

Advances in Psychology and Law 1

Monica K. Miller  
Brian H. Bornstein *Editors*

# Advances in Psychology and Law

Volume 1

 Springer

# Advances in Psychology and Law

## **Series Editors**

Brian H. Bornstein

Monica K. Miller

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Monica K. Miller • Brian H. Bornstein  
Editors

# Advances in Psychology and Law

Volume 1

 Springer

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*To Paul Ahlers, who has always inspired me to be my best. This series was born out of that inspiration.*

*—MM*

*To Edie Greene and Steve Penrod—  
colleagues and mentors who have advanced  
my understanding of psychology, law,  
and much else.*

*—BB*



# Preface

Welcome to the “Advances in Psychology and Law” book series published by Springer. The idea for the series was born from the observation that there was no publication outlet dedicated to thorough reviews of existing research that can reveal policy implications and suggest important directions for future research. This series seeks to fill that gap. We quickly realized that one book could not reach this goal—a whole series was needed. We would like to thank Springer, and Sharon Panulla in particular, for helping make this vision a reality.

This book series is unique in its scope and purpose, in that it seeks to enhance understanding of the connections between these disciplines, present “state of the science” summaries for researchers, and provide a starting point for scholars wanting to delve into a new topic of study by reading an up-to-date review chapter on that topic. The series will include all areas of psychology (e.g., developmental, social, cognitive, clinical, neuroscience) and law (e.g., criminal, civil, contracts, property, family). Chapters will be primarily literature reviews or meta-analyses about particular topics that are relevant to psychology and law and are of current interest to the field. Authors will typically go into great depth to summarize research on one particular topic (rather than focusing on the entire body of research in an area) and will be encouraged to take calculated risks (e.g., engaging in informed speculation about future research or the consequences of particular legal policies). Volumes in the series will appear at roughly annual intervals.

In addition to the coeditors, the book series has an editorial board of distinguished scholars who are experts in various areas in psychology and law. The editorial board offers guidance about the development of topics and serves as expert reviewers.

This inaugural volume contains eight chapters, each focusing on a different topic within psychology and law. The first three chapters address pretrial issues. Specifically, Villalobos and Davis discuss how minority race suspects are at a distinct disadvantage during interrogation. Their vulnerabilities might make them susceptible to falsely confessing and being unfairly judged as guilty. The second chapter addressing pretrial issues is by Neuschatz and colleagues. They address the issue of showup identifications. The authors summarize research generally

indicating that showups are less reliable than lineups. The authors offer theoretical explanations and policy implications. Similarly, the third chapter, by Kocab and Sporer, addresses another issue related to identifications; specifically, they conduct a meta-analysis of the weapon focus effect. Results help the authors present practical recommendations for police and experts testifying in court.

The next three chapters deal with issues regarding trial procedures. First is a chapter by Alvarez, Miller, and Bornstein which reviews the law and psychology relevant to criminal jury instructions. Such instructions are given by judges to help juries make legally appropriate decisions, avoid bias, and prevent unjust outcomes. However, instructions are often ineffective and sometimes even counter-productive. The second chapter also deals with influences on jurors' decisions. Scurich's chapter on risk assessment reviews the literature regarding the effects of structured risk assessments on jurors' decisions. The author offers several psychological explanations for why jurors are generally insensitive to risk assessment information. The third chapter that deals with trial issues is written by Milojevich, Quas, and Yano. The authors discuss the experiences of children who are involved in legal proceedings. Participation in both criminal and civil proceedings can be detrimental to children's well-being; this chapter reviews the evidence and recommends ways to mitigate stress and facilitate coping.

The seventh chapter, by Mesler, Anderson, and Calkins, reviews the various legal policies that apply to sex offenders. The chapter addresses the faulty perceptions that underlie sex offender policies (e.g., housing restrictions) and how these perceptions have led to ineffective policies. They offer suggestions for reforming such policies. In the final chapter, Robbennolt and Hans present an overview of the ways that tort law interacts with psychology. This review discusses the various ways that psychological theory can inform several central issues and domains of civil law, including causation, contributory negligence, and tort damages.

As this preview of the chapters illustrates, the field of psychology and law encompasses a wide variety of diverse topics. These topics have a number of real-world consequences for suspects, offenders, witnesses, litigants, factfinders (e.g., juries and judges), and others. We hope that the series will be helpful to scholars and practitioners by providing broad overviews of many topics relevant to the intersection of psychology and law. To that end, we invite scholars to visit our website (<http://www.springer.com/series/11918>) and submit chapter ideas for future volumes to either of us (mkmiller@unr.edu or bbornstein2@unl.edu). We hope that the series will ultimately educate readers and inspire future scholarship.

