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COMMENTS

COERCED FATE: HOW NEGOTIATION MODELS LEAD TO FALSE CONFESSIONS

KIERA JANZEN*

Police interrogators across the United States employ tactics that can lead to coerced, often false, confessions. While police departments have shifted away from physically coercive methods of interrogation, psychologically coercive practices that utilize deceit have taken their place. The reliability of confession evidence becomes a significant concern when interrogators elicit confessions using these techniques. Further demonstrating the need for change in this realm, false confessions and wrongful convictions place a financial burden on cities and taxpayers, who foot the bill for settlements and damages resulting from these cases. The current legal framework in the U.S. permits—by failing to explicitly prohibit—these tactics, and police departments across the nation implement and encourage officers to use them. The psychologically coercive methods that police employ in interrogations share elements with methods that parties often use in negotiations. To analyze why interrogators engage in these practices and why they are successful in eliciting confessions, this Comment examines psychologically coerced confessions under the frameworks of three commonly used negotiation models: 1) the position-based model, 2) the interest-based model, and 3) the core concerns model. This analysis illustrates the need for systemic change to the laws applicable to police interrogations, the widely used methods of interrogation, and the inter-departmental practices that perpetuate coercive tactics. Specifically, this Comment suggests a cross-institutional approach to reform in which

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lawmakers enact legislation that sets standards for interrogations, judges prohibit evidence elicited through psychologically coercive tactics, and police departments overhaul their interrogation practices and hold officers accountable when they engage in psychologically coercive techniques.

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INTRODUCTION

“Patterns tell you that you have a bad orchard, not just a bad apple.”¹

On November 30, 2008, a sixteen-year-old mother hysterically placed a call to the police department in Worcester, Massachusetts to report that her thirteen-month-old son, who suffered from respiratory problems, was

¹ Sarah Macaraeg & Yana Kunichoff, *‘Nothing Happens to the Police’: Forced Confessions Go Unpunished in Chicago*, GUARDIAN (Jan. 28, 2016), <https://www.theguardian.com/us-news/2016/jan/28/chicago-police-department-false-confessions-torture> [<https://perma.cc/EU9H-88U7>].

not breathing.² Nga Truong's baby died at a nearby hospital less than ninety minutes later.³ About twenty-four hours later, Truong confessed to suffocating her infant son, Khyle, after Worcester police detectives interrogated her for two hours.⁴ Following the confession, police arrested Truong and charged her with murder as an adult.⁵ A judge denied Truong bail and the right to attend Khyle's funeral, then sent her to jail where she spent the first four months on suicide watch and in solitary confinement.⁶ Without a trial, this period of detainment occurred while Truong was supposed to be presumed innocent.⁷

A videotape of the interrogation shows Truong in an eight-by-ten foot windowless interrogation room, repeatedly denying killing her son and fighting back tears.⁸ Over the course of the two-hour interrogation, the teenage mother stated thirteen times that she did not kill Khyle.⁹ However, Sergeant Kevin Pageau and Detective John Doherty's utilization of interrogation elements from the commonly used Reid Technique—a multi-part method of questioning designed to psychologically coerce subjects—eventually led Truong to falsely confess.¹⁰

² David Boeri, *How a Teen's Coerced Confession Set Her Free*, NPR (Dec. 30, 2011, 3:22 PM), <https://www.npr.org/2012/01/02/144489360/how-a-teens-coerced-confession-set-her-free> [<https://perma.cc/TND2-DZES>].

³ *Id.*

⁴ Gretchen Gavett, *A Rare Look at the Police Tactics That Can Lead to False Confessions*, PBS (Dec. 9, 2011), <https://www.pbs.org/wgbh/frontline/article/a-rare-look-at-the-police-tactics-that-can-lead-to-false-confessions/> [<https://perma.cc/E2VM-LLVD>].

⁵ *Id.*

⁶ Boeri, *supra* note 2; Brian Ballou et al., *Teen Charged in Son's Death Found Infant Brother Dead*, BOSTON GLOBE (Dec. 3, 2008), http://archive.boston.com/news/local/massachusetts/articles/2008/12/03/teen_charged_in_sons_death_found_infant_brother_dead/ [<https://perma.cc/B424-VM9V>].

⁷ Boeri, *supra* note 2; *see* Paul v. Davis, 424 U.S. 693, 724 (1976) (“In the criminal justice system, this interest [in notice and an opportunity to be heard] is given concrete protection through the presumption of innocence and the prohibition of state-imposed punishment unless the State can demonstrate beyond a reasonable doubt, at a public trial with the attendant constitutional safeguards, that a particular individual has engaged in proscribed criminal conduct.”).

⁸ Gavett, *supra* note 4.

⁹ David Boeri, *Anatomy of a Bad Confession, Part 1*, WBUR (Dec. 7, 2011), <http://legacy.wbur.org/2011/12/07/worcester-coerced-confession-i> [<https://perma.cc/DN5W-FEFY>].

¹⁰ Gavett, *supra* note 4; Boeri states as follows:

Towards the end of the interrogation, Pageau said, “All everyone’s waiting for today is for you to admit to what you did so that we can start the process of getting you some help, getting your brothers out of that house, and getting them in a better home, where there’s a mom that gets up in the morning and takes care of them.” Truong responded by inquiring further about what kind of help she could get, and

Nearly three years later in 2011, the prosecutor dropped the case against Truong, and she was released after spending two years and six months in jail.¹¹ Before the prosecutor dropped the charges, Worcester Superior Court Judge Janet Kenton-Walker approved a motion to suppress all statements that Truong made to the detectives over the course of her interrogation.¹² Further, in February 2011, the judge ruled that the confession was inadmissible.¹³ Judge Kenton-Walker described Truong as “a frightened, meek, emotionally compromised teenager who never understood the implications of her statements.”¹⁴ Ultimately, she deemed the girl’s statements involuntary for two reasons: the interrogators violated procedure by failing to extend her the *Miranda* rights required for juveniles, and they used false statements and deception to illicit the confession.¹⁵ The prosecutor had no other evidence against Truong—no DNA evidence, no eyewitness testimony, no prior convictions, and no circumstantial evidence—and was forced to drop the case.¹⁶ In 2016, the City of Worcester reached a settlement with Truong for \$2.1 million, which ended her suit against the city for civil rights violations, malicious prosecution, false arrest, and false imprisonment.¹⁷

Judge Kenton-Walker found Truong’s statements to be involuntary because Pageau and Doherty’s collective use of deceit, false statements, false promises, and trickery coerced Truong to falsely confess.¹⁸ However, almost all of the individual techniques that the interrogators employed were

the officers told her that while they could not promise anything, her confession would grant her leniency in the juvenile system. To this, Truong whispered, “Do I have to say it?”, and after Pageau replied that she did, Truong sobbed for one full minute before stating, “I smothered Khyle.”

Boeri, *supra* note 9.

¹¹ Boeri, *supra* note 2; Gavett, *supra* note 4.

¹² Gavett, *supra* note 4.

¹³ Boeri, *supra* note 2.

¹⁴ *Id.*; see also David Boeri, *Woman in Tossed-Out Confession Gets \$2.1M Settlement from Worcester*, WBUR (June 30, 2016), <http://www.wbur.org/all-things-considered/2016/06/30/nga-truong-worcester-settlement> [https://perma.cc/U4CM-WCYT] (noting that after Judge Kenton-Walker watched the interrogation video, she stated, “With notable naivete, Nga believed what the officers told her. . . . All she wanted to know was whether she and her brothers would now be able to go to a foster home.”).

¹⁵ Boeri, *supra* note 2.

¹⁶ *Id.*

¹⁷ Boeri, *supra* note 14.

¹⁸ Boeri, *supra* note 2; Gavett, *supra* note 4.

legal.¹⁹ Interrogations are inherently stressful and coercive by nature because authority figures use both intimidation and leverage.²⁰ Police departments no longer engage in the brutal physical torture tactics, often referred to as “the third degree,” that were commonplace prior to the Supreme Court’s 1936 prohibition on such methods in *Brown v. Mississippi*.²¹ However, the current U.S. legal framework permits many psychologically coercive techniques that police interrogators employ.²²

Interrogators design and employ psychologically coercive tactics to elicit confessions in a manner similar to formerly used physical torture techniques. One definition of psychologically coercive police tactics is “coercive police methods that sequentially manipulate a suspect’s perception of the situation, expectations for the future, and motivation to shift from denial to admission.”²³ These tactics can result in truthful confessions and the genuine administration of justice, but numerous cases demonstrate that they frequently lead to false confessions and wrongful convictions of innocent individuals who were psychologically coerced to profess guilt to crimes that they did not commit.²⁴

The psychologically coercive tactics used by interrogators like Pageau and Doherty, and the confessions they produce, raise the issue of reliability throughout the legal process, from interrogation to potential conviction.²⁵ Most jurors cannot fathom confessing to a crime that they did not commit.²⁶ People unfamiliar with interrogation tactics struggle to imagine why

¹⁹ Boeri, *supra* note 2. Note that Judge Kenton-Walker did not rule on the permissibility of any of the individual tactics that Pageau and Doherty used, but found that their collective use of these techniques throughout Truong’s interrogation coerced her to confess.

²⁰ Frances E. Chapman, *Coerced Internalized False Confessions and Police Interrogations: The Power of Coercion*, 37 *LAW & PSYCHOL. REV.* 159, 164 (2013).

