

Dr. Richard A. Leo, Ph.D., J.D.
JUSTICE RESEARCH & CONSULTING, INC.
15 Ashbury Terrace
San Francisco, CA 94117

(415) 661-0162 (Phone)
(650) 636-9468 (FAX)
Email: rleo@usfca.edu

September 9, 2015

Don Knight, Esq.
Attorney at Law
7852 S. Elati St. #201
Littleton, CO 80120

Re: Richard Glossip

Dear Mr. Knight,

This report is per your request in the above-referenced case of Richard Glossip.

I. Qualifications

I am the Hamill Family Professor of Law and Psychology at the University of San Francisco, and formerly an Associate Professor of Psychology and an Associate Professor of Criminology at the University of California, Irvine. My areas of research, training, and specialization include social psychology, criminology, sociology, and law. For more than two decades, I have conducted extensive empirical research on police interrogation practices, the psychology of interrogation and confessions, psychological coercion, police-induced false confessions, and erroneous convictions. In 1992 and 1993, I spent nine months doing field research inside the Oakland Police Department, which included sitting in on and contemporaneously observing one-hundred twenty-two (122) felony interrogations; in 1993, I also observed sixty (60) fully videotaped interrogations in the Vallejo and Hayward Police Departments in northern California. Since then, I have analyzed thousands of cases involving interrogations and confessions; I have researched, written, and published numerous peer-reviewed articles on these subjects in scientific and legal journals; and I have written several books on these subjects, including *Police Interrogation and American Justice* (Harvard University Press, 2008) and *Confessions of Guilt: From Torture to Miranda and Beyond* (Oxford University Press, 2012).

I am regarded as a national and leading expert on these topics, and I have won numerous awards for my scholarship and publications. My scholarship has often been featured in the news media and cited by appellate courts, including the United States Supreme Court on multiple

occasions. To date, I have consulted with criminal and civil attorneys on more than one-thousand and seven-hundred (1,700) cases involving disputed interrogations and/or confessions, and I have been qualified and testified as an expert witness more than three-hundred (300) times in state, federal, and military courts in thirty-four (34) states plus the District of Columbia, including more than two-hundred (200) times in the State of California. I have given many lectures to judges, defense attorneys, prosecutors, and other criminal justice professionals, and I have taught interrogation training courses and/or given lectures to police departments in the United States, China, and the Republic of Cyprus.

My qualifications are summarized in greater detail in my curriculum vitae, which is attached to this report. I am not being compensated for my time.

II. Materials Reviewed

In conjunction with my preparation of this report, I have reviewed the following documents:

- Transcript of Interrogation of Justin Sneed (January 14, 1997)
- Report of Dr. Edith King (July 1, 1997)
- Excerpt from police report of Vern Kriethe (undated)
- Direct examination of Justin Sneed (5/26/04)
- Cross-examination of Justin Sneed (5/27/04)
- Affidavit of Michael G. Scott

III. Professional Opinions

Based on the materials I have reviewed, in my professional opinion:

1) It has been well-documented in the empirical social science research literature that hundreds of innocent suspects have confessed during police interrogation to crimes (often very serious crimes such as murder and rape) that it was later objectively proven they did not commit. There is a well-established empirical field of research in the academic disciplines of psychology, criminology, and sociology on the subjects of police interrogation practices, psychological coercion, and false confessions. This research dates back to 1908; has been the subject of extensive publication (hundreds of academic journal articles, stand-alone books, and book chapters in edited volumes); has been subjected to peer review and testing; is based on recognized scientific principles, methods, and findings; and is generally accepted in the social scientific community. This research has analyzed numerous police-induced false confessions and identified the personal and situational factors associated with, and believed to cause, false confessions.¹

¹ See Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38;