Reno, NV, USA  
Lincoln, NE, USA

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# Interrogation and the Minority Suspect: Pathways to True and False Confession

J. Guillermo Villalobos and Deborah Davis

Eddie Torbio-Ruiz was asked to come to the police station in Reno, Nevada, voluntarily, to discuss allegations that he had sexually molested his girlfriend's two underage granddaughters. Although Eddie's native language was Spanish and he spoke English poorly, he was interrogated by English-speaking Detective Curtis Lampert. After asking a series of background questions, Lampert began an accusatory interrogation designed to cause Eddie to admit to the accusations against him. Throughout the interrogation, Lampert spoke faster than even native English speakers would understand easily. Though Eddie appeared superficially to understand Lampert, his problems with understanding became clearer as the interrogation progressed.

Eddie initially denied all allegations, but Detective Lampert was a master interrogator who very cleverly enacted strategies interrogation scholars have shown to promote both true and false confessions. As Lampert used these strategies to move Eddie from denial to admission, Eddie appeared to admit to sexually abusive behaviors with the girls. But at several points he answered "yes" to questions or assertions that he had committed specific actions toward the girls, only to answer with a vehement "Oh, no!" when asked the very same question only a short time later. At many points in the interrogation, it was difficult to clearly infer that he knew what he had been asked, what he was responding to, or whether he and Detective Lampert were talking about the same things. Perhaps the clearest indicator of Eddie's misunderstanding came after he had been charged. When his attorney, Jennifer Lunt, tried to tell him the implications of his confession, Eddie denied that

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he had made the admissions. When Ms. Lunt played the tape of the interrogation to show him what he had said, Eddie absolutely insisted the interrogation he saw on the tape was not the real interrogation. It had to have been doctored! He tried to fire his attorney several times, claiming she conspired with those who had doctored the tapes to try to incriminate him!

We cannot know for sure whether all or some of Eddie's admissions were false, though he retracted them (indeed, denied he ever made them) and contested the allegations at trial. But features of both Eddie and his interrogation raise questions about the meaning of his statements during interrogation. What did Eddie really admit to, and why did he do it? Both the voluntariness and the validity of the confession were brought into question by the nature of the interrogation—as deployed against a suspect with Eddie's personal vulnerabilities. Nevertheless, despite Ms. Lunt's efforts to suppress the confession, based in part on the obvious language difficulties, it was presented against Eddie at trial and he was convicted.

Interrogation tactics are sufficiently powerful to induce both true and false confessions from suspects with no apparent enhanced vulnerability, as indicated by scores of laboratory and field studies documenting interrogation-induced false confessions, and demonstrating the role of specific interrogation practices in inducing them (see Davis & O'Donohue, 2004; Kassin et al., 2010; and Leo, 2008 for reviews). But like many minority suspects in interrogation, Eddie Torbio-Ruiz might have suffered multiple sources of enhanced vulnerability to interrogative influence and to false or coerced confession.

First, Eddie was accused of a crime stereotypically associated with his social category. How much difference might it have made to Eddie that he was accused of the crime of child sexual abuse that stereotypes associate with step-parents and mothers' boyfriends: a situation also facing many minority defendants accused of crimes stereotypically associated with their race?

Second, such stereotypes associating Eddie's social category with the crime in question may have affected police behavior. What role did such stereotypes play in causing Eddie to be viewed as a likely perpetrator and to be subjected to interrogation? How might they have promoted the interrogator's presumption that Eddie was guilty, and his choice of how, and how vigorously, to interrogate Eddie? How did they affect the interrogator's ability to recognize cues that Eddie might be innocent?

Third, Eddie was interrogated by an English-speaking interrogator without an interpreter: a common circumstance among suspects for whom English is a second language. The interrogator (perhaps deliberately) made understanding even more difficult by speaking unusually rapidly. How might the enhanced cognitive load this situation imposed on Eddie have further impaired his already compromised ability to understand, to think about what he was being told, and to resist the tactics of influence deployed against him to persuade him to confess?