²¹ *Brown v. Mississippi*, 297 U.S. 278 (1936); Boeri, *supra* note 9; *but see, e.g.*, Macaraeg & Kunichoff, *supra* note 1 (discussing the Chicago Police Department’s use of electric shock, suffocation, beating, and mock executions to coerce confessions under detective and commander Jon Burge from the 1970s through early 1990s).

²² Gavett, *supra* note 4.

²³ Chapman, *supra* note 20, at 163–64.

²⁴ See Brandon L. Garrett, *The Substance of False Confessions*, 62 *STAN. L. REV.* 1051, 1060 (2010) (noting that scholars and researchers have identified at least 250 cases involving false confessions since the 1990s). See also Richard Leo, *Police Interrogations, False Confessions, and Alleged Child Abuse Cases*, 50 *U. MICH. J. L. REFORM* 693, 698–700 (2017) (noting that “DNA cases consistently show fifteen to twenty-five percent false confessions”, and that this may just be the “tip of the iceberg” because false confessions are “a phenomenon that is largely invisible.”).

²⁵ Saul M. Kassir, *Why Confessions Trump Innocence*, *AM. PSYCHOLOGIST* (Apr. 30, 2012), <http://www.injusticeinperugia.org/AmericanPsychologistSaulKassir.pdf> [<https://perma.cc/C9KQ-KXVB>].

²⁶ *Id.*

someone would act against her own interests by admitting guilt when she is truly innocent.²⁷ Consequently, people tend to view any confession, regardless of its validity, with an underlying presumption of guilt.²⁸ As a result, “[t]he real trial is what occurs in the interrogation room.”²⁹ Existing laws and their enforcement must shift to prohibit psychologically coercive practices that lead to unreliable confessions because such confessions carry presuppositions of guilt that impair the administration of justice throughout the entirety of a case.

False confessions not only impair the administration of justice, they also cost cities and taxpayers millions of dollars.³⁰ As in Truong’s case, courts and juries award millions of dollars in settlements and damages to individuals implicated in false confession cases.³¹ In addition to the pursuit of true justice, police departments have financial incentives to change their internal interrogation practices to avoid costly payouts for cities and their taxpayers.

The case of Nga Truong is hardly an isolated example of the use of psychologically coercive tactics leading to a false confession and wrongful conviction. In the U.S., 40 of the first 250 people exonerated based on DNA evidence had falsely confessed.³² The development of DNA testing has revealed the scope of the issue of false confessions and wrongful

²⁷ Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY LAW. 332, 333 (2009) (noting that “[M]ost people do not know what occurs during police interrogations, and . . . they wrongly assume that individuals do not act against their self-interest or engage in self-destructive behavior, such as falsely confessing to a crime they did not commit.”).

²⁸ Leo, *supra* note 24, at 700.

²⁹ *Id.*

³⁰ See, e.g., Crimesider Staff, *How Chicago racked up a \$662 million police misconduct bill*, CBS NEWS (Mar. 21, 2016), <https://www.cbsnews.com/news/how-chicago-racked-up-a-662-million-police-misconduct-bill/> [<https://perma.cc/U2AZ-9NSD>] (noting that from 2004 to 2016, Chicago taxpayers paid \$662 million for police misconduct, largely attributable to cases of false confessions and wrongful convictions).

³¹ See, e.g., Fran Spielman, *‘Englewood Four,’ coerced into confessions, to get \$31M settlement*, CHI. SUN TIMES (Dec. 9, 2017), <https://chicago.suntimes.com/news/englewood-four-31-million-settlement-tortured-false-confession-exonerated/> [<https://perma.cc/Z7LP-8YCV>] (noting a \$31 million settlement to be paid by Chicago taxpayers to four men in a rape and murder false confession case); Frank Green, *Former U.S. attorney on Norfolk Four rape, murder case: ‘It’s the worst miscarriage of justice I’ve experienced in my 40 years as a lawyer’*, RICHMOND-TIMES DISPATCH (Feb. 23, 2018), http://www.richmond.com/news/local/crime/former-u-s-attorney-on-norfolk-four-rape-murder-case/article_fecc026b-0175-546c-a7f7-7074bc760549.html [<https://perma.cc/D497-7GZ7>] (noting a \$41 million verdict in New York, a \$20 million settlement in Illinois, an \$18 million settlement in Washington, D.C., a \$16 million verdict in Missouri, and a \$13.2 million verdict in Ohio).

³² Garrett, *supra* note 24.

convictions.³³ Post-conviction DNA tests prove that many people who falsely confessed to crimes could not have been the true perpetrators of those crimes.³⁴ In turn, psychologists and social scientists have studied the psychological impacts of coercive interrogation tactics in attempts to determine how they are applied and why they lead to confessions, whether false or not.³⁵

Although psychologists and social scientists have provided insight into how coercive interrogation methods impact interrogation subjects, examining psychologically coercive police interrogations under the frameworks of several of the most commonly-used negotiation models provides further insight into the actions and motivations of both interrogation subjects and interrogators. This Comment analyzes psychologically coercive interrogations under the position-based negotiation model, the interest-based model,³⁶ and the five core concerns presented by Roger Fisher and Daniel Shapiro in their book, *Beyond Reason: Using Emotions as You Negotiate*.³⁷ This analysis clarifies common misconceptions surrounding confession evidence by illustrating how interrogators get people to confess, why people confess to crimes that they did not commit, and what motivates police departments to engage in systematic use of these techniques. This examination further demonstrates that the current legal framework applicable to interrogations gives police broad leeway to employ tactics that have coercive effects akin to traditional physical torture methods. This legal framework, in combination with lack of officer and department accountability and failure to address problematic interrogation practices at a systemic level, creates a bad orchard where innocent people are psychologically coerced to falsely confess.

The remainder of this Comment will unfold in several parts. Part I examines the development of the current legal framework that governs police interrogations and illustrates how it allows psychologically coercive practices to persist. Part II addresses coercive interrogation tactics and the psychological and social science research on coerced confessions, which demonstrates how these techniques lead to confessions. Part III explains

³³ Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. HUM. BEHAV. (2009), [http://web.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20-%20LHB%20\(2010\).pdf](http://web.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20-%20LHB%20(2010).pdf) [<https://perma.cc/V89T-G6VM>] [hereinafter *Police-Induced Confessions White Paper*].

³⁴ *Id.*

³⁵ See, e.g., Leo, *supra* note 27; *Police-Induced Confessions White Paper*, *supra* note 33.

³⁶ See ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (Bruce Patton ed., 2d ed. 1991).

³⁷ ROGER FISHER & DANIEL SHAPIRO, *BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE* (2005).

the position-based, interest-based, and core concerns negotiation models and applies each model to the interrogation of Nga Truong to show how police can exploit elements from these negotiation models to coerce interrogation subjects to confess. Part IV then reflects on the insights gained from examining police interrogations under the negotiation model framework and proposes potential solutions to the problem of psychologically coercive interrogation practices.

I. THE LEGAL FRAMEWORK OF INTERROGATIONS

A. HISTORICAL LEGAL FRAMEWORK OF COERCION

Officials have engaged in widespread torture as a means of eliciting confessions throughout history. Centuries ago in the Roman Republic, officials regularly used physical torture on slaves to extract confessions and augment testimony.³⁸ In the later period of the Roman Empire, officials expanded confessional torture policies to citizens as well as slaves, and used these techniques to confirm evidence in cases involving those accused of “grave crimes.”³⁹ Similarly in the U.S., for much of the eighteenth and nineteenth centuries, “the state had ample means to obtain incriminatory evidence,” and sheriffs, constables, night watchmen, and community members were responsible for crime control.⁴⁰ However, large-scale professional police departments developed in the late nineteenth century and took on responsibility for criminal investigations and interrogations.⁴¹ The lack of law governing interrogations allowed officers to engage in “third degree” methods of physical and mental torture similar to ancient Roman techniques.⁴² Commonly employed third-degree techniques against interrogation subjects included: beating, kicking, mauling, holding a suspect’s head under water, burning with cigars or pokers, extended solitary confinement, sleep and food deprivation, shining blinding lights in faces,

³⁸ Tracey Maclin, *A Comprehensive Analysis of the History of Interrogation Law, With Some Shots Directed at Miranda v. Arizona*, 95 B.U. L. REV. 1387, 1397–98 (2015).

³⁹ Sarah Bond, *Torture Has Never Been An Effective Means of Information Gathering – Just Ask the Romans*, FORBES (Jan. 28, 2017, 8:58 AM), <https://www.forbes.com/sites/drsarahbond/2017/01/28/torture-has-never-been-an-effective-means-of-information-gathering-just-ask-the-romans/#1274fe89367c> [<https://perma.cc/RSD9-8JZW>].

⁴⁰ Steven Penney, *Theories of Confession Admissibility: A Historical View*, 25 AM. J. CRIM. L. 309, 322–23 (1998).

