

EXAMINING THE RELIABILITY OF CONFESSIONS

THESIS

Presented to the Graduate Council of
Texas State University-San Marcos
in Partial Fulfillment
of the Requirements

for the Degree

Master of SCIENCE

by

Patricia A. Hom, B.S.C.J.

San Marcos, Texas
December 2010

EXAMINING THE RELIABILITY OF CONFESSIONS

Committee Members Approved:

John Pete Blair, Chair

Joycelyn M. Pollock

Kim Rossmo

Michael Supancic

Approved:

J. Michael Willoughby
Dean of the Graduate College

COPYRIGHT

by

Patricia A. Hom

2010

FAIR USE AND AUTHOR'S PERMISSION STATEMENT

Fair Use

This work is protected by the Copyright Laws of the United States (Public Law 94-553, section 107). Consistent with fair use as defined in the Copyright Laws, brief quotations from this material are allowed with proper acknowledgement. Use of this material for financial gain without the author's express written permission is not allowed.

Duplication Permission

As the copyright holder of this work, I, Patricia A. Hom, authorize duplication of this work, in whole or in part, for educational or scholarly purposes only.

ACKNOWLEDGMENTS

I would like to acknowledge all of the guidance and support I received during this process for the completion of my master's and thesis. To all the professors on my committee, Dr. Blair, Dr. Pollock, Dr. Rossmo, and Dr. Supancic, thank you for your critiques and tolerance. Without your help, this process would not have been manageable. I truly value your time and effort to guide me through my education and my thesis. You all have made a *profound* and *everlasting* effect on me.

I would also like to thank the participating police department for their time, effort, and resources. Nothing but thanks Chase and Michael (a.k.a. "Hunter") for their time and effort as well. Your help throughout this process has made my examination run smoothly.

Finally, I would like to acknowledge my family. A large portion of my sanity is attributed to my husband, Zachary, and my parents. Thank you for being patient and keeping me sane. Your open ears and encouragement kept me calm, focused, and collected to write this thesis.

This manuscript was submitted on October 19, 2010.

TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS	v
LIST OF TABLES	ix
ABSTRACT.....	x
CHAPTER	
I. INTRODUCTION	1
II. LITERATURE REVIEW.....	4
Denials, Admissions, and Confessions	4
Interviews and Interrogations.....	5
False Confessions.....	8
Defining false confessions	8
Types of false confessions	9
The Use of Police Deception	12
Risk Factors.....	14
Situational risk factors	14
False evidence.....	14
Minimization.....	19
Dispositional risk factors	23
Juveniles and mental disabilities.....	24
Personality and background characteristics	25
Present Case Law	26
Interrogation process.....	26
Admissibility into evidence	27
Police deception and interrogations	29
Supporting juveniles	30
Proposed Preventions	32
Improving investigation practices.....	32
Videotaping interrogations.....	33
Assessing the reliability of confessions	36

III. METHODOLGY	41
Sample.....	41
Coding procedure	44
Finding the facts.....	47
Reliability.....	48
IV. RESULTS	50
Inconsistencies	51
Leaking and Contamination.....	52
V. CONCLUSION	56
Complications with Leo’s Test	58
Glitches with Garrett’s Analysis	61
Data Issues and Limitations	62
Future Research.....	63
APPENDIX A.....	65
APPENDIX B	68
APPENDIX C	60
APPENDIX D.....	70
APPENDIX E	72
APPENDIX F.....	73
APPENDIX G.....	74
APPENDIX H.....	76
APPENDIX I.....	78
APPENDIX J	79
APPENDIX K.....	80
APPENDIX L	81
APPENDIX M	82
APPENDIX N	83

APPENDIX O	84
REFERENCES	85

LIST OF TABLES

	Page
Table 1: Interrogation Time Table	43
Table 2: Corroboration Table	51

ABSTRACT

EXAMINING THE RELIABILITY OF CONFESSIONS

by

Patricia A. Hom, B.S.C.J.

Texas State University-San Marcos

December 2010

SUPERVISING PROFESSOR: JOHN PETE BLAIR

Currently, the only requirement for a confession to be admissible into evidence is that the confession is voluntarily provided by the suspect. However, a confession that is voluntary is not necessarily reliable. If a confession is not identified as reliable, one might question whether the confession is true or false. Consequently, if a voluntary test continues to be the only requirement for the admissibility of a confession into evidence, one may also ponder how many false confessions become admissible in court. Due to the severe consequences of wrongful convictions and the influential weight a confession possesses as evidence, this thesis provides an exploratory analysis of Leo's (2008) reliability test to minimize the admission of false confessions. The analysis corroborates confessions with both dependent and independent evidence (Leo, 2008) and offers insight into the process and importance of examining the reliability of confessions.

CHAPTER I

INTRODUCTION

Media attention of the Innocence Project¹ has brought wrongful convictions to the forefront of the criminal justice, psychology, and law literatures. Consequently, there has been a growing interest in developing various procedures that may prevent miscarriages of justice. From the time of its inception in 1992, The Innocence Project has compiled and analyzed 255 cases of wrongful convictions throughout the United States. From that analysis, the Innocence Project has identified eyewitness misidentification, invalidated forensic evidence and false confessions or admissions as three major causes of wrongful convictions (2010, Innocence Project). This thesis will focus on one of the factors contributing to wrongful convictions: false confessions.

Research has consistently found confessions to be one of the most influential pieces of evidence brought into the courtroom (Drizin & Reich, 2004; McMullen, 2005; Henkel, Coffman, & Dailey, 2008). Previous research has focused on both understanding false confessions and identifying preventative techniques that should be implemented in order to minimize the prevalence of false confessions and wrongful convictions.

The courts govern the admissibility of confessions as well as what conduct is acceptable during interrogations. Despite the courts' guidelines, many have suggested

¹ For more information, go to www.innocenceproject.org.

some form of reliability test for admitting confessions into evidence (Milhizer, 2006; Sangero, 2007; Findley, 2008; Leo, 2008; Milhizer, 2008).

The purpose of this thesis is to examine Leo's (2008) reliability test using 13 interrogations conducted by a medium-sized Texas police department in 2007. The three factors suggested by Leo (2008) in his reliability test will be weighed in this study to determine if the confessions obtained from the Texas police department were reliable. Leo's (2008) elements include whether the confession given by the suspect (1) coincides with facts known to the public, (2) is consistent with the facts *not* known to the public, and (3) leads the investigators to new evidence. Conducting this exploratory analysis provides insight to the process that is needed to assess the reliability of confessions. Specifically, it will show how useful these criteria are to determine the reliability of a confession.

One of the main concerns in this analysis is the rate of false confessions. Some researchers have suggested that the rate of false confessions is extremely low (Sigurdsson & Gudjonsson, 1994; Sigurdsson & Gudjonsson, 1996). If this is correct, the likelihood of a false confession within the current data is low, and there would need to be a significantly higher number of interrogations with confessions in the study in order to capture a false confession. Consequently, limitations to the interpretations of these results exist. Specifically, the efficacy of this test will not be known, with certainty, since the likelihood of finding a false confession in a small sample (n=12) from one department is unlikely. Despite this limitation, the current exploratory analysis provides insight into the process required to implement Leo's (2008) reliability test.

Chapter 2 presents a Literature Review of the published research on false confessions. Deception and the justification for police use are discussed. The last portion of the literature discusses the current case law covering interrogations and the admissibility of confessions.

Chapter 3 addresses the methodology used to examine confessions in the present study. Chapter 4 discusses the results of the research. The final chapter offers recommendations based on the literature and results and explores possible improvements to policy and practice based on the current research findings.

CHAPTER II

LITERATURE REVIEW

This chapter starts by defining denials, admissions and confessions. The next section distinguishes the difference between interviews and interrogations and then explains typical interrogation procedures. The various types of false confessions are broken down into three distinct categories. The third section also addresses the current debate among researchers over potential risk factors in obtaining false confessions.

Denials, Admissions and Confessions

Before false confessions are discussed, it is important to explain denials, admissions and confessions. Denials are the antithesis of admissions and confessions. Gudjonsson (2003) breaks denials down into two distinct categories: true denials and false denials. Individuals who truthfully deny participation in the alleged criminal activity present true denials. Individuals who lie about their involvement in the alleged crime render false denials.

An admission, usually made before a full confession, entails some statement that suggests the suspect was involved in the crime. Confirming that the suspect was at the crime scene during the offense or participated in some part of the crime are examples of an admission. A full confession includes specific information on how the crime was committed and the motive behind the crime (Inbau, Reid, Buckley & Jayne, 2001).

Similar to denials, confessions are broken down into two categories: true confessions and false confessions. True confessions are given by suspects who have confessed to a crime they have committed. The major part of this research focuses on false confessions, which entails a description of the crime and motive from an individual who did not participate in the crime to the extent in which they had indicated within their confession (Gudjonsson, 2003).

Interviews and Interrogations

The intention of an interview or an interrogation is to obtain the truth. An interview obtains information about the individual along with what they know about the current case in a non-accusatory manner. Interrogations, on the other hand, are accusatory. In order to obtain incriminating statements, the investigators must tell the suspect that telling the truth is the best option (Inbau et al., 2001). Blair (2005b) suggests that direct confrontation, theme development (rationalizations), resistance strategies, and alternative questioning (Inbau et al., 2001) are interrogation methods used within various interrogation models.

Direct confrontation is implemented in two ways. The first method is when an interrogator states that, based on their investigation; they know the suspect has committed the crime. Telling the suspect there is “currently no way for us (the police) to eliminate you as a suspect” is the second method (Inbau et al., 2001).

Theme developments, also known as rationalizations, are methods that try to justify the crime. Rationalizations may be used to make confessing easier for the suspect. Usually a variety of themes are utilized, but they are dependent on which theme appeals to the suspect during the interrogation (Blair, 2005b).

There are two main types of rationalizations that can be utilized, depending on the suspect. For emotional suspects, comparing the crime to a more serious crime or giving a moral justification is common (i.e., “the victim asked for it”). For non-emotional suspects, theme developments might be used to focus on promoting a non-criminal intent for the crime, or to suggest to the suspect that lying is useless (Inbau et al., 2001; Blair, 2005b).

Denials, objections and ignoring the interrogator are three forms of resistance. Methods such as dominating the conversation, reaffirming the accusation of guilt, and moving closer to a suspect² are recommended to eliminate this issue (Inbau et al., 2001). Reaffirming the accusation of guilt could be as simple as stating, “We know that you committed this crime,” after the suspect denies involvement. In addition, if a suspect begins to ignore the interrogator by looking the other way, the interrogator should move to a position where the suspect can see them.

Finally, the alternative question is often used to prompt the first admission of guilt. The alternative question requires the interrogator to give the suspect two reasons why she or he may have committed the crime. Blair (2005b) gives an example: “Did you steal the money to pay for bills or drugs?” (p. 47). Asking alternative questions gives the suspect two options to explain why they may have committed the crime. If the suspect answers, “I did it for drugs,” the initial admission has been given. After this point, the interrogator’s focus changes to obtaining a full confession with details of the entire crime (Inbau et al., 2001).

An interrogation is used to persuade the suspect that telling the truth is the best alternative. However, the success rate of obtaining a confession depends on various

² This is done so the interrogator is more difficult to ignore.

factors, including the interrogator's experience, strength of the evidence, length of interrogation, and the interrogation methods used (Leo, 1996; Blair, 2005b).

In Leo's (1996) seminal research of interrogations, a total of 122 interrogations were observed in person at one police department. Another 60 videotaped interrogations were viewed from two other police departments. Most of the interrogations (71.2%) were less than an hour in length. Only 7.8% were more than two hours long. Of the 182 interrogations observed, Leo (1996) suggests that the strength of evidence and the suspect's prior criminal record were strong predictors in how a suspect would be treated. Suspects that were more likely to be charged were individuals who had more evidence against them prior to the interrogation and had a previous criminal record.