Fourth, Eddie was an immigrant. As such, he grew up in a culture with laws and individual rights differing from those of the USA, and with different standards of police behavior and citizen expectations of treatment by police and the legal system. How did his culture-related experiences and expectations affect his assumptions

and reactions during interrogation? Did Eddie worry that the interrogator might have the power to deport him or to facilitate his deportation, or that being suspected of a crime might cause others to do so? Did such worries and culture-based assumptions fuel fear of defying the interrogator, and Eddie's susceptibility to influence?

These are the issues we address in this chapter. We review the nature of forces suspects face in interrogation, considering underlying processes we suggest selectively affect minorities in interrogation. These include: (1) the existence and nature of stereotypes associating racial minorities with crime; (2) the concept of "stereotype threat" and existing evidence of its effects on self-regulation, motivation, and cognitive performance; (3) difficulties in communication between native and non-native English speakers and implications for miscommunication, suggestibility, and compliance; (4) the relationship of race, culture of origin, and immigration status to social power dynamics with law enforcement, (5) the relationships of these characteristics to expectations of law enforcement and the justice system; and (6) personal characteristics and life history experiences relevant to interrogation experiences and performance that are more prevalent among some minorities. We further address the impact of these factors on police attitudes and behavior during interrogation. Among other impacts, we suggest these influences on suspects and interrogators compromise the voluntariness of suspect interactions with law enforcement (including during interrogation) and result in elevated rates of both true and false interrogation-induced confession among minorities. Though the basic processes underlying our analysis of minority vulnerability in interrogation have been well documented, there are almost no empirical studies of minority behavior/vulnerability in interrogation. We hope our chapter will provide impetus for much needed research among interrogation scholars to provide interrogation-specific evidence of the vulnerabilities we suggest herein.

Below we review basic processes affecting police and minority suspects in interrogation. We suggest these basic processes affect the likelihood that the target will be interrogated at all, the behaviors of the interrogator during interrogation, and/or the cognitive, emotional, and behavioral reactions of the suspect. In turn, we identify several specific mechanisms through which these processes affect police and suspect assumptions, affective reactions, and behaviors during interrogation.

Specifically, we suggest that police behaviors are affected by basic processes that (1) fuel negative affect and behavior toward minorities; (2) increase suspicion and the likelihood police will target minorities for interrogation; and (3) enhance the presumption of criminality and guilt underlying confirmation biases in interrogations and investigations involving minority suspects. These and other basic processes place minority suspects at enhanced risks of first submitting to interrogation and subsequently succumbing to its pressures through confession, and of failures of prosecutors, judges, and juries to recognize involuntary or false confessions when they occur.

We suggest additional factors that affect minority performance in interrogation. Minority risks are elevated in part through forces with *direct impact* on (1) communication and understanding in interactions with law enforcement; (2) minority perceptions of the extent to which they *can* resist the demands of law enforcement to talk and

to confess; (3) their expectations of the likely consequences of resistance versus compliance. Additional forces *indirectly* affect minority risk by undermining abilities necessary for resistance through mechanisms including; (4) enhanced emotion (e.g., fear and anxiety); (5) elevated cognitive load; (6) ego-depletion and self-regulation failure; and (6) their impact on distress, distress regulation, impulse control, and rational decision-making.

## **Basic Processes Affecting Minorities in Interrogation**

Though there are many basic factors selectively affecting outcomes of law enforcement interactions with minority suspects, we suggest the following are most directly relevant. We focus our review of evidence primarily on Blacks and Latinos, as more research has been conducted on those populations than on other minority groups.

### ***Cultural Stereotypes Associating Minorities with Crime***

Documentation of American cultural stereotypes associating racial minorities with crime dates back to the era of slavery (Welch, 2007). The bulk of such literature has concerned criminal stereotypes and/or criminal profiling of African Americans (e.g., Epp, Maynard-Moody, & Haider-Markel, 2014; Glaser, 2015; MacLin & Herrera, 2006; Niemann, Jennings, Rozelle, Baxter, & Sullivan, 1994; Welch, 2007), and arguably the strongest associations of race with crime concern this group. Indeed, Welch argues that the implied relationship between Black men and crime has been continuously reinforced in such a profound and systematic way that many people in US society have come to see Blacks and crime as intrinsically related, though Blacks do not actually account for the majority of crimes committed in the USA. Even Blacks themselves tend to believe that Blacks are dangerous, aggressive, or predisposed to criminality (Sniderman & Piazza, 1993), and both Blacks and Whites (even those without conscious racial prejudice) manifest racial biases in judgment of criminal intent and culpability (see Banks, Eberhardt, & Ross, 2008 for review).