The fact that police-induced false confessions can and do occur has been well-documented and is not disputed by anyone in the law enforcement or academic community. Indeed, leading police interrogation training manuals have, at least since 2001, contained entire chapters and sections on the problem of police-induced false confessions and what investigators need to know to better understand and avoid eliciting false confessions from innocent suspects.² Social scientists have documented approximately four-hundred and fifty to five-hundred proven false confessions in America since the early 1970s,³ but this is surely an underestimate and thus the tip of a much larger iceberg for several reasons. First, false confessions are difficult for researchers to discover because neither the state nor any organization keeps records of them. Second, even when they are discovered, false confessions are notoriously hard to establish because of the factual and logical difficulties of proving the confessor's *absolute* innocence. As a result, Richard Ofshe and I coined the term "proven false confession" in 1998,⁴ showing that there are only four ways in which a disputed confession can be classified as proven beyond any doubt to be false: 1) when it can be objectively established that the suspect confessed to a crime that did not happen; 2) when it can be objectively established that it would have been physically impossible for the confessor to have committed the crime; 3) when the true perpetrator is identified and his guilt is objectively established; and/or 4) when scientific evidence dispositively establishes the confessor's innocence. However, only a small number of cases involving a disputed confession will ever come with independent case evidence that allows the suspect to prove his innocence beyond dispute because doing so is akin to proving the negative. The documented number of proven false confessions in the scientific research literature is, therefore, a dramatic undercount of the actual false confessions that police have elicited in the United States in recent decades. There have almost certainly been thousands (if not tens or hundreds of

Richard A. Leo (2008), *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press); and Gisli Gudjonsson (2003), *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* (John Wiley & Sons Inc).

² See, for example, *See* Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2001). *CRIMINAL INTERROGATION AND CONFESSIONS*, 4th Edition (Aspen Publishers, Inc.) at 411-448; and David Zulawski and Douglas Wicklander (2002). *PRACTICALASPECTS OF INTERVIEWING AND INTERROGATION*, 2nd Edition (CRC Press) at 73-104.

³ The largest published study of proven false confessions to date is Steven Drizin and Richard A. Leo (2004). "The Problem of False Confessions in the Post-DNA World." *North Carolina Law Review*, 82, 891-1007. For a review of the literature documenting proven false confessions, see Richard A. Leo (2008), *POLICE INTERROGATION AND AMERICAN JUSTICE*. At that time, there were approximately two-hundred and fifty to three-hundred proven false confessions in the documented literature. Since 2004, Steve Drizin, Gillian Emmerich and I have collected an additional two-hundred proven false confessions that are the subject of an academic article we are currently drafting but have not yet submitted for publication.

⁴ Richard A. Leo and Richard Ofshe (1998). "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation." *The Journal of Criminal Law and Criminology*. Vol. 88, No. 2. Pp. 429-496

thousands) more police-induced false confessions than researchers have been able to discover and classify as proven false. Indeed, in a survey of police that my colleagues and I published in 2007, police investigators themselves estimated that they elicited false confessions in 4.78% of their interrogations.⁵

The subject of police interrogation and false confessions is beyond common knowledge and highly counter-intuitive.⁶ Police detectives receive specialized training in psychological interrogation techniques; most people do not know what these techniques are or how the techniques are designed to work (*i.e.*, move a suspect from denial to admission). In addition, most people also do not know what psychological coercion is, why some techniques are regarded as psychologically coercive, and what their likely effects are. Moreover, most people do not know which interrogation techniques create a risk of eliciting false confessions or how and why the psychological process of police interrogation can, and sometimes does, lead suspects to falsely confess. This unfamiliarity causes most people to assume that virtually all confessions are true.

The same interrogation pressures, techniques and factors that may lead an innocent person to falsely confess to a crime he did not commit may also lead a guilty person to falsely implicate an innocent third party as an accomplice.

2) In Mr. Glossip's case, my review of the materials leads me to conclude that the interrogating officers (Bemo and Cook) used interrogation techniques that could have elicited false and unreliable statements from Justin Sneed about Richard Glossip's alleged involvement in the homicide of Barry Van Treese. These included:

A) *Presumption of Guilt and Investigative Bias*. There are three important decision points in the interrogation process that are known to be linked to false confessions or statements. The first decision point is the police decision to classify someone as a suspect.⁷ This is important

⁵ Saul Kassin, Richard Leo, Christian Meissner, Kimberly Richman, Lori Colwell, Amy-May Leach, and Dana La Fon (2007). "Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs," *Law and Human Behavior*, 31, 381-400.

