution Opening Statement

Members of the jury my name is John Callahan. The testimony you hear will reveal the truth about what happened August 25th, the night Ms. Susan Watson was killed. Her life was taken from her at a very young age, in a cruel and violent fashion. We are all here to see that this woman receives the justice we all deserve. Likewise, it is our duty to render that same justice through this honorable court. The state has the most powerful method to prove that Gary Hall did in fact commit this homicide. By his own confession, we know that he had the motive and wherewithal to kill, and after hearing detective testimony, I am confident that you will provide a verdict of guilty. Please pay close attention to Timothy West's testimony and blood analysis. The defense will ask you to focus on what they claim is a lack of evidence. They will say that Gary's confession is not a smoking gun and trace evidence is inconclusive. I ask you use common sense in evaluating the merit of the defense's arguments, and use that same common sense when reaching a decision.

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Q: Mr. Fuller, how long have you been a homicide investigator?

A: Twelve years.

Q: How many investigations have you conducted?

A: This case is the twenty-third.

Q: Did Mr. Hall waive his *Miranda* rights?

A: Yes.

Q: Was he threatened?

A: No.

Q: Did you interrogate Mr. Hall?

A: Yes.

Q: During the interrogation did you threaten him?

A: No.

Q: Did you make him any promises?

A: No.

Q: Did Mr. Hall confess to killing Susan Watson?

A: Yes.

Q: During the interrogation did you offer Gary something to drink?

A: Yes.

Q: Did you allow him to take a break to use the facilities?

A: Yes.

Cross Examination of Detective Fuller

Q: The interrogation record shows you told Mr. Hall it was in his best interest to confess, is that right?

A: No.

Q: You said you would be his advocate?

A: No, not really.

Q: How would you characterize the method you used to get the confession?

A: We were nice to Mr. Hall and then he confessed.

Q: You assumed Mr. Hall was guilty?

A: Yes I did.

Q: So, when you told Gary you wanted to help him, was that you lying to him?

A: I chose to pursue the confession through reasoning with Mr. Hall.

Q: So, you began to manipulate him right from the beginning of the interrogation?

A: I suggested possible explanations for his behavior.

Q: His behavior meaning you suggested explanations for the guilt you *assumed* he had?

A: Yes.

Q: You're confident Mr. Hall's confession was accurate?

A: Yes.

Q: Is that why he was the exclusive focus of your investigation?

A: He was the focus because of his relationship with the victim and his obvious reasons for killing her.

Q: Obvious because of the confession or because of evidence?

A: There's plenty of circumstantial evidence, but the confession is our lynchpin.

Q: Did you discover evidence at his apartment?

A: We found Susan's hair and DNA.

Q: In the context of their relationship, the trace evidence is understandable?

A: Yes.

Q: Did Gary provide a voluntary DNA sample?

A: Yes.

Q: Did it match trace evidence on the murder weapon?

A: We were unable to recover useable trace evidence from the knife.

Q: So your case is entirely contingent on Gary's confession evidence?

A: Gary Hall confessed to murder.

Direct Examination of Timothy West

Q: Where did you discover these jeans?

A: In a dumpster behind the club.

Q: Did your laboratory examine the blood found on the jeans?

A: Yes.

Q: Were you able to match the blood to the victim?

A: Yes.

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A: There was also blood that didn't match Ms. Watson's.

Q: Do you believe that it belongs to the killer?

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Q: That exposure serves to confound the identification?

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Detective Fuller asked Hall, "You know why we're here, don't you?" Hall expressed he did know why, that his ex-girl friend had been killed. Chen told him, "You know the evidence points at you, but it's circumstantial; would you like to help us sort this mess out?" After repeated attempts to get information from Halls, the detectives commented on the effect of Susan's death on her family and the community. Detectives then guided Hall through possible ways he planned and committed the homicide. Hall seemed especially upset about this, and Chen commented "It would really provide closure for the family to know what happened and why." Detectives continued to reason with Hall until 2:30 a.m., at which time Hall became agitated and emotional. "Just give me the paper...I can't prove otherwise, I guess..." Fuller interrupted Hall, "You understand what this means, right?" While Hall was reading over the type-written confession he started to weep, "She didn't deserve this...I am truly evil." As Fuller looked over the confession, he said "You're doing the right thing; take your time, and we'll see you through this."

Without interruption, this interrogation lasted 10 hours and 10 minutes, and ended at 8:40 am the next morning when Gary Hall signed a confession. Hall asserted he stabbed Susan Watson, but could not provide any specific details of the event.

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Q: Did Mr. Hall confess to killing Susan Watson?

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Q: During the interrogation did you offer Gary something to drink?

