FIRST DISTRICT APPELLATE PROJECT

60 YEARS AFTER *MIRANDA*: A FRESH LOOK AT CHALLENGING CONFESSIONS

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INTRODUCTION

In a criminal case, a defendant's confession or admission can be powerful evidence for the prosecution, and an "evidentiary bombshell which shatters the defense." (*People v. Cahill* (1993) 5 Cal.4th 478, 503.). Thus, a confession is admissible at trial only if it satisfies two independent constitutional requirements: (1) it was obtained in compliance with the procedural safeguards established by *Miranda v. Arizona* (1966) 384 U.S. 436, and (2) the confession was made voluntarily, meaning it was not the product of coercive police conduct that overbore the defendant's free will, as required by the Due Process Clause of the Fourteenth Amendment.

In the 60 years since *Miranda v. Arizona* was decided, courts have grappled with the legal issues presented by law enforcement efforts to circumvent the constitutional protections set forth in that decision, and have struggled to define the circumstances that render a confession involuntary under the Fourteenth Amendment.

These materials will not provide an in-depth examination of constitutional objections to the admission of confessions. Excellent guides to challenging confessions exist, including Jonathan Grossman's The Revival of *Miranda* and the Fifth Amendment (2018) and the CEB's California Criminal Law Procedure and Practice § 23 (Confessions and Admissions).

Instead, we will highlight some recent appellate decisions and state statutory developments, as well as practical tips for identifying and presenting claims on appeal and analyzing prejudice resulting from the improper admission of confessions.

I. Overview of Fifth Amendment Challenges to the Admission of a Defendant's Confession and/or Admission

A. *Miranda v. Arizona* (1966) 384 U.S. 436

In *Miranda,* the United States Supreme Court held that the Fifth Amendment's guarantee of an individual's right not to be compelled to "be a witness against himself" requires implementation of procedural safeguards when law enforcement interrogates a suspect. An "individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation," as well as the right to court-appointed counsel, right to remain silent, and that anything said during the interview can be used against the individual in court. (*Id.* at pp. 469-473.)

If an individual does not knowingly and intelligently waive these rights, "no evidence obtained as a result of interrogation can be used against him." (*Id.* at p. 479.) If an individual invokes their right to silence and/or to consultation with an attorney, the interrogation must stop.

The duty to give *Miranda* warnings is triggered when the individual is (1) in custody, and (2) subject to interrogation. Since *Miranda,* appellate decisions have addressed numerous variations of law enforcement questioning that may qualify as a custodial interrogation. Numerous decisions have also addressed the adequacy of *Miranda* advisements, what constitutes an invocation of the individual's constitutional rights, and the validity of an individual's waiver of rights.

Article I, Section 15 of the California constitution independently protects the right against self-incrimination and right to counsel. However, due to California's truth-in-evidence provision (Cal. Const., art. I, § 28), federal (not state) law controls the admissibility of a defendant's admission or confession. (*People v. Lessie* (2010) 47 Cal.4th 1152.)

B. Independent Standard of Review

On appeal, a claim that a defendant's confession was improperly admitted and used against him is evaluated under the independent standard of review.

"We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained. Where [] an interview is recorded, the facts surrounding the admission or confession are undisputed and we may apply independent review." (*People v. Leon* (2020) 8 Cal.5th 831, 843, citations omitted.) The trial court's factual findings are reviewed under the substantial evidence standard. (*People v. Krebs* (2019) 8 Cal.5th 265, 299.)

When an appellate court employes independent review, the court generally reviews the evidence relied on by the trial court. This means that appellate counsel (as explained in Section V) must obtain and review all audio-video recordings of their client's interactions with law enforcement and request transmission of relevant exhibits to the Court of Appeal (Cal. Rules of Court, rule 8.224).

C. Recent State and Federal Decisions

1. Custodial Status

Many *Miranda* claims turn on whether the defendant was in custody when the incriminatory statement was made. An individual is in police custody if a reasonable person would not feel free to leave in similar circumstances. (*Miranda,* at p. 444.) This concept has frequently been extended by appellate courts to an almost absurd degree, given that many people do not feel free to walk away from armed and uniformed law enforcement officers. (See *People v. Linn* (2015) 241 Cal.App.4th 46, 68, fn. 10 [reviewing empirical research].)

a. Change in Nature of Questioning

Even an interaction that begins voluntarily may become custodial if the nature and tone of the questioning changes. (See *People v. Saldana* (2018) 19 Cal.App.5th 432 ["[E]ven where a suspect voluntarily goes to a police station for an interview, if once there, the circumstances become such that a reasonable person would not feel free to leave, the interrogation can become custodial."].) "[T]he nature of the questioning may tip the balance in a given situation when viewed as part of the totality of the circumstances." (*People v. NavaAdame* (2025) 116 Cal.App.5th 1, 20.)

In *NavaAdame*, the Court of Appeal recently found that the defendant was subjected to custodial interrogation, thus requiring *Miranda* warnings, during the third part of an interview at the sheriff's station. Though the interview began voluntarily when he tried to turn himself in for one instance of child molestation, he ultimately confessed to multiple criminal acts.

No reasonable person in defendant's position would have felt free to leave after the detective opened the third part of the interrogation with lengthy confrontational monologues that were rife with accusation and employed a barrage of "well-known interrogation techniques designed to elicit confessions," including foreclosing any factual dispute about guilt by focusing on why the sexual abuse occurred, and minimizing the moral seriousness of the alleged conduct. (*Id.* at 18-19.)

b. Mismatch Between Verbal Advisement and Objective Circumstances

Telling a suspect they are free to leave does not mean that the suspect is not in custody. In *People v. Stayner* (2026) 19 Cal.5th 395, a suspect was verbally told by FBI investigators that he was not under arrest and was free to leave. However, he was also handcuffed and placed inside an FBI vehicle with an

FBI agent. The Court rejected the government's contention that Stayner was not in custody because he was handcuffed only for safety purposes and was told that he did not have to participate in an interview. The objective circumstances would have indicated to a reasonable person that Stayner was deprived of his freedom of action.

Similarly, in *In re Matthew W.* (2021) 66 Cal.App.5th 392, a teenager was interviewed inside his home by three armed police officers who pat searched him and refused his mother's request to be present for the interview. The officers told Matthew that he was not under arrest and they were just there to ask some questions. Nonetheless, under the circumstances (police initiated the interview, multiple officers arrived at his home in the early morning, pattern of questioning indicating the officer's goal was to get Matthew to admit to the stabbing, officers were armed), a reasonable person would not have believed he was free to leave.