⁶ See Danielle Chojnacki, Michael Cicchini and Lawrence White (2008), "An Empirical Basis for the Admission of Expert Testimony on False Confessions," *Arizona State Law Journal*, 40, 1-45; Richard A. Leo and Brittany Liu (2009). "What Do Potential Jurors Know About Police Interrogation and False Confessions?" *Behavioral Sciences and the Law*, 27, 381-399; Linda Henkel, Kimberly Coffman, and Elizabeth Dailey (2008). "A Survey of People's Attitudes and Beliefs About False Confessions," *Behavioral Sciences and the Law*, 26, 555-584; Iris Blandon-Gitlin, Kathryn Sperry, and Richard A. Leo (2011) "Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?" in *Psychology, Crime and Law*, 17, 239-260; and Mark Costanzo, Netta Shaked-Schroer and Katherine Vinson (2010), "Juror Beliefs About Police Interrogation, False Confession and Expert Testimony" in *The Journal of Legal Empirical Studies*, 7, 231-247.

⁷ The second important decision point in the process occurs when the police interrogate the suspect. The third important decision point in the interrogation process occurs after the police have elicited an admission—an "I did it" statement—from the suspect.

because police only *interrogate* individuals whom they first classify as suspects; police *interview* witnesses and victims. There is a big difference between interrogation and interviewing: unlike interviewing, an interrogation is accusatory, involves the application of specialized psychological interrogation techniques, and the ultimate purpose of an interrogation is to get an incriminating statement from someone whom police believe to be guilty of the crime. False confessions or statements occur when police misclassify an innocent suspect as guilty and then subject him to a custodial interrogation, and are satisfied with elicitation of a version of events that, in fact, is not true. This is one reason why interrogation training manuals implore detectives to investigate their cases before subjecting any potential suspect to an accusatorial interrogation.⁸

In the interrogation of Justin Sneed, investigators Bemo and Cook presumed the guilt of Richard Glossip from almost the start and sought to pressure and persuade Justin Sneed to implicate Richard Glossip in the crime.

B) *False Evidence Ploys*. Police interrogators routinely tell criminal suspects that the evidence establishes their guilt: if police possess real evidence, this is called a true evidence ploy. If police are making up, lying about, or exaggerating non-existent evidence, this is called a false evidence ploy. The social science research literature has demonstrated that false evidence ploys are virtually always present in, and substantially likely to increase, the risk of eliciting false statements, admissions and/or confessions. False evidence ploys are among the most well-documented situational risk factors for eliciting false and unreliable statements, admissions and/or confessions.⁹ Many people do not know that police detectives can legally lie by pretending to have incriminating evidence that does not exist, is fabricated or is exaggerated; even those who suspect that the police may be bluffing about the evidence are likely to fear that police will manipulate evidence to prosecute them. The use of false evidence ploys can create or contribute to the suspect's perception that he is trapped, there is no way out, and that his conviction will be inevitable, thus leading to the perception that he has little choice but to agree to or negotiate the best available outcome or mitigation of punishment given the subjective reality of his situation.

⁸ Fred Inbau, John Reid and Joseph Buckley (1986). *CRIMINAL INTERROGATION AND CONFESSIONS*, Third Edition (Baltimore, MD: Williams & Wilkins) at 3 (“Prior to the interrogation, and preferably before any contact with the suspect, become thoroughly familiar with all the known facts and circumstances of the case.”). See also Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2013). *CRIMINAL INTERROGATION AND CONFESSIONS*, 5th Edition (Burlington, MA: Jones & Bartlett Learning) at 18 (“One basic principle to which there must be full adherence is that the interrogation of suspects should follow, and not precede, an investigation conducted to the full extent permissible by the allowable time and circumstances of the particular case. The authors suggest, therefore, that a good guideline to follow is “investigate before you interrogate.”).

⁹ Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich). “Police-Induced Confessions: Risk Factors and Recommendations” in *Law and Human Behavior*, 34, 3-38.

In the interrogation of Justin Sneed, investigators Bemo and Cook repeatedly lied to Justin Sneed by telling him that multiple people or witnesses had implicated him in the murder of Barry Van Treese.