⁴¹ *Id.*

⁴² *Id.*; *Police-Induced Confessions White Paper*, *supra* note 33, at 6.

coercive questioning, threats, and promises related to leniency.⁴³ Police interrogators relied on these types of tactics through the 1930s.⁴⁴ In 1929, President Herbert Hoover established the Wickersham Commission (also known as the National Commission on Law Observance and Enforcement), a committee which investigated and analyzed issues in law enforcement.⁴⁵ In its 1931 report, the Commission condemned interrogators' use of third-degree methods and found that they led to coerced false confessions.⁴⁶

Shortly after the Wickersham Commission's 1931 report, the Supreme Court, in 1936, condemned interrogators' use of physical abuse to elicit confessions in *Brown v. Mississippi*.⁴⁷ In *Brown*, police arrested a suspect, hung him by a rope from a tree limb, and later tied him to the tree, where they whipped him while he proclaimed his innocence.⁴⁸ Police eventually released the man, but rearrested him days later, severely whipped him again, and told him the whipping would continue until he confessed.⁴⁹ The suspect did confess and he was convicted based on this confession, but the Supreme Court reversed his conviction, stating that a trial "is a mere pretense where the state authorities have contrived a conviction resting solely upon confessions obtained by violence."⁵⁰ The Court further held that in order to comport with due process, state action must be "consistent with fundamental principles of liberty and justice".⁵¹

As a result of the Wickersham Commission's report and the Supreme Court holding in *Brown* that "[t]he rack and torture chamber may not be substituted for the witness stand,"⁵² interrogators began to move away from

⁴³ *Police-Induced Confessions White Paper*, *supra* note 33, at 6; Maclin, *supra* note 38, at 1391; Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 909 (2004).

⁴⁴ *Police-Induced Confessions White Paper*, *supra* note 33, at 6.

⁴⁵ Maclin, *supra* note 38, at 1391; John Woolley & Gerhard Peters, *Herbert Hoover: Remarks at the First Meeting of the National Commission on Law Observance and Enforcement*, THE AM. PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/node/210035> (last visited Nov. 11, 2017) [<https://perma.cc/CNV2-Z38H>].

⁴⁶ *Id.*

⁴⁷ 297 U.S. 278 (1936); *Police-Induced Confessions White Paper*, *supra* note 33, at 12.

⁴⁸ 297 U.S. at 281.

⁴⁹ *Id.* at 281–82.

⁵⁰ *Id.* at 284, 286.

⁵¹ *Id.* at 286 (quoting *Herbert v. Louisiana*, 272 U.S. 312, 316 (1926)); Russell L. Weaver, *Reliability, Justice, and Confessions: The Essential Paradox*, 85 CHI.-KENT L. REV. 179, 182–83 (2010).

⁵² 297 U.S. at 286; *see also* *Ashcraft v. Tennessee*, 322 U.S. 143 (1944) (holding that admission of a confession was improper because it was elicited by means of a brutal interrogation).

third-degree tactics.⁵³ Instead, interrogators increasingly developed and relied on psychological interrogation methods to increase subjects' anxiety and stress and exploit their emotions.⁵⁴ Police interrogators have developed a "single-minded purpose of interrogation . . . to elicit incriminating statements" because confession evidence can lead to convictions,⁵⁵ and police performance is often measured by the number of convictions they obtain, and subsequently the number of crimes they clear.⁵⁶ These performance measures do not necessarily consider whether guilty or innocent people are convicted.⁵⁷ Consequently, interrogators have relied on these psychological interrogation methods to obtain confessions from suspects by any means necessary.

Current federal and state laws allow—or at least fail to explicitly prohibit—interrogators to employ psychologically coercive tactics that lead innocent people to falsely confess to crimes. The American criminal justice system has grappled with police-induced false confessions since the late nineteenth century.⁵⁸ An 1819 case that is widely regarded as the first wrongful conviction case in the United States involved a false confession.⁵⁹ In 1897, the Supreme Court ruled in *Bram v. United States* that under the Fifth Amendment, any confession "extracted by any sort of threats or violence . . . obtained by any direct or implied promises, however slight, [or] by the exertion of any improper influence" is invalid.⁶⁰ However, the Court did not deem the Fifth Amendment "privilege against compelled self-incrimination" to be a "fundamental" right, and it was thus only applicable to federal criminal trials and not state criminal trials, which constitute the vast majority of criminal trials.⁶¹ The Supreme Court did not extend (via the Fourteenth Amendment) this privilege to the states until *Malloy v.*

⁵³ Drizin & Leo, *supra* note 43, at 909–10.

⁵⁴ *Id.*; *Police-Induced Confessions White Paper*, *supra* note 33, at 6.

⁵⁵ *Id.*

⁵⁶ Roger Koppl & Meghan Sacks, *The Criminal Justice System Creates Incentives for False Convictions*, 32 CRIM. JUST. ETHICS 126, 145 (2013), <https://doi.org/10.1080/0731129X.2013.817070> [<https://perma.cc/R8SB-76T8>].

⁵⁷ *Id.* at 146.

⁵⁸ *Police-Induced Confessions White Paper*, *supra* note 33, at 6.

⁵⁹ Robert J. Norris & Allison D. Redlich, *Seeking Justice, Compromising Truth? Criminal Admissions and the Prisoner's Dilemma*, 77 ALB. L. REV. 1005, 1015–16 (2014) (noting the incident of the first wrongful conviction in the U.S. in 1819).

⁶⁰ 168 U.S. 532, 542–43 (1897).

⁶¹ *Id.* at 542; Marc L. Waite, *Reining in "Knock and Talk" Investigations: Using Missouri v. Seibert to Curtail an End-Run Around the Fourth Amendment*, 41 VAL. U. L. REV. 1335, 1354 (2007).

Hogan in 1964.⁶² This meant that for decades, suspects in state criminal trials could not invoke the Fifth Amendment protection to exclude coerced confessions.⁶³

B. LEGAL FRAMEWORK FOR MODERN INTERROGATION TECHNIQUES

Unlike the explicit prohibition of physical torture in interrogations in *Brown*, the law regarding psychologically coercive and deceptive interrogation practices is “far less condemnatory,” providing broad leeway to police in the interrogation room.⁶⁴ Prior to the Supreme Court’s substantive discussion of the Fifth Amendment’s application to interrogations and psychological techniques applied in police questioning in *Miranda v. Arizona*,⁶⁵ the Court noted in several cases that interrogators engaging in deceptive tactics can cause involuntary confessions.⁶⁶ For example, *Leyra v. Denno* involved a psychiatrist, who, working with police, impersonated a general medical practitioner and posed “subtle and suggestive questions . . . to induce [the] petitioner to admit his guilt.”⁶⁷ The Supreme Court deemed the resulting confession involuntary because of the psychiatrist’s deception and the police’s use of other mentally and emotionally taxing tactics.⁶⁸ However, the Court did not hold that coercive tactics of this nature on their own could presumptively disqualify a confession on voluntariness grounds.⁶⁹ Thus, despite discussion of psychological interrogation practices, prior to *Miranda*, the Court did not rule on the legality of the use of coercive practices in general, and focused instead on the context of individual cases. Nonetheless, interrogation jurisprudence further developed in the 1960s when the Supreme Court guaranteed suspects in state criminal proceedings the Fifth Amendment’s “privilege against self-incrimination” through the Fourteenth Amendment in *Malloy*,⁷⁰ and the Court held that the Sixth Amendment’s right to counsel applied during police interrogations in *Escobedo v. Illinois*.⁷¹

⁶² 378 U.S. 1, 3 (1964); Waite, *supra* note 61, at 1354.

⁶³ *Id.*

⁶⁴ See generally 297 U.S. 278 (1936); see *Police-Induced Confessions White Paper*, *supra* note 33, at 12.

⁶⁵ 384 U.S. 436 (1966).

⁶⁶ *Police-Induced Confessions White Paper*, *supra* note 33, at 12.

⁶⁷ 347 U.S. 556, 559 (1954).

⁶⁸ *Id.* at 561; see also *Spano v. New York*, 360 U.S. 315, 323–24 (1959) (holding a confession involuntary where the interrogator exploited his preexisting friendship with the suspect to elicit the confession).

⁶⁹ *Police-Induced Confessions White Paper*, *supra* note 33, at 12.

⁷⁰ *Malloy v. Hogan*, 378 U.S. 1, 3 (1964).

⁷¹ 378 U.S. 478, 490–91 (1964).

Scholars, including Saul M. Kassin, Steven A. Drizin, and Thomas Grisso, view *Miranda* as a significant step in the Court seeking to prevent police interrogations from leading to coerced, false confessions.⁷²

In 1966, the *Miranda* Court expressed concern about instances where “the inherently threatening power of the police” was leveraged against the lesser powers of interrogation subjects, and theorized that the process of questioning was coercive due to its power dynamic structure alone.⁷³ Here, however, the Court again failed to explicitly outlaw psychologically coercive interrogation tactics.⁷⁴ In a 5–4 decision, the Court ruled that the Fifth Amendment mandated a fundamental privilege for interrogation subjects to receive warnings about their rights to remain silent, that anything they do or say can and will be used against them, information about availability of legal counsel, and an opportunity to waive those rights before the interrogation.⁷⁵ Further, “unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of the interrogation can be used against [the defendant].”⁷⁶

Despite the theoretical increase in protections against coerced confessions for interrogation subjects that *Miranda* offered, federal and state courts today largely permit coercive police interrogation conduct as long as police provide the *Miranda* warnings and the suspects waive their rights.⁷⁷ Whether innocent or not, more than 80% of suspects waive their *Miranda* rights with the intent of seeming cooperative to police.⁷⁸ Consequently, “*Miranda* has not proven to be a panacea to the problem of false confessions.”⁷⁹ Research suggests that merely satisfying the *Miranda*

⁷² See *Police-Induced Confessions White Paper*, *supra* note 33, at 7 (describing *Miranda* as “[o]ne of the U.S. legal system’s greatest efforts to protect suspects from conditions that might produce involuntary and unreliable confessions”).

⁷³ *Id.*; Maclin, *supra* note 38, at 1399.