2. Selective Invocation of Rights

The right to counsel under the Fifth Amendment is triggered when an individual subject to a custodial interrogation personally requests an attorney.[1] The invocation must be clear, though no specific words are required. (*Davis v. United States* (1994) 512 U.S. 452; *People v. Ramirez* (2022) 13 Cal.5th 997, 1103-1105.) Once the individual has requested an attorney, questioning must end.

An individual may also selectively invoke their rights by refusing to answer questions on certain topics. In that case, interrogation must end with respect to that topic. (*Michigan v. Mosley* (1975) 423 U.S. 96.)

In *Michaels v. Davis* (9th Cir. 2022) 51 F.4th 904, the Ninth Circuit found that the California Supreme Court had erred when it found the defendant's taped confession admissible (*People v. Michaels* (2002) 28 Cal.4th 486). Michaels had "selectively invoked his right not to answer a specific question" by stating "Okay, that one." (*Id.* at p. 924.) The Supreme Court correctly recognized that Michaels invoked his right to remain silent as to the topic of the question, but incorrectly held that Michaels was required to selectively

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[1] An individual's right to counsel implicates both the Fifth and Sixth Amendments. The Sixth Amendment right to counsel "is triggered at or after the time that judicial proceedings have been initiated." (*Fellers v. United States* (2004) 540 U.S. 519, 523.)

invoke "on a question-by-question basis" after he had already declined to answer a question about that topic. (*Id.* at p. 924.) This was error because a suspect does not have to repeatedly refuse to answer questions after invoking the right not to answer. It is the obligation of law enforcement to end questioning on the particular topic.

3. Deliberate Two-Step Interrogations

A two-step interrogation is a tactic where officers question a suspect without *Miranda* warnings and elicit an inadmissible confession. Officers then administer *Miranda* warnings, obtain a waiver of rights, and re-elicit the same confession. This tactic does not automatically render the second, post-warning statement inadmissible. (*Oregon v. Elstad* (1985) 470 U.S. 298; *Missouri v. Seibert* (2004) 542 U.S. 600.) In *Seibert,* the Supreme Court agreed that a post-warning statement could be inadmissible as involuntary where the statement was a product of a deliberate two-step interrogation, but did not provide a single test for evaluating the adequacy of the warnings or voluntariness of a statement produced from such an interrogation. "The California Supreme Court has declined to decide whether the *Seibert* plurality's rule or Justice Kennedy's rule should be applied. [Citation.]" (*People v. Sumagang* (2021) 69 Cal.App.5th 712, 727.)

In *Sumagang*, the Court of Appeal found a second, post-warning statement inadmissible under both tests articulated in *Seibert.* A detective questioned a suspect for 25 minutes without an advisement of rights, then, after a two-minute break, gave a *Miranda* warning and continued the questioning for another 45 minutes.

All of the circumstances of the two statements (particularly that the interviews appeared to be one continuous interrogation) supported a conclusion that the second statement was involuntary. The court also pointed out that, at the evidentiary hearing on a *Seibert* claim, the prosecution bears the burden of establishing that the interrogator *did not* engage in a strategy to "foil *Miranda.*" The court found that burden had not been carried here, partly as a result of prosecution objections during questioning of the detective about his motives and understanding of the *Miranda* rules. (*Sumagang,* at p. 728.)

The evidence also supported an inference that officers deliberately subverted *Miranda.* The court looked at the nature of the post-warning interrogation (leading questions, reference to the first statement), lack of "curative" measures (substantial break in time, advisement regarding the

inadmissibility of the prewarning statement), overlapping nature of the statements, continuity of the place and personnel, and timing. (*Id.* at pp. 729-730.)

4. Assertion of Right to Counsel After Prior Waiver

A suspect who has waived their *Miranda* rights may invoke them later on during the interrogation by "unambiguously" asserting them. (*People v. Stitely* (2005) 35 Cal.4th 514, 535; *Edwards v. Arizona* (1981) 451 U.S. 477.) "[W]hether a suspect has waived the right to counsel with sufficient clarity prior to the commencement of interrogation is a separate inquiry from the question whether, subsequent to a valid waiver, he or she effectively has invoked the right to counsel." (*People v. Williams* (2010) 49 Cal.4th 405, 427.)

In *People v. Henderson* (2020) 9 Cal.5th 1013, the defendant first waived his *Miranda* rights and agreed to speak with police. After being asked about his whereabouts on the night of the offenses under investigation, he stated he wanted to "speak to an attorney first, because I, I take responsibility for me, but there's other people that…" (*Id.* at p. 1020.) The Court found his assertion unambiguous and noted that the officer spoke over him several times as he tried to explain why he wanted to speak with an attorney. The Court also considered the circumstances preceding his invocation as context for interpreting his request, explaining that the defendant was hesitant to answer questions and did not answer some questions. (*Id.* at p. 1024.)

The Court also held that the defendant's invocation could not be considered limited to certain topics (as the trial court had found). Though a suspect may provide a limited invocation, here the defendant did not limit his invocation. Instead, he tried to explain his reason for requesting a lawyer (fear of implicating others). (*Id.* at pp. 1027-1028.) Finally, the Court emphasized that, while officers may validly control the interrogation and determine which questions to ask, they may not do so in order to undercut a suspect's invocation of their rights:

> Certainly, context matters, but it cannot be used to cast a clear invocation in a different light. In an interrogation officers frequently control the narrative. They may do so, among other reasons, to keep the statement focused and coherent. But they may not use otherwise legitimate control to obfuscate a suspect's attempt to invoke his rights.

(*Id*. at p. 1026.)

5. Initiation of Questioning After Invocation of Right to Counsel

Once the individual has requested an attorney, questioning must end, though police can re-question the individual if they voluntarily re-initiate contact. (*Edwards v. Arizona* (1981) 451 U.S. 477, 484-485.)

In *People v. Avalos* (2022) 85 Cal.App.5th 926, the Court of Appeal found that the defendant's initiation of contact with police after previously invoking was not voluntary due to the circumstances of the interrogation and the defendant's state of mind. Avalos was an 18-year-old high school student with minimal prior contact with the police, appeared to be confused about what a lawyer would do for him, and was cold because his clothes had been taken away and he had spent the night in a holding cell wearing a paper gown. (*Id.* at pp. 932-933.)