C) *Minimization and Maximization Techniques.* A common interrogation strategy is for investigators to portray the offense in a way that minimizes its moral, psychological and/or legal seriousness, thus lowering the perceived cost of confessing by communicating that the consequences of confessing will not be that serious. Interrogation techniques and strategies that minimize the legal seriousness of the crime, in particular, are associated with and known to increase the risk of eliciting false confessions. Such minimization strategies can imply leniency, reduced punishment, or even no punishment at all if the suspect perceives that there is no consequence to confessing (*i.e.*, either that the act to which the suspect is confessing is not a crime or that it carries little or no penalty).¹⁰ Conversely, interrogation techniques and strategies that maximize the legal seriousness of the crime – *i.e.*, suggest that the suspect will face a bad or perhaps the worst possible outcome if he or she does not make or agree to an incriminating statement -- are also associated with and known to increase the risk of eliciting false confessions. Such maximization strategies can imply harsher treatment, confinement, punishment, sentencing and/or other negative outcomes if the suspect fails to comply and confess.

In the interrogation of Justin Sneed, investigators Bemo and Cook repeatedly tell him that he will be made the scapegoat for the crime if he does not confess, implying that he will receive the harshest punishment if he does not confess to it (maximization); they repeatedly suggest that Richard Glossip is the one who put him up to it; and they tell him that he can get this straightened out and that if he did not mean to do it, they can tell this to the district attorney (minimization). They also tell him that if he does not confess, many other witnesses will come forward and testify against him (maximization).

3) *Police Suggestion, Leading Questions and Scripting.* Police investigators are trained to find the truth, not to create it. The suggestion that Richard Glossip was involved in the homicide of Barry Van Treese first came from investigators Bemo and Cook, not Justin Sneed. The investigators feed Justin Sneed their theory that Richard Glossip was the mastermind of this homicide, and they repeatedly tell him that Richard Glossip was putting the crime on him.

4) *Multiple Inconsistent and Contradictory Accounts.* In his interrogation on January 14, 1997, Justin Sneed ended up giving 4 different versions of what he knew and what allegedly occurred in the homicide of Barry Van Treese. He then made a plea bargain in which he made a deal with the prosecution to testify against Richard Glossip to spare himself from the death penalty and receive a sentence of life without parole instead. Then, in the two trials of Richard

¹⁰ Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38.

Glossip, he ultimately ended up giving 3 other different versions of the crime. Finally, his mother has told an investigator for the defense that, in the early days following his arrest, he gave yet another story to her in letter. Multiple and inconsistent versions of an offense are one possible indicator of a confession's potential unreliability. Justin Sneed gave the following 8 different accounts:

Account # 1: That he did not know what to say about the death of Barry Van Treese

Account # 2: That he did not kill Barry Van Treese

Account # 3: That he killed Barry Van Treese, but that he had not intended to kill him but only to steal money from him

Account # 4: That Richard Glossip had asked him to kill Barry Van Treese so that he could run the motel, or for money.

Account # 5: That, following the killing, Richard Glossip told Justin Sneed to purchase trash bags, a hacksaw, and muriatic acid: the acid would be used to melt the body, the saw to cut it up, and the trash bags to carry it away.

Account # 6: That Richard Glossip told Justin Sneed prior to January 1997, to kill Barry Van Treese where he was in the motel boiler room with a hammer that happened to be nearby. Justin was able to refuse this command. Later, in January, Sneed agreed to follow Richard's orders to beat Van Treese to death with a baseball bat because of the way Richard Glossip had raised his voice. Sneed also said in this testimony that there was no plan given to him as to how the murder and disposition of the body would go. Richard just gave him one order at a time. Finally, Sneed also stated, for the first time, that he also stabbed Van Treese with a knife that he carried with him that night.

Account # 7: That Richard Glossip actually had a plan, and communicated that plan to Sneed. The plan was for Sneed to kill Barry Van Treese and that Richard Glossip agreed it was Richard's job to clean up the room after the homicide.

Account # 8: That there were others (besides Richard Glossip and Justin Sneed) involved in the homicide of Barry Van Treese, and that those involved would be high ranking figures.