⁷⁴ *Police-Induced Confessions White Paper*, *supra* note 33, at 13 (explaining that while the Court “discussed the use of trickery and deception and noted that the deceptive tactics recommended in standard interrogation manuals fostered a coercive environment . . . [it] did not specifically prohibit such tactics,” but gave suspects rights that could stop an interrogation instead).

⁷⁵ *Miranda v. Arizona*, 384 U.S. 436, 469, 476, 479 (1966); see also *In re Gault*, 387 U.S. 1, 41 (extending similar rights and procedures to juveniles).

⁷⁶ *Miranda*, 384 U.S. at 479.

⁷⁷ Christopher Slobogin, *Manipulation of Suspects and Unrecorded Questioning: After Fifty Years of Miranda Jurisprudence, Still Two (Or Maybe Three) Burning Issues*, 97 B.U. L. REV. 1157, 1165–67 (2017).

⁷⁸ Douglas Starr, *Do police interrogation techniques produce false confessions?*, THE NEW YORKER (Dec. 9, 2013), <https://www.newyorker.com/magazine/2013/12/09/the-interview-7> [https://perma.cc/T55U-SZCS].

⁷⁹ Weaver, *supra* note 51, at 184.

requirements is insufficient to prevent interrogators from coercing innocent people to falsely confess.⁸⁰ Most innocent suspects relinquish their rights before the accusations begin in an interrogation, and are unlikely to invoke their rights to end the questioning as interrogators increase pressure and employ coercive tactics.⁸¹ Suspects give up their rights in some instances because police administer the warning poorly or improperly, and in doing so, “undercut[t] its significance and impact.”⁸² In addition, significant issues remain even if the *Miranda* rights are properly extended.⁸³ Suspects may be nervous, misunderstand the implications of their actions, or feel concerned about the consequences of talking to police, and might therefore waive their rights without much consideration of the consequences.⁸⁴ While these are potential issues for all interrogation subjects, according to Christopher Slobogin, “psychological characteristics of [some] suspect[s] make the warnings irrelevant.”⁸⁵ In particular, adults with mental disabilities and children under the age of sixteen tend to misunderstand the warnings or their implications.⁸⁶

Since *Miranda*, the Supreme Court has been more deferential toward police departments’ interrogation practices, and has permitted, through explicit rulings as well as vague interpretations and statements about the law, the continued use of deceptive and coercive tactics.⁸⁷ Presently, police can “lie about anything in the interrogation room so long as it does not violate the Fourteenth Amendment due process voluntariness standard.”⁸⁸ For instance, in *Frazier v. Cupp*, interrogators falsely told the suspect that a person he was with at the time of the crime had confessed to it.⁸⁹ The Court held that while deceptive tactics of this nature should be considered when assessing the voluntariness of a confession, they were insufficient on their own “to make this otherwise voluntary confession inadmissible.”⁹⁰ This

⁸⁰ See *Police-Induced Confessions White Paper*, *supra* note 33, at 7–9.

⁸¹ Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 *DENV. U. L. REV.* 979, 1116–17 (1997).

⁸² Weaver, *supra* note 51, at 185.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Slobogin, *supra* note 77, at 1176.

⁸⁶ *Police-Induced Confessions White Paper*, *supra* note 33, at 8.

⁸⁷ *Id.* at 12.

⁸⁸ Leo, *supra* note 24, at 717.

⁸⁹ 394 U.S. 731, 737–38 (1969).

⁹⁰ *Id.* at 739; see also *Oregon v. Mathiason*, 429 U.S. 492, 496–97 (1977) (holding that an “officer’s false statement about having discovered [the suspect’s] fingerprints at the scene” was insufficient by itself to make the confession inadmissible); *State v. Nightingale*, 58 A.3d 1057, 1061, 1068–69 (Me. 2012) (holding that interrogators’ false suggestions that

case “has been interpreted by police and the courts as a green light to deception.”⁹¹

Additionally, in the context of an interrogation, it is legal for the police to “misrepresent[t] the strength of the state’s case to the suspect.”⁹² Police are further permitted to deceptively befriend suspects in an effort to gain their trust and get information from them.⁹³ According to case law, police are not explicitly prohibited from engaging in minimization, or “downplaying the moral consequences of the crime without mentioning the legal ones.”⁹⁴ Minimization, part of the commonly-used Reid Technique, involves interrogators expressing sympathy to the suspect, minimizing the offense, suggesting that they would act in a similar way, and offering various explanations for the crime.⁹⁵ For example, in a murder interrogation, police using minimization tactics might suggest to the suspect “that the murder was spontaneous, provoked, peer-pressured, or accidental rather than the work of a cold-blooded premeditated killer.”⁹⁶ Minimization is intended to provide interrogation subjects with moral justifications and excuses for the alleged crime, and when a person is under extreme pressure and experiencing feelings of desperation and hopelessness, he or she may consequently feel that confessing is a tenable alternative or escape.⁹⁷

In the last few decades, the Supreme Court has also issued rulings that changed some procedures surrounding interrogation jurisprudence. In 1991, the Court held in *Arizona v. Fulminante* that the admission of an involuntary confession was subject to harmless error analysis, rather than “trigger[ing] a rule of ‘automatic reversal.’”⁹⁸ This means that in cases where a coerced confession was allowed into evidence, instead of the case being automatically reversed, the appellate court will consider the admittance of the confession as “harmless error” and look beyond the

they had compromising DNA evidence and satellite images of the suspect’s car at the crime scene did not make the confession inadmissible).

⁹¹ *Police-Induced Confessions White Paper*, *supra* note 33, at 13.

⁹² Miller W. Shealy, Jr., *The Hunting of Man: Lies, Damn Lies, and Police Interrogations*, 4 U. MIAMI RACE & SOC. JUST. L. REV. 21, 35 (2014); *see* Bobby v. Dixon, 565 U.S. 23 (2011).

⁹³ Shealy, Jr., *supra* note 92, at 29.

⁹⁴ Starr, *supra* note 78; *see, e.g., Frazier*, 394 U.S. 731, 738–39 (1969) (an interrogator’s suggestion that the victim initiated the fight “by making homosexual advances” did not make the confession inadmissible).

⁹⁵ *Police-Induced Confessions White Paper*, *supra* note 33, at 12.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ 499 U.S. 279 (1991); Charles J. Ogletree, Jr., *Arizona v. Fulminante: The Harm of Applying Harmless Error to Coerced Confessions*, 105 HARV. L. REV. 152, 153 (1991).

procedural error to determine if it affected how jurors evaluated the case.⁹⁹ If the court determines that the error did not prejudice jurors' evaluation of the case, then it will not reverse the case based on the error.¹⁰⁰ Another shift in the law came in 2000 with the Court's decision in *Dickerson v. United States*.¹⁰¹ The *Dickerson* Court changed the approach of examining the reliability of confessions to "a deferential voluntariness test examining the 'totality of the circumstances' of a confession."¹⁰² This new test involves an examination of "the characteristics of the accused and the details of the interrogation,"¹⁰³ and almost always results in courts finding confessions to be voluntary.¹⁰⁴

C. LEGAL LIMITS ON MODERN INTERROGATION TECHNIQUES

Regardless of the interrogation legal framework's vagueness and the subsequent broad authority granted to police interrogators, lower courts have defined some limits to this power and set some guidelines for what is improperly coercive. Several state courts, primarily out of fear that such evidence will be presented in court, ruled that police cannot fabricate evidence.¹⁰⁵ However, the Supreme Court and lower federal courts have yet to provide substantive guidance on this issue.¹⁰⁶ Further, courts generally do not approve of police interrogators' misrepresentation of legal rights,¹⁰⁷ and relatedly, interrogation techniques cannot involve negotiating

⁹⁹ Ogletree, Jr., *supra* note 98, at 156–57.

¹⁰⁰ *Id.* at 157.

¹⁰¹ 530 U.S. 428 (2000).

¹⁰² *Id.* at 444; Garrett, *supra* note 24, at 1058.

¹⁰³ *Dickerson*, 530 U.S. at 434.

¹⁰⁴ Garrett, *supra* note 24, at 1058.

¹⁰⁵ *Police-Induced Confessions White Paper*, *supra* note 33, at 13; *see, e.g.*, *State v. Cayward*, 552 So.2d 971, 975 (Fla. Dist. Ct. App. 1989) (holding that a defendant's confession was inadmissible where police fabricated an incriminating crime lab report); *State v. Chirokovskic*, 373 N.J. Super. 125, 133 (N.J. Super. Ct. App. Div. 2004) (holding that suspect's statements had to be suppressed where police detectives fabricated a laboratory report placing the suspect's DNA at the crime scene).

¹⁰⁶ *Police-Induced Confessions White Paper*, *supra* note 33, at 13; *see also* Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 *FORDHAM URB. L.J.* 791, 805 (2006) ("Few federal courts have circumscribed the use of specific deceptive interrogation techniques, and only in rare cases have federal courts deemed deceptive interrogation practices coercive.").