The court also found that certain comments by the detective amounted to initiating the second interview. Avalos was originally questioned for five hours before stating he wanted to talk to a lawyer. The detective then told him, "if for some reason you want to change your mind and you wanna talk to me, you can, just ask for me. I don't care if it's 2:00, 3:00 in the morning I'll come back. Okay? Because I care about you getting your story the right way out. Okay?" (*Id.* at p. 932.) This "statement encouraging Avalos to speak to her because she cared about him getting his 'story the right way out' – after he had involved the right to counsel" equated to the detective initiating the interview, not the defendant. (*Id.* at p. 933.)

6. Age as Factor in Assessing Custodial Status or Invocation/Waiver of Rights

An individual's age may be considered at various points in a *Miranda* analysis, including whether the interview was custodial (*Matthew W.,* 66 Cal.App.5th at p. 408) and whether the individual understood and voluntarily waived his rights (*Avalos,* 85 Cal.App.5th at pp. 932-933).

7. *Perkins* Operations After Invocation of the Right to Counsel[2]

In *Illinois v. Perkins* (1990) 496 U.S. 292, the Supreme Court held that *Miranda* does not apply to the placement of an informant or undercover officer in a cell with the defendant because in such a conversation, the "essential ingredients of a 'police-dominated atmosphere' and compulsion" are not present. (*Id.* at p. 296.)

A recent investigative piece published by CalMatters provides more background on the use of *Perkins* operations in California, including racial disparities in the use of these operations:

> A[n] analysis of cases in Los Angeles, San Diego, Riverside and Santa Clara counties shows that Perkins operations include false evidence ploys, jail cells outfitted with recording devices, and cash payments of up to $3,000 per day to undercover operatives, also known as Perkins agents. The agents, often described in court filings as older and physically larger than their targets, frequently presented themselves as experienced gang members with a history of violence. In some cases, as many as five were placed in a cell with one person.

"Historically, California courts have found *Perkins* controls when a suspect invokes the right to counsel but then unknowingly speaks to a police agent the suspect does not believe to be an agent." (*People v. Ramadhan* (2026) 120 Cal.App.5th 906, 911, rev. grant'd (S286520) pending *People v. Allen*.) However, recent developments in California may support challenges to statements obtained through a *Perkins* operation depending on the facts of the statement.

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[2] When considering the admissibility of a statement made to an undercover agent by an in-custody suspect, counsel must consider whether the defendant has been formally charged with the offense. Because the Sixth Amendment right to counsel attaches at the "initiation of adversary judicial criminal proceedings," it does not apply to many situations where a detained individual makes an incriminatory statement to an undercover agent. (*People v. Gonzalez* (2021) 12 Cal.5th 367, 384; see also *People v. Johnsen* (2021) 10 Cal.5th 1116, 1152-1153.) Instead, the Fifth Amendment right to counsel (*Miranda*) applies when a suspect is in custody prior to being charged.

In *People v. Zapata* (2026) 118 Cal.App.5th 529, Division One of the Fourth District held that the defendant's statements made during a *Perkins* operation, after he had invoked his *Miranda* rights, were inadmissible because known law enforcement officers were highly involved in the operation. During the time the defendant was placed in a holding cell with undercover agents, a sheriff's deputy

> contacted Zapata as stimulations both to remind Zapata law enforcement was there and to get him to talk. After an hour the cooperating inmates were not getting information about the murder. At that point, having monitored the jail cell conversation remotely, a known law enforcement agent entered the cell, brought Zapata out, and began the lineup ruse. The point of this more elaborate ploy was to increase the "level of compulsion" (*Perkins, supra*, 496 U.S. at p. 297 []) on Zapata and to coerce him to speak about the killing, when he got back to his cell. Then, even after Zapata expressly requested an attorney, the deputy increased pressure on Zapata by not only putting him back into the cell, but also simultaneously stating that he would be charged with murder. This prompted the *Perkins* operatives to ask Zapata about that crime.

(*Id*. at pp. 540-541.)

The court noted that the "significant participation of a person known by [defendant] to be law enforcement while [defendant] was in police custody" at various points during the *Perkins* operation to put additional pressure on the defendant "raised the *Perkins* operation to a custodial interrogation." (*Id.* at p. 541.) The court explained, while ploys "'*that do not rise to the level of compulsion or coercion to speak* are not within *Miranda's* concern,' [citation] ... ploys which rise to the level of compulsion or coercion *remain* within *Miranda's* ambit." (*Id.* at p. 540.) In *Ramadhan*, 120 Cal.App.5th at p. 913, the same division of the Court of Appeal held that admission of a defendant's confession to an undercover agent after he requested counsel was not error because "the known officer did nothing to stimulate conversations with the *Perkins* operative." Review was granted in *Ramadhan* pending *Allen.*

In addition, the California Supreme Court has granted review in *People v. Allen* (S286520/B328333) on the following issues:

> (1) If a defendant has invoked his right to remain silent while being interrogated by a law enforcement officer, are incriminating statements obtained through a subsequent *Perkins* operation (i.e., the use of an

undercover agent to question a jailed defendant) admissible as substantive proof of the defendant's guilt at trial?

(2) What effect, if any, does the fact that the interrogating officer continued questioning after petitioner invoked his Fifth Amendment right to silence have upon the admissibility of the statements subsequently obtained during the *Perkins* operation?

In *Allen,* the defendant twice invoked his right to remain silent, but police continued to ask him questions; some of his answers were incriminatory. Three days later, police placed a law enforcement agent in the defendant's cell and recorded him admitting his participation in the crime. The Court of Appeal, in an unpublished decision, rejected appellant's argument that *Perkins's* holding did not apply to situations where the suspect has already invoked his right to remain silent. The court followed *People v. Orozco* (2019) 32 Cal.App.5th 802. Briefing is complete in *Allen,* and several amicus briefs were filed, including by the ACLU and CPDA.

II. Involuntary Confessions

A. Overview of Due Process Challenges to Involuntary Confessions

"The use of coerced confessions, whether true or false, is forbidden because the method used to extract them offends constitutional principles. [Citation.]" (*Lego v. Twomey* (1972) 404 U.S. 477, 485.)