IV. Evaluating the Reliability of Incriminating Statements, Admissions and Confessions

In addition to studying the psychology of police interrogation and the correlates and causes of false confessions from the innocent, scientific researchers have also analyzed the patterns, characteristics and indicia of reliability in true and false confession cases. To evaluate the likely reliability or unreliability of an incriminating statement, admission or full confession

from a suspect, scientific researchers analyze the fit between the suspect's post-admission narrative and the crime facts and/or corroborating evidence derived from the confession (*e.g.*, location of the missing murder weapon, loot from a robbery, the victim's missing clothing, etc.).¹¹

The purpose of evaluating the fit between a suspect's post-admission narrative and the underlying crime facts and derivative crime evidence is to test the suspect's actual knowledge of the crime. If the suspect's post-admission narrative corroborates details only the police know, leads to new or previously undiscovered evidence of guilt, explains apparent crime fact anomalies and is corroborated by independent facts and evidence, then the suspect's post-admission narrative objectively demonstrates that he possesses the actual knowledge that would be known only by the true perpetrator and therefore is strong evidence of guilt. If the suspect cannot provide police with the actual details of the crime, fails to accurately describe the crime scene facts, cannot lead the police to new or derivative crime evidence, and/or provides an account that is full of gross errors and disconfirmed by the independent case evidence, then the suspect's post-admission narrative demonstrates that he fails to possess the actual knowledge that would be known only by the true perpetrator and is therefore strongly consistent with innocence. Indeed, absent contamination, the fit between the suspect's post-admission narrative and both the crime scene facts and the derivative crime evidence therefore provides an objective basis for evaluating the likely reliability of the suspect's incriminating statements.

The well-established and widely accepted social science research principle of using the fit standard to evaluate the validity of a confession statement is also a bedrock principle of criminal investigation within law enforcement. Properly trained police detectives realize that an "I did it" statement is not necessarily evidence of guilt and may, instead, turn out to be evidence of innocence. For example, in high-profile murder cases, police regularly screen out volunteered confessions by seeing whether or not the person can tell the police details known only to the perpetrator or lead the police to derivative crime evidence that either corroborates, or fails to demonstrate, the person's guilty knowledge. Police often keep particularly heinous or novel aspects of the crime from the press so that they can be used to demonstrate a confessor's guilty knowledge. Police sometimes deliberately include an error in media releases or allow incorrect statements to go uncorrected so that a true perpetrator will be able to demonstrate his personal knowledge of the crime. In other types of cases, police detectives regularly rely upon the fit standard to identify a true admission that might be mixed in with a collection of volunteered statements.

¹¹ See Richard Ofshe and Richard A. Leo (1997) "The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions." *Studies in Law, Politics & Society*, Vol. 16. Pp. 189-251; and Richard A. Leo and Richard Ofshe (1998). "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation" *The Journal of Criminal Law and Criminology*. Vol. 88, No. 2. Pp. 429-496.

Using the fit standard to evaluate the validity of a suspect's incriminating statements, admissions or confessions is a bedrock principle of law enforcement because police detectives realize that seeking corroboration during the post-admission phase of interrogation is essential to proper investigative work.¹² This is because it is a fundamental principle of police investigation that true explanations can be supported and false explanations cannot be supported (assuming no contamination has occurred), and because false explanations will not fit the facts of the crime, lead to derivative evidence or be corroborated by independent evidence.

Moreover, post-admission narrative analysis and the fit standard are central to proper criminal investigation because properly-trained detectives should realize that the purpose of detective work is not to clear a crime or get a conviction, but to carefully collect evidence in a way that will lead to the arrest, prosecution and conviction of the guilty while at the same time ensuring that no innocent individual is wrongly arrested, prosecuted or convicted.

A suspect's post-admission narrative therefore provides a gold mine of potential evidence to the unbiased, properly-trained detective who is seeking to ferret out the truth. If the suspect is guilty, the collection of a detailed post-admission narrative will allow the detective to establish the suspect's guilt beyond question, both by demonstrating the suspect's actual knowledge and by corroborating the suspect's statements with derivative evidence. Properly-trained detectives realize that the strongest form of corroboration comes through the development of new evidence using a suspect's post-admission narrative. While it is not possible to verify every post-admission narrative with the crime facts, a skillful interrogator will seek as much verifiable information about the crime as he can elicit. The more verifiable information elicited from a suspect during the post-admission period and the better it fits with the crime facts, the more clearly the suspect demonstrates his responsibility for the crime.