¹⁰⁷ Cynthia J. Najdowski & Catherine L. Bonventre, *Deception in the interrogation room*, *AM. PSYCHOL. ASS'N* (2014), <https://www.apa.org/monitor/2014/05/jn> [<https://perm.a.cc/2XDJ-ZQ2F>]; *see, e.g.*, *Commonwealth v. Baye*, 462 Mass. 246, 257 (Mass. 2012) (holding that the defendant's statements should have been suppressed as involuntary partially because of police "mischaracteriz[ation] [of] the law of murder, felony-murder, and accident).

or promising legal relief to suspects.¹⁰⁸ Police are additionally forbidden from making threats of “physical force or other serious harm” against an interrogation subject’s family.¹⁰⁹

D. PRACTICES THAT FURTHER THE MODERN INTERROGATION LEGAL FRAMEWORK

Outside of the legal framework, other systemic practices perpetuate improperly coercive interrogation tactics. Namely, police interrogators who employ improper coercive tactics largely go unpunished and are rarely held accountable for their misconduct.¹¹⁰ In fact, officers are sometimes rewarded in these cases. For example, Chicago police officer Francis Valadez has been accused of coercing six false murder confessions—including some by men who have either been exonerated, acquitted, or had their charges dropped; Valadez was also accused of battery and assault during his time with the Chicago Police Department.¹¹¹ Valadez has been promoted multiple times since these incidents and has received 131 awards during his time on the force.¹¹² Additionally, numerous officers involved in the Burge Police Torture Scandal in Chicago in the 1970s through 1990s were “promoted, commended, or allowed to retire with full benefits,” and recommendations for discipline for several officers were dismissed.¹¹³ Deborah Jacobs, a law enforcement expert and former Executive Director of the New Jersey American Civil Liberties Union, commented on this systemic issue that, “[w]hen officers see other officers’ misconduct tolerated—or even rewarded—it not only sends a message that brutal

¹⁰⁸ Slobogin, *supra* note 77, at 1172.

¹⁰⁹ *Id.* at 1165–66; *see* *Lynumn v. Illinois*, 372 U.S. 528, 532 (1963) (holding that a confession resulting from interrogators’ threat to take defendant’s children away was invalid); *Rogers v. Richmond*, 365 U.S. 534, 535–36 (1961) (holding a confession was involuntary where police threatened to arrest suspect’s wife).

¹¹⁰ *See, e.g.*, Macaraeg & Kunichoff, *supra* note 1 (discussing the lack of legal accountability for Chicago police officers accused of “coercing at least eleven false confessions for murder” despite the accusers being exonerated, acquitted, or having their criminal charges dropped).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Human Rights Watch, *Chicago: Torture*, HUMAN RIGHTS WATCH, <https://www.hrw.org/legacy/reports98/police/uspo53.htm#P1623404619> [<https://perma.cc/BK6U-JLXV>] (last visited Oct. 26, 2018) (explaining the Burge Torture scandal, in which Chicago Police Commander Jon Burge and other Chicago officers and detectives physically and psychologically tortured—via severe beatings, electric shock, and other abusive methods—at least 65 individuals between 1972 and 1991).

misconduct is allowed, but that it's the only way to succeed or survive within the department's culture."¹¹⁴

II. COERCIVE PRACTICES AND CONFESSIONS

A. DEFINITION OF FALSE CONFESSIONS

A false confession is defined as an admission of guilt followed by a factual description of a crime that the individual confessing did not actually commit.¹¹⁵ The factual descriptions often include specific details about how and why the confessor allegedly committed the crime.¹¹⁶ The state of Illinois and other organizations do not keep records of these types of confessions, so they can be challenging to discover and track.¹¹⁷ However, a number of factors may lead a court to classify a confession as false, including: (1) evidence that the crime did not occur, (2) evidence demonstrating that it was a physical impossibility for the false confessor to have committed the crime, (3) the person who actually committed the crime coming forward, or (4) DNA results or other scientific evidence proving the confessor's innocence.¹¹⁸ Scholars explain that the psychologically coercive tactics that police employ involve deception and manipulation of a suspect's perception of the situation and their future expectations, which shift the interrogation subjects' motivations from denial to admission, and can ultimately produce false confessions.¹¹⁹ Since around 80% of criminal cases involve a confession,¹²⁰ the issues of psychologically coercive tactics and false confessions highly impact the criminal justice system's search for truth and administration of justice.

B. SIGNIFICANCE OF CONFESSION EVIDENCE

It is difficult for most people, particularly those unfamiliar with coercive interrogation methods, to imagine confessing to a crime that they did not commit.¹²¹ In his 1923 evidence treatise, John Henry Wigmore stated, "false confessions were 'scarcely conceivable' and 'of the rarest

¹¹⁴ Macaraeg & Kunichoff, *supra* note 1.

¹¹⁵ Leo, *supra* note 27, at 333.

¹¹⁶ Kassir, *supra* note 25.

¹¹⁷ *Police-Induced Confessions White Paper*, *supra* note 33, at 5.

¹¹⁸ *Id.*

¹¹⁹ Chapman, *supra* note 20, at 163–64.

¹²⁰ Major Joshua E. Kastenber, *Three-Dimensional Model for the Use of Expert Psychiatric and Psychological Evidence in False Confession Defenses Before the Trier of Fact*, 26 SEATTLE U. L. REV. 783, 797 (2003).

¹²¹ Kassir, *supra* note 25.

occurrence’, and that ‘[n]o trustworthy figures of authenticated instances exist.’”¹²² The scientific and psychological research and publications regarding the potential effects of police interrogations, false confessions, and coercive practices are not common knowledge.¹²³ Further, most people have difficulty comprehending why a person would act counterintuitively to his or her self-interest by confessing to something that he or she did not do.¹²⁴ Even some people who are familiar with coercive police interrogation tactics think that interrogators need to employ these methods to obtain valid confessions and that the tactics are unlikely to lead to false statements.¹²⁵ Thus, in general, people conclude that confessions obtained by police interrogators are valid admissions of guilt.¹²⁶ The public fails to recognize the scope and significance of coerced confessions, which can lead jurors to assign confession evidence a disproportionate amount of weight.¹²⁷ Experiments with mock jurors have demonstrated that people view confession evidence as more important than other types of evidence, even when told that that evidence was coerced, that other evidence contradicts it, or that it should be disregarded.¹²⁸ Thus, regardless of what evidence and testimony may emerge during a trial, if an individual confessed (falsely or not) to a crime, such a confession can seal a defendant’s fate in the minds of jurors.

Not only does confession evidence significantly affect jurors’ perceptions of innocence, but it also persuades police, prosecutors, and judges.¹²⁹ According to scholars Richard J. Ofshe and Richard Leo, “[a] confession—whether true or false—is arguably the most damaging evidence the government can present in a trial.”¹³⁰ Following a confession, police usually arrest the confessor, curtail their investigation, and subsequently close the case.¹³¹ This happens regardless of whether interrogators employed questionable coercive tactics, there are

¹²² Garrett, *supra* note 24, at 1052.

¹²³ Leo, *supra* note 24, at 701.

¹²⁴ Leo, *supra* note 27, at 333.

¹²⁵ Najdowski & Bonventre, *supra* note 107; *see also* Kassin, *supra* note 25, at 5 (“although people recognize the coerciveness of certain interrogation tactics, they do not perceive an accompanying risk of false confessions”); Maclin, *supra* note 38, at 1389 (“Perhaps because of their fear of crime and the uncomplicated objective of police interrogation, Americans are sometimes conflicted about police interrogation.”).

¹²⁶ Leo, *supra* note 24, at 701.

¹²⁷ *Id.* at 700.

¹²⁸ *Id.* at 701.

¹²⁹ Ofshe & Leo, *supra* note 81, at 983–84.

¹³⁰ *Id.*

¹³¹ *Id.* at 984.

inconsistencies in statements, or contradictory evidence exists.¹³² This prompts a series of further issues for confessors, such as difficulties convincing others of their innocence in recantations post-confession, the increased likelihood that prosecutors will charge them severely, and greater difficulty making bail.¹³³ Further, confessions can negatively influence the perspectives of witnesses and experts,¹³⁴ corrupt the framing of other evidence,¹³⁵ and “set in motion a virtually irrefutable presumption of guilt among . . . the media, the public, and lay jurors.”¹³⁶

C. THE REID TECHNIQUE¹³⁷

Many U.S. police departments base their interrogation practices on the Reid Technique.¹³⁸ John E. Reid, a Chicago policeman turned consultant and polygraph expert, and Fred Inbau, a Northwestern Law professor, studied polygraphs and psychology to develop the Reid Technique in the 1940s and published the first explanatory manual in 1962.¹³⁹ The technique unfolds in several parts that shift between interrogators offering their subject positive and negative incentives.¹⁴⁰ The first step of the technique, sometimes referred to as the behavior analysis interview, involves probing the suspect, who is usually isolated in a small room,¹⁴¹ with basic, non-threatening questions to watch for any indications of anxiety.¹⁴² If the interrogator feels that the suspect’s body language and answers indicate he or she is lying, the questioner begins the interrogation phase of the technique.¹⁴³ This step largely entails the maximization tactics of insisting (usually with false or valid claims to evidence) that the subject committed the crime, preventing the suspect from denying accusations, and following

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Kassir, *supra* note 25.

¹³⁵ *Police-Induced Confessions White Paper*, *supra* note 33, at 23.

¹³⁶ Drizin & Leo, *supra* note 43, at 922.

¹³⁷ In 1947, the Northwestern University School of Law’s Journal of Criminal Law and Criminology published an article about the Reid Technique when it was in its developmental stages. John E. Reid, *A Revised Questioning Technique in Lie-Detection Tests*, 37 J. CRIM. L. & CRIMINOLOGY 542 (1947).

¹³⁸ See Starr, *supra* note 78 (“John E. Reid & Associates, Inc. trains more interrogators than any company in the world. Reid’s clients include police forces, private security companies, the military, the FBI, the CIA, and the Secret Service.”).