A: Yes.

Q: Did you allow him to take a break to use the facilities?

A: Yes.

Cross Examination of Detective Fuller

Q: During the interrogation did Gary explain the details of the crime?

A: No.

Q: During the 10 hours and 10 minutes you forgot to ask him?

A: No, I asked him.

Q: Did you provide Gary hypothetical situations explaining how he might have acted?

A: Yes.

Q: Were you worried about contaminating you suspect's memory?

A: I don't know what that means.

Q: Were you concerned with what Gary knew?

A: Yes.

Q: Then why did you author his confession statement?

A: Routine.

Q: Was this a difficult case to investigate?

A: No.

Q: It was important to you that Gary confess, wasn't it?

A: Yes.

Q: So important, you focused exclusively on him?

A: Yes.

Q: What physical evidence did you find in his apartment?

A: We found Susan's hair and DNA evidence.

Q: The hair was on her hairbrush and her toothbrush had the DNA?

A: That's right.

Q: You know Gary and Susan had a relationship, right?

A: Yes, councilor.

Q: Did Gary provide a voluntary DNA sample?

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Q: But you cannot objectively connect the blood to Mr. Hall?

A: No.

Q: Thank you.

Direct Examination of Expert Witness

Q: Doctor Reid, would you please describe your credentials?

A: I earned my undergraduate degree at State University and then earned a Ph.D. in social psychology, specializing in interrogations and confessions.

Q: Do police use psychologically-oriented tactics during interrogations?

A: Yes they do.

Q: Please describe them.

A: Two psychological strategies used by police, 'interrogation tactics' if you will, are maximization and minimization. Maximization is the process of emphasizing the seriousness of the crime and the strength of the evidence, fake or real. Psychological coercion comes from the communication that punishment will be especially severe if the suspect does not provide an admission of guilt or a confession.

Q: And minimization?

A: Another interrogation approach would be minimization. The psychological coercion results from police explaining to suspects that their crimes were understandable or justifiable. Oftentimes, police suggest to suspects morally justifiable motives for committing the crime, and convince them that anyone, in the same or similar circumstances would do the same thing.

Q: Briefly explain how these tactics can be legal and coercive at the same time?

A: In the laboratory, maximization and minimization are perceived as coercive. These strategies allow police the use of psychologically-coercive tactics in the boundaries of the law. No direct threats or promises are introduced during interrogation. Rather, maximization *implies* a threat of swift and severe punishment, and minimization *implies* a promise of leniency, justification or less severe punishment.

Q: Does research support the claim police use of these tactics are experienced as coercive by suspects they interrogate?

A: Yes. Maximization and minimization operate as the functional equivalents of threats and promises.

Q: What other important factors influence an interrogation and confession?

A: The age of the suspect, his or her criminal sophistication, IQ, and length of the interrogation.

Q: Which of those factors applies to the interrogation and confession of Gary Hall?

A: My opinion is that Mr. Hall's lack of criminal sophistication and the length of the interrogation operated in a capacity to put him at risk for providing a false confession.

Q: Why would an innocent person confess to a crime they did not commit?

A: There are two main reasons: a coerced-compliant confession results from interrogator abuse or the absolute need to escape the interrogation situation. A coerced-internalized confession results from the suspect actually coming to believe in his or her own guilt when they are in fact innocent.

Q: Do you have an opinion about the nature of Gary Hall's confession?

A: Yes. In the absence of physical abuse, it appears that Mr. Hall internalized notions of his own guilt.

Q: Is this a common occurrence?

A: Not as common as a coerced-compliant confession, but much more problematic.

Cross Examination of Expert Witness

Q: Doctor, can you quantify the amount of coercion necessary to elicit a false confession?

A: No.

Q: That would be impossible, wouldn't it?

A: Individual differences would make quantification problematic.

Q: An objective determination of a psychological-coercion threshold is impossible?

A: Yes.

Q: How can you ever know if a confession is coerced?

A: Analysis of the confession itself reveals the type and amount of coercion.

Q: So the determination is subjective.

A: Yes.

Q: Why should this jury believe your opinion, given the state of the science?

A: My role is to provide the jury with information they would not have otherwise had.

A: The criteria has general scientific acceptance.

Q: Is it not your opinion that Gary Hall provided a coerced-internalized confession?

A: In my opinion, Gary Hall's confession has several markings of a coerced-internalized confession.

Q: So your opinion can distinguish a false confession from a truthful one?

A: No it cannot.

Q: No further questions.

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A: We found Susan's hair and DNA evidence.

Q: The hair was on her hairbrush and her toothbrush had the DNA?

A: That's right.