"[T]he due process voluntariness test ... examines 'whether a defendant's will was overborne' by the circumstances surrounding the giving of a confession. [Citation.] The due process test takes into consideration 'the totality of all the surrounding circumstances — both the characteristics of the accused and the details of the interrogation.' [Citations.] The determination 'depend[s] upon a weighing of the circumstances of pressure against the power of resistance of the person confessing.' [Citation.]" (*Dickerson v. United States* (2000) 530 U.S. 428, 433-434.)

"[U]nder current law, no single factor is dispositive in determining voluntariness, but rather courts consider the totality of circumstances. [Citations.]" (*People v. Williams* (1997) 16 Cal.4th 635, 661.)

"'[C]oercive police activity is a necessary predicate to the finding that a confession is not "voluntary" within the meaning of the Due Process Clause of

the Fourteenth Amendment.' [Citations.] Coercive police activity, however, "'does not itself compel a finding that a resulting confession is involuntary." [Citation.] The statement and the inducement must be causally linked. [Citations.]'" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1093, disapproved on other grounds.)

Unlike *Miranda*, which is rooted in the Fifth Amendment, coercion-based inadmissibility is grounded in the due process clauses of the Fourteenth Amendment and article I, section 15 of the California Constitution. Accordingly, the exclusionary rules for coerced confessions sweep more broadly than those obtained in violation of *Miranda,* which are generally only inadmissible in the prosecution's case in chief. An involuntary confession is inadmissible for *any* purpose, including impeachment if the defendant testifies inconsistently. (*People v. Demetrulias* (2006) 39 Cal.4th 1, 29–30*, People v. Neal* (2003) 31 Cal.4th 63, 68.) And unlike *Miranda*, in which the fruit of the poisonous tree doctrine does *not* apply to physical evidence seized as a result of a non-coercive interrogation, the taint of a coerced confession extends to derivative evidence and subsequent confessions, unless the prosecution establishes a break in the causative chain. (*People v. Sims* (1993) 5 Cal. 4th 405.)

B. Independent Standard of Review

The prosecution bears the burden of proving voluntariness by a preponderance of the evidence, and on appeal, the reviewing court independently examines the uncontradicted facts surrounding the making of the statement. (*People v. Miranda-Guerrero* (2022) 14 Cal.5th 1.) The trial court's factual findings regarding the circumstances surrounding the confession are upheld if supported by substantial evidence, but the ultimate legal question of voluntariness is reviewed de novo (*People v. Stayner* (2026) 19 Cal.5th 395.)

C. Recent State and Federal Decisions

With few exceptions, recent California case law has not been particularly favorable to coerced confession challenges. We discuss recent and noteworthy California cases here, along with some more positive out-of-state and federal cases which can be useful for their persuasive value and in assessing trends.

1. Exploiting Suspect's Concern for Loved One

An explicit threat to prosecute a defendant's children unless the defendant confesses can render a confession involuntary. In one of the few positive cases to come out of California in recent years, the Fourth District Court of Appeal held in in *People v. Jimenez* (2021) 73 Cal.App.5th 862 that a detective's threat to arrest and prosecute the defendant's teenaged sons for murder was coercive and rendered defendant's confession involuntary and inadmissible. The admission of defendant's coerced confession was prejudicial and thus warranted reversal of his conviction for first degree murder.

Courts have emphasized the particular vulnerability of a parent trying to protect their child from imminent harm. In *State v. Vasquez-Santiago* (2019) 301 Or. App. 90, 456 P.3d 270, the Oregon Court of Appeals held that the confession of an illiterate immigrant man with an IQ of 53 was involuntary. Detectives falsely confirmed the defendant's mistaken belief that his infant son was being detained and separated from his nursing mother, repeatedly told the defendant that his entire family was suffering, and explicitly stated that the key to securing the family members' release was for the defendant to confess to murder. One detective stated: "I can't let your family go until I find that body. And not until I get the truth from you." The court found that these statements communicated a direct quid pro quo — confession in exchange for the family's release — and that the state failed to meet its burden of proving the absence of inducement.

2. False Promises of Leniency or Other Benefits

The voluntariness inquiry is fact-intensive, and courts sometimes go to great lengths to find a way to deem a confession voluntary. A good example of this is *People v. Stayner* (2026) 19 Cal.5th 395 [death penalty affirmance], where the Court found that FBI interrogation techniques employed during the defendant's interview — including offers of counseling, housing promises, assurances that the defendant was a "fundamentally good person", and promises to look after his family — did not rise to the level of coercion that would render the confession involuntary because the offers were not made in exchange for a confession. The Court found it significant defendant said he was willing to be interviewed, the interview was not unduly prolonged or confrontational, he was assured he was not under arrest, he was offered food, drink, and breaks, and he declined treatment for his chest pain, implying the pain was emotional, not physical.

Similarly, in *People v. Battle* (2021) 11 Cal.5th 749, the Court found no coercion, rejecting the defendant's assertions that the investigator made implied promises of lenity. The Court found that even if the officer had misled the defendant regarding his criminal liability, the statement "had no proximate causal connection to the subsequent admission." The court found it significant that there were no allegations of physical abuse, the defendant was 26 and presented as articulate and intelligent, he was not physically restrained, did not express unwillingness to speak to investigators, knew he could stop the questioning any time, the examination lasted only three to three and a half hours, in which he was given breaks, water, and did not appear to be exhausted.

While recent California Supreme Court authority has not been particularly helpful, there have been positive developments in state and federal courts. For example, in *United States v. Young* (10th Cir. 2020) 964 F.3d 938, an FBI agent interrogating a narcotics suspect told the defendant he had personally spoken with the federal judge assigned to the case, that the judge had reviewed the defendant's criminal record, and that the defendant could reduce the amount of time he would serve in federal prison by answering questions truthfully — stating that each truthful answer would tick time off his sentence. The agent also misrepresented the applicable sentencing range. The Tenth Circuit held that the agent's misrepresentations and false promises of leniency were sufficient to overbear the suspect's will and render his confession involuntary. The court emphasized that while misrepresentations of fact generally do not render a confession involuntary, misrepresentations of law are much more likely to do so.

Courts distinguish between false representation of fact and false promises of leniency, with the latter more likely to render a confession involuntary. In *State v. Collins* (Ct. App. 2021) 435 S.C. 31, 864 S.E.2d 914, the agent assured a suspect in an arson case that whatever the defendant told him would not leave the room. Officers also promised the defendant he would go home that day regardless of what he said, threatened that if he did not provide information they would come after him, and warned that a co-defendant could face thirty-four years in prison — implicitly threatening the same for the defendant. The South Carolina Court of Appeals found the confession was rendered involuntary by officers' coercive tactics, especially in light of the defendant's limited education, enrollment in special education classes, and stroke-related cognitive impairment.

3. Misrepresentation or Fabrication of Facts and/or Law

Police misrepresentations of law are more likely to render a suspect's confession involuntary than misrepresentations of fact, as in *Johnson v. State* (Fla. Dist. Ct. App. 2019) 268 So. 3d 806. There, the Florida District Court of Appeal reversed a double murder conviction after finding that an officer's misrepresentations of law rendered the defendant's confession involuntary. The officer repeatedly told the defendant that self defense was his only out, that he would not go to jail for shooting in self defense, and that he could not be arrested without overwhelming evidence that the self defense claim was invalid — all legally incorrect statements. The court held that the officer's conduct caused the defendant to confess based on unrealistic hope and delusions as to his true position.

Misrepresentations of fact that involve the state of physical evidence are more likely to be found coercive, especially in combination with other problematic interrogation techniques. In *State v. Baker* (2020) 147 Haw. 413, the Hawaii Supreme Court vacated a sexual assault conviction after finding the interrogating detective employed seven separate improperly coercive interrogation techniques. These included: (1) falsely claiming that DNA evidence tied the defendant to the assault; (2) implying that confessing would result in better public and media perception; (3) suggesting that continued denial would be held against the defendant in court; (4) minimization tactics describing the alleged crimes as understandable errors in judgment due to alcohol; (5) use of unlawfully discriminatory gender-based stereotypes to excuse the conduct; (6) the false friend technique; and (7) threatening that the defendant's refusal to admit to certain conduct would be reflected in the detective's report. The court held that misrepresentations about the existence of incontrovertible physical evidence that directly implicates the accused is an exceptionally coercive interrogation tactic and its use is a strong indicator that the suspect's statement was involuntary. The court further noted that interrogation techniques that rely on stereotyping protected classes of persons are inherently coercive and strongly weigh against any subsequent statement being voluntary.

4. Prolonged Detention

The length of an interrogation can support a finding of involuntariness, especially where the defendant is particularly vulnerable. In *People v. Leverson* (2024 IL App (1st)) 211083, ¶¶ 110-14, 482, 256 N.E.3d 1138, the Illinois Appellate Court reversed a murder conviction after finding that a 19-

year-old defendant's confession following 72 hours of detention was involuntary. Police violated the defendant's right to counsel at least four times over 66 hours, responding to his requests with lies and obfuscation. Officers told the defendant that those under investigation don't get a phone call — a statement the court characterized as obviously false. The defendant requested phone calls as many as 20 times and was held incommunicado for 48 of the 72 hours. Officers also surrounded the defendant physically, threatened him with the death penalty, and warned him about sexual violence in prison. The court found that by the time the defendant agreed to speak, the police had demonstrated to him that they could hold him incommunicado for as long as it took for him to confess.

But courts have found that even an hours-long, late-night interrogation may not rise to the level of coercive where the police made some effort to ensure a defendant's comfort. In *People v. Miranda-Guerrero* (2022) 14 Cal. 5th 1, the Court held that a confession at the end of a seven-hour interview beginning at midnight was voluntary, even though the defendant expressed sleepiness and officers repeatedly emphasized his isolation from family. The court noted that officers gave the defendant numerous breaks, drinks, and food, and never offered leniency or threatened a harsher penalty for silence.

5. Exploitation of Juvenile or Intellectual Vulnerabilities

Age matters, including in the assessment of voluntariness. In *State v. Adkisson* (Tenn. 2026) No. W2022-01009-SC-R11-CD (2026 WL 1542890), the Tennessee Supreme Court found that a 17-year-old defendant's confession was involuntary under the totality of the circumstances. An investigator falsely told the defendant he was possibly looking at the death penalty — a legal impossibility for a juvenile offender — and falsely claimed that video surveillance footage showed the defendant at the scene of the shooting when no such footage existed. The chief of police warned the defendant about what adult prisoners do to seventeen-year-olds in the penitentiary. The defendant's mother was physically present at the police station but never allowed into the interrogation room despite the defendant's four requests to speak with her. The interrogation lasted approximately seven hours beginning at 2:20 a.m., and the defendant exhibited signs of emotional distress, crying intermittently and at one point repeatedly striking his head on the table.

Keeping a child isolated from a parent or trusted adult increases the risk of coercion. In *In re A.L.* (2020-Ohio-4061) 157 N.E.3d 350, the Ohio Court of Appeals found that the confession of a ten-year-old child was involuntary.

Police called the child a liar nineteen times during the interrogation, falsely claimed there were cameras that captured the incident, told the child he would go home after the interview (he did not), and denied his request to use the restroom. The child's father had deceived him about the purpose of the visit and did not accompany him into the interrogation room, and the father had a potential conflict of interest with his son. An expert testified that the child's age placed him at risk of wanting to please police. The court found that the child's will was overborne by the interrogation conducted without adult consultation.

6. Combative, Demeaning, and Physically Intimidating Interrogation

The Michigan Supreme Court found that statements made by an 18-year-old defendant were involuntary based in part on the officers' use of racial slurs and cuss words and repeated commands to "man up." (*People v. Stewart* (2023) 512 Mich. 472, 999 N.W.2d 717.) The court found their combative tone isolated and belittled the young defendant and rendered him more susceptible to other coercive tactics. The officers also made repeated references to leniency and lied about the extent of the evidence against him.

In *Ochoa v. State* (Tex. Crim. App. 2024), 707 S.W.3d 344, the interrogating officer was visibly armed and exerted physical dominance over the juvenile defendant by placing his hands on his knees, removing his hood, blocking his access to the door, and repeatedly ordering him to look at him when he tried to look away. The Texas appellate court found the circumstances "suggested a degree of physical control" that weighed against a finding of voluntariness.

D. Practice Tips for Challenging Involuntary Interrogations

- **Document every aspect of the interrogation environment**: its duration, time of day, location, the number of officers present, whether the defendant was given food, water, or bathroom access, whether the defendant requested counsel or family contact, and whether the assertion of *Miranda* rights were ignored. Courts have consistently found that no single factor is dispositive; rather, the cumulative weight of circumstances determines voluntariness.

- **Misrepresentations of law** — as opposed to misrepresentations of fact — carry heightened risk of rendering a confession involuntary. Scrutinize whether officers misstated the applicable charges,

sentencing ranges, or legal standards such as self defense or arrest thresholds.

- **False promises of leniency**, whether explicit or implied through minimization tactics or suggestions of favorable treatment, are among the most reliably coercive tactics courts have identified.

- **Juvenile defendants and those with intellectual disabilities**, mental illness, or limited education present heightened vulnerability. While mental condition alone is not sufficient to establish involuntariness absent police exploitation, courts have repeatedly found that officers who know of a suspect's vulnerability and employ tactics that exploit it — such as calling a child a liar repeatedly, denying parental access, or making threats about prison violence — will have their conduct weighed heavily against voluntariness.

- **Use social science to help establish involuntariness**: Leverage the robust and readily-available body of case studies, law review articles, commission reports, etc. to demonstrate how innocent people can be psychologically induced to confess to crimes they did not commit.

III. California Statutes and Procedures

Counsel should be aware of several state statutes enacted to protect individuals from coercive questioning and to ensure that courts have the evidence to properly evaluate the voluntariness of an individual's statements.

A. Recording Interrogations

Law enforcement must electronically record interrogations of adults and juveniles suspected of murder. (§ 859.5; Welf. & Inst. § 626.8.) For juveniles, the "recording" must be by video. (§ 859.5(g)(2)(A).) The recordings must be maintained until the appeal and habeas proceedings are final or, in the case of juveniles, when the youth is no longer subject to juvenile court jurisdiction. (§ 859.5(f); Welf. & Inst. § 626.8.)

Violation of these statutes do not automatically render an unrecorded confession inadmissible, but the violation must be considered in adjudicating suppression motions, are admissible to support claims of involuntariness or unreliability, and may trigger a mandatory jury instruction. (§ 859.5(e).)

B. Youth-Specific Statutes

A youth taken into custody must be advised of their *Miranda* rights, even if not interrogated. (Welf. & Inst. § 625.) The statute extends to youth taken into the custody "on the ground that there is reasonable cause for believing that such minor [] has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court" as well as youth suspected of committing a crime. A youth must also be informed within one hour of being taken into custody that they have the right to call both their parents and an attorney. (Welf. & Inst. § 627(b).)

Prior to a custodial interrogation and before the waiver of *Miranda* rights, a juvenile must consult with legal counsel. This consultation may not be waived. (Welf. & Inst. § 625.6.)

California has banned the use of deception by law enforcement when questioning individuals under the age of 17. (Welf. & Inst. § 625.7.) This includes lying about evidence or making false promises. Any statement obtained through such methods is considered involuntary and cannot be used in court.

The Legislature recently passed Assembly Bill 1905 (effective January 2027), which adds Welf. & Inst. § 625.8 and prohibits *Perkins* operations on youth. This bill prohibits a law enforcement officer from seeking statements or information while working undercover, or by individuals working in collaboration with, or acting as agents of, law enforcement, from a person who "was 17 years of age or younger at the time the crime was committed and under 26 years of age at the time of custody." The bill would direct a court to consider any willful failure of a law enforcement officer in violation of these provisions in determining the credibility of that law enforcement officer.

IV. Practical Tips

When counsel begins reviewing the appellate record in a case where the defendant's confession was admitted, counsel must ensure that they have access to all interviews of their client.

- **Obtain and carefully review all exhibits**: Video/audio recordings offered or admitted into evidence at a trial or hearing are part of the record and should be maintained in the superior court's file. (Rule 8.320(e).) Appellate counsel may obtain the exhibits from the superior court, the prosecutor, or trial counsel. The logistics of obtaining

exhibits, especially those in less common audio/visual formats, varies by county and by Court of Appeal division. If the superior court clerks are unable or unwilling to make copies of exhibits, counsel can request they be transmitted to the Court of Appeal under rule 8.224 or may be able to augment the record with the exhibits.

- **Obtain all transcripts**: Transcripts of "sound or sound-and-video" recordings provided to the jury or the court are part of the normal record on appeal. (Rule 8.320(b)(11).) This includes transcripts that are "furnished" to the jury even if they are not admitted into evidence.

- **Obtain all recordings and transcripts that were not admitted into evidence**. Obviously, recordings that were not admitted into evidence are not part of the normal record on appeal. However, these recordings may be highly relevant to determining whether your client's statement should have been admitted or excluded. Check in with trial counsel about their impressions of the interrogation, and request copies of relevant discovery, including police reports, transcripts, and audio recordings. If appellate counsel determines there were grounds to exclude a confession, the issue could be raised via an IAC claim in a habeas petition.

- **Transmit exhibits to the Court of Appeal**. If the video or audio recording of the interrogation is relevant to resolution of the claim, make sure to get it in front of the court. (See *Matthew W.,* 66 Cal.App.5th at p. 406 ["because defendant has failed to include the recording of the interrogation in the record on appeal, we will presume that [the officer's] tone of voice during the questioning was calm and professional, and that the interrogation was not particularly lengthy"].)

V. Developing and Arguing Prejudice

The prejudice resulting from the unconstitutional admission of a defendant's admission or confession, whether the error is based on a *Miranda* violation or involuntariness, is assessed under the *Chapman* standard for federal constitutional error: "The Attorney General bears the burden of showing that admission of the [] confession was harmless beyond a reasonable doubt." (*Sumagang*, 69 Cal.App.5th at p. 733.) Even when other evidence is sufficient to support the verdict, improper admission of a defendant's confession can be prejudicial. (*Neal*, 31 Cal.4th at p. 86.)

Even in the context of the more stringent *Chapman* standard, the erroneous admission of a confession should be viewed as more prejudicial than other

types of federal constitutional errors due to the weight factfinders give to a defendant's confession. "A confession is like no other evidence." (*Arizona v. Fulminante* (1991) 499 U.S. 279, 296; see also *People v. R.C.* (Ill. 1985) 108 Ill.2d 349, 356, ["a confession is the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable"].)

> With respect to the erroneous admission of a confession, the burden under the *Chapman* standard is difficult to satisfy. '[T]he defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. ... The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.' ([*Arizona* v.] *Fulminante, supra*, 499 U.S. at p. 296.)

(*Sumagang*, at p. 284.)

As the California Supreme Court has explained, "the confession operates as a kind of evidentiary bombshell which shatters the defense." (*People v. Cahill* (1993) 5 Cal.4th 478, 503, citation omitted.) "[T]he improper admission of a confession is much more likely to affect the outcome of a trial than are other categories of evidence, and thus is much more likely to be prejudicial under the traditional harmless-error standard." (*Ibid.*)

Social science research bears this out, and many studies have found that juries and other decision-makers find confessions extremely persuasive:

> Confessions are among the most powerful forms of evidence introduced in a court of law, even when they are contradicted by other case evidence and contain significant errors. This is because police, prosecutors, judges, jurors, and the media all tend to view confessions as self-authenticating and see them as dispositive evidence of guilt. Juries tend to discount the possibility of false confessions as unthinkable, if not impossible. False confessions are viewed as contrary to common sense, irrational, and self-destructive. Moreover, police-induced false confessions tend to be facially persuasive because police make sure the confessor includes "elective statements" such as crime scene details, expressions of remorse, the confessor's alleged

> motives for committing the offense, and acknowledgements of voluntariness.

(Richard A. Leo et. al., *Bringing Reliability Back in: False Confessions and Legal Safeguards in the Twenty-First Century*, 2006 Wis. L. Rev. 479, 485 (2006).)

However, admission of a defendant's confession is not always prejudicial.

> The erroneous admission of an involuntary confession properly might be found harmless, for example, (1) when the defendant was apprehended by the police in the course of committing the crime, (2) when there are numerous, disinterested reliable eyewitnesses to the crime whose testimony is confirmed by a wealth of uncontroverted physical evidence, or (3) in a case in which the prosecution introduced, in addition to the confession, a videotape of the commission of the crime.

(*Cahill,* at p. 505.)

The following are some themes from cases where the admission of a confession was found prejudicial:

- **Whether the confession was central to the prosecution's case**, for example, if it formed the "centerpiece" of the prosecution's case, or was an "evidentiary bombshell." (*Cahill,* 5 Cal.4th at p. 503; *Neal*, 31 Cal.4th at pp. 86-87; *Henderson,* 9 Cal.5th at pp. 1029-1031);

- **The weakness or contested nature of the remaining evidence.** (*Henderson*, 9 Cal.5th at pp. 1030-1031; *NavaAdame,* 116 Cal.App.5th at p. 22; *Cahill,* 5 Cal.4th at p. 505 [giving examples of evidence that would be strong enough to satisfy *Chapman*]);

- **How the admission of the confession affected the defense case**, specifically whether the admission of the defendant's statements affected perceptions of his credibility and/or impelled the defendant to testify. (*In re Matthew W.*, 66 Cal.App.5th at pp. 411-414; *Neal,* 31 Cal.4th at p. 87);

- **Prosecutorial reliance on the confession in argument.** (*NavaAdame,* 116 Cal.App.5th at p. 22 [prosecutor "repeatedly emphasiz[ed] to the jury that they heard NavaAdame's 'own words'"], *People v. Bridgeford* (2015) 241 Cal.App.4th 887 ["prosecutor opened his closing arguments with appellant's confession" and referenced it

three additional times during argument], *In re Matthew W.,* 66 Cal.App.5th at p. 414; *Saldana*, 19 Cal.App.5th at p. 463);

- **Indications that the factfinder relied on the confession**. (*In re Art T.* (2015) 234 Cal.App.4th 335 [juvenile court stated that it could not identify the youth as the perpetrator based on video evidence alone], *Bridgeford* [jury asked for video and transcripts of appellant's interview], *Matthew W.,* 66 Cal.App.5th at pp. 413-414; *Saldana,* 19 Cal.App.5th at pp. 463-464).

VI. Confessions Outside the Jury Trial Direct Examination Context

Questions about the admissibility of statements obtained unconstitutionally can arise in contexts other than the prosecution's case-in-chief or in proceedings other than criminal trials. This list is not meant to be exhaustive or to necessarily provide a complete answer to admissibility questions, but should assist in starting research.

- **Impeachment in criminal trial**. Statements obtained in violation of *Miranda* may be admissible as impeachment evidence even if inadmissible as part of the prosecution's case-in-chief. (*People v. May* (1988) 44 Cal.3d 309; *Harris v. New York* (1971) 401 U.S. 222.) However, involuntary statements are inadmissible for all purposes, including impeachment. (*Neal,* 31 Cal.4th 63; *People v. Bey* (1993) 21 Cal.App.4th 1623.) A limiting instruction (CALCRIM 356) may be appropriate if a confession is admitted for impeachment purposes.

- **Defense "opens door" to admission of statement.** If defense counsel's questions on direct or cross-examination relate to a defendant's statement previously ruled inadmissible, the prosecution may be able to introduce the statement even though it was obtained in violation of *Miranda.* (See *People v. Sakarias* (2000) 22 Cal.4th 596 [counsel's cross-examination of law enforcement witness opened door to admission of *Miranda*-violative statements].) Likewise, the prosecution may be allowed to question a defense expert about such statements if defense counsel provided them to the expert. (*People v. Edwards* (2017) 11 Cal.App.5th 759, 767 [noting that the "use of defendant's illegally obtained statements to impeach the expert witnesses during the sanity phase promotes the same truth-seeking function of a criminal trial as the impeachment exception of a defendant who testifies"]; *People v. Rich* (1988) 45 Cal.3d 1036.)

- **Sentencing and resentencing hearings**. We are not aware of any California cases analyzing the admissibility of unconstitutionally-obtained statements at a sentencing hearing. However, a few general (and seemingly contradictory) legal principles apply. A sentencing hearing is a critical stage of a criminal prosecution (*People v. Dial* (2004) 123 Cal.App.4th 1116), and due process principles apply at sentencing (*People v. Silva* (2021) 72 Cal.App.5th 505, 522). Moreover, an individual may not be compelled to testify against himself at a sentencing hearing because "[t]o maintain that sentencing proceedings are not part of 'any criminal case' is contrary to the law and to common sense." (*Mitchell v. U.S.* (1999) 526 U.S. 314, 327; *Estelle v. Smith* (1981) 451 U.S. 454 [non-*Mirandized* statements obtained during competency interview inadmissible at capital penalty phase].) On the other hand, courts may consider a wide range of evidence when making sentencing decisions, including evidence that would not necessarily be admissible at a trial. (§§ 1170(b)(4), 1203, 1204; Cal. Rules of Court, rule 4.420(d); *People v. Lamb* (1999) 76 Cal.App.4th 664.)

- **Revocation of probation or other type of supervision hearings**. The *Miranda* exclusionary rule does not apply at probation revocation hearings, and a statement obtained in violation of *Miranda* may be admissible. (*People v. Racklin* (2011) 195 Cal.App.4th 872.) Revocation hearings are not criminal prosecutions, so the Fifth Amendment right against self-incrimination does not apply; instead, due process principles apply to revocation hearings. (*Morrissey v. Brewer* (1972) 408 U.S. 471; *Gagnon v. Scarpelli* (2973) 411 U.S. 778.)

  Moreover, in general, exclusionary rules do not apply to probation revocation hearings. (*People v. Hayko* (1970) 7 Cal.App.3d 604; *People v. Harrison* (1988) 199 Cal.App.3d 803.) The exception may be where the police conduct in obtaining the confession is so egregious as to shock the conscience. (See, e.g., *People v. Washington* (1987) 192 Cal.App.3d 1120 [racial profiling].) Also, unreliable evidence should not be admitted at revocation hearings. (See *People v. Gray* (2023) 15 Cal.5th 152, 163 [noting all parties' interest in "accurate fact-finding and the informed use of discretion by the trial court"].)

- **Evidentiary hearing under section 1172.6**. We are not aware of any appellate court opinions addressing the admissibility of a petitioner's statement to law enforcement on the basis that it violated *Miranda*. However, in the context of analyzing the admissibility of postconviction statements made during the parole assessment process,

several appellate courts have held that 1172.6 hearings are not criminal prosecutions, so the Fifth Amendment privilege against self-incrimination does not apply. (See *People v. Rodriguez* (2025) 110 Cal.App.5th 458; *People v. Zavala* (2024) 105 Cal. App. 5th 366, 376; *People v. Duran* (2022) 84 Cal.App.5th 920.) Similar logic could apply to challenges to the admission *Miranda*-violative statements.

In addition, section 1172.6, subdivision (d)(3) provides for the admission of previously admitted evidence that is admissible under current law. Due process principles apply to section 1172.6 hearings, so it is possible to argue that a defendant's statement should be excluded because it was involuntary. (*Zavala*, at pp. 376-377; *People v. Palacios* (2024) 101 Cal.App.5th 942, 951, 953.) However, it may be difficult to raise involuntariness if it was not raised at the original trial unless the petitioner can point to some change in the law that makes the statement inadmissible. (*Palacios,* at pp. 951-952 [relying on 1172.6(d)(3)'s provision for admission of previously admitted evidence].) *Palacios* glossed over the "admissible under current law requirement," but we are not aware of any courts that have disagreed with *Palacios.*

Two cases pending in the California Supreme Court consider the proper interpretation of subdivision (d)(3): *People v. Pineda*, S296909 [admission of co-defendant's statements during a *Perkins* operation as statements against interest]; *People v. Robinson,* S288606 [admissibility of grand jury proceedings]. Both decisions may be relevant to considering how to challenge as involuntary statements that were previously admitted.

- **Evidence of constitutional violation admissible at some post-conviction resentencing hearings**. Evidence that a confession obtained unconstitutionally contributed to the original conviction may be a relevant factor for the court to consider at a post-conviction resentencing hearing. For example, section 1172.1 subdivision (a)(5) explains that evidence that the "defendant's incarceration is no longer in the interest of justice includes, but is not limited to, *evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction* or sentence at issue." Section 1172.75 includes a more generic "interests of justice" clause that could be interpreted to include evidence that the defendant's constitutional rights were violated in the original criminal proceedings.

- **Civil commitment and mental health-related hearings.**

    - Statements obtained in violation of *Miranda* are inadmissible at the sanity phase of a criminal trial. (*People v. Edwards* (2017) 11 Cal.App.5th 759; *People v. Weaver* (2001) 26 Cal.4th 876, 961.)

    - Competency proceedings are not criminal proceedings, but "special proceeding[s], governed generally by the rules applicable to civil proceedings." (*People v. Lawley* (2002) 27 Cal.4th 102, 131.) It is not clear whether *Miranda*-violative statements would be admissible on the issue of competency, which is separate from guilt.

    - The Fifth Amendment does not apply to non-criminal hearings, including civil commitments. (*Public Guardian of Contra Costa v. Eric B.* (2020) 12 Cal.5th 1085, 1098-1099.) By statute, individuals faced with commitment as NGI, OMHD, or SVP are afforded some of the same constitutional rights as criminal defendants. (§§ 1026.5(b)(7) [NGI], 2972 [OMHD]; Welf. & Inst. Code, § 6601-6603 [SVP].) Due process principles do apply to civil commitment proceedings. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219; *Conservatorship of E.A.* (2026) 20 Cal.5th 145.)

- **Guilty plea appeals.** A claim that evidence was illegally obtained in violation of the Fifth Amendment is waived by a plea of guilty or no contest. (*People v. Whitfield* (1996) 46 Cal.App.4th 947, 959-960 [because appeal of a denial of a motion to exclude non-Mirandized statements deals with guilt or innocence and its provability, and appellant had pled no contest, the denial of her motion was not cognizable on appeal]; but see *People v. DeVaughn* (1977) 18 Cal.3d 889 [while a guilty plea waives appellate challenge to confessions, appellants may argue they were induced to enter a plea by a trial court's unauthorized promise that the issue was preserved on appeal].)

  However, should evidence come to light that a confession was involuntary based on an interrogating officer's fabrication of evidence, it could be challenged via habeas, even in a guilty plea case. Section 1473, subd. (b)(1)(B) provides that a person my prosecute a writ of habeas corpus where "[f]alse physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person."

Note that recent amendments to section 1473 have further expanded potential habeas challenges in guilty plea cases, arguably including claims based on newly-discovered evidence of coercive interrogation tactics. Section 1473 now provides for relief where new evidence "more likely than not would have changed the *outcome of the case*" instead of the "*outcome at trial*." (§ 1473, subd. (b)(1)(c)(i), emphasis added.)