¹³⁹ Gavett, *supra* note 4; *Police-Induced Confessions White Paper*, *supra* note 33, at 7.

¹⁴⁰ *Police-Induced Confessions White Paper*, *supra* note 33, at 7.

¹⁴¹ *Id.*

¹⁴² Starr, *supra* note 78.

¹⁴³ *Id.*

up with minimization that intends to make the crime seem less serious and occasionally with promises or inducements.¹⁴⁴ Maximization techniques are intended to make a suspect feel hopeless, and the minimization tactics that follow are supposed to provide the suspect with a moral justification, making him or her feel that confessing will provide an escape or leniency.¹⁴⁵ Throughout the interrogation, police will also present a theme to the suspect that theorizes why he or she committed the crime.¹⁴⁶ The theme incorporates a suspect's background and offers "a moral . . . excuse for committing the offense."¹⁴⁷ For example, a theme for a suspect who has told police that he would rob someone at gunpoint when desperate could be that the suspect committed the crime because of extreme financial necessity.¹⁴⁸ If these steps lead an interrogation subject to confess, the interrogator then works in conjunction with the subject to ensure that the admission turns into a written confession, and can provide the subject with assistance like multiple choice questions to help establish the details.¹⁴⁹

Social scientists and legal researchers have found numerous problems with the Reid Technique. At the outset, studies show that the average person can detect deception in non-verbal behavioral cues only 54% of the time, and police perform only marginally better.¹⁵⁰ Thus, police interrogators often proceed in an interrogation with a false presumption of guilt that can lead the interrogator to treat the suspect aggressively, in turn increasing the suspect's anxiety.¹⁵¹ The first reading of a suspect and interrogators' initial presumption of guilt allow and encourage the interrogators to proceed with psychologically coercive tactics that can lead to false confessions.¹⁵²

¹⁴⁴ *Id.*

¹⁴⁵ *Police-Induced Confessions White Paper*, *supra* note 33, at 12, 18.

¹⁴⁶ Gavett, *supra* note 4.

¹⁴⁷ Brian R. Gallini, *Police "Science" in the Interrogation Room: Seventy Years of Pseudo-Psychological Interrogation Methods to Obtain Inadmissible Confessions*, 61 HASTINGS L.J. 529, 539–40 (2010).

¹⁴⁸ *Id.*

¹⁴⁹ Starr, *supra* note 78.

¹⁵⁰ *Police-Induced Confessions White Paper*, *supra* note 33, at 6; *see also* Charles F. Bond, Jr. & Bella M. DePaulo, *Accuracy of Deception Judgements*, 10 PERSONALITY & SOC. PSYCHOL. REV. 214, 229 (2006), <https://pdfs.semanticscholar.org/e5d3/12728e90eecb46ddc506bfde6b9c9fb9d2c9.pdf> [<https://perma.cc/Y4SP-KSZE>] (finding that the difference between non-experts and experts—including police officers, detectives, judges, interrogators, criminals, customs officials, mental health professionals, polygraph examiners, job interviewers, federal agents, and auditors—in discriminating truths from lies is statistically insignificant).

¹⁵¹ Starr, *supra* note 78.

¹⁵² Leo, *supra* note 24, at 709.

When interrogation subjects are innocent, their innocence becomes an additional risk factor that police can undermine with psychologically coercive tactics. Innocent people tend to be more willing to cooperate because they believe that truth and justice will ultimately prevail, and that their innocence will become apparent to investigators and the jury.¹⁵³ Further risk factors include intellectual disability, mental illness, immaturity, youth, failure to understand the legal system, and failure to understand the potential ramifications of the situation.¹⁵⁴ The psychologically coercive tactics associated with the Reid Technique can make individuals in these particular groups, as well as any interrogation subjects who become anxious and broken down by such tactics, feel powerless, confused, and sometimes doubtful, about their own innocence.¹⁵⁵ Consequently, the Reid Technique may lead to coerced and false confessions.

III. NEGOTIATION MODELS

Police officers use elements from commonly used negotiation models when interrogating suspects. These negotiation models provide varied tactics for addressing conflict and strive to maximize success in legal and business settings as well as in everyday life. Three of the most commonly used models are the position-based model, the interest-based model, and the core concerns model. These models can, and often do, overlap within the context of a singular negotiation.¹⁵⁶ In particular, negotiation scholars frequently discuss the tension between position-based and interest-based models, commonly known as the negotiator's dilemma.¹⁵⁷ The dilemma results from the tension between the cooperative, interest-based negotiation approach that can build value for all parties and the adversarial, positional approach that can allow one party to claim value over the other.¹⁵⁸ When faced with this tension, those involved in a negotiation or conflict scenario must remain cognizant of the tension and assess which elements of a

¹⁵³ *Police-Induced Confessions White Paper*, *supra* note 33, at 22.

¹⁵⁴ Slobogin, *supra* note 77, at 1182.

¹⁵⁵ Leo, *supra* note 24, at 712.

¹⁵⁶ See generally Leonard L. Riskin, *Managing Inner and Outer Conflict: Selves, Subpersonalities, and Internal Family Systems*, 18 HARV. NEGOT. L. REV. 1 (2013) (explaining various models for addressing and managing internal and external conflict, including negotiations, and how these models can interact and overlap).

¹⁵⁷ See D. Lax & J. Sebenius, *The Manager as Negotiator: The Negotiator's Dilemma: Creating and Claiming Value*, in DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES 49–62 (Stephen B. Goldberg et al., 2d ed. 1992).

¹⁵⁸ *Id.*

particular model are appropriate given the circumstances.¹⁵⁹ While each model offers a unique framework that can help negotiators reach an understanding of conflict scenarios, such scenarios are often complicated and involve a plethora of moving parts that rarely perfectly fit or are explained in totality by a theoretical model. Although these three models can be used to achieve positive outcomes, such as favorable deals and conflict resolution, police interrogators using tactics such as the Reid Technique employ elements from each model to coerce interrogation subjects to confess. An analysis of each model aids in understanding why psychologically coercive interrogation techniques are so effective in eliciting confessions, whether true or false.

The position-based model is an adversarial model that emphasizes what an individual desires, or at least what he or she says that he or she desires, or what he or she feels entitled to.¹⁶⁰ The chief concern of a negotiator adhering to this model is gaining more value, as defined by the context of the negotiation, than the other party and can involve exploitation of one party's power over the other to achieve that goal.¹⁶¹

On the other hand, the interest-based model of negotiation focuses on what the negotiator actually needs and stresses the importance of the goals or motives that underlie the positions, or stated desires, of each party.¹⁶² As an example from everyday life, two chefs working in a kitchen may both demand that they need the last orange for a recipe, and their respective positions would be to claim sole use over the orange.¹⁶³ However, one chef might need the orange peel for a garnish, and the other chef might need the juice of the orange for a dressing. Those reasons would be their interests, or motivations for demanding the orange in the first place.¹⁶⁴ In an interest-based negotiation, the chefs would express this reasoning to each other in order to reach the mutually beneficial solution of splitting the orange, so the first chef claims the orange peel and the other chef takes the remainder of the orange.¹⁶⁵ The four tenets of the interest-based model, which seeks to reach an agreement that respects the interests of both parties, are: (1) “separat[ing] the people from the problem” and “be[ing] soft on the people

¹⁵⁹ Riskin, *supra* note 156, at 31.

¹⁶⁰ *Id.* at 30–31.

¹⁶¹ *Id.*

¹⁶² *Id.*; see also FISHER, URY & PATTON, *supra* note 36, at 11–12.

¹⁶³ Mary Rowe, Nils Fonstad & Robert McKersie, *Interests vs. Positions*, MIT, <http://web.mit.edu/negotiation/www/NBivsp.html> [<https://perma.cc/Y3XP-W6VJ>] (last visited July 20, 2018).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

and hard on the problem,” (2) “focus[ing] on interests, not positions,” (3) “invent[ing] options for mutual gain,” and (4) “insist[ing] on objective criteria.”¹⁶⁶

Last, Fisher and Shapiro developed and discussed the core concerns model of negotiation in their book *Beyond Reason*.¹⁶⁷ This model recognizes that an overabundance of emotions is present in a negotiation and that emotion aids in the parties’ understanding of the situation, while also providing opportunities for negotiators to address and successfully navigate conflict scenarios.¹⁶⁸ The model identifies five core concerns: appreciation, autonomy, affiliation, status, and role.¹⁶⁹ The level of importance of a particular concern varies personally and situationally, but in general, people experience positive emotions if their concerns are met or have negative feelings if they are not satisfied.¹⁷⁰ In turn, people feel positive emotions when engaging in interest-based negotiation and negative emotions tend to be linked to the adversarial position-based model.¹⁷¹ Thus, core concerns can also influence parties’ positions and interests.¹⁷² In order to foster positive emotions, Fisher and Shapiro suggest to “‘express appreciation’, ‘build affiliation’, ‘respect autonomy’, acknowledge status’, and ‘choose a fulfilling role.’”¹⁷³

IV. APPLICATION OF NEGOTIATION MODELS TO THE CASE OF NGA TRUONG

The specific details of Nga Truong’s interrogation are positioned for an analysis under negotiation frameworks. The position-based model, interest-based model, and core-concerns model demonstrate how the detectives, using the Reid Technique, psychologically coerced Truong to confess to a crime she did not commit. This section additionally highlights how Detectives Pageau and Doherty could exploit ambiguity in the legal framework surrounding interrogations to achieve their single-minded goal of obtaining confession evidence. Further, this application suggests why Truong confessed despite her innocence.