Q: You know Gary and Susan had a relationship, right?

A: Yes, councilor.

Q: Did Gary provide a voluntary DNA sample?

A: Yes.

Q: Did it match trace evidence on the murder weapon?

A: We were unable to recover useable trace evidence from the knife.

Q: So your case is entirely contingent on Gary's confession evidence?

A: Gary Hall confessed to murder.

Direct Examination of Timothy West

Q: Where did you discover these jeans?

A: In a dumpster behind the club.

Q: Did your laboratory examine the blood found on the jeans?

A: Yes.

Q: Were you able to match the blood to the victim?

A: Yes.

Q: Did you find any other evidence on the jeans?

A: Yes.

Q: What did you find?

A: There was also blood that didn't match Ms. Watson's.

Q: Do you believe that it belongs to the killer?

A: I do.

Cross Examination of Timothy West

Q: Mr. West, was it possible to confirm the source of the other blood evidence?

A: No.

Q: For what reason?

A: The blood was partially exposed to chemicals which were also in the dumpster.

Q: That exposure serves to confound the identification?

A: Yes.

Q: So you cannot match the blood evidence to Mr. Hall?

A: Not in the condition we found it in, no.

Q: But you assume that the blood belongs to the killer?

A: In a stabbing, an intimate crime, it's very probable the blood belongs to the killer.

Q: But you cannot objectively connect the blood to Mr. Hall?

A: No.

Q: Thank you.

Prosecution Closing Statement

Ladies and gentlemen, you heard testimony from a veteran homicide investigator. Remember that Mr. Hall waived his *Miranda* warnings and volunteered to be questioned. Remember that he signed a confession and admitted his guilt. Use your common sense. Why would an innocent man incriminate himself if he had no involvement? It's crazy; and it's also crazy to believe that detectives somehow caused him to confess against his will. You heard the detective's testimony. At no time was Mr. Hall physically abused. He wasn't hit, slapped, or shoved. He wasn't threatened. There were no promises. So, there can be no question: Mr. Hall confessed because Mr. Hall committed the homicide. Use your common sense - It's as simple as that. Don't be deceived by a lack of easy answers. Police may not have all the physical methods to prove Gary Hall's involvement, but I ask you, remember Susan and provide the justice she deserves.

Defense Closing Statement

Ladies and gentlemen of the jury, please do not equate justice for Susan Watson with the condemnation of Gary Hall. For over ten hours, Gary was indoctrinated with stories of how he might have acted, with a motivation he might have acted on. Listen to the evidence and ask yourself what you believe. Wouldn't Gary have left behind evidence? Wouldn't he have brought evidence of his involvement back to his apartment? To focus

on his confession is to ignore objectivity. Sure he signed a piece of paper. Wouldn't you if you had to endure such a lengthy ordeal? Detectives showed a single-minded focus when they concentrated solely on Gary Hall. All they had was a jealous ex-boyfriend with no criminal record. The detectives don't care about the reliability of this confession. When they obtained it the case was finished. I ask you now to critically evaluate what you have heard, and let your conscience guide your decision. With such a lack of evidence, please consider Gary's future and the consequences of your decision carefully. Thank you.

Jury Instructions

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

Thank you for agreeing to participate in our study. Your responses are important to our research.. Please answer every question on this form by placing a check in the box that corresponds to the appropriate response.

Your gender:

- Male [1]
 Female [2]

Into which of the following age categories do you fall:

- 17-24 [1]
 25-34 [2]
 35-44 [3]
 45-54 [4]
 55-64 [5]
 65 or older [6]

Which of the following characterizes your background?

- White [1]
 Hispanic [2]
 African-American [3]
 Other [4]
 If *Other*, please describe _____.

Your marital status:

- Single [1]
 Married [2]
 Separated [3]
 Divorced [4]
 Widowed [5]
 Living/someone [6]

How would you evaluate your political views?

- Liberal [1]
 Slightly Liberal [2]
 Slightly Conservative [3]
 Conservative [4]

Do you have a valid driver's license?

- No [1]
- Yes [2]

Have you ever served on a jury (in a criminal or civil case)?

- No [1]
- Yes [2]

What is your employment status?

- Not working now/unemployed [1]
- Retired [2]
- Student [3]
- Homemaker [4]
- Employed full-time [5]
- Employed part-time [6]

Are you, a close friend of, or related to, anyone employed in the justice system?
(e.g., police officer, judge, attorney, etc.)

- No [1]
- Yes [2]

What is the highest year of education you have attained?

- Less than high school [1]
- Attended some high school [2]
- High school diploma [3]
- Partial college or junior college [4]
- College degree [5]
- Post-graduate college degree [6]

Please circle the number that corresponds most closely to how you feel.

Do you find the defendant, Mr. Hall guilty or not guilty?

- Guilty [1]
- Not Guilty [2]

How confident are you that your verdict is correct?

Not at all Confident 0 1 2 3 4 5 6 Very Confident

What is the probability that the defendant, Mr. Hall, committed the crime the state has charged him with?

Low Probability 0 1 2 3 4 5 6 High Probability

How confident are you that your recommendation is correct?

Not at all Confident 0 1 2 3 4 5 6 Very Confident

How strong was the prosecution's case?

Very Weak 0 1 2 3 4 5 6 Very Strong

How strong was the defense's case?

Very Weak 0 1 2 3 4 5 6 Very Strong

How much evidence did the prosecution have?

Little Evidence 0 1 2 3 4 5 6 Lots of Evidence

How important was the prosecution's evidence to your verdict?

Not Important 0 1 2 3 4 5 6 Very Important

How much evidence did the defense have?

Little Evidence 0 1 2 3 4 5 6 Lots of Evidence

How credible or believable did you find the confession expert, Dr. Reid, to be?

Not Very Credible 0 1 2 3 4 5 6 Very Credible

To what extent did you rely on the credibility of confession expert's testimony to evaluate his testimony?

Did Not Rely 0 1 2 3 4 5 6 Relied Heavily

How consistent did you find the confession expert to be?

Not Very Consistent 0 1 2 3 4 5 6 Very Consistent

To what extent did you rely on the consistency of the expert witness to evaluate his testimony?

Did Not Rely 0 1 2 3 4 5 6 Relied Heavily

Rate the importance of the confession expert's (Dr. Reid) testimony to your verdict.

Not Very Important 0 1 2 3 4 5 6 Very Important

How easily did you understand the testimony of the confession expert (Dr. Reid)?

Not Very Easy 0 1 2 3 4 5 6 Very Easy

How honest did the confession expert (Dr. Reid) appear to be?

Not Very Honest 0 1 2 3 4 5 6 Very Honest

To what extent did you rely on the honesty of confession expert (Dr. Reid) to evaluate his testimony

Did Not Rely 0 1 2 3 4 5 6 Relied Heavily

How trustworthy did you find the confession expert (Dr. Reid) to be?

Not Very Trustworthy 0 1 2 3 4 5 6 Very Trustworthy

To what extent did you rely on the trustworthiness of the confession expert (Dr. Reid) to evaluate his testimony?

Did Not Rely 0 1 2 3 4 5 6 Relied Heavily

Do you believe the confession expert should be allowed to testify in this case?

Should Not Be Allowed 0 1 2 3 4 5 6 Should Be Allowed

How serious did you take your role as a juror in this case?

Not at All Serious 0 1 2 3 4 5 6 Very Serious

How important was the Detective's Fuller's testimony to your verdict?

Not Very Important 0 1 2 3 4 5 6 Very Important

How credible or believable did you find Detective Fuller to be?

Not Very Credible 0 1 2 3 4 5 6 Very Credible

How confident did you find Detective Fuller to be that the confession he received was the truth?

Not Very Confident 0 1 2 3 4 5 6 Very Confident

How consistent was Detective Fuller's testimony?

Not Very Consistent 0 1 2 3 4 5 6 Very Consistent

How accurate was Detective Fuller's testimony?

Not Very Accurate 0 1 2 3 4 5 6 Very Accurate

How confusing was Detective Fuller's testimony?

Not Very Confused 0 1 2 3 4 5 6 Very Confused

In your opinion, was Hall's confession voluntary or coerced? (check one box)

- Voluntary [1]
- Coerced [2]

How much pressure was the defendant Mr. Hall under to confess?

No Pressure at All 0 1 2 3 4 5 6 A Lot of Pressure

In your opinion, rate the fairness of the police interrogation?

Not at All Fair 0 1 2 3 4 5 6 Extremely Fair

In your opinion, how likely is it that an innocent person would confess when subjected to interrogation?

Not At All Likely 0 1 2 3 4 5 6 Extremely Likely

In your opinion, how likely is it that a guilty person would confess when subjected to interrogation?

Not At All Likely 0 1 2 3 4 5 6 Extremely Likely

In your opinion, should experts be allowed to testify about the research on confessions?

Should Not Allow 0 1 2 3 4 5 6 Absolutely Allow

How influential was the expert's testimony on police interrogations on your verdict?

Not At All 0 1 2 3 4 5 6 Extremely Influential

Author Note

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Figure Caption

Mean ratings of probative validity as a function of interrogation tactic and expert testimony.