There are similarly strong stereotypical associations of Latinos with predisposition to violence, criminality, and membership in street gangs (Bender, 2003; Holmes, Smith, Freng, & Muñoz, 2008; MacLin & Herrera, 2006; Niemann et al., 1994; Welch, Payne, Chiricos, & Gertz, 2011). Of course, many among the Latino population are immigrants (some illegal immigrants), and public opinion has associated immigrants with crime, despite the lack of evidence of such a link (Martinez & Lee, 2000). Indeed, some research suggests that an increase in immigrant population is either not related to more violent crimes in metropolitan areas (Reid, Weiss, Adelman, & Jaret, 2005), or might even be related to a decrease of violent crime in urban areas (Wadsworth, 2010). Nevertheless, of the US population 73% believe

that immigrants are likely to cause higher crime rates, and almost 90% endorse the statement “protecting our borders is important to prevent drug trafficking and organized crime” (Ipsos Public, 2010). Such beliefs may explain in part the well-documented Hispanic-White sentencing disparity, which is significantly reduced when accounting for citizenship. Noncitizens are more than four times more likely to be incarcerated, and this effect is larger than those for race, ethnicity, gender, age, or education or the nature of the offense in question. Moreover, this citizenship effect has increased steadily over the last 15 years, and is greater in districts with growing immigrant populations and for undocumented versus legal immigrants (see Light, Massoglia, & Kind, 2014 for review).

Criminal stereotypes of Middle Easterners have been documented more recently, particularly after the September 11 terrorist attacks (Alsultany, 2012; Marvasti, 2005). Indeed, Marvasti argues that stigmatization of Middle Eastern Americans has become commonplace to the point that they are subject on a daily basis to unwarranted questioning by the general public about their beliefs, intentions, and ideologies. In addition, the fact that the September 11 attacks and other recent terrorist acts (e.g., the Madrid train bombings in 2004, the London attack on public transport in 2005) were committed by Muslim men has led to criminal profiling and additional scrutiny at transportation security ports (Kydd, 2011). Thus, it seems that stereotypes of Middle Eastern Americans and foreign nationals link them to specific types of crimes associated with terrorism, rather than to crime in general.

Likewise, even criminal stereotypes of Blacks and Latinos can be somewhat crime specific. Criminal stereotypes of these groups link them primarily to violent or drug-related crimes, rather than to crimes stereotypically linked to other groups, such as white-collar crimes (e.g., Davis, Williams, & Villalobos, 2013; Gordon, 1990, 1993; Gordon & Anderson, 1995; Gordon, BIndrim, McNicholas, & Walden, 1988; Roman, 2000; Sunnafrank & Fontes, 1983).

Perhaps due to their comparatively small populations, specific criminal stereotypes of other ethnic minorities have been historically understudied. Nevertheless, stereotypes of other minority groups may well include broad or specific criminality stereotypes. For instance, commonly held stereotypes about Native Americans—such as alcoholism and laziness (Tan, Fujioka, & Lucht, 1997)—could be associated with expectations that Native Americans might be prone to commit certain crimes, such as crimes that are alcohol related (e.g., drunk driving) or associated with being unwilling to work (e.g., theft). It remains for future research to more fully investigate criminal stereotypes that may link other groups to crime generally or to specific types of crime.

As we develop more fully in sections to come, stereotypical associations of race with criminality can impact the experiences of ethnic minority suspects during interrogation in at least two ways, including: (1) causing them to be suspected and targeted for interrogation, and (2) fueling a presumption of guilt that can affect interrogator behavior during the interrogation. Moreover, should the interrogation result in confession, race-related criminal stereotypes can affect reactions to defendant claims that the confession was coerced (and should not be admitted as evidence

at trial) or false (and therefore should not lead to prosecution or conviction). The direction and completeness of the case investigation may likewise be compromised, resulting in lesser ability to support claims of innocence or false confession. Given the crime-specific nature of some race-criminality associations, one would expect such effects to depend in part upon the specific crime type in question.

### ***Minority Awareness of Race-Based Criminality Stereotypes: Metastereotypes and the Impact of Stereotype Threat***

Sigelman and Tuch (1997) coined the term *metastereotype* to describe Blacks' perceptions of how relevant outgroups (i.e., Whites) stereotype them. Such metastereotypes are widespread among Blacks and include awareness of being stereotyped as likely to be violent and criminal. Indeed, awareness of race-related criminality stereotypes and criminal profiling has been so prevalent among Black and Latino minority populations that expectations of racial profiling, race-based suspicion, and negative encounters with the police have become integral to the identities of young minority men (Dottolo & Stewart, 2008; Glaser, 2015; Harris, 2002; Menjívar & Bejarano, 2004; Solis, Portillos, & Brunson, 2009).