The types and frequency of methods used during an interrogation were also noted. Roughly 81% of interrogators used between two and seven methods. Only 12% used 10 or more methods. These methods included various forms of rationalizations such as appealing to the suspect's self-interest, offering moral justification, minimizing the moral seriousness of the crime, using praise or flattery, and/or appealing to the suspect's conscience. Other techniques, such as exaggerating the moral seriousness of the crime, touching the suspect in a friendly manner, and undermining the suspect's confidence in denial, were also observed.

The most frequently used methods were appealing to the suspect's self interest (88%) and confronting the suspect with existing evidence of guilt (85%). Undermining the suspect's confidence by employing a denial of guilt method was used in 43% of the cases while confronting the suspect with false evidence of guilt was employed 30% of the time. Minimizing the facts and nature of the offense was used in 6% of the cases and

yelling at the suspect was used in 3% of the interrogations. None of the interrogators touched the suspect in an unfriendly manner (Leo, 1996).

In general, Leo (1996) found four methods that were most likely to induce some form of incriminating statement: (1) identifying contradictions in the suspect's denial of involvement, (2) offering the suspect a moral justification or psychological excuse for his behavior, (3) using praise or flattery, and (4) appealing to the suspect's conscience.

Identifying contradictions in the suspect's denial of involvement is less of a method and is more likely to be described as merely establishing face value of the statements.

Methods two and four, which are forms of minimization, are controversial within the literature of false confessions.

False Confessions

Confessions tend to be one of the most valuable pieces of evidence collected by police and are one of the most influential types of evidence presented in court (Drizin & Reich, 2004; McMullen, 2005; Henkel, Coffman, & Dailey, 2008). However, false confessions are often cited as a major cause of wrongful convictions (Leo, 2001; Westervelt & Humphrey, 2001; Huff, 2002; Gudjonsson, 2003). The following discussion explores the definition of false confessions, the various forms of false confessions and reasons an individual would confess to a crime that he or she did not commit.

Defining false confessions

There are two definitions of false confessions: (1) a completely innocent person declares that they committed a crime, and (2) an individual overstates their involvement in the crime (Alying, 1984). Ofshe (1989) defines a false confession as an incriminating

statement that may be “intentionally fabricated or is not based on actual knowledge” (p. 13) of the crime. These definitions imply that false confessions can be elicited from both innocent *and* guilty individuals (Gudjonsson, 2003). Most researchers and advocates are concerned with innocent false confessions.³ The use of DNA evidence has established that false confessions occur; however, due to the unknown base rate of interrogations and confessions it is difficult to determine the prevalence of false confessions. Researchers estimate these incidents occur at an extremely low rate. Sigurdsson and Gudjonsson (1994) found that roughly 12% of 229 adult inmates had given a false confession sometime in the past. However, less than 1% of the inmates had given a false confession for their current offense. In a later study by Sigurdsson and Gudjonsson (1996), none of the 108 juvenile offenders admitted to giving a false confession. In 1998, Cassell examined the sample of 173 cases from a prosecutor’s office and did not find evidence of any false confessions. While detrimental consequences are high in false confessions can be significant, prevalence of false confessions remains low.

Types of false confessions

Gudjonsson (2003) classifies false confessions into three types: (1) voluntary false confessions, (2) compliant false confessions, and (3) internalized false confessions. Voluntary false confessions are described as occurring in the “absence of elicitation” (Kassin & Wrightman, 1985, p. 76). Individuals who voluntarily confess to a crime they did not commit can come forward to police after reading about that particular crime in the news. Alternatively, they may come forward to admit to a crime that has not been committed. Kassin and Wrightman (1985) suggest that these confessions are produced by

³ A completely innocent individual who is convicted based on a false confession given to police represents the greatest potential miscarriage of justice.

a need for infamy, a self-punishment for previous acts, a failure to distinguish reality from fantasy, a desire to protect the real perpetrator, or an anticipation of leniency for the criminal act. This type of false confession is considered to be rare and is usually of less interest to researchers (Gudjonsson, 2003).

A compliant false confession occurs when an individual knows he or she is confessing to a crime he or she did not commit. These false confessions are caused by psychological pressure from interrogators. By definition, these individuals falsely confess to a crime they did not commit because they believe doing so will avoid other, more negative, consequences.

Gudjonsson (2003) suggests that an individual confesses to a crime because he or she (1) wants to end the interrogation, (2) wants to avoid being locked up, (3) believes he or she will be allowed to go home, or (4) is trying to cope in the current situation. Unlike someone who internalizes a false confession, individuals who compliantly confess *know* they did not commit the alleged crime but still confess in order to gain some other assumed benefit (i.e., to end the interrogation). Furthermore, individuals who provide a compliant false confession tend to retract their confession soon after the interrogation concludes.

Compliant false confessions typically have several causes; specifically, stress, police pressure, interpersonal styles, and coercive threats and promises. The interrogator induces hopelessness and then gives incentive(s) for the suspect to end the interrogation with a confession (Ofshe & Leo, 1997).

Internalized confessions, previously known as persuaded false confessions, are more likely to occur in high profile cases such as murder and can result from unusually

lengthy interrogations (Blair, 2005a; Leo, 2008). These confessions are a significant concern though they are believed to occur less frequently than compliant confessions. Internalized false confessions occur when the suspect has no memory of committing a crime, but still believes he or she committed the offense and confesses. Similar to the compliant false confession, internalized false confessions are usually retracted soon after the interrogation ends.

Leo (2008) discusses a three-step process to explain internalized false confessions. First, the investigator makes a suspect question his or her innocence. This is done by repeatedly accusing the suspect, attacking the suspect's statements of innocence or denial of guilt, and presenting false evidence to the suspect. The second step occurs when the investigator gives the suspect reasons for why she or he does not remember committing the crime. Finally, the investigator asks the suspect to give details about how the crime was committed. Since the suspect believes he or she is guilty but does not remember the crime, there are different ways the suspect will compose a confession. The suspect can guess, confabulate, and/or repeat details the investigator leaked or previously inferred to him. At the beginning of the confession, the suspect uses conditional language but changes to declarative by the end. For instance, "I must have done it," changes to "I did it." If a suspect goes through this entire process, the confession can be filled with inaccurate facts (Leo, 2008).

Memory distrust syndrome (MDS) is suggested to be one of the factors contributing to this phenomenon (Leo, 2008). There are two distinct conditions of MDS. The first involves a suspect who has no memory of the offense or what they were doing at the time of the crime. The other condition is when suspects clearly remember that they

did not commit in the crime at the beginning of the interrogation, but slowly shift into believing that they were responsible for the crime (Leo, 2008).

Compliant and internalized false confessions are usually the result of deceptive or coercive police methods (Gudjonsson, 2003; Leo, 2008). However, the empirical evidence supporting these conclusions is inconsistent and researchers have yet to find and implement a methodological approach that includes real-life circumstances present in interrogations (Inbau et al., 2001; Russano et al., 2005).

The Use of Police Deception

From the implementation of certain interrogation methods, to detecting lies, police deception⁴ plays a large part in interrogations. Due to the severe consequences of false confessions, many academics and advocate groups have debated the role of police deception in interrogations (Grisso, 1981; Ceci & Bruck, 1993; Dunn, 1995; Kassin & Kiechel, 1996; Gudjonsson, 2003; Redlich and Goodman, 2003; Alpert & Noble, 2009; Kassin, Drizin, Grisso, Gudjonsson, Leo & Redlich, 2009). Some advocates and researchers suggest that the ability to detect deception is no better than chance, and, therefore, deception should not be used in the interrogation room (DePaulo & Pfeifer, 1986; Vrij, 2000; Kassin et al., 2009). Others suggest that using deception with certain individuals will increase the likelihood he or she will succumb to the deception methods (Ceci & Bruck, 1993; Dunn, 1995; Gudjonsson, 2003; Forrest, Wadkins, & Larson, 2006; Gudjonsson, Sigurdsson, Asgeirsdottir, & Sigfusdottir, 2007).

Philosopher Sissela Bok (1979) proposes that deception should be avoided in most circumstances *except* when (1) lying is needed to avoid a crisis, and (2) society

⁴ Police deception is defined as a deliberate effort to mislead suspects (DePaulo, Lindsay, Malone, Mulenbruck, Charlton, & Cooper, 2003).

needs to be protected from an enemy. Assuming that certain suspects are the “enemy,” this ideology supports the use of deception under certain circumstances. Using Bok’s (1979) principles, previously mentioned, on deception, Slobogin (2007) suggests police should not use deceptive methods unless probable cause exists that the suspect is the perpetrator.

The use of deception is then justified to elicit incriminating information providing any subsequent deceptive methods used are legitimate and non-coercive. Deceptive methods should cease once formal charges are filed (Slobogin, 2007).

A form of deception found in an interrogation occurs often when a suspect believes he or she did not have an option to remain silent (Stuntz, 1989; Slobogin, 2007). Slobogin (2007) further states:

a prohibition of interrogation deception under these conditions would cause much more harm (in terms of lost true confessions) than benefit (in terms of preventing false confessions and any intangible harm to the dupe or society). (p. 17)

Essentially, Slobogin (2007) implies that if deception is not used in appropriate instances, a greater harm may occur in the loss of a true confession. But what happens when a police officer’s deception has landed somewhere between a justifiable lie and an unacceptable lie? Alpert and Noble (2009) propose that the police officer’s decision to lie can be justified if it was based on reasonable information and he or she acted in good faith. Determining whether a police deception is justified depends on the intent, justification of the deception, and whether or not the lie is acceptable⁵ (Alpert & Noble, 2009).

⁵ In this instance, acceptability refers to both legal and social acceptance.

The following section discusses factors that influence the outcome when deception is used in interrogations. The situational factors that are discussed below articulate the current controversy over the use of deception. The results of various empirical works provide a better understanding of why these issues still stand.

Risk Factors

The risk factors associated with false confessions fall into: situational and dispositional categories (Kassin et al., 2009). Situational risk factors include various aspects of the environment of the interrogation. Dispositional risk factors are traits a particular suspect possesses that make him or her more vulnerable to certain interrogation methods. The controversial use of situational factors is still debated among researchers and advocates.

Situational risk factors

Situational risk factors include various aspects of the environment of the interrogation. False evidence and minimization tend to be two of the most discussed situational factors. Although studies that have examined these factors have produced inconsistent results, the following section examines the research and addressed the limitations of these studies.

False evidence.

False evidence, also known as false evidence ploys, is a method interrogators employ to make a suspect think there is evidence that links him or her to the crime when there is not. Usually, an interrogator presents implicating evidence of the suspect, such as false eyewitness testimony or false paperwork to the suspect. According to Inbau et al. (2001), false evidence is to be implemented as a last effort and should *not* be used on

youth with low social maturity, diminished mental capacity, and/or individuals who have already declared he or she may have committed the crime. False evidence is one factor believed to contribute to internalized false confessions. Many studies have addressed the effect of false evidence on false confessions (Kassin & Kiechel, 1996; Redlich & Goodman, 2003; Horselenberg et al., 2006; Blair, 2007; Nash & Wade, 2009); however, the results are inconsistent. More importantly, most of these studies lacked the severity and certainty⁶ present in real-life crimes.