¹⁶⁶ FISHER, URY & PATTON, *supra* note 36, at 11–12.

¹⁶⁷ FISHER & SHAPIRO, *supra* note 37.

¹⁶⁸ Riskin, *supra* note 156, at 35–36. *See also* FISHER & SHAPIRO, *supra* note 37.

¹⁶⁹ FISHER & SHAPIRO, *supra* note 37, at 15.

¹⁷⁰ *Id.* at 17–21.

¹⁷¹ Riskin, *supra* note 156, at 36.

¹⁷² *Id.* at 37.

¹⁷³ *Id.* at 38 (quoting FISHER & SHAPIRO, *supra* note 37, at 25, 52, 72, 94, 115).

A. SPECIFICS OF THE TRUONG INTERROGATION

In their interrogation of Nga Truong, Detectives Pageau and Doherty generally adhered to the Reid Technique.¹⁷⁴ At the outset, Pageau and Doherty isolated the teenager in a small, windowless room.¹⁷⁵ Consistently throughout the two-hour interrogation, rather than questioning Truong about Khyle's death, they assumed that the teenage mother had killed her baby.¹⁷⁶ This presumption was not based on any physical evidence. The interrogators failed to consider baby Khyle's history of asthma, his fever, strep throat, and tracheobronchitis that his death certificate listed as contributing factors to his death.¹⁷⁷ Pageau and Doherty proceeded under this assumption of guilt, accused Truong of lying any time she suggested otherwise, and incorporated their assumption into their theme that she had a history of killing babies.¹⁷⁸ The interrogators engaged in maximization tactics by twisting the evidence regarding the death of Truong's brother due to Sudden Infant Death Syndrome eight years prior to suggest that she had killed him. Detectives Pageau and Doherty then presented false evidence that the autopsy stated Khyle was smothered, and yelled at the teen and accused her of failing to tell the truth when she repeatedly stated that she did not kill her son.¹⁷⁹ When Detectives Pageau and Doherty sensed that Truong was showing signs of hopelessness, they switched to minimization practices.¹⁸⁰ The interrogators knew that Truong was poor, and lived with and took care of her brothers, and they offered to provide the family with help in getting into a better home in exchange for her confession.¹⁸¹ The police additionally advanced the theory that the teen's mother was also

¹⁷⁴ Gavett, *supra* note 4.

¹⁷⁵ *Id.*

¹⁷⁶ Boeri, *supra* note 2.

¹⁷⁷ *Id.*

¹⁷⁸ Boeri, *supra* note 9; *see also* Boeri, *supra* note 2 (Truong: "I'm telling you everything." Pageau: "No you're not. Stop. Don't lie to me." . . . Pageau: "Sudden death syndrome? How about big sister syndrome? That baby mysteriously dies. And now Khyle's in your care, and he mysteriously dies. Either you're a liar or you just got the worst luck in the world.").

¹⁷⁹ Boeri, *supra* note 2.

¹⁸⁰ Boeri, *supra* note 9; *see also* Boeri, *supra*, note 2 (Doherty: "People will be much more understanding if you come forward and say, 'I'm a 16-year-old girl. I lost it, this is what happened.'").

¹⁸¹ Boeri, *supra* note 9; *see also* Boeri, *supra* note 2 (Pageau: "All everyone's waiting for today is for you to admit to what you did so that we can start the process of getting you some help, getting your brothers out of that house and getting them in a better home, where there's a mom that gets up in the morning and takes care of them.").

blameworthy in the baby's death¹⁸² and suggested that if she confessed, she would be punished in juvenile court, if at all.¹⁸³ Shortly thereafter, Truong admitted and eventually confessed to the crime.¹⁸⁴

Similar to many police interrogators who employ coercive tactics,¹⁸⁵ Detectives Pageau and Doherty largely remained within the bounds of the law during their questioning of Truong. It was legal for the interrogators to question the teenage mother in a small space, yell at her, distort past evidence about her brother's death, and lie about Khyle's autopsy. The detectives only broke the law when they promised Truong leniency in juvenile court in exchange for her confession and failed to extend her the *Miranda* rights required for juveniles.¹⁸⁶ This interrogation provides an opportunity to apply the position-based, interest-based, and core concerns models of negotiation to a coercive police interrogation that led to a false confession.

B. NEGOTIATION MODELS APPLIED TO THE INTERROGATORS

Before Truong's interrogation began, the Worcester police lacked any evidence against the teen.¹⁸⁷ Given that the case involved the death of a baby, Detectives Pageau and Doherty likely felt significant pressure to obtain the valuable evidence of a confession.¹⁸⁸ While police interrogators often do not maliciously intend to elicit false confessions or convict people for crimes that they did not commit,¹⁸⁹ interrogators' "single-minded purpose" in an interrogation is to obtain evidence, preferably in the form of a confession, that will lead to a conviction.¹⁹⁰ Thus, under the position-based model, police will use coercive tactics and exploit their inherent power over suspects to meet their position of securing a confession.¹⁹¹

¹⁸² Gavett, *supra* note 4 (Pageau and Doherty implied that the teenage mother committed the murder because taking care of her siblings had become frustrating and too much of a burden).

¹⁸³ Boeri, *supra* note 9.

¹⁸⁴ *Id.*

¹⁸⁵ Gavett, *supra* note 4 (Richard Leo explaining, "Most of what police do in interrogations that lead to false confessions is legal. The accusations, yelling; moving in closer, invading one's space; lying about evidence, making it up, pretending to have evidence; telling somebody they failed a polygraph, for example.").

¹⁸⁶ Boeri, *supra* note 2.

¹⁸⁷ Boeri, *supra* note 9.

¹⁸⁸ *Police-Induced Confessions White Paper*, *supra* note 33, at 13–14.

¹⁸⁹ Ofshe & Leo, *supra* note 81, at 983.

¹⁹⁰ *Police-Induced Confessions White Paper*, *supra* note 33, at 6.

¹⁹¹ See Riskin, *supra* note 156, at 30–31.

A possible interest for detectives like Pageau and Doherty is the desire to feel that they are of value to their departments by gaining this evidence. Detectives are often encouraged by departments that reward effective interrogators with awards and promotions.¹⁹² These interests underlie and motivate interrogators' position of securing confession evidence.

Last, the core concerns that appear to be most significant to police interrogators like Pageau and Doherty are appreciation, status, and role.¹⁹³ If officers successfully obtain confessions, police superiors, the media, and the public may all express appreciation to the officers and recognize their status as effective interrogators.¹⁹⁴ These officers will then feel fulfilled in their role in the police department by getting a conviction for a suspect. This examination under the negotiation models demonstrates that the single-minded position of obtaining a confession—particularly in high stakes cases where evidence is lacking—combined with the interests and core concerns that encourage police to achieve this position can lead interrogators to employ any means necessary to secure confessions. In turn, this can result in the proliferation of coercive tactics that lead to false confessions and can detract from determining the truth and a commitment to justice.

C. NEGOTIATION MODELS APPLIED TO NGA TRUONG

On the other side of the interrogation, Truong presented several of the risk factors mentioned in Part II.¹⁹⁵ Her age, lack of exposure and understanding of the legal system and interrogation practices, and emotional state due to her son's death one day earlier, coupled with the deceptive tactics of the interrogators, made her more susceptible to the coercion that ultimately resulted in a confession of guilt for her son's death.¹⁹⁶ An examination of the interrogation under the negotiation model framework from Truong's perspective further illustrates why the teenage

¹⁹² See *id.*; see, e.g., Macaraeg & Kunichoff, *supra* note 1 (discussing awards and promotions granted to police interrogators in the Burge torture scandal).

¹⁹³ FISHER & SHAPIRO, *supra* note 37, at 15.

¹⁹⁴ See, e.g., David Boeri, *Questions Remain In Coerced Worcester Confession*, WBUR (Feb. 16, 2012), <http://legacy.wbur.org/2012/02/16/worcester-police> [https://perma.cc/NYT9-AL5Y] (Gemme stating that even after Truong's case was dropped, he stands by his statement expressing "full support and confidence" in Pageau and Doherty); Scott J. Croteau, *Civil Rights Suit Filed Against Worcester Police*, TELEGRAM & GAZETTE (Dec. 4, 2012), <http://www.telegram.com/article/20121204/NEWS/112049893> [https://perma.cc/NNB8-LGVF] (Worcester Police Chief Gary J. Gemme stating that the interrogation was valid and that the police department's practices were constitutional).

¹⁹⁵ See *supra*, Section II (B).

¹⁹⁶ Gavett, *supra* note 4.

mother gave into the coercion and confessed. The position of Truong and others in similar interrogation situations is to retain their innocence and avoid being convicted of the crime alleged against them.¹⁹⁷ However, as the interrogation progresses and police employ techniques that exploit interrogation subjects' interests, it can become difficult for subjects to keep this ultimate goal in mind, and subjects can become tempted to give in to their interests that offer any form of escape.¹⁹⁸ In this case, the interrogators' coercive tactics exploited Truong's interest in helping her family and getting out of the hopeless interrogation situation.

Further, applying the framework of core concerns, Pageau and Doherty built affiliation with the teen by showing sympathy for her situation through their minimization practices and recognition of her status as the caretaker for her brothers.¹⁹⁹ This, in turn, likely made Truong feel appreciated for caring for her family. Under the frameworks of the negotiation models, this demonstrates that interrogators can leverage their power and utilize coercive tactics to exploit suspects' interests and core concerns to alter their positions, leading to a result that is in line with the interrogators' positions, interests, and core concerns.