If the suspect is innocent, the detective can use the suspect's post-admission narrative to establish his lack of knowledge and thus demonstrate his likely or certain innocence. Whereas a guilty suspect can corroborate his admission because of his actual knowledge of the crime, the innocent suspect cannot. The more information the interrogator seeks, the more frequently and clearly an innocent suspect will demonstrate his ignorance of the crime. His answers will turn out either to be wrong, to defy evaluation, or to be of no value for discriminating between guilt and innocence. Assuming that neither the investigator nor the media have contaminated the suspect by transferring information about the crime facts, or that the extent of contamination is known, the likelihood that his answers will be correct should be no better than chance. Absent contamination, the only time an innocent person will contribute correct information is when he makes an unlucky guess. The likelihood of an unlucky guess diminishes as the number of possible answers to an investigator's questions grows large. If, however, his answers about

¹² Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2013). CRIMINAL INTERROGATION AND CONFESSIONS, 5th Edition (Burlington, MA: Jones & Bartlett Learning) at 354-360.

missing evidence are proven wrong, he cannot supply verifiable information that should be known to the perpetrator, and he inaccurately describes verifiable crime facts, then the post-admission narrative provides evidence of innocence.

This, of course, assumes that the suspect's knowledge of the crime has not been contaminated by the media, community gossip, the police or some other source with inside knowledge about crime details. If a suspect has learned unique or non-public crime facts from one of these sources, then the fact that his confession contains these details is, of course, not indicative of pre-existing knowledge or probative of guilt. This problem is discussed in detail in the following section.

V. The Problem of Contamination

The post-admission narrative process is about more than merely eliciting information from the suspect. Investigators in practice have been observed to shape the suspect's narrative to make the confession as persuasive as possible and to enhance the chances of conviction.¹³ In this way, confessions are scripted or constructed by interrogators. A persuasive crime narrative requires an explanation of why the crime happened—the motives and explanations of the suspect for committing the crime. It also should contain a statement of the suspect's emotions, not only his or her emotions at the time of committing the crime, but also the shame, regret, or remorse the suspect now feels for having committed the crime. Interrogators are also trained to get the suspect to cleanse the interrogation process, usually by providing statements to the effect that the confession was voluntary. Interrogators will ask the suspect, usually after the suspect's resistance has been broken down and he has been made to believe that it is in his best interests to confess, whether the suspect was treated well, given food and drink, bathroom breaks, and other comforts, and whether any promises or threats were made to the suspect. Finally, and perhaps most importantly, interrogators seek to ensure that the confession contains both general and specific crime knowledge—the details of the crime that only the true perpetrator should know.

The problem of contamination in false confession cases arises when the interrogator pressures a suspect during the post-admission narrative phase to accept a particular account of the crime story—one that usually squares with the interrogator's theory of how the crime occurred—and then suggests crime facts to the suspect, leads or directs the suspect to infer correct answers, and sometimes even suggests plausible motives for committing the crime.¹⁴ . Because they are trained to presume the guilt of those whom they interrogate, American police assume that they are interrogating suspects who already know the correct crime facts. But this is not true when they are mistakenly interrogating an innocent person.

¹³ Richard A. Leo (2008). *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press) at 165-194.

¹⁴ Richard A. Leo (2008), *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press).

Instead, the innocent suspect is pressured to use facts disclosed to him by his interrogators in order to construct a plausible-sounding confession and post-admission narrative. Indeed, the presence of these details in the suspect's confession falsely gives the suspect's narrative credibility and the appearance of corroboration. After police interrogators have contaminated the suspect with non-public crime facts, they often attribute "guilty knowledge" to the suspect when he repeats back and incorporates into his confession the very facts that they first educated him about. One researcher has called these contaminated details "misleading specialized knowledge."¹⁵ In many false confession cases, police and prosecutors argue that the suspect's confession corroborates his guilt because he "knows facts only the true perpetrator would know," even though the suspect first learned these facts from his interrogators. Of course, if the interrogation process is not electronically recorded, the interrogator is free to assert that these crime facts were volunteered by the suspect and the trial devolves into a swearing contest between the suspect and the interrogators over who was the source of the details in the confession. If the entire process is recorded, however, then it may be possible to trace the contamination.