Research on the psychological phenomenon known as *stereotype threat* (Steele & Aronson, 1995) suggests that when negative stereotypes about one's social group are made salient, the person may become concerned about being judged according to the stereotypes and/or about confirming the negative stereotype (e.g., fears of performing badly among groups stereotyped as unintelligent or incompetent). Several emotional, cognitive, and behavioral reactions to the experience of stereotype threat with implications for experiences of minority suspects have been documented.

Negative emotional reactions—in the form of worry and anxiety over other's negative reactions and one's own potential to confirm the stereotypes—are inherent to the experience of stereotype threat. In turn, the negative emotions themselves, the related increased physiological arousal, and the distraction, enhanced cognitive load and self-regulatory demands resulting from threat-related thoughts and emotions (and efforts to manage them) create a cascade of reactions that are dysfunctional in the context of police contact and interrogation (see Davis & Leo, 2012a, 2012b; Inzlicht & Schmader, 2012; Najdowski, 2011; Steele, Spencer, & Aronson, 2002 for reviews).

*Stereotype threat and the appearance of deception.* First, the experience of stereotype threat may lead the suspect to appear more deceptive, both in interrogation and later before judges and juries. Central to the experience of stereotype threat are increased anxiety, attempts to conceal that nervousness or anxiety, and efforts to disprove the stereotype (e.g., Finchilescu, 2010; Klein & Azzi, 2001; Major & O'Brien, 2005). Interrogators are taught to interpret indicators of anxiety as indicating deception (see Vrij, 2008 for review), and may also view increased defensiveness as deceptive.

As reviewed in the subsequent section on assessment of deception, detectives' perceptions of suspect deception are crucial determinants of both the decision to interrogate, and the nature of interrogation, once begun. In this way, by causing the suspect to manifest purported cues of deception, stereotype threat increases the risk of true and false confession by indirectly affecting the interrogator's assessments, interrogation effort, and strategies (see Davis & Leo, 2012a, 2012b; Najdowski, 2011 for reviews). An additional threat can be imposed when suspects are interrogated by those of a different race, as interracial interactions have been shown to result in anxiety, self-regulatory efforts to cope, and enhanced cognitive load. Such reactions can increase the appearance of deception (Richeson & Shelton, 2007).

*Stereotype threat and self-regulatory decline.* Second, stereotype threat and its aforementioned effects are ego-depleting and result in self-regulatory decline (see Inzlicht & Schmader, 2012 for reviews). Davis and Leo (2012a) coined the term "interrogation-related regulatory decline" (IRRD) to refer to self-regulatory decline in the context of interrogation. They reviewed a number of factors inherent to interrogation that are depleting and cause regulatory decline, including stereotype threat. Generally, self-regulatory decline refers to reduced ability to control one's emotions, thoughts, and behaviors. Crucially, this includes suppression or redirection of those that are dysfunctional in the immediate and/or long-term context (see Vohs & Baumeister, 2011 for reviews).

In interrogation, it is important to control emotions, both to minimize distress and to facilitate control of cognition and behavior. As we develop more fully in later sections, suspects often confess because they have become sufficiently distressed to do anything to escape the distressing context. Poor emotional regulation can result in greater distress in reaction to the interrogation, and promote the need to escape. Self-regulatory decline also renders the person more responsive to immediate impulses than to long-term goals, and less able to control his or her behavior to suppress such impulses. Together, the decline in control of emotions and behavior renders the person more vulnerable to stress-induced confession (see Davis & Leo, 2012a, 2012b).

Control of cognition is also vital to interrogation performance. Interrogation is designed to convince suspects that confession will result in better legal outcomes than denial. To recognize these interrogative messages as deceptive and flawed, one must control one's attention to focus on relevant incoming information (and screen out irrelevant information), to access relevant information from memory, to critically evaluate incoming information to recognize flaws or deception, and to use appropriate information to reason and evaluate one's options. One must resist interrogator efforts to control the information one considers and how it is interpreted. Self-regulatory decline undermines all such abilities (see Davis & Leo, 2012a, 2012b for review of interrogation-related effects of self-regulatory decline; and of self-regulatory effects of stereotype threat specifically).