CONCLUSION

A. AFTERMATH OF NGA TRUONG'S CASE

In 2016, the City of Worcester reached a settlement with Nga Truong for \$2.1 million in the aftermath of the false confession.²⁰⁰ Following her release from jail, Truong enrolled in college and is now living as a free woman.²⁰¹ However, after the case ended, the policemen responsible for her interrogation "continue[d] to perform their duties as investigators with the full support and confidence of the police administration."²⁰² The Worcester Police Department actually promoted Pageau to investigate police misconduct.²⁰³ Worcester Police Chief Gary Gemme further confirmed that he "expressed full support and confidence in [his] two officers."²⁰⁴ The police department's only other institutional response was to agree that the district attorney would be involved in all of its

¹⁹⁷ See Riskin, *supra* note 156, at 30–31.

¹⁹⁸ See *id.*; *Police-Induced Confessions White Paper*, *supra* note 33, at 28.

¹⁹⁹ FISHER & SHAPIRO, *supra* note 37, at 15.

²⁰⁰ Boeri, *supra* note 9.

²⁰¹ Boeri, *supra* note 194.

²⁰² Boeri, *supra* note 2.

²⁰³ Boeri, *supra* note 194.

²⁰⁴ *Id.*

investigations of homicides and serious crimes.²⁰⁵ Ed Ryan, Truong's lawyer in the case and former Massachusetts Bar Association president, commented on the lack of police accountability and tolerance for the continuance of coercive interrogation tactics. He explained that "[t]his is a degree of arrogance, a degree of disrespect for the rule of law that frightens me . . . That is a very frightening circumstance to have law enforcement so empowered, so arrogant, that they think they can get away with this kind of behavior."²⁰⁶ Ryan further stated that Truong's case was "the worst case of coercion he's seen in thirty-five years."²⁰⁷

B. RECOMMENDATIONS FOR CROSS-INSTITUTIONAL REFORM

Psychologically coercive tactics like those used by the police interrogators in Truong's case can and do elicit truthful confessions that lead to the proper administration of justice, but they also frequently elicit false confessions.²⁰⁸ Given the significant weight that the public, as well as those in the legal field, assign to confession evidence, these confessions can create injustices throughout the legal process and lead to convictions and jail time for innocent people. Further, false confessions and wrongful convictions mean that the true perpetrators of crimes may remain free with the potential to commit further harm.

False confessions also place a financial toll on taxpayers.²⁰⁹ In the past few years, judges in cities across the country have awarded settlements ranging from a few million dollars to tens of millions of dollars to individuals like Truong who were coerced into falsely confessing.²¹⁰ Settlements related to false confessions significantly contribute to bills totaling hundreds of millions of dollars that cities are paying for police misconduct.²¹¹ For example, the state of Illinois paid about \$253 million in taxpayer-backed settlements in wrongful conviction cases between 1989 and early 2013, many of which involved false confessions.²¹² Taxpayers

²⁰⁵ Gavett, *supra* note 4.

²⁰⁶ Boeri, *supra* note 194.

²⁰⁷ Gavett, *supra* note 4.

²⁰⁸ See Garrett, *supra* note 24, at 1060; Leo, *supra* note 24, at 698–700.

²⁰⁹ See *supra* note 31.

²¹⁰ See *supra* note 31.

²¹¹ See *supra* note 31.

²¹² Kari Lydersen, *Wrongful Conviction Costs Keep Climbing*, BETTER GOVERNMENT ASSOCIATION (Apr. 8, 2013, 6:30 PM), <https://www.bettergov.org/news/wrongful-conviction-costs-keep-climbing> [<https://perma.cc/5VQN-LT2A>]; see also Innocence Blog, *Report Says Wrongful Convictions Cost California \$221 Million*, INNOCENCE PROJECT (Mar. 11, 2016), <https://www.innocenceproject.org/wrongful-convictions-cost-california-221-million/> [<https://perma.cc/4GH7-YQ75>] (explaining that wrongful convictions, many of

are consequently forced to pay the price for police interrogators' use of psychologically coercive tactics, while the interrogators themselves largely remain unpunished.

To address the issue of unreliable confessions as well as the issue of financial drain that stems from the larger issue and is illustrated by Truong's case, lawmakers and judges, as well as police departments and individual officers, must commit to systemic changes. Lawmakers can adopt legislation, like the laws some states have adopted that require police to electronically record interrogations.²¹³ Legislation of this nature will set standards for other elements of interrogations, such as presentation of evidence, offers to provide help, and psychological manipulation and coercion in general. Further, when presented with evidence of confessions elicited via coercive tactics, courts can take the opportunity, much like the Court did when it related to physical torture tactics in *Brown*,²¹⁴ to explicitly prohibit evidence elicited from psychologically coercive interrogation tactics. Finally, police departments can update their interrogation procedures and implement and enforce policies that hold officers accountable when they engage in coercive practices. This cross-institutional approach to reform will help to decrease the number of coerced and false confessions, and in turn, will aid in the administration of true justice.

While the United States' interrogation jurisprudence made a step in the right direction by outlawing third-degree tactics,²¹⁵ and lawmakers have furthered progress by introducing electronic recording requirements for interrogations in some states,²¹⁶ there exists significant room for improvement when it comes to psychologically coercive techniques. The laws currently in place, in addition to police departments' failure to hold officers accountable for engagement in improper, and sometimes illegal, interrogation tactics, encourages the perpetuation of coerced, false confessions. Under the Reid Technique, police interrogators are trained to employ psychologically coercive tactics and police departments often reward officers for securing confessions, whether psychologically coerced or not. Research demonstrates that these tactics are just as coercive as the

which involved false confessions, cost taxpayers in California at least \$221 million between 1989 and 2012).

²¹³ See Dep't of Justice, *New Department Policy Concerning Electronic Recording of Statements*, 128 HARV. L. REV. 1552, 1553 (2015).

²¹⁴ See 297 U.S. 278 (1936).

²¹⁵ *Id.*

²¹⁶ Dep't of Justice, *supra* note 213, 1552 n. 1 (noting Alaska, Arkansas, California, and twenty other jurisdictions that require officers to electronically record interrogations).

physical torture associated with the third-degree methods. The law should thus be updated to reflect that. Like electronic recording laws, legislators can continue to address this issue by developing laws that regulate other aspects of interrogations, such as the type and size of room where the questioning takes place, the kinds of questions that interrogators can and cannot ask, and the evidence (whether real or fake) that officers can introduce.

Courts that hear cases involving false confessions can begin to establish precedent prohibiting psychologically coercive interrogation methods, such as the Reid Technique. Similar to Judge Kenton-Walker's approach in *Truong's* case, judges can take into consideration the coercive influence of some of the legally ambiguous interrogation tactics and deem confessions inadmissible when the tactics have an unjust coercive impact on a subject. Prosecutors can further explicitly prohibit interrogators' use of any tactics that violate existing laws and can increase enforcement in this realm. Additionally, as mentioned in the Introduction, courts in recent years have begun to award individuals coerced into confessing millions of dollars in settlements with cities and police departments.²¹⁷ If the judicial system continues with this practice, this will provide further incentive for police departments to adopt policies and practices that promote the proper administration of justice, rather than those that encourage tactics that are psychologically coercive to obtain confessions at any cost.

The current police systems that tolerate and encourage such practices via awards and promotions should be overhauled. Analysis of psychologically coercive interrogation practices under the frameworks of the position-based, interest-based, and core concerns models of negotiation illustrates how these tactics can coerce individuals into confessing to crimes. Interrogators exploit suspects' positions, interests, and core concerns with a single-minded focus of obtaining confessions to enhance the interrogators' own positions, interests, and core concerns. This examination further demonstrates that police interrogators' hyper-focus on obtaining confessions impedes the search for truth and justice in numerous instances by eliciting false confessions. While it is important to gather solid, reliable evidence in cases, the positions of interrogators should shift to focus on the proper administration of justice. States and localities are also financially incentivized to encourage police departments to change their focus and update their policies given the massive settlements and damages payments that courts are issuing to individuals that interrogators

²¹⁷ See *supra* note 31.

are coercing.²¹⁸ Departments should reform their interrogation practices with these positions as a guide, rather than continue with methods found to be psychologically coercive and unjust. Current policies fail to deter police interrogators from using psychologically coercive tactics, and there should be more repercussions when police elicit false confessions. Departments should thus additionally replace any practices that offer incentives to officers involved in interrogations that judges deem to be psychologically coerced with measures that punish and hold officers accountable for such conduct. Following the negotiation model framework, this policy and practice update will also aid in shifting police interrogators' interests and core concerns to ultimately encourage the position of striving for the proper administration of justice.

The cross-institutional systemic reform outlined above, informed by insights from common negotiation models, can help to address the issue of psychologically coercive interrogation tactics, which are largely permitted by the current legal framework surrounding interrogations and are encouraged by police departments. These tactics employ psychological manipulation and deceit to coerce interrogation subjects into confessing, and as seen in the case of Nga Truong, can lead individuals to confess to crimes that they did not commit. Updates to interrogation legislation and reform of police departments' interrogation practices will improve the reliability of confession evidence and will decrease the financial drain that false confessions impose on taxpayers. In the end, these psychologically coercive tactics must be prohibited so that no interrogation subject has a coerced fate.

²¹⁸ See *supra* note 31.