Researchers have found that contamination by police regularly occurs in interrogation-induced false confession cases. In a study of the first two-hundred and fifty (250) post-conviction DNA exonerations of innocent prisoners in the American criminal justice system, Professor Brandon Garrett of the University of Virginia Law School showed that this pattern was present in 95% of the false confession cases in this data set (38 of 40 cases). In other words, in the overwhelming majority of these proven false confession cases, police interrogators fed the suspect unique non-public facts that "only the true perpetrator would know," but the prosecutor erroneously alleged that the suspect volunteered these facts and that the suspect thereby corroborated the reliability of his confession. But because the jury in each case mistakenly believed the prosecutor rather than the defense, each of the confessors was convicted, and in each of these cases the defendant's innocence (and the falsity of the confession) was only proven many years later by DNA.¹⁶ In a recent follow-up study more recent false confession DNA exonerations, Garrett found that another 21 of 23 (91%) were contaminated.¹⁷

In sum, the problem of contamination means that when applying the fit test to assess the reliability of the confession, it is essential to separate out the contaminated facts from the facts that unquestionably were provided by the suspect.

¹⁵ Gisli Gudjonsson (2003), *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* (John Wiley & Sons Inc).

¹⁶ Brandon Garrett (2011). *CONVICTING THE INNOCENT* (Harvard University Press)

¹⁷ Brandon Garrett (2015). "Contaminated Confessions Revisited," Forthcoming in *University of Virginia Law Review*.

VI. Conclusion

In conclusion, based on my detailed analysis above, it is my professional opinion that:

1) It has been well-documented in the empirical social science research literature that hundreds of innocent suspects have confessed during police interrogation to crimes (often very serious crimes such as murder and rape) that it was later objectively proven they did not commit. The same interrogation pressures, techniques and factors that may lead an innocent person to falsely confess to a crime he did not commit may also lead a guilty person to falsely implicate an innocent third party as an accomplice.

2) Investigators Bemo and Cook presumed the guilt of Richard Glossip in their interrogation of Justin Sneed, and their guilt-presumptive and directive interrogation of Justin Sneed suffered from tunnel vision, confirmation bias and investigative bias

3) Investigators Bemo and Cook used several interrogation techniques on Justin Sneed that, based on decades of social science research, could have caused Justin Sneed to make or agree to a false statement, and falsely implicate Richard Glossip. These interrogation techniques included false evidence ploys, minimization, and maximization.

4) Justin Sneed gave multiple inconsistent and contradictory accounts of his involvement, and Richard Glossip's alleged involvement, in the homicide of Barry Van Treese. These accounts do not fit with one another, or the crime scene facts, and thus are one indicator of the potential unreliability of Sneed's statements implicating Richard Glossip in this case. As described in more detail above, Sneed ultimately gives eight different accounts of his and Richard Glossip's alleged involvement (or non-involvement) in the murder of Barry Van Treese. The suggestion that Richard Glossip was involved in the murder of Barry Van Treese – which everyone agrees Justin Sneed committed alone – first came from investigators Bemo and Cook, who were seeking to pressure and persuade Sneed to adopt their pre-existing theory of the crime (i.e., that it was masterminded by Richard Glossip, even though no evidence supported this theory when they were interrogating Justin Sneed and pressuring him to parrot it back to them).

The opinions I express in this report are based on my own knowledge, research, and publications; research and publications in the field; and the case-specific information and evidence that has been provided to me. Should any additional information or testimony come to my attention, I reserve the right to modify any opinions expressed herein accordingly.

Don Knight, Esq.
Attorney at Law
September 9, 2015
Page 13

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink that reads "Richard A. Leo". The signature is written in a cursive style with a large, prominent "R" and "L".

Richard A. Leo, Ph.D., J.D.
Hamill Family Professor of Law and Psychology
University of San Francisco