*Stereotype threat and hopelessness.* A central determinant of the decision to confess is the suspect's perceptions of the strength of evidence against him (see Kassin et al., 2010; Leo, 2008). Awareness of stereotypes associating race with criminality can instill hopelessness in minority suspects, undermining confidence

that their claims of innocence will be believed. By, in effect, taking exoneration off the table, additional interrogation tactics designed to convince suspects that confession will minimize the consequences become more effective (see Davis & Leo, 2012a, 2012b; Leo, 2008).

In sum, stereotype threat can render minorities more vulnerable to interrogative influence by first increasing the appearance of deceptiveness and increasing the probability they will be interrogated, and later increasing susceptibility to stress-induced confession and/or to the interrogator's arguments that confession is best. Although this chapter concerns ethnic minority suspects, stereotypes associate many other social categories with crime generally, or with a specific kind of crime (e.g., Davis, Williams, Ogundimu, & Hyatt, [under review](#)). These social categories are not limited to racial or ethnic minorities such as Blacks or Latinos, but also extend to other groups such as prior felons and others stereotypically associated with specific crimes, such as bankers accused of fraud, husbands accused of spousal homicide, and many others. In Eddie's case, awareness of the stereotype associating step-fathers and mothers' boyfriends with sexual molestation might have increased his vulnerability to falsely confess, and fueled the interrogator's presumption of Eddie's guilt (see Davis & Leo, [in press](#) for a review of vulnerabilities of sex abuse suspects).

### *Communication and English as a Second Language*

A large segment of the US population has limited English proficiency, thousands of whom are arrested, given *Miranda* warnings, and interrogated annually (Rogers et al., 2009; Rosales, 2012). More than half of the federal case load consists of prosecutions for immigration-related crimes, including over 7000 new charges per month. Many such cases entail contested waivers of *Miranda* rights and/or claims of false or coerced confessions, often based in full or part on difficulties of comprehension that can compromise the voluntariness of disputed waivers or confessions (Malhotra, 2013). In her book *Coerced Confessions*, Berk-Seligson (2009) provides an in-depth analysis of how suspects with limited English proficiency (mostly Latino immigrants) face a myriad of language difficulties during criminal interrogations.

Language difficulties are most problematic when the suspect has limited English skills and no interpreter is provided. Most obviously, failures of understanding during the interrogation can be profound, as illustrated by our story of Eddie Ruiz. The language difficulties made it more difficult to know what Eddie intended to admit to. When he appeared to agree with an accusation, did he actually know what he was agreeing to? He clearly failed to understand the interrogator reliably, and in part for this reason gave inconsistent answers to the same question at different points in the interrogation.

Such inconsistencies can also reflect, in part, a phenomenon referred to as "gratuitous concurrence," which has been observed across multiple populations,

and tends to occur when a low-power individual interacts with one of high-power in the language of the latter (Lieberman, 1995). People with limited proficiency in the dominant language tend to “agree” with outgroup members who hold power or authority during social interactions (e.g., Eades, 2006), even if the message has not been understood clearly. Berk-Seligson (2009) suggests that in the context of police interrogation, it is not uncommon for suspects to simply go along with the interviewer, even if they are not able to understand what is being said, until they are able to understand something and give a “real reaction.” This phenomenon would explain Eddie’s vehement “Oh Nos!” to the same assertions he had seemingly agreed to shortly before.

Even if the non-native English-speaking suspect can understand the literal statements of the interrogator, there are several elements that can be lost in the interaction because of the additional efforts required to understand a conversation in another language. In effect, the suspect may have to work so hard to track the meaning of the words that he loses the overall meaning of the sentences and cannot keep up with the flow of conversation. Corollary to this difficulty are tendencies to misunderstand, or miss completely, the more subtle, less clear, more complicated, or indirect statements. For example, comprehension of indirect requests with different levels of conventionality is positively related to language proficiency of English as a Second Language (ESL) learner (e.g., Cook & Liddicoat, 2002).

The increased cognitive load and enhanced effort needed to try to track the conversation imposed by language difficulties can increase vulnerability to confession through several pathways. To the extent that anxiety is increased by language difficulties, the suspect may appear more deceptive to the interrogator, thereby enhancing the risk that the suspect will be interrogated, affecting the nature and persistence of the interrogator’s efforts to induce confession, and impairing the interrogator’s ability to recognize the suspect’s innocence (see subsequent section on assessment of deception).