Two studies have explored the impact of false evidence on confessions when the suspect was not certain he or she committed an artificial “crime” (Kassin & Kiechel, 1996; Redlich & Goodman, 2003). Both studies involved subjects typing on a keyboard after facilitators instructed them not to press a certain key. If they pressed the prohibited key, they were told the computer would crash. After a period of time, the computer automatically crashed and the researcher accused the suspect of pressing the prohibited key.

With half of the subjects in Kassin and Kiechel’s (1996) study, a confederate claimed to have seen the participant pressing the prohibited key. This false evidence procedure produced significantly more false confessions than when no false evidence was introduced. Participants given the false evidence were also more likely to internalize their involvement in pressing the prohibited key; that is, they thought that they had actually pressed the prohibited key when they had not.

In the Redlich and Goodman (2003) study, the experimenter presented the subjects with a computer printout that indicated the participant had pressed the prohibited

⁶ Certainty refers to the subject’s ability to definitely know whether or not he or she has committed the crime or whether the evidence exists or not.

key. When respondents were asked if they pressed the prohibited key, 74% of the participants said “no”; the remainder said they were unsure if they pressed the key or not. About 69% of participants “confessed” when respondents were shown the false evidence. However, the results did not find that false evidence had a significant impact on internalization or confabulation.

Horselenberg et al. (2006) conducted a study in which participants were accused of “criminal acts” that ranged in severity. The first two studies included participants who were told not to press the “Windows” key or the “F12” key, otherwise the computer would crash. The second segment of the study accused participants of cheating. The difference in the two studies was how certain the respondent would be that he or she committed the crime. The results indicated that as certainty increases, the respondent is less likely to give a false confession. For instance, pressing a prohibited computer key can occur and be justified as an accident. However, cheating is an act the respondent must consciously carry out and cannot be justified as an accident in the mind of the suspect. The findings suggest that an accusation of a more serious offense (cheating) is less likely than a minor offense (crashing a computer) to result in a false confession. This corresponds with the idea that laboratory studies may not accurately display the rate of false confessions studied in real life (Inbau et al., 2001; Russano et al., 2005).

Blair (2007) conducted a similar study. The participants were told that a picture of a person would appear on the screen for five seconds. After the picture disappeared, nine other pictures of people and the original person would be displayed on the screen simultaneously. Participants were told to pick which person was originally displayed on the screen. In order to address the certainty of the “criminal” act the subject was told not

to press “control,” “alt,” and “delete” keys at the same time. If the subject did, they were told the computer would crash. After the third trial, the computer was programmed to crash.

After being accused of crashing the computer, participants were exposed to one of four conditions: (1) no interrogation methods, (2) minimization/ maximization⁷, (3) false evidence, or (4) both minimization/maximization and false evidence. All subjects were certain that they had not pressed the prohibited keys. Overall, 27.6% of the subjects signed a false confession, but there was no single method that significantly elicited a false confession than another method. Exposure to false evidence did not change the participants’ perception of future penalties they may have faced while the minimization and maximization methods did not affect the respondents’ perception of the consequences’ severity. The results indicated that the severity of the consequences did not affect the false confession rate, but the unavoidability of the consequences was positively related to the rate of false confessions (Blair, 2007).

In a study conducted by Nash and Wade (2009), subjects were asked to participate in a computerized gambling task using a fake bank and money. Each subject answered 14 questions to the best of his or her ability. In the gambling task, the subject chose and bet on the best answer. If the subject answered a question correctly, a green check would appear on the screen. Then, he or she was instructed to take money out of the fake bank and place the money into their personal gains. If a red “X” came on the screen, the respondent was supposed to put money from their personal gains into the fake bank.

Similar to the studies discussed above, the subjects were accused of cheating. Instead of using a print-out from the computer or testimony from a confederate, fake

⁷ Minimization and maximization are explained further in the next section.

videos were used as evidence against the subjects. To alter the fake video, researchers obtained 10 to 20 seconds of the recorded session. When the respondent answered a question correctly, the researchers replaced the green check mark with a red “X”. Consequently, the video displayed the respondent taking money from the bank when he or she answered a question incorrectly.

After finishing the gambling tasks, respondents were brought back and accused of taking money from the fake bank when they did not. All respondents were asked to sign a confession statement. Some respondents were *told* that there was a video of them stealing from the fake bank; the others were *shown* a forged video implicating them. Respondents told there was a video implicating them were more likely to agree with the accusation on the second request in comparison to individuals who were shown the fake video. Subjects who *saw* the video of themselves cheating were more likely to sign a confession on the first request (93%), and were more likely to partially or fully internalize the confession (86%) compared to subjects who were merely told there was video that implicated them (73% and 60%). The results suggest that individuals are more likely to provide a false confession when there is fake, digitally altered video of the subject cheating as evidence. However, it is important to note that most police agencies are prohibited from providing fake and digitally altered evidence.

Initial studies found a higher false confession rate when subjects were presented with false evidence (Kassin & Kiechel, 1996; Redlich & Goodman, 2003); however, when certainty was accounted, later studies found a decrease in false confessions (Horselenberg et al., 2006; Blair, 2007). The smallest procedural change, such as pressing three prohibited keys simultaneously, instead of one, changed the rate of false

confessions. More severe acts, such as cheating, were also found to decrease the likelihood of a false confession. The inconsistencies between these studies display how small, yet significant, factors can affect the results.

Minimization.

Many researchers claim that minimization and the presentation of false evidence increase the likelihood a suspect will provide a false confession (Kassin & McNall, 1991; Kassin & Kiechel, 1996; Redlich & Goodman, 2003; Russano, Meissner, Narchet & Kassin, 2005; Horselenberg, Merckelbach, Smeets, Franssens, Peters, & Zeles, 2006; Blair, 2007; Nash and Wade, 2009). Kassin and McNall (1991) propose that promises of leniency in exchange for a confession are one of the most powerful psychological inducements. Leo (2008) suggests that these inducements are given after the suspect believes that he or she is definitively the offender and that confessing to the crime is the best way to escape the stressful experience. These inducements generally fall into two categories referred to as 'hard sell' (maximization) and 'soft sell' (minimization) techniques. Maximizations are statements used to make the suspect believe others will think poorly of the suspect if he or she does not confess. This method also involves exaggerating the severity of the allegations against the suspect (Kassin & McNall, 1991). Inbau et al. (2001) suggest this method for individuals who tend to be non-emotional.

Minimizations are statements interrogators use to influence the suspect's outlook on the crime. Offering face-saving excuses, blaming the victim, or decreasing the perceived seriousness of the offense are all examples of minimizations. These methods are suggested for individuals who tend to display regret (Inbau et al., 2001)

Critics claim that minimizations and maximizations communicate promises of leniency and threats of punishment that are similar to explicit threats of punishment and promises of leniency. Explicit threats and promises are not permitted in the United States (*Payne v. Arizona*, 1958). The use of inducements, therefore, is believed to increase the likelihood of a false confession since they are believed to operate in a way similar to explicit threats and promises (Kassin & McNall, 1991, Gudjonsson, 2003; Leo, 2008).

Kassin and McNall (1991) conducted three experiments in a study over maximization and minimization. In the first experiment, 75 participants read simulated interrogation transcripts of murder suspects that involved various methods such as minimization, maximization and false evidence ploys. Each transcript that was given to a respondent contained a designated method at the same point in each transcript followed by a programmed response. One condition gave respondents the transcripts with minimization methods, another with maximization methods. The other two conditions gave the respondent a transcript without any methods and, lastly, a transcript with false evidence ploys. Afterwards, the respondents estimated the level of punishment the suspect should receive if (1) the suspect confessed and was found guilty, and (2) the suspect denied all accusations. This experiment suggested that respondents who read the transcripts with minimization methods were less likely to believe the suspect would confess. Furthermore, respondents perceived the suspects as less likely to confess, the interrogations as less coercive compared to the other conditions, and were more likely to view the interrogator as sympathetic (Kassin & McNall, 1991).

The second segment of the experiment included 36 undergraduate students who read three different simulated transcripts of interrogations done under three different

conditions. The first condition utilized minimization methods, the second used explicit promises, and the third condition was the control group. Interrogators accused the suspect of three different crimes- murder, theft and a hit-and-run accident. After reading the transcripts, the respondents were asked to predict the amount of sentence the suspect would get if he or she confessed to the crime. The findings from the second question asked, “What do you think is the likelihood that this suspect actually committed the crime in question?” (Kassin & McNall, 1991, p. 241). According to Kassin and McNall (1991), both the minimization and the promise of leniency condition communicated leniency expectations though there were no significant differences between the various crimes.

The last experiment entailed 75 students who read interrogation transcripts of an auto theft interrogation. There were five conditions in this experiment:⁸ (1) no confession, (2) unprompted confession, (3) promise, (4) threat, and (5) minimization. After reading the transcripts, the respondents were asked if the suspect confessed freely (without coercion), the likelihood the suspect would receive a guilty or innocent verdict, and questions pertaining to the respondents’ perception of the suspect. The results suggested that any confession that was prompted by the officer’s comment was more likely to be viewed as involuntary. However, respondents were more likely to give a guilty verdict and to hypothesize lighter sentences in the minimization condition (Kassin & McNall, 1991).

Comparing all three experiments reveals a contradiction. In the third experiment, the majority of the respondents suggested that confessions prompted by minimization

⁸ Similar to the conditions above, the promise condition the suspect was explicitly told that he would be treated well during his detention if he confessed. The threat condition told the suspect that if he did not confess to the crime he would be treated roughly during his detention. The minimization condition gave a justification for the auto theft.

methods are involuntary (Kassin & McNall, 1991). According to law, no confession can be admissible if it is viewed as involuntary (*Brown v. Mississippi*, 1936). If minimization methods result in a coerced confession, and that confession is seen as coercive by the court, the confession would not be admissible into evidence. This would prevent the admission of false confessions and thus, wrongful convictions.

Russano et al. (2005) examined the impact of minimizing an offense and deal offering on false confessions. There were 330 individuals from a southeastern university that participated in this study. Each participant was matched with a confederate to answer questions. Both the participant and the confederate were told they were involved in a study to evaluate individual and team decision making abilities. Some questions that would be asked were classified as “team questions” where both the respondent and the confederate could participate. The others were to be answered by the participants or confederate on their own.

At some point during the session, the administrator left the room. Two scenarios were set up. In the guilty condition, the confederate asked the participant to help him/her with the individual questions. In the innocent condition, the confederate did *not* ask the respondent to help him/her on the individual questions. Some respondents cheated in the guilty condition while others did not, but both innocent and guilty subjects were interrogated and accused of cheating during the process (Russano et al., 2005).

During the time of accusation, certain conditions only used minimization, others only offered a deal and the last condition utilized minimization and making a deal. Minimization methods included face-saving excuses and statements of concern or sympathy by stating, “I’m sure you didn’t realize what a big deal it was” (Russano et al.,

2005, p. 483). In the conditions where a deal was offered to the participants the experimenters would state that “things could probably be settled pretty quickly” (Russano et al., p. 482).

Minimization methods and offering an explicit deal increased the confessions in both innocent and guilty subjects. The use of minimization and deal offering increased the rate of true confessions to 81% and 72% respectively, from the original 46%. The original rate of false confessions, without minimizing an offense *and* deal offering was 6%. The use of minimization and deal offering to respondents increased the false confession rate to 18% and 14% respectively. However, when both methods were used, the rate of false confessions increased to 43% (Russano et al., 2005).

Though at face value, these studies appear to support the belief that false evidence and minimization cause a false confession, when examined more closely, one finds that the support is inconsistent⁹. Many laboratory studies that support situational factors as a predictor of false confessions lack several factors present in true interrogation settings. Essentially, since the severity and certainty of crimes influences the rate of false confessions (Nash & Wade, 2009)- these laboratory studies are not likely to replicate real-world consequences and must be interpreted with caution (Inbau et al., 2001; Horselenberg et al., 2006; Leo, 2008).

Dispositional risk factors

Dispositional risk factors refer to traits a particular suspect may have that may make him or her more vulnerable to false confessions. Overall, there is a consensus that individuals who are immature or have mental disabilities are more vulnerable to false

⁹ It is important to note that false evidence was not one of the four methods most likely to elicit a false confession in Leo's (1996) study over interrogations.

confessions (Ceci, 1994; Dunn, 1995; Richardson, Gudjonsson & Kelly, 1995; Gudjonsson, 2003; Redlich & Goodman, 2003; Kassin et al., 2009). Other research has identified certain personality and background characteristics that are regularly found in individuals who give a false confession (Forrest et al., 2006; Gudjonsson et al., 2007). These are detailed in the following section.

Juveniles and mental disabilities.

Research supports the concept that juveniles and individuals with low intelligence or a mental disorder are more at-risk to falsely confess than other populations (Grisso & Pomicter, 1977; Gudjonsson, 2003; Redlich & Goodman, 2003; Owen-Kostelnik, Reppucci, & Meyer, 2006; Kassin et al., 2009). Since maturity and mental development can directly affect the decision-making process, there are significant differences in the decision-making abilities of these individuals (Ceci, 1994; Leo, 1994; Dunn, 1995; Richardson et al., 1995). Consequently, there are multiple concerns about the use of deceptive interrogation methods on juveniles and those with mental disabilities. The three most commonly addressed issues include (1) the influence of adult language, (2) the unreliability of deception detection from nonverbal communication, and (3) the influence of leading, suggestive, and repeated questions (Kassin & Gudjonsson, 2004).

Suggestibility, memory, and the need to comply with authoritative figures also affect false confession rates (Redlich & Goodman, 2003; Miles, Powell, Gignac & Thomson, 2007). Juveniles and individuals with mental disabilities are not only more suggestible than adults, but they also have a strong trust of people in authority (Loftus, 1979; Ceci & Bruck, 1993; Ceci, 1994; Dunn; 1995). In addition, these individuals tend to act on emotions (i.e., fear and anger), have an eagerness to please people and are less

likely to assess or understand consequences (Grisso & Pomicter, 1977; Ofshe, 1989; Gudjonsson, 2003). As a result, these individuals are more likely to confess to simply end the interrogation process (Hall, 1980; Grisso, 1981; Ceci & Bruck, 1993; Sigurdsson & Gudjonsson, 1994; Drizin & Leo, 2004). Research on Gudjonsson's Compliance Scale (GCS) and Gudjonsson's Suggestibility Scale of 1987 (GSS) found that these factors are related to false confessions provided juveniles and individuals with mental disabilities (Forrest et al., 2006; Miles et al., 2007).

Some researchers have suggested that having a parent present may reduce false confessions among juveniles. However, McMullen (2005) proposes the presence of legal aides, or individuals familiar with the law, may prove to be more effective for juveniles who are being interrogated.

Personality and background characteristics.

Gudjonsson et al. (2007) examined background factors of 1,896 Iceland students, aged from 15-24, 138 of whom claimed they had falsely confessed to a crime. Of these, reports of bullying at school, LSD use, substance misuse treatment, violence in the street or at home, death of a parent or sibling, being expelled from school, and negative school performance were more common compared to individuals who claimed they did not falsely confess.

Some limitations exist in this study. The casual direction of the relationship between false confessions and personality traits cannot be known. Furthermore, the authors did not confirm the claims of false confessions respondents had made.

Gudjonsson (2003) and Leo (2008) advise that false confessions are more likely to occur due to a combination of factors. When police-induced false confessions were

examined from The Innocence Project, Blair (2005a) found that a combination of legally coercive interrogation practices and/or unusual suspects were usually present in cases where a false confession was given.

Present Case Law

Case law governs various aspects of the interrogation process (i.e., acceptable behaviors, admissibility standards). Unfortunately, case law has shaped only part of the process to obtain incriminating statements. While case law has given a basic framework of what actions are legal and what rights have to be maintained during an interrogation, there are still many unanswered questions. The following section outlines the significant cases that have provided the current guidelines police officers and the courts must follow.

Interrogation process

The Supreme Court has established that confessions obtained through physical coercion (*Brown v. Mississippi*, 1936) must be excluded. Confessions obtained through explicit promises of leniency are also prohibited (*Payne v. Arkansas*, 1958) due to the psychological coercion present. Police officers who interrogated the defendant in *Lynumn v. Illinois* (1963) told the suspect she would lose all state financial aid if she did not admit to the crime. In *Spano v. New York* (1959), a police officer, who was a friend of the suspect, told him that if he did not admit to the crime, the officer would lose his job. In *Arizona v. Fulminante* (1991) a confession obtained by an inmate (paid by the FBI), was identified as coercive since the defendant (Fulminante) had reason to fear for his safety when the inmate threatened to withhold protection from the defendant if he did not confess. These cases demonstrate that external threats, combined with other circumstances, make confessions inadmissible.

Other factors also may cause a confession to be suspect, and therefore, inadmissible. *Corley v. U.S* (2009) held that voluntary confessions are not admissible if the confession is given after an arrest with an unreasonable delay in seeing the federal magistrate. This coincides with the Mallory¹⁰ rule (1957) (i.e., confessions are inadmissible if there was an unreasonable time of detention between the arrest and preliminary hearing).

Admissibility into evidence

Since 1966, the only criterion for a confession to be admissible in court is whether or not the suspect was given his or her Miranda rights (if in a custodial interrogation without an attorney) and that the confession was voluntarily given considering all facts of the case. However, this has recently been amended in *Berghuis v. Thompkins* (2010). Prior to this decision, the court declared that in order for the confession to be admissible, Miranda warnings must have been given, even if the confession was proved to be voluntary (*Dickerson v. US*, 2000). This is usually done by the interrogator reading the suspect his or her rights, followed by the suspect signing an acknowledgement form.

One of the earliest cases concerning admissibility of a confession is *Massiah v. United States* (1964). Using the critical stage test, the Court held that incriminating statements made *after* the suspect was indicted cannot be admitted into court. In *Miranda v. Arizona* (1966), the court distinguished the difference between Sixth Amendment and Fifth Amendment rights¹¹. While Sixth Amendment rights protect an individual post indictment, the Fifth Amendment ensures that an individual will not be compelled to be a

¹⁰ The Mallory Rule is also known as the Mallory-McNabb rule.

¹¹ See Appendix B.

witness against him or herself. The Miranda warning, a safeguard against coerced confessions, informs the suspect that he or she has a right to remain silent and to an attorney. Though attorneys are not necessary, these rights are believed to be important because they ensure that confessions are not coerced. However, as discussed later, the Supreme Court has recently shifted its belief from believing the Miranda warning is essential for a confession to be considered uncoerced when a lawyer is not present (*Berghuis v. Thompkins*, 2010).

Oregon v. Mathiason (1977) confirmed that Miranda warnings are only necessary if there is a restriction of personal freedom and *Illinois v. Perkins* (1990) declared coercion is present only in police dominated atmospheres, which does not include prison cells. *Oregon v. Elstad* (1985), found that an incriminating statement made before the Miranda warnings is admissible *if* the suspect was questioned before an arrest and the Miranda rights were not intentionally withheld.

In *Colorado v. Connelly* (1986) an individual had waived his Miranda rights and willingly confessed to a police officer that he had killed someone. The suspect admitted that he had not been drinking or taken drugs, but had previously been in a mental hospital. Despite his prior mental conditions, the Court deemed the confession admissible in court and established the “voluntary rule” and “totality of the circumstances.”

In *Maryland v. Shatzer* (2009) the courts held that a second interrogation for the same offense is permissible if the suspect waives his or her rights. Since the suspect had been out of custody for more than two weeks in *Maryland v. Shatzer* (2009), the Court believed he was not likely to be coerced and was consequently not likely to endure the

pressures of an interrogation. This ruling allows investigators to re-interrogate a suspect and use any incriminating information from the second interrogation.

In *Berghuis v. Thompkins* (2010), the suspect, Thompkins, was read his Miranda rights but refused to sign the acknowledgement form stating the officer had read his rights. Thompkins continued to remain silent for the majority of the interrogation. However, when the interrogator asked Thompkins “Do you pray to God to forgive you for shooting that boy down?” (*Berghuis v. Thompkins*, 2010, pp. 3-4), he responded, “Yes.” Consequently, Thompkins admitted to committing the crime and his confession was accepted as evidence in his trial. The Supreme Court held that Thompkins knowingly and voluntarily waived his right to remain silent, despite the fact he did not sign the acknowledgement form. The Supreme Court continues to adopt two standards to determine whether a confession was voluntarily given. The first addresses law enforcement’s conduct in creating pressure. The second assesses the suspect’s capacity to resist pressure (*Mincey v. Arizona*, 1978).

Police deception and interrogations

Police deception plays a large part in interrogations; however, there is only a small portion of case law that discusses the proper, or improper, use of police deception in interrogations. Although there is little case law that clearly distinguishes the difference between acceptable and unacceptable deceptive practices, the courts seem to apply to the totality of the circumstances and shocking the conscious tests (*Frazier v. Cupp*, 1969; *State v. Gevan*, 2002). In *Colorado v. Spring* (1987), the defendant was brought into an interrogation and waived his rights under the assumption that he was being questioned for a minor offense. When he later confessed to murder, the Supreme Court held that trickery

does not include situations where the interrogators choose to omit a subject of the interrogation. The police deception, or withheld information in this instance, did not invalidate his original Miranda waiver.

In two cases, the courts have allowed the use of false evidence ploys. In a Supreme Court case, *Frazier v. Cupp* (1969), an officer told a suspect that his accomplice had confessed to the crime when he had not. The Court held that the false evidence was permissible after examining the totality of the circumstances. In *State v. Kelekolio* (1993), a Hawaii Supreme Court case, the court held that presenting false *physical* evidence was permissible. In this particular case, the false physical evidence included evidence of sexual activity, such as bruises on the victim's body from forced sexual intercourse.

In *State v. Gevan* (2002), the Minnesota Court of Appeals held that a police officer who improperly represented himself as the suspect's (Gevan) advocate, "shocked the conscience" (*Rochin v California*, 1952). Not only did the police officer misrepresent himself as Gevan's advocate, but he also promised Gevan that he would not be arrested *if* he told the police officer what happened during the offense. By the time *State v. Gevan* (2002) was decided, *Payne v. Arkansas* (1958) already established that explicit promises are prohibited due to the presence of psychological coercion.

Supporting juveniles

Juveniles are classified as an at-risk group for false confessions and case law has both supported and acknowledged this group requires additional protections. There are various factors the American court system has recognized to influence a juvenile's likelihood to falsely confess, including their level of education, intelligence, mental

health and their current physical condition (*Fikes v. Alabama*, 1957; *Payne v. Arkansas*, 1958; *Greenwald v. Wisconsin*, 1968).

In *Haley v. Ohio* (1948), an adolescent was interrogated from 12 a.m. to 5 a.m. This was the first court case that stated a confession could be inadmissible if the interrogation was conducted over an unreasonable amount of time. *In re Gault* (1967) confirmed this holding and suggested special caution is needed when dealing with juvenile interrogations. *Gallegos v. Colorado* (1962) also acknowledged the fact that coercive conditions could derive from the absence of a lawyer or other adult and *Fare v. Michael C.* (1979) standardized the acceptance of confessions using the totality of the circumstances. However, in *Yarborough v. Alvarado* (2004), the court held that a suspect's age and experience, or lack of experience with law enforcement are not objective factors required to determine whether or not a suspect could reasonably believe he or she could leave the interrogation. While prior case law suggests there is a need for caution when dealing with juveniles, *Yarborough v. Alvarado* (2004) suggests otherwise.

In general, case law provides certain protections to suspects during interrogations. However, there is substantial ambiguity concerning the implementation of certain controversial methods within interrogations (i.e., minimization and false evidence). The false confession literature offers certain methods that may influence the rate of false confessions, especially with various at-risk groups, but does not recommend alternatives. Furthermore, there are few safeguards for the admission of confessions besides the voluntary test and totality of the circumstances. With the recent decision of *Berghuis v. Thompkins* (2010), the very definition of "voluntary" has altered.

Proposed Preventions

No system can eliminate all false confessions. All criminal justice systems have flaws and unintended negative consequences. However, policies and procedures¹² can be implemented to minimize the occurrence of false confessions. Some of these policies and procedures include improving investigation practices, recording of interrogations, implementing consistent training among police and investigators, and adopting reliability tests to assure the confession is dependable. These proposed preventions are described below.

Improving investigation practices

Identifying potential errors that may have occurred prior to the suspect's interrogation is important since the majority of work needed to solve a case is conducted prior to an interrogation. Consequently, Alpert and Noble (2009) suggest officers should be trained to identify which groups are vulnerable populations, the consequences of deceptive interrogation practices, how to elicit truthfulness, and character training. However, in order for the training to be effective, cognitive and negative organizational influences should be minimal. In fact, an open-minded atmosphere with minimal bias is essential for these recommendations to work.

Rossmo (2009) lists several ideas to improve investigative work and decrease the prevalence of wrongful arrests. Avoiding tunnel vision and groupthink and controlling rumors are some examples. Another suggestion is to organize brainstorming sessions. Basically, police officers should explore different avenues, views, and theories by

¹² Most of these proposed preventions will not stop false confessions from occurring but can identify false confessions before they turn into wrongful convictions.

questioning the facts they already possess and playing “devil’s advocate” with the dominant investigation theory.

However, there are two proposals that are of importance when considering false confessions. First is the need to avoid conclusions about a case until all the evidence has been collected and analyzed. The second proposal suggests that investigators should question how they know what they think they know. Police should avoid assumptions about a suspect until all the evidence has been collected and can be used to verify existing theories or information. These particular suggestions, at their basic form, are essentially reliability tests.

Videotaping interrogations

One of the most commonly proposed solutions is to mandate videotaping interrogations through legislation (Kassin and McNall, 1991; Drizin & Reich, 2004; Kassin, 2005; McMullen, 2005; Kassin et al., 2009). States that have required the videotaping of interrogations vary on when and how the videotaping should be conducted. In order for a confession to be admissible in court, some states require videotaping all confessions of any crime (Alaska and Minnesota), while other states only require videotaping interrogations for more serious crimes (i.e., New Jersey, Illinois, and Maine). Overall, there are around 450 individual departments that videotape at least some of their interrogations (The Justice Project, 2008). This helps the jury, defendant and police officers objectively account for Miranda warnings and verifies that the confession was voluntary (Leo, 2001; McMullen, 2005; The Justice Project, 2008; Kassin et al., 2009).

Various research has supported the idea of mandated electronic recording of the *entire* interrogation and has provided reasons why mandating such practices would be beneficial. According to Drizin and Reich (2004), electronic recording of an interrogation allows individuals to make an accurate examination of the confession and prevents coercive interrogation methods. In addition, this process can improve the relationship between the police and public. The accuracy of a videotape counteracts the subjective memory of both the suspect and the police investigator (Drizin & Reich, 2004; Kassin et al., 2009).

Others have suggested that electronic recording of an interrogation will also minimize the need for note-taking, provide an objective account of the interrogation and ensure that the confession was given voluntarily (The Justice Project, 2008). Providing an objective record of what occurred during the interrogation is critical to testing the reliability of a confession. Without such a record, there is always a possibility that information known to the police was accidentally leaked to the suspect. The objective record also protects the suspect from misconduct on the part of the interrogator *and* the interrogator from claims of misconduct on the part of the suspect (Drizin & Reich, 2004). Essentially, electronic recording of interrogations is deemed to help both defendants and police officers (Jayne, 2003; Drizin & Reich, 2004; The Justice Project, 2008).

A study conducted by the Justice Project (2008) in Texas and Tennessee found multiple reasons why police departments did not record interrogations. The most frequently cited reasons include the cost of recording devices and the suspects' refusal to speak in a recorded interview. Other reasons include the belief that obtaining a confession

may be more difficult, there may be negative perceptions of certain interrogation techniques and malfunctions may occur with the equipment.

Jayne (2003) conducted a survey of police investigators' experience with electronic recording of interviews and interrogations in Alaska and Minnesota, two states that require recording of interrogations. Overall, most of the investigators did not notice a change in the confession rate. Roughly 74% of interrogators reported the number of confessions was not affected.

However, the results suggested law enforcement agencies' original concern (obtaining a confession may be more difficult when using recording devices) was not completely unfounded. When the recording device was not visible, the confession rate was roughly 82%. Recording devices that were always visible had a confession rate of 43%. This suggests that investigators were more likely to obtain a confession if the camera was hidden than if the camera was visible.

Other researchers have assessed how the interrogation is viewed on video, also referred to as camera perspective, and have criticized current agencies that record interrogations claiming that the camera perspective plays an important factor in interpreting the voluntariness of the confession (Lassiter, Diamond, Schmidt, & Elek, 2007). If the camera is focused on the suspect during the interrogation, the interpretation of the confession is more voluntary in comparison to when the camera has both the interrogator and suspect within its line of sight.

In a study that examined how the camera perspective affects the viewer's interpretation of an interrogation as voluntary or involuntary, respondents included both judges and law enforcement. Confessions were perceived as more voluntary when the

camera was focused on the suspect rather than when the camera was focused on the interrogator or on both (Lassiter et al., 2007). Due to these findings, the authors suggest camera perspective can create a bias when a confession is viewed for admissibility.

Assessing the reliability of confessions

Federal law defines a confession as “confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing” (USC 18 section 3501, paragraph e). According to *Berghuis v. Thompkins* (2010), a confession of guilt can include answering “yes” to an implicating question. At this point in time, case law dictates which elements are required for a confession to be admissible. However, before 1966, *corpus delicti* and the trustworthiness standard were two regulations used to form a reliability standard. *Corpus delicti* translates as the “body of the crime” and was used to prevent false confessions. Essentially, before there could be a trial, prosecutors would have to prove there was a crime committed. The trustworthiness standard focuses on the actual confession. Under this standard, a confession must be corroborated. However, these two requirements need to be entwined.

Many researchers advocate for a reliability test or some form of verification of a confession before allowing evidence into court. While the voluntary test is essential to ensure an individual is not compelled against his or her will to confess to a crime (*Mississippi v. Brown*, 1936), the voluntary test does *not* ensure the confession is reliable and trustworthy. Consequently, Leo (2008) proposes three criteria that should be weighed in order to determine if a confession is reliable: the confession given by the suspect (1) coincides with facts known to the public, (2) is consistent with the facts *not* known to the public, and (3) leads investigators to new evidence. When these three components are

examined within the context of the criminal investigation, the consistency between the confession provided by the suspect and facts known to police will strengthen the confession.

Obtaining information from the confession that is consistent with the facts known to investigator, *and* known to the public, is an important form of corroboration. This is fundamental to reliability as these facts include information most people will know. For instance, if pictures of the victim are made public, a physical description of the victim is essential. A confession that does not include this information would not be as reliable if it did contain the already known facts.

However, when a confession contains facts the public did *not* know, the confession is much more reliable. A description of the victim if a picture was not made public, or information about the crime scene that an ordinary individual would not know, increases the reliability of the confession (Leo, 2008).

New information, also known as independent information, provided by the suspect also increases the reliability of a confession. However, independent information must be verified. If the new information is authenticated with actual evidence, this suggests the suspect knew details only the perpetrator would know. For instance, suppose there is a case where a deceased body was recovered but no murder weapon was found. If the police find the weapon where the suspect stated, this increases the likelihood that the confession is true and reliable (Inbau et al., 2001; Gudjonsson, 2003; Leo, 2008).

These criteria require different forms of corroboration. Information withheld from the public, but known by investigators, is also called dependent corroboration. New information, later confirmed by investigators, is called independent corroboration.

Finally, rational corroboration occurs when a suspect appears to exhibit rational behavior and include mundane information only the suspect would know. This last type of corroboration is thought to be the weakest (Inbau et al., 2001).

Leo's (2008) reliability test requires that the criteria and corroboration needs to be weighted in order to determine whether a confession is reliable. However, there is little instruction as to *how* these elements should be weighted. Inbau et al. (2001) provides various guidelines to assess corroborations given within a confession. The first is that the confession should possess some sort of specific corroboration. If, for some reason, the investigator failed to elicit specific corroboration and the suspect was unable to provide corroboration, than the current confession may be a nonexistent confession¹³. However, there may be alternative motives to why the suspect initially decided to confess, but refused to provide specific information – for example, to hide information that may link him or her to another crime (Inbau et al., 2001).

It is also not uncommon for the offender to take full responsibility of the crime, but refuse to provide emotional details about the crime. A confession that does articulate emotional motives or elements does not equate to a false confession. Furthermore, inconsistencies should be expected between a confession and witness or victim statements. Inbau et al. (2001), suggest that the “same motives for initially withholding a confession also affects missing and erroneous information within the confession” (p. 437). However, to truly evaluate the reliability of a confession, the investigator must develop corroboration within the confession and understand the explanation for why the

¹³ A nonexistent confession is described as a statement that may include information that is incriminating, but does not acknowledge that he or she committed the crime. Incriminating statements in these types of confessions include a false alibi, acknowledgement of opportunity or access, and even unreasonable explanations for why the suspect may obtain physical evidence.

suspect decided to confess. These aforementioned guidelines are used to assess the reliability of confessions.

Recently, Garrett (2010) examined the substance of 40 known false confession cases. Of the 40 cases, 25 were rape-murder cases, 3 were murder cases and 12 were rape cases. Forty-three percent of the wrongly convicted individuals were mentally ill or retarded, and 33% of the individuals were juveniles. Since these cases used post-conviction DNA to clear the individuals from the crimes, it was emphasized that these cases were not representative of all false confessions.

In order to assess the reliability of a confession, Garrett (2010) suggested that statements made by the suspect, without any prompting from the investigator, are of utmost importance. Similar to Leo (2008), the post-admission narrative should match the facts of the crime. Depending on the crime, important facts include who initiated the crime, who was involved, where the crime occurred, and why the crime was committed.

The analysis was broken down into 10 themes with two distinct groups: interrogation practices and courtroom proceedings. The interrogation practices themes included (1) contamination of evidence from the police to the suspect (i.e., leaking and/or feeding), (2) corroborated facts, (3) mistaken facts, (4) guessed or public facts, (5) inconsistencies/lack of fit, (6) deceptive methods, (7) crime scene visits, and (8) recorded interrogations. Garrett (2010) also analyzed two themes that occurred in the courtroom, both of which involved the contamination of information to the suspect.

Garrett (2010) addressed the amount of detail the previously convicted individuals provided. There were 36 confessions that contained some sort of information that should have been known only to the guilty party (i.e., information withheld from the public).

Consequently, Garrett suggested these pertinent details were either leaked or fed to the suspect. Presenting a false dilemma, Garrett (2010) did not acknowledge that an individual may have known these facts from familiarity (of the neighborhood or from neighborhood rumors), or that the individual may have overstated his or her involvement in the crime.

The overwhelming majority of these cases included juveniles or mentally challenged individuals, factors that put a suspect at risk. Methods that are *not* recommended by interrogation manuals and prohibited by law were also used in these interrogations (e.g., promises of leniency, threats of violence). Other investigators used leading questions, corrected the suspect if he or she gave the wrong answer, or brought the individual back to the crime scene.

Furthermore, while these investigations ceased after a confession, investigators ignored inconsistencies between the confession and other known facts to the investigators. Interrogation manuals and various recommendations for investigations have suggested just the opposite of these practices (Inbau et al., 2001; Rossmo, 2009). While Garrett's (2010) analysis provided insight into the unfortunate, and in some instances, prohibited conduct that occurred in these particular cases, the findings cannot be generalized to the circumstances of all false confessions.

Verifying a confession's substance with the major facts of the crime, while accounting for leakage and feeding, is one way to employ the checks and balances within the American justice system and assist in minimizing the risk of false confession. Although Garrett's (2010) study had its limitations, his methodology is used, in part, to guide this analysis.

CHAPTER III

METHODOLOGY

The objective of this thesis is to conduct an exploratory descriptive analysis of Leo's (2008) reliability test. Leo's (2008) reliability test identifies three factors that should be considered in order to establish the reliability of a confession. The three criteria center on whether the confession given by the suspect (1) coincides with facts known to the public, (2) is consistent with the facts *not* known to the public, and (3) leads investigators to new evidence. However, there is little instruction on *how* these elements should be weighed. In order to accurately assess the reliability of confessions, several procedures were followed. This chapter discusses the assorted forms of information an investigator may typically encounter and how that data was coded. The method and reasoning behind the classification of factual information is also discussed, along with a brief description of the sample data.

Sample

Data were collected in 2009 and 2010 from a medium-sized Texas police department (approximately 80 sworn officers).¹⁴ The current sample was selected from

¹⁴ IRB exemption request for this analysis was approved Monday May 17, 2010 (EXP2010V7439). The author has also taken the Collaborative Institutional Training Initiative (CITI) required to work with any data which involves human subjects.

a previous study¹⁵ that examined why investigators choose to interrogate a suspect. The police reports were collected from offenses that took place in 2007. Of the original 2,242 police reports, cases in which an interrogation¹⁶ occurred were extracted. There were a total of 104 interrogations conducted. Cases that included an interrogation but not a confession were excluded. Of the 31 remaining cases, only twelve cases could be used. Two of cases involved two confessions. In 18 of the 31 cases a recording could not be located. The remaining interrogation only contained an interview with the victim. Thus, this sample consists of 14 confessions.

All of the 14 interrogations, 12 were conducted at the local police station and were conducted at the local jail because the suspects were already under arrest and booked. Three of the interrogations included individuals who were already arrested. Three of the 12 recordings were audio only, the remainder were videos. Only one interrogation, Case 12, confession b, was not recorded; consequently, the only information available for that particular confession were the facts along with the dependent and independent corroboration found in the written confession. It is not known if any leakage that may have occurred in this confession.

The mean total recorded length of the interrogations was 49:09 minutes, with a median of 47:03 minutes. In order to know how long the interrogation truly was, the time that the suspect took to write his or her statement and any other blank time was subtracted from the total recorded length of the interrogation. The adjusted length mean was 22:44

¹⁵ The sample was selected from a study conducted by Dr. J.P. Blair which was approved by the IRB - EXP2009L511.

¹⁶ The participating police department labeled all contact with suspects as interviews. To be consistent with the intention of this research, henceforth, these "interviews" will be referred to as interrogations.

minutes, with a median of 19:24 minutes. As a result, the arithmetic mean true time of the interrogations was 28:11 minutes, with a median of 34:26 minutes.

Table 1: Interrogation Time Table

Case	Offense	Adjusted Time	True Time	1 st Accusation	1 st Admission
1	Retaliation and assault	1:30	≈41:05	4:10	13:47 22:22
2	Theft	35:11	≈24:28	13:38	15:24
3	Injury to a child	8:46	≈10:57	-	3:35
4a	Assault	5:27	≈57:49	-	4:05
4b	Assault	29:53	≈35:07	-	2:27
5	Theft	20:50	≈39:50	9:44	3:42 11:31
6	Theft	20:32	≈15:10	-	1:46
7	Hit and run	18:15	≈10:32	-	1:38
8	False report	50:19	≈17:18	-	3:22
9	Theft	11:52	≈35:11	15:01	10:53
10	Theft	24:28	≈10:29	-	10:22
11	Sexual assault of a child, theft	1:03:41	≈34:26	4:53	6:10 10:48
12	Theft	2:32	≈9:34	-	2:59
		Mean=22:44	Mean=28:11	Mean=9:29	Mean=7:48
		Median=19:24	Median=34:26	Median=9:44	Median=5:08
		Std dev=24:26	Std dev=14:46	Std dev=4:56	Std dev=6:01

* In this case the offender was charged with two counts of theft.

Not all interrogations had a time of accusation. This was either due to the inherent nature of the interrogation, or the suspect's willingness to provide a statement without any prompting. The latter of the 2 occurred in cases 3, 6, 8, and 10. Case 1 was inherently accusatory because the suspect was already in jail for the offense. There was no need for a confession; however, the suspect asked to talk to an officer about his case and subsequently, provided an admission of guilt. More than half of the first admissions

were made within the initial 6 minutes of the interrogation (Mean 7:48, Median 5:08).

Table 1 displays the findings for each case.

All of the cases had at least some evidence implicating the suspect. However, seven cases out of the 12 (58%) had direct evidence that undoubtedly implicated the suspect prior to the interrogation. Direct evidence that was classified as “undoubtedly implicating” included information such as (1) a video that clearly showed the suspect stealing, (2) voice recordings, from an answering machine, in which the suspect implicated himself within the threatening messages, and (3) being caught in the act by police officers.¹⁷ There were three cases where the suspect was charged with more than one offense.¹⁸

Coding Procedure

Before an interrogation was viewed, detailed notes from the initial police report were reviewed to obtain a general idea of the type of offenses and data that would be examined. During the review of interrogations, five times were recorded: (1) the recorded length of the interrogation on the DVD or audio CD, (2) the time of the first accusation made by the officer, (3) the time of the first admission made by the suspect, (4) any blank time, and (5) the amount of time the suspect was left in the room to write his or her confession. The fourth and fifth pieces of information were recorded to convey the real length of the interrogation. There were many interrogations that had blank time, time when there was no one in the interrogation room, usually at the beginning or the end. In one case, this included the time when the suspect was already in the room, waiting for the interrogator to enter the room. Furthermore, excluding time the suspect used to write the

¹⁷ Refer to Appendix D through Appendix O for the specific physical evidence that was provided in each case.

¹⁸ See Table 1 for more information.

voluntary confession was important because, at this point, the interrogation had ceased and the suspect was no longer being questioned.

In order to assess the reliability of the confessions, the written and oral confessions were extracted from each case file and/or interrogation. All but one of the offenders gave an oral confession, and only eight (62%) also provided a written confession. The substance of each confession was examined for any details that could be corroborated. Pertinent details such as what was stolen, the method in which the crime was committed and unique access or knowledge requirements (i.e., access to security code and system) were identified through analyzing the facts of the case (Inbau et al., 2001). Afterwards, the interrogation, with exception to Case 12, confession b, was examined for any leakage cues that may have occurred.

Subsequently, the reports were studied for the details collected from the confession. If these details were not found in the initial report, but were later verified by the investigators to be true, the details were coded as independent corroborations. For example, if a suspect confessed to a theft and provided the location of the stolen merchandise, this would be considered independent corroboration if the investigators found the merchandise at that particular location. In the circumstances where a detail from the confession could *not* be verified, such as the motive to a crime, that particular detail would not be identified as a fact and, was therefore, excluded from the analysis.

Using the example from above; assume the investigation of the theft had located the stolen merchandise. If the suspect provided the correct location of the merchandise, this detail would be classified as an item of dependent corroboration. The important factor in identifying dependent corroboration is verifying that the investigator did not

leak the information to the suspect. If the information was leaked to the suspect there would be no way to know, with certainty, if the suspect knew that information prior to the leakage. As a result, that detail within the confession could no longer be considered a dependently corroborated fact.

In order to identify leakage cues, the interrogations were examined for any information the investigator mentioned that the suspect did not address earlier in the interrogation. If leakage cues were found in the interrogations, the piece of information that was leaked, if included in the suspect's confession, was no longer considered dependent information. These comparisons are noted and analyzed in a side-by-side comparison¹⁹ to determine whether the confessions are reliable using Leo's (2008) reliability test.

Another factor, related to information collected throughout the investigation, was accounted for within the analysis - the classification of evidence within each case. After the details of the confession had been verified as dependent corroboration, independent corroboration, or discarded due to unconfirmed information, the remaining information was categorized into three different classes of evidence. Class 1 evidence includes physical evidence that directly implicated the suspect. This class of evidence is the most objective, and involved little to no subjective interpretation of the evidence. Class 2 evidence contains victim statements and certain witness statements. Class 3 evidence entailed the remaining witness statements and descriptions.

Class 2 evidence is most likely to be true, but due to the subjective interpretation that occurs during an offense, this evidence cannot be held to the same standard as Class

¹⁹ A side-by-side comparison examines the consistencies and inconsistencies between the known facts of the crime and the facts given in the confession.

1 evidence. In reference to witness statements; witnesses that knew the offender and/or victim are more likely to provide accurate descriptions of the suspect and/or offense due to their familiarity with the participants. Witness statements that were consistent with other independent witness statements were also classified as Class 2 evidence. Class 3 evidence is comprised of eyewitness statements in which the witness did not know the victim or the suspect.

Finding the facts

Throughout the investigation process, investigators are confronted with various types of evidence including victim statements, witness statements, and physical evidence. While physical evidence tends to be more objective (i.e., video recording of an offender stealing), the issue within this analysis is the justification of the personal and subjective accounts of witnesses and victims. In other words, how do we know an individual's personal and subjective interpretation of an event is the truth?

The sample used in this analysis contains multiple cases with direct physical evidence; however, it is important to understand how and why certain statements made by the victims and witnesses are classified as a "fact" of the case. By clarifying which subjective statements are facts and which are not, the justified facts of the confession that have been compared with the case report can be utilized to identify dependent corroboration. Coherence and correspondence theories of truth are drawn on to analyze subjective information investigators obtained throughout the investigation process.

Coherence, the consistency between an individual's beliefs, is divided into two different forms - interpersonal and intrapersonal coherence. Intrapersonal coherence refers to the consistency within an individual's beliefs, while interpersonal derives from

the fact that in order for an individual's beliefs to be true, his or her beliefs must be widely accepted among other individuals. Correspondence, on the other hand, states that beliefs need to be consistent with facts for the beliefs to be true (Kirkham, 1992; Dunwoody, 2009). As Dunwoody explains, "coherence in the form of rationalism and correspondence in the form of empiricism" (2009, p. 117).

In this particular analysis, a witness's or victim's statements are identified as a fact of the case if there is cohesion and there are no contradictions within their statements. When a victim's statement is consistent with a higher class of evidence, Class 1 evidence, the victim's account is more likely to be reliable and be considered a fact. Since witness testimony is known to be one of the least reliable pieces of evidence (Saks & Kuelher, 2005; Innocence Project, 2010), using other, independent witnesses, and victims' statements (if available), is best to determine whether correspondence exists among the various parties. If there is no independent verification among the witness statements, the information collected from those particular witnesses is weaker, and therefore, classified as Class 3 evidence.

Reliability

The examination of information and confessions involves both objective and subjective considerations. However, since this exploratory analysis is more subjective in nature than objective, a simple reliability test was implemented within this analysis. A fellow graduate student randomly chose and analyzed the subjective details of three, approximately 25%, of the provided interrogations. Subjective factors, also known as impressionistic factors, included dependent and independent corroborations found within

the confession. Leaked information was also noted. Of the 23 details identified in the confession, 21 were consistent between the two findings, suggesting 91% reliability²⁰.

It is important to note that this analysis does not compare the information known to the public and the information not known to the public because there was no way to know or identify which pieces of information were known to the public and which were not known. Furthermore, most, if not all, of these cases were not high profile cases. Consequently, there is little reason to believe there would have been critical details about these cases in the news.

The fact that many of these interrogations were conducted when the police had physical evidence (i.e., tape recording of harassment) is not representative in the normal cases an investigator may be assigned. Despite the fact that this analysis does not distinguish what information was withheld from the public, the findings from this study provide a greater insight into the process of confirming the reliability of confessions, information that is found within confessions, and what alterations may be needed to more accurately assess the reliability of confessions.

²⁰ The reliability of this analysis assessed the facts that were dependently corroborated, independently corroborated, and leaked information, if any, from the investigator to the suspect. For more information, see Appendix C.

CHAPTER IV

RESULTS

The total number of true facts collected throughout the investigation was compared to how many details were contained in each confession. Within each confession, details were separated into those that were dependently corroborated, independently corroborated, or leaked. The sample mean of true facts was 12 with a median of 9 and a standard deviation of 5.51. The mean sample of details within the confession was 7 (median= 6, $S_{\text{details}}=3.05$). Approximately 29% (4) of the cases had 80% or more of the total number of true facts in the suspect's confession. Forty-two percent had 70% or more true facts within the suspect's confession. The remaining 57% had less than 70% of the total number of true facts within the suspect's confession. See Table 2 for a breakdown of the results.

Most of the details found within the confession were dependently corroborated and only two cases (14%) had any form of independent corroboration.²¹ Independent information provided to the investigators entailed the location of stolen merchandise in both of these cases. The mean of dependent details provided within the confessions was 5.57 (median=5, $S_{D\text{-details}}=2.95$). Approximately 71% of the cases had 70% or more dependent corroboration, while the remaining 29% had less than 70%. Approximately 43% of the confessions had at least one piece of dependent information excluded from

²¹ See Appendix E and Appendix O for more information.

Table 2: Corroboration Table²²

Case	Details in Confession	Dependent Corroboration	Independent Corroboration	Voided Dependent Corroboration
1	7	4	0	1
2	11	10	1	0
3	5	5	0	0
4a	12	10	0	1
4b	5	5	0	0
5	13	11	0	1
6	7	6	0	0
7	6	5	0	0
8	6	2	0	0
9	9	7	0	2
10	6	5	0	1
11	3	3	0	0
12a	4	2	1	0
12b	5	3	0	unknown*
Mean	7	6	<1	<1
Median	6	5	0	0
Std Dev	3.05	2.95	0.36	0.67

* Only a written confession was provided. Consequently there was no recording of this interrogation and the amount of leakage, if any, could not be determined.

the suspect's confession due to leakage cues.

Inconsistencies

Case 8 was the only offense that contained major inconsistencies in the suspect's confession when compared to the initial report. In the initial report, the suspect claimed

²² Refer to Appendix D through Appendix O for information on the specific true facts of the cases, the corresponding class of evidence, the facts that were included in the confession, and the facts that were leaked to the suspect.

that the offender had slapped her across her face and pushed her to the ground. The police officer who arrived on scene believed that the physical injuries were consistent with the victim's story. However, when she returned to provide a written statement to the investigator, the victim changed her story and stated that the offender did not slap her. Instead, a female, who was with the offender that night, was the individual who fought with the victim.

Due to the inconsistency in the victim's statements, there were only two facts which could be verified. The remaining details of the crime from both statements could not be confirmed. The investigator, who suspected the victim to be covering for the offender, told the victim she could no longer "take her word" on the events that occurred that evening. In the end, the victim provided a written confession claiming that she gave a false report to the police officer.

Other inconsistencies were found in Case 6, Case 7, and Case 12, the only inconsistency found in Case 7 was the location of the keys to the offenders vehicle. In the confession, the offender stated that he left his keys in the truck, but the initial report stated the keys were found at a nearby apartment complex by the pool. In Case 6 and 12, the suspects denied that their significant other was involved in the thefts when evidence suggested their significant others were indeed aware of, and may have participated in the thefts. In Case 6, the offender's significant other did not provide a confession; however, in Case 12, the significant other provided a confession (Confession A).

Leaking and Contamination

The sample contained six cases (43%) that involved information leaked from the interrogator to the suspect. Five out of the six suspects (83%) included the leaked

information in their confession. All the information that was leaked to the suspect, and consequentially included in his or her confession, was not counted as dependent corroboration.

In 3 of the six cases (50%), the information leaked was Class 1 evidence. That is, there was physical evidence to support the leaked information. The remaining 3 cases had Class 2 evidence leaked from the investigator to the suspect. It is important to note that all of these cases had some form of Class 1 evidence. However, despite the fact that the police had direct evidence implicating the suspects, leakage cues can potentially be detrimental to the reliability of a confession.

The cases that leaked Class 2 evidence to the suspect are important to note. In Case 4 there were 11 witnesses along with 2 offenders that were also victimized in an assault with a deadly weapon. Throughout the two interrogations that led to confessions, there were at least two other interrogations occurring concurrently. The investigator had leaked the fact that a BB gun was used to a suspect who had not mentioned the weapon up to that point in time. More importantly, the suspect who provided a confession, in Case 4a, had to repeatedly correct the investigator that the gun was not a real gun, but was actually a BB gun. In another interrogation, the investigator leaked information about the number of individuals who entered the residence and attacked the second offender.

Another issue found in Case 4 entailed the recordings of the interrogations. In these recordings, the suspects are already in the room when the recording was turned on and they remained in the room when the recording was turned off. While there is no reason to think that the interrogator did this purposefully, there is a need for interrogations to be fully recorded. All other recordings collected in this sample showed

the suspect coming in and leaving the interrogation room. However, due to the complexity of the case, and the fact that interrogations were occurring concurrently, minor errors are likely to occur.

In Case 9, the suspect was accused of theft from her workplace. From the beginning of the interrogation, the suspect had openly confessed that she voided various items, which were supposed to be purchased, from her step-father's bill. When the offender "voided" items, she manually overrode the cash register system to remove certain items from the receipt implying that merchandise would be placed back in the store when, those "voided" items remained in her step-father's possession. The offender also stated the approximate date the theft occurred. When the investigator accused the suspect of providing the other discounts that were not approved by her manager, she denied all allegations. The investigator then provided her with the four dates, amounts, and some of the items that were purchased with a manual override without the manger's approval.

Throughout the majority of the interrogation the suspect denied the other thefts. Even when the investigator provided the dates in which the theft occurred, the suspect again, claimed, "on the 15th was the only transaction I did." Soon after, the suspect admitted to the other thefts. When asked how many times she assisted in the theft, the offender stated, "I guess that is in the papers," and then shrugged saying, "I didn't know the people" after the interrogator asked who received the discounts.

There were a couple of issues with this investigation besides the aforementioned leaked information. First, the suspect's initial language was not English and this had contributed to the communication issues between the suspect and the investigator. This

became evident when the suspect repeatedly attempted to discuss the procedures with the investigator. Another problem was how the theft was employed. When the suspect assisted her step-father in stealing from the store, she voided items that were actually placed in her step-father's bag. In the other circumstances, she had been accused of conducting a manual override, giving unauthorized discounts on the merchandise. While it is possible that the suspect manually overrode the items in order to assist other individuals in the theft, the offender admitted to voiding the items for her step-father without any prompt, and the only voided items occurred on the day she claimed her step-father came into the store. This suggests that the former may not be as likely if the latter overrides were not voided.

This leads to the last concern; the investigative research that could have been conducted, but was not, after the interrogation concluded. When the suspect provided an alternative reason for why the output stated "Manual Override," the investigator stated the output would have *probably* displayed a different output. While this may be a reasonable conclusion for the investigator to come to, there was no indication in the report that the investigator verified whether or not there was a different output for the cash register when an a family/friend discount or the alternative explanation was implemented.

Although there were leakage cues found within the current sample, it is imperative to realize that in those cases there was Class 1 evidence that directly incriminated the suspect. Furthermore, the information that was leaked included the Class 1 evidence in 50% of those particular cases. The real concern lies in circumstances in which subjective information (i.e., Class 2 or Class 3 evidence) was leaked.

CHAPTER V

CONCLUSION

In *Miranda v. Arizona* (1966), the Supreme Court held that suspects should be informed of their right to counsel and created safeguard against compelled confessions. Currently, this safeguards' main requirement is that the confession is voluntarily given. While obtaining a voluntary confession is essential to protect against coerced confessions, a right that is recognized in the Constitution; a confession that is voluntary does not necessarily equate to a reliable confession. If a confession is not reliable, one must question whether the confession provided is true. Although false confessions are expected to occur infrequently, their potentially severe consequences prompt the need to minimize these possible miscarriages of justice.

Addressing only one part of wrongful convictions, this thesis has provided an exploratory analysis of Leo's (2008) reliability test to minimize the admission of false confessions. Leo's (2008) reliability test identifies three factors that should be considered in establishing the reliability of a confession; whether the confession given by the suspect (1) coincides with facts known to the public, (2) is consistent with the facts *not* known to the public, and (3) leads investigators to new evidence.

Leo's (2008) reliability test identifies only three items of corroborations that may be found within a confession. Limited Instruction and insight into *how* these elements should be evaluated was provided. As seen in Garrett's (2010) analysis there is

a need to include any leakage cues the investigator may intentionally or unintentionally provided to the suspect. A combination of Leo's (2008) and Garrett's (2010) criteria were employed during the analysis of the interrogations.

After the cohesion and correspondence of facts were verified, the results suggest that 42% of the cases had 70% or more known true facts in the suspect's confession, and 57% with less than 70% of the known true facts in the suspect's confession. More importantly, the pieces of dependent corroboration ranged from 2 to 11. Only two cases had less than 50% of dependent corroboration between the confession and the facts of the case while four cases had at least 90% dependent corroboration between the confession and facts of the case. Independent corroboration was rare and only occurred in financial/theft cases.

The inconsistencies between the confession and facts of the case did not seem to have a major impact. Two of the cases, the inconsistencies pertained to individuals who were involved with the crime. However, the inconsistencies found in Case 8 were apparent to the investigator, and consequently, proceeded with caution for the remainder of the interrogation and case. Leakage cues and contamination occurred, but seemed to be present in more complicated cases (i.e., multiple witnesses, victims, or suspects). More importantly, leakage cues appeared within interrogations that obtained direct evidence of the suspect committing the crime.

When a confession contains a couple of incorrect details and/or an interrogation possesses leakage cues, one might wonder how this affects the reliability of a confession. On the other hand, questioning whether a confession that possesses verified dependent information and no inconsistencies can be classified as a true confession is another

circumstance to consider. To answer the latter, according to this analysis, the confession is most likely reliable. The strength of the reliability would increase if the suspect provided independent information that was later confirmed by investigators.

In order to answer the former, more research on the reliability of confessions is needed. Inbau et al. (2001) suggest that minor inconsistencies do not automatically indicate a false confession and that, “the same motives for initially withholding a confession also affects missing and erroneous information within the confession” (p. 437). The results of this analysis support the former; if the investigation has collected Class 1 evidence, the confession is likely to be reliable even if there may be a couple of inconsistent facts or facts withheld. The underlying assumption in these circumstances is that there is more weight given to the physical evidence in the case and less on the reliability and content of the actual confession.

The results also suggest that all of the suspects gave a reliable confession with the possible exception of Case 9. The suspect of Case 9 provided detailed information about the assistance of theft for her step-father but the suspect did not provide dependent facts that were not leaked within her confession. There is little doubt she had assisted her step-father in the accused theft and it is plausible that she assisted in the other thefts. However, one is left to question if she gave a true confession or if she simply overstated her involvement in the crimes.

Complications with Leo’s Test

Reliability tests are a common preventative measure recommended by many scholars (Goodman, 2006; Sangero, 2007; Thomas, 2007; Leo, 2008), but Leo’s (2008) reliability test, like many others, only provide a broad and vague “test”. Proposing

different criteria that should be weighed while examining confessions, offers, at minimum, an abstract idea of what *could* be included within a confession. In fact, the reliability test does not propose any practical applications of the test nor have there been any implementations of a specific reliability test. Nevertheless, reliability tests are a meaningful recommendation that could assist in preventing the admission of false confessions into evidence and consequently, a miscarriage of justice.

Various complications became apparent after the data were collected. The first issue was determining what information could be used as a valid fact of the offense. This became more difficult to determine as more witnesses, victims, and offenders were involved with varying accounts of the offense. This problem was resolved by using the coherence and correspondence theories of truth.

After establishing what information was valid, the details of the confession had to be categorized into dependent corroboration, independent corroboration, voided corroboration due to leaked information, or omitted altogether. Leo's reliability test accounts for independent and dependent corroboration; however, it does not acknowledge or provide any guidance pertaining to confessions that contain information that had to be voided due to leaked information. More importantly, the reliability test does not discuss how to proceed with leaked information from the investigator to the suspect. In this particular instance, Garrett's (2010) study guided and confirmed how these situations should be handled. Information that was provided by the suspect without any prompt from the investigator is of utmost importance. Accordingly, any information that is leaked to the suspect, that is eventually included in his or her confession, can not be

included as dependent corroboration. There would be no way to confirm that the suspect knew this information prior to the leakage cue.

Determining what information was leaked presented another predicament. If an investigator has direct evidence of a suspect committing a crime, is information leaked if the investigator reveals the direct evidence in the investigator's possession? For instance, the offender in Case 10 was seen, in a video and confirmed by the victim, wearing a cowboy hat during the night of his offense. When the offender was brought in for questioning, the investigators asked the suspect what he was wearing the night of the theft. The description he provided of his clothes matched what the investigators knew, but he left out the cowboy hat. The investigator then asked if he was wearing anything on his head; the offender said a bandana. After that statement, one of the investigators picked up the cowboy hat on the table, asked a question, followed by a statement, that the offender was wearing that cowboy hat the night of the offense.

Technically, the detail was leaked since the offender did not mention the cowboy hat until after the investigator told him there was evidence that showed the suspect wearing the cowboy hat. There were two factors to consider. First, the video showed the offender wearing that cowboy hat the night of the offense. So if that information was known to be true, what harm could be done by leaking that information? On the other hand, one had to consider if there was *no* evidence that implicated him wearing the hat. Or as seen in other cases, the information leaked was supported with Class 2 evidence; evidence that does not directly implicate the suspect. What if the information was based off of an eyewitness description with no other validation? The

uncertainty that stemmed from these questions required the analysis to omit any information that was leaked; whether or not the information came from direct evidence.

Conceptually, there were issues in determining the final results. In this scenario, reliability can be visualized on a continuum. For instance, a confession can be identified as more reliable when independent corroboration is present because the confession led the investigators to new information that confirmed their previous theory. However, how does one compare the reliability between two confessions that do *not* have independent corroboration; or more generally, *how* reliable are the confessions? One could argue that the three classes of evidence offered in this analysis, could provide a guideline in determining where the confession would fall on the reliability continuum. For instance, a confession that supplies primarily Class 1 and Class 2 evidence would be more reliable than a confession that offers Class 2 and Class 3 evidence.

Even still, one must question what confidence can be placed in this method? Like many other methods pertaining to false confession risk factors, this reliability test cannot quantify the reliability of a confession.

Problems with Garrett's Analysis

While Garrett's (2010) study was the only study, known to the author, to explore the substance of confessions, it still lacked the structure to be replicated. No methodology was outlined within his article that indicated there was a systematic approach to analyzing the substance of the confessions. He merely stated, "to assess the substance of these false confessions...regarding their content, pretrial materials, trial materials and the confessions themselves were sought for all forty who falsely confessed..." (2010, p. 1061). There was no discussion pertaining to *how* he chose to

examine the confessions, only the materials that were attempted to be gathered. He merely inspected the cases for common features among the cases.

Nevertheless, the examination provided valuable information pertaining to characteristics that were found in false confessions and the surrounding processes. Garrett's (2010) study found that information only the real offender could know was incorporated into false confessions. He identified inconsistencies found with the false confessions when compared to police reports and a closer analysis revealed many leakage cues in the interrogations that were consequently used within the individual's confession. As a result, Garrett suggested that information that was provided, without any prompt from the investigator, should be of utmost importance.

Data Issues and Limitations

There were many problems that arose during the course of the analysis. The first of these relates to the data. Not all of the cases were complete and/or available for reviewing. There were 19 cases that were excluded from the sample because the recordings of the interrogations and confessions could not be located. As seen in Case 12, only one of the two recorded interrogations could be found.

Another limitation with the data was the actual sample size. There were only 14 confessions. This is not a representative sample and, as a result, these findings may not necessarily be generalized to other confessions. Even if all of the interrogations and confessions were found, the number of cases would only be 31. Furthermore, the sample was extracted from *one* medium sized police department instead of various agencies. Inbau et al. (2001) suggest that interrogations should be collected from at least three different agencies to be representative of interrogation practices.

Another concern was the lack of empirical studies that have been able to examine the reliability of confessions. Garrett's (2010) study is the only analysis, known to the author, which examined the substance of confessions. Garrett's (2010) analysis offered an interpretation of already known false confessions; however, another limitation that limits generalization of his findings. The lack of an established method, along with the innate subjective interpretation of this type of research, made the analysis more difficult to implement.

Future Research

In order to better understand the reliability of confessions, future research needs to replicate this study. Future empirical studies should also collect a larger sample from a variety of police departments and account for information known to the public and not known to the public, a distinction this analysis was unable to make. Since complex cases increase the possibility an error is made, it would be important to collect cases with more serious charges so we could better understand and identify complexities an investigator may face.

One of the largest limitations of Leo's (2008) reliability test is that it does not quantify the reliability of a confession. One can only compare the sample confessions to theoretical examples that would exist on a reliability continuum. Consequently, prospective analyses should attempt to quantify how reliably a confession can be measured. Knowing that independent corroboration is more likely to lead to a reliable confession along with the three classes of evidence provided in this analysis, may offer a better method for determining whether the class of evidence can determine the true reliability of confessions.

Despite these limitations, this exploratory analysis has accomplished its objective in providing a better understanding of Leo's (2008) reliability test of confessions. Leo provides a broad and vague test that should be implemented to determine whether a confession is reliable or not. The results and methodology used within this analysis, offers a valuable insight into how Leo's (2008) reliability test could potentially be implemented.

APPENDIX A

18 USC SECTION 3501. ADMISSIBILITY OF CONFESSIONS

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such

defendant was without the assistance of counsel when questioned and when giving such confession. The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: Provided, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

APPENDIX B

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

APPENDIX C

Internal Reliability Test

Table C1: Reliability Test

Case	Details in Confession	Analysis 1	Analysis 2
5	-White Lawn truck with weed eaters	D	D
	-2 stolen weed eaters	D	D
	-Victims followed offenders in their silver car	D	D
	-Hispanic male (offender) talked to victim	D	D
	-Female Hispanic in car with male Hispanic	D	D
	-Offender returned weed eaters to victim	D	D
	-Male offender had tattoo on left ring finger	D	D
	-Bike stolen from local bar	D	D
	-Bike was a specialized 21 speed bike	D	D
	7	-Location of accident	D
-Hit a telephone pole and lines were down		D	D
-Wallet, with driver's license, was located in the middle console		D	D
-3 men were seen fleeing the accident site		D	D
-Witness had called after 3 men who hit the telephone pole		D	D
10	-Cab ride specified city	D	D
	-Ride home was from a football game	I	D
	-Ran into apartment complex before paying for the cab fare	D	D
	-Fare was approximately \$70	D	D
	-White male approximately 6' 4"		D
	-Suspect was wearing orange shirt, blue jeans, and a bandana	D	D
	-Suspect was wearing a black cowboy hat	L	L

APPENDIX D

Case 1

Table D1: Case 1 Facts

Crime: Assault and Retaliation			
True Facts	Class Level	Confession	Leaked
Lump on victim's head	1		
Offender physically assaulted victim	1	X	
Offender not willing to come outside to talk with police	2	X	
Offender's father willing to pay for emergency medical bills	1	X	X
Victim took a trip to Alaska after assault	1	X	
Offender called victim repeatedly during trip to Alaska	1	X	
Offender left 6 threatening messages (admitting to crime)	1	X	
Message 1: Offender admits to pushing victim	1		
Message 2: Offender describes hatred towards victim	1		
Message 3: "I fucking hate you"	1		
Message 4: Offender describes how he loves hating the victim, and that the victim should change her number	1		

Message 5: “You know I’m fucking crazy and I know who you care about”, offender calls victim a “stupid fucking cunt”	1	
Message 6: Threatens to kill all of her loved ones if she puts him in jail	1	X
Offender intoxicated while leaving messages	1	
*Admitted to arresting officers that he was wondering “what took so long” for the officers to arrest him	2	

Physical evidence in Case 1:

- Email between the victim and the offender’s father and the victim
 - An agreement that specified the father would pay for the victim’s medical bills in exchange for the victim dropping charges
- Recording of the threatening voice messages the offender left on the victim’s answering machine.

APPENDIX E

Case 2

Table E1: Case 2 Facts*

Crime: Theft of Property (\$500-\$1,500)			
True Facts	Class of Evidence	Confession	Leaked
4 cell phones stolen	1	X	
Theft occurred Monday evening	1	X	
Offender knew alarm code	2	X	
Offender worked for cleaning company	2	X	
Offender had male accomplice	1	X	
Male accomplice ID	2	X	
Back storage room door open	1	X	
Offender came in the room with lights on	1	X	
Lights were turned off	1	X	
Offender came in with the lights off	1	X	
Male came into back room	1	X	
Male offender stole phones	1	X	
Location of stolen phones	1	X	

* Written confession provided with report

Physical evidence in Case 2 included:

- Video recording of the theft
- The stolen phones (located after the offender told the investigators where the cell phones could be found)

APPENDIX F

Case 3

Table F1: Case 3 Facts*

Crime: Injury to a Child

True Facts	Class of Evidence	Confession	Leaked
Offender was watching child night of abuse	2	X	
Child abused with leather belt	1	X	
Bruises and cuts on back, thigh, and arms	1	X	
Design of belt imprinted on the child's skin	1		
Offender told the mother of the child when she came home from work	2	X	
Hit child at least 3 times	1	X	

* Written confession provided with report

Physical evidence in Case 3 investigation:

- Photos of the physical injury the child sustained from the abuse

APPENDIX G

Case 4

Table G1: Case 4 Facts*

Crime: Assault with a Deadly Weapon				
True Facts	Class of Evidence	Confession 1	Leaked	Confession 2
Apartment complex location	1	X		
Apartment number	1	X		
Time of assault	2	X		
Offender 1 entered Offender