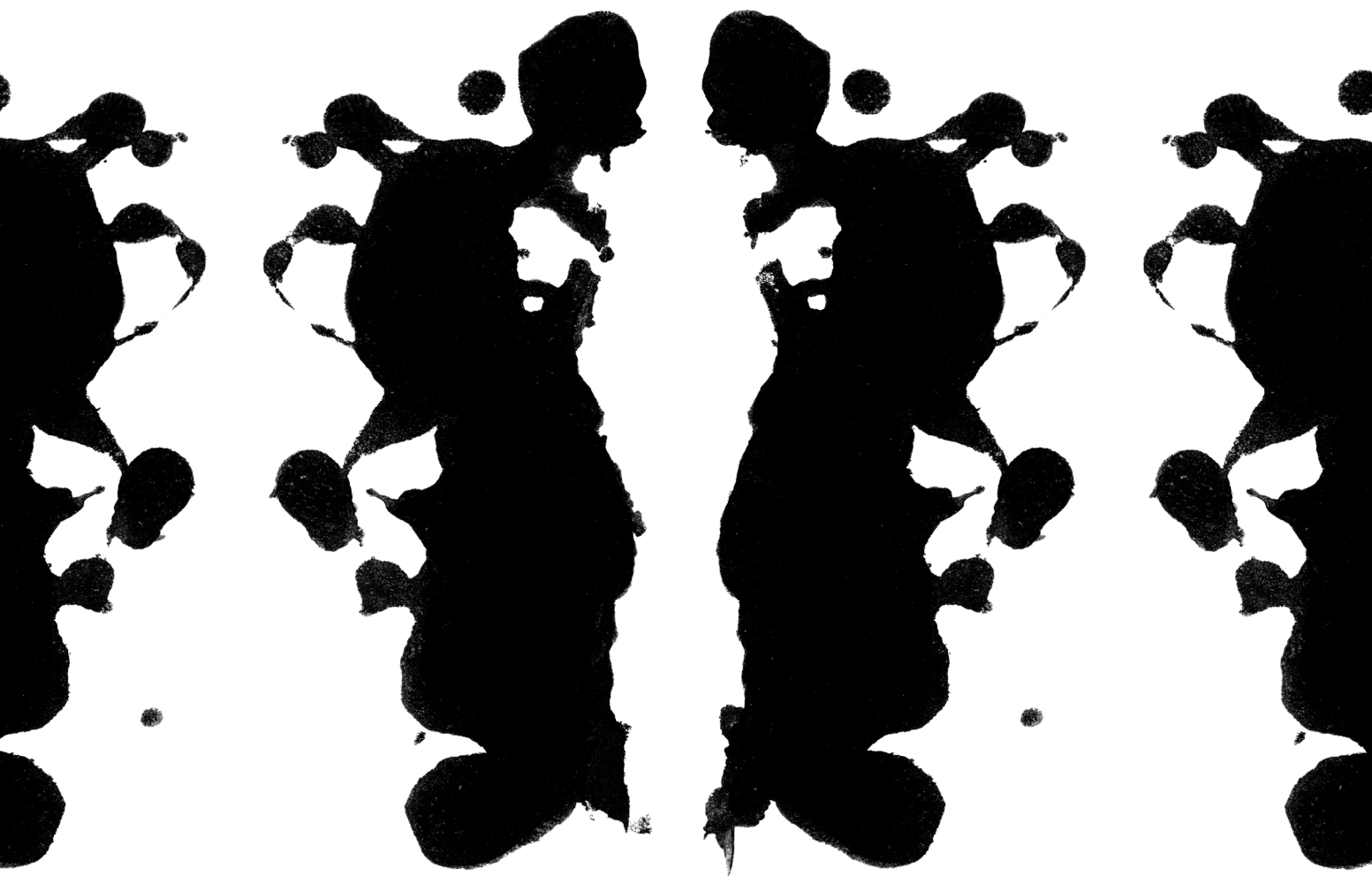




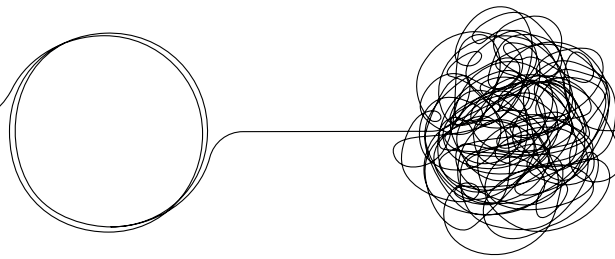
When subjects admit guilt but they're innocent

Understanding and preventing false confessions

By Beth Mohr, CFE



Why would someone confess to a crime they didn't commit?
Often an interviewer, trained to be accusatory and aggressive, will pressure subjects to admit guilt. Here's how fraud examiners — rightfully constrained by higher ethics guardrails — can prevent false confessions that result in wrongful terminations and improper convictions, and ruin innocent subjects' lives, while leaving the guilty free to commit additional crimes.



It boggles our minds to think that someone would confess to a crime they didn't commit. Most jurors and even judges probably believe that no mentally competent individual would falsely confess to anything, but particularly to a serious crime like felony fraud or homicide. Even the U.S. Supreme Court has said that false confessions are rare exceptions even when coercion is involved. (See "Regulating Police Deception during Interrogation," by George C. Thomas III, HeinOnline, 2006-2007, tinyurl.com/3h7hdubh.) Supposedly neutral professionals like forensic scientists will discount alibis and other actual evidence of innocence when a subject confesses. Studies showed that alibi witnesses recanted their truthful alibi statements when they were told that subjects confessed to committing the crime. This means that even a witness who knew that a confessing subject in a case wasn't at the scene of the crime, and thus couldn't possibly be guilty of the allegations, was sufficiently swayed by the false confession to recant their truthful alibi statement. (See "Recanted Corroborations: The Impact of Confessions on Alibi Evidence," by Stéphanie B. Marion, Jeff Kukucka, Carisa Collins, Saul Kassin and Tara M. Burke, Ryerson University, tinyurl.com/32md2eku.) Although false confessions were once believed to be extremely

rare they may prove to be alarmingly common when DNA testing exonerates suspects who've previously confessed. Law enforcement can inadvertently generate false confessions but so can fraud examiners and occupational theft investigators. We need to understand how this can occur to prevent it from happening.

AutoZone, one of the U.S.'s largest auto parts retailers, has paid out millions of dollars to former employees and their attorneys after the company's internal investigators had been found to have elicited false confessions from those employees. In 2000, in one of the first cases filed, the AutoZone investigator had accused an employee of stealing \$820 during a transfer of a store's deposit into an armored truck for delivery to a bank. An AutoZone investigator, who held the employee for nearly three hours, promised that if he'd just confess, he could keep his job. If he failed to confess, the investigator said, he'd go to jail. The innocent employee, who wanted to keep his job and avoid jail, eventually signed a statement admitting the theft. The company immediately fired him and deducted the money from his final paycheck.

Two weeks later, it was discovered that the bank found the missing \$820. However, the accused ex-employee didn't get his job

or money back. So, he sued the retailer for false imprisonment and wrongful termination. In 2006, a jury awarded \$7.5 million to the ex-employee after it decided he'd been falsely imprisoned, and the investigator had used fraud to make him confess. Dozens of other employees have sued AutoZone, citing similar circumstances, often involving the same investigator or investigative team. Juries have awarded tens of millions more in damages. The retailer has appealed each case, but so far the verdicts have been affirmed, although damage awards were reduced in some cases. (See "When Employees Confess, Sometimes Falsely," by Saul Elbein, The New York Times, March 8, 2014, tinyurl.com/2s3wpebm.)

VULNERABLE SUBJECTS

A variety of subjects' vulnerabilities affect risk factors for false confessions, including age, lack of sophistication, cognitive limitations, mental illness and instability, plus general personality traits such as high suggestibility. Subjects also could be vulnerable because they have histories of sexual abuse or other trauma. But virtually everyone will falsely confess if they believe that's their only option to eliminate the crushing psychological pressure of interrogation.

Neurological research has shown children and young people up to about age 21 simply don't have the maturity to discern the seriousness of consequences and so are much more likely to forfeit future rewards in favor of immediate rewards. Scientists refer to the teenage brain as "a work in progress." Young persons might believe false confessions are expedient escapes from stressful situations even when interview and interrogation techniques aren't coercive. Also, young people are more likely to believe promises of leniency, including the promise that they'll be able to go home if they'd only confess to serious crimes, under circumstances that any sophisticated adult would rationally deem absurd. [See "You Made Me Promises, Promises" — Determining the Existence of Promises of Leniency During Custodial Interrogation and the Proper Standard of Review. [State v. Sharp, 210 P.3d 590 (Kan. 2009), by Aaron

Good, Washburn Law Journal, Vol. 49 (2009-2010), tinyurl.com/2574kf8u.]

Race is also a risk factor for false confessions — not because of any particular individual vulnerability in the interrogation room but possibly because of interrogators' and police officers' implicit bias. As of Aug. 8, 2022, the National Registry of Exonerations listed 3,200 defendants since 1989 who were convicted of murder, sexual assault and drug crimes in the U.S. and later exonerated because they were innocent; 53% of them were Black, nearly four times their proportion of the U.S. population, which is about 13.6%. (See "Race and Wrongful Convictions in the United States – 2022," National Registry of Exonerations, September 2022, tinyurl.com/582ztdbk and the United States Census Bureau, QuickFacts, tinyurl.com/bdhyh66y.)

Starting in the 1950s, interrogation training for police, and for many internal fraud investigators, tended to be generally based on the Reid Technique. John E. Reid was a former Chicago police officer turned polygraphy expert and consultant.

(See "The Interview: Do police interrogation techniques produce false confessions?"

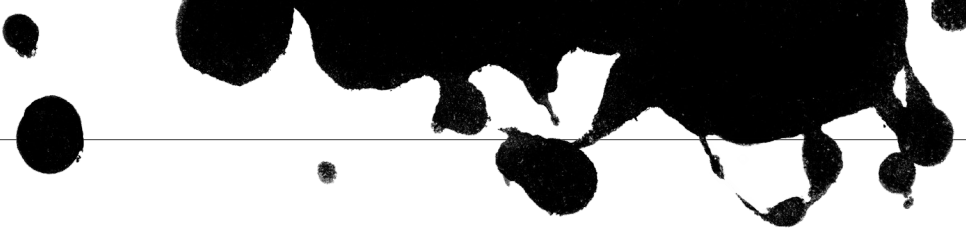
by Douglas Starr, The New Yorker, Dec. 1, 2013, tinyurl.com/4j5bnsjx.)

The Reid Technique and others like it are based on a step-by-step process that focuses on presumption of guilt and eliciting confessions. The technique's creators believe that nobody would falsely confess to a crime they didn't commit, so any amount of psychological pressure is justifiable in obtaining a confession. (Ironically, the original case upon which Reid based his process involved generating a false confession in a homicide case. See The New Yorker article, tinyurl.com/4j5bnsjx.)

Under the Reid Technique, police officers

or other officials are supposed to "investigate, then interrogate" after they've determined, through various means, that subjects are guilty. Cognitive bias already pushes humans towards such assumptions. These techniques give investigators validation to pursue confessions based on "their gut" and other assumptions, which they can base on subjects' race, attitude, perceived nervousness, idiosyncrasies and other observations.

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According to the Reid Technique materials, the process begins with isolating and secluding the subject, followed by an investigator's friendly rapport building that suddenly ends with the investigator saying they're absolutely certain of the subject's guilt. The investigator interrupts and then ignores the subject's denials of guilt and becomes more accusatory.

Reid Technique trainers teach investigators to keep subjects engaged, and prevent them from resting or becoming passive. An investigator persuades a subject to offer an excuse for the crime or gives a choice between two alternatives, such as, "Did you steal the money for drugs, or was it because your family needed the money?" Investigators present to subjects fabricated physical evidence and fictitious statements from supposed co-conspirators, and then lie to subjects about the investigators' knowledge of the facts of the case and subjects' guilt. Reid Technique trainers teach investigators to offer confession as the only possible way to stop questioning.

While the new Reid Technique manual now includes a section on avoiding false confessions, academics are still extremely critical of it and similar interrogation models. Studies have shown that even experienced investigators and police officers are no better than the general population at detecting actual lies, and interrogation training increases their confidence in their own abilities but not the accuracy of their opinions. (See "Reid Technique," ScienceDirect, from Encyclopedia of Applied Psychology, 2004, tinyurl.com/rtnjex2p.)

Interrogators and interviewers are generally no better at detecting lies than pure chance; they're correct about 50% of the time. Academic studies have also demonstrated that the Behavioral Analysis Interview method, a mainstay of the Reid Technique — in which investigators determine that subjects are lying and thus guilty — isn't scientifically valid. Of course, people react differently to stress; what signifies untruthfulness in one person doesn't necessarily apply to others. (See "Beyond Good Cop/Bad Cop: A Look At Real-Life Interrogations," NPR, Dec. 5, 2013, tinyurl.com/bdcrlb9x; "The Reid Interrogation Technique and False Confessions: A Time for Change," by Wyatt Kozinski, Seattle Journal for Social Justice, April 14, 2018, tinyurl.com/ar-hsmb5; and "Active Deception Detection," by Timothy R. Levine, Sage Journals, Oct. 1, 2014, tinyurl.com/3xmx8txr.)

The U.S. Supreme Court, in the well-known Miranda case, recognized the power of psychological pressure when it decided that a person who "has been taken into custody or otherwise deprived of his freedom of action in any significant way" has the right to remain silent but needs to be informed of that right prior to questioning. (See *Miranda v. Arizona*, 384 U.S. 436, 1966, tinyurl.com/fut4uyvr.) The courts have confined themselves to

concerns about confessions coerced from the guilty and haven't taken up the topic of false confessions, even though — as we've seen — exonerations and academic studies have proven that false confessions are a real problem. Most non-sworn fraud examiners wouldn't be giving a Miranda warning in any event because Miranda only applies to custodial interrogation by the government.

ACKNOWLEDGING CONFIRMATION BIAS IN INVESTIGATIONS

Investigators also frequently demonstrate "confirmation bias" — the seeking or interpreting of evidence in ways that are partial to existing beliefs, expectations or hypotheses. In other words, investigators interpret statements and other evidence in a case only in ways that are consistent with their previously formed beliefs about a subject's guilt. Investigators say to themselves, and sometimes to the subject, "I know you're guilty; so, just confess." (See "You're guilty, so just confess!: Cognitive and behavioral confirmation biases in the interrogation room," in additional sources below.) It's simply human nature to assume our ideas are correct and to seek out confirmation of our beliefs during an investigation. Confirmation bias has been shown to have played a major part in virtually all false confessions where the subject was subsequently determined to have been factually innocent through DNA testing.

Fraud examiners also begin their investigations with fraud hypotheses, but they must be extremely careful to interpret evidence as broadly as possible. They must keep alternate scenarios in mind, including the possibility that fraud may not have occurred at all.

Evidence in criminal and administrative or employment cases is frequently subject to interpretation. So, fraud examiners must be wary of interpreting evidence in ways that support their hypotheses or giving more weight to evidence that's consistent with what they think happened and who they think committed the fraud.

When an investigator accuses someone of a crime and clearly telegraphs they don't believe the person's denials, they set into motion a behavioral confirmation process that negates analysis of discourse or body language in the subject.

The investigator's presumption of guilt can influence the subject's behavior, the behavior of other investigators, and ultimately the judgments of any neutral observers. In other words, when an employee is accused of a crime and then accused of lying, they often react emotionally at the prospect of not being believed. They become uncomfortable, react defensively and repeatedly deny their involvement. The investigator interprets the

employee's responses to the accusations as acting like someone who's guilty of something; the investigator then tells the subject that they're undoubtedly lying and are guilty.

This phenomenon, called Othello's error, refers to Shakespeare's character who accused his wife of having an affair with another man. She denied it, cried and became distraught that she couldn't do anything to convince her husband she hadn't been unfaithful. Even though she was telling the truth, Othello interpreted his wife's distress as guilt and shame over the affair and killed her. Thus, Othello's error was interpreting his wife's emotional reaction as evidence of the truth of his accusation. (See tinyurl.com/ms75b9ez.)

TYPES OF FALSE CONFESSIONS

Let's discuss three different recognized typologies of false confessions: voluntary, internalized and compliant. (See "Confessions: Psychological and Forensic Aspects," by S. Kassin, International Encyclopedia of the Social & Behavioral Sciences, ScienceDirect, 2001, tinyurl.com/54zjc2h2.)

Subjects who are mentally ill, cognitively impaired or attention-seeking media-hounds will voluntarily and spontaneously confess to crimes they didn't commit. For example, an estimated 200 or so people confessed to kidnapping the Lindbergh baby in 1932. These subjects normally are unable to convincingly persuade investigators they committed the crimes because they lack sufficient knowledge about the specifics of the incidents.

Investigators can question subjects who are innocent but ultimately confess and believe they've committed crimes — sometimes creating false memories. These internalized false confessions can result from subjects' guilt over not preventing crimes or losing touch with reality because of mental illness.

Investigators' interrogations, whether coercive or legal, can brainwash subjects into believing they're guilty, especially when investigators present supposedly infallible evidence, such as falsified lie detector tests, fake DNA evidence and false confessions of others. (This tactic is generally legal in the U.S. but is illegal in most other developed nations.)

The compliant false confessor, as shown in the opening AutoZone case, knows they're innocent, but nevertheless confesses to escape interrogators' threats including physical force, psychological torment, and a promised or implied reward.

Statements from such confessions frequently begin with their truthful, blatant denials of any involvement. But after investigators have broken down subjects' will with legal or coercive techniques, the subjects often say, "Just tell me what to say, and I'll say it" or something similar. Subjects often don't know enough about the actual crimes to piece together convincing confessions. Investigators must feed details to them, and the subjects practice until they can recite the facts and be sufficiently convincing. Or investigators might write confessions, and then have the subjects sign them.

Once subjects confess, their fates are essentially sealed. Prosecutors, juries, and even judges and forensic scientists, are almost always willing to believe confessions. Even when judges and juries are told that confessions were illegally coerced, perhaps even because of investigators' physical abuse, they still give credence and weight to the confessions.

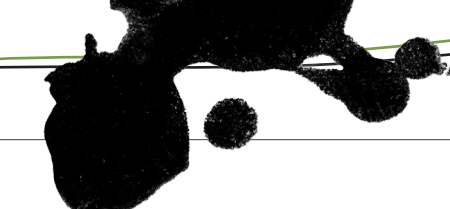
When subjects confess investigations usually stop, which means that courts never address facts that could've proven innocence. And, of course, when the wrong subject is identified, the real perpetrators go free.

FRAUD EXAMINERS' OBLIGATIONS

So, how can fraud examiners ensure they're not inducing subjects to falsely confess? Simple techniques can help protect investigators, their employers and innocent subjects. Never assume guilt because it can lead to Othello's error, reinforces confirmation bias and begins an admission-seeking interrogation with only one foregone conclusion — the subject will be forced to confess.

When asked about concerns over false confessions, proponents of the Reid Technique often argue that they only interrogate guilty people. The problem is that the same investigator who decided the subject should be interviewed, also conducts the interrogation (often using deceptive techniques) and determines the subject's guilt. This is confirmation bias in action.

Facts and the pursuit of facts — not merely confessions — should drive investigations. ACFE members are bound by the association's ethical obligations, which include making determinations, writing reports and expressing opinions based on



verifiable facts. We're precluded by our professional standards from opining on the guilt or innocence of any individual.

The ACFE Code of Professional Ethics states:

An ACFE Member, in conducting examinations, will obtain evidence or other documentation to establish a reasonable basis for any opinion rendered. No opinion shall be expressed regarding the guilt or innocence of any person or party. (See tinyurl.com/3ajauypt.)

Refusing to fall victim to confirmation bias and always conceding that a subject might be telling the truth goes a long way toward lessening the chance of a false confession.

To be clear, the Reid Technique, and similar high-pressure police interrogation techniques are extremely effective at generating confessions. However, the courts might rule that investigators coerced confessions and therefore rule them inadmissible.

CFEs can use newer interview and interrogation techniques that are effective in obtaining confessions and reduce the risk of producing false confessions.

Modern interview technique models focus on an interviewer (not an interrogator) building a rapport with a subject and giving them many opportunities to give varying statements during an open dialogue. The interviewer can then compare the subject's multiple statements with each other and the objective facts of the case. Research has shown that these interviews are more effective at obtaining reliable confessions than the deceptive tactics of deception, fear, intimidation and extreme psychological pressure. In 2017, Wicklander-Zulawski and Associates, which calls itself the leading training company in the world on interrogation techniques, stated that it would no longer teach the Reid Technique because of the risk of false confessions. The company has developed its own interviewing techniques. (See

"Leading Police Consulting Group Will No Longer Teach the Reid Technique," Innocence Project, March 8, 2017, tinyurl.com/2bc46fkh.)

Use of deceptive tactics and fabricated evidence in interviews is illegal in many countries. Even in the U.S., where using fabricated evidence and false statements in an interrogation is generally permitted by law, the circumstances may violate a fraud

examiner's obligations under ACFE professional standards. These standards include obligations of integrity, objectivity and due professional care, while being alert to the possibility of conjecture, and unsubstantiated opinions and biases. CFEs are required to consider both exculpatory and inculpatory evidence in their fraud examinations. (See the CFE Code of Professional Standards, tinyurl.com/3ajauypt.)

Interviewers can record interviews and interrogations with video or audio devices to help prevent false confessions and allegations of coercion. Supervisors or employers' attorneys can view or listen to recordings to ensure interviewers told subjects they were free to leave and made no threats or promises that might have coerced confessions. In the AutoZone example, the employer's policy precluded recording of any portions of interviews; even the subjects weren't allowed to record sessions.

Finally, a member of an investigative team, prosecutor or company attorney can play devil's advocate to help prevent false confessions and mistaken investigative conclusions during investigations. This person shouldn't be involved in the investigation nor a subject's interviews but will question each piece of evidence and its interpretation, raise concerns about assumptions that drove the investigation, and pose alternate theories and even suggest additional subjects.

PREVENTING FALSE CONFESSIONS AND RUINED LIVES

Liability for fraud examiners, investigators and employers who utilize deceptive, high-pressure interrogation techniques can be significant — costing millions of dollars for each case. Eliciting false confessions results in wrongful terminations and improper convictions, and ruins innocent subjects' lives while leaving the guilty free to commit additional crimes. Fraud examiners and investigators can use the techniques here to help ensure that their work doesn't result in false confessions. ■ **FM**

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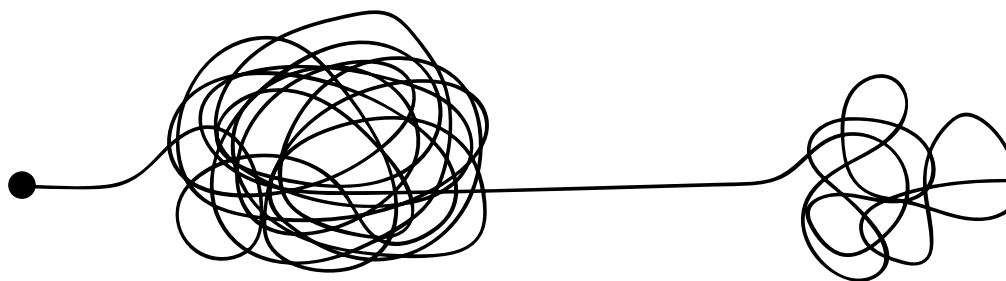
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