Moreover, distraction and cognitive load further impair understanding and contribute to the general self-regulatory decline discussed earlier as inherent to the experience of stereotype threat. Likewise, the ability to critically analyze the statements of the interrogator and reason adequately during the interrogation is impaired by the reduction of available cognitive resources imposed by the extra distraction and cognitive load. Thus, the ESL suspect faces the triple risks of incurring enhanced interrogator suspicion and the presumption of guilt; admission without full understanding of what he is admitting to; and of enhanced interrogative suggestibility resulting from reduced ability to recognize flaws in arguments for confession (see Davis & Leo, 2012a, 2012b; Petty, Cacioppo, Strathman, & Priester, 2005).

*Lost in translation: Problems with use of interpreters.* ESL suspects are often interrogated with the assistance of an interpreter. Though some of the above problems can be successfully addressed in this way, several new problems can be introduced. For example, the interpreter may not be neutral, but rather another officer effectively functioning as a “second interrogator.” This can prove problematic in several respects. Use of interrogation officers as interpreters of *Miranda* warnings, for example, has been criticized as a poor way to safeguard against violation of *Miranda*

rights of vulnerable suspects, as the goal of the interrogation officer is to induce the suspect to waive those rights (e.g., Rosales, 2012). The dual role may also encourage the “interpreter” to adopt a more forceful or hostile demeanor, to add to the main interrogator’s comments or arguments, and to be perceived as an additional authority and advocate for confession.

The interpreter may also be inefficient or inaccurate; for instance, not translating everything that is said (to or by the suspect), or translating incorrectly. The effects of such missing or mistaken translations are many (see Berk-Seligson, 2009 for examples). They may affect suspects’ understanding of their *Miranda* rights, and discourage suspects from asserting them (see the subsequent section on *Miranda*). They may also affect the process of interrogation. Sometimes, they simply increase the difficulty and frustration of the interaction for both interrogator and suspect. More seriously, they can exert significant effects on the nature of the interrogation.

For example, the second author (Davis) recently served as an expert for a case in which the translator consistently translated the suspect’s Spanish word for “rape” (*violar* in Spanish) into English words implying physical rather than sexual abuse. The interrogator became increasingly frustrated with the suspect, and more suspicious of him, because he thought the suspect insisted on talking about physical abuse of the child when the interrogator was trying to talk about rape.

## **Race, Culture of Origin, and Immigration Status: Power Dynamics and Perceptions of Legal Rights, Law Enforcement, and the Justice System**

An additional set of risks is imposed by the real and perceived power differentials between minority suspects and law enforcement. Among minority suspects real power differences can be perceived as much greater than among Whites, as the result of lack of understanding of legal rights, or of distrust of law enforcement and the operation of the justice system more generally.

*Power dynamics, cognition, and behavior.* Few circumstances are as exemplary of interactions with high power imbalance as criminal interrogations. Interrogators tend to control suspects and the environment; are questioning suspects about events with potentially catastrophic implications for their future; and are commonly viewed as able to influence outcomes such as whether the suspect will be arrested, what he may be charged with, or how he will be viewed by prosecutors, judges, and juries. As suggested by research applying Communication Accommodation Theory (CAT) to the investigation of civilian–police interactions, real or perceived power differentials between interaction partners can greatly influence the expectations and behaviors of both parties during police encounters, generally to the benefit of police officers (Giles, 2002; Giles, Willemyns, Gallois, & Anderson, 2007). In addition, research on power imbalance between Whites and racial minorities suggests that minorities tend to accommodate to Whites during interpersonal interactions, presumably

largely the result of pronounced differences in socioeconomic status (e.g., Stanback & Pierce, 1981).

In sum, when interrogators engage in cross-racial interactions with suspects, two layers of power imbalance may apply: those of police–suspect and those of White–minority interactions. Moreover, an additional layer of imbalance may be perceived by legal and illegal immigrants facing criminal interrogation, or interrogation by immigration officers seeking admissions with potential to affect their own or family members’ immigration status/deportation. In either of the latter contexts, the interrogator may be perceived as affecting whether the suspect and/or his family can continue to live in the United States.

The impact of power imbalance during interpersonal interactions is manifold, and can extend to cognitions, emotions, and behaviors of both parties. In her “situated focus” theory of power dynamics, Guinote (2010) suggested that power affects basic processes of self-regulation and cognition as the result of specific strategies for goal attainment in the situation at hand. Since powerful individuals can more easily obtain their goals, they tend to focus attention more exclusively on goal-relevant information; to focus on the pursuit of rewards, rather than avoidance of threats; and in some circumstances to pursue more effortless strategies to make judgments and to attain their goals.

Thus, the high power interrogator will experience several processes relevant to interrogation, including: (a) more focused attention and effort relevant to goals of the immediate situation (such as the suspect and efforts to get him to confess), (b) greater implicit prejudice, (c) greater reliance on gut reactions and on stereotypes when they are primed in the situation, and (d) therefore, not surprisingly, stronger confirmation biases (see Guinote, 2010 for review). Such processes can intensify the confirmation biases operating in assessment of deception, interrogation, and investigation of the case and lead the interrogator to exert more effort to cause the suspect to confess.

In contrast, relatively powerless individuals experience greater difficulty in achieving their goals; feel less self-efficacy and experience greater dependency on others for doing so; tend to have less clear priorities and less focused attention; and exert less goal-directed effort in specific situations. They engage in more effortful controlled cognitive processing across situations, and simultaneously must attend to more, and more sources of, information (including powerful others) to increase predictability and control, and to achieve their goals. This results in more effortful goal pursuit and greater self-regulatory effort, cognitive load, and self-regulatory decline. Moreover, as relatively powerless individuals experience more barriers to goal pursuit, they become hypervigilant to threats, subject to higher levels of negative affect and behavioral inhibition, and more risk averse (see Guinote, 2010; Keltner, Gruenfeld, & Anderson, 2003 for reviews; see also Mullainathan & Shafir, 2013 for review of similar effects of poverty/scarcity on self-regulation and cognition).

These effects of power are relevant to suspect performance in interrogation in several respects. Like stereotype threat, powerlessness can itself promote a sense of hopelessness, undermine confidence in the ability to establish one’s innocence, and

promote confession. Also like stereotype threat, powerlessness enhances negative emotions, increases cognitive and self-regulatory load, and undermines further self-regulation of emotion, cognition, and behavior. These effects have the dual consequences of enhancing the likelihood of stress-induced confession and increasing suggestibility/persuasion that confession is best. In the context of this increased suggestibility, those with low power seek to interpret information beyond its literal meaning, with the objective of increasing predictability and personal sense of control (see Guinote, 2010).

The tendencies of low power individuals to devote attention to the needs and objectives of high power individuals, and to evaluate the details of their behavior to assess implications for the lower power individuals' goals, would render them more sensitive to the interrogator's affective reactions (and to manipulation via expressions of flattery, pleasure, and displeasure) and to the many subtle and implied threats and promises concerning the consequences of confession versus denial. Such tactics are common practices among interrogators (see Davis, 2010; Davis & Leo, 2010).

Finally, high-powered individuals are often perceived as more persuasive (Lammers, Dubois, Rucker, & Galinsky, 2013), and simple compliance with demands of higher power individuals is among the basic dynamics of power in social interaction (perhaps including acquiescence with demands to confess). Given power differentials inherent to race and social class in our society, these processes, which would be expected to occur during criminal interrogations regardless of the suspect's race or ethnicity, should be more robust for minority suspects.

*Understanding of legal rights.* Understanding of legal rights, including those to refuse to talk to police, can be affected by culture of origin. For instance, in a series of in-depth interviews conducted with immigrants from several Latin American countries (Mexico, El Salvador, Cuba, and Guatemala), Menjivar and Bejarano (2004) identified a number of factors that substantially influenced respondents' perceptions of crime and the police, including *bifocal lens* (i.e., influences of knowledge and experiences regarding crime, police, and the justice systems in both their home country and the United States), and their experiences with immigration officials. Immigrants tend to initially use the laws and customary procedures (e.g., police apathy, corruption, rigidity) from their home countries as a frame of reference on how laws might function in the United States (Erez, 2000).

Culture-based beliefs and understanding can affect immigrants' literal understanding of their rights, their beliefs concerning whether law enforcement will honor such rights, and expected consequences of refusal to talk to police. Immigrants often come from countries where authorities terrorize their citizens and government is generally corrupt. As a result, they may even distrust their lawyers in the United States because they are government employees (see Messier, 1999; Rosales, 2012), and see less value in asking to have a lawyer present during interrogation. Moreover, they may come from countries where unquestioned cooperation with authorities is demanded and enforced (e.g., China; Einesman, 1999), and therefore automatically tend to be compliant with any demand of law enforcement. Finally, previous experiences and awareness of others' experiences with American immigration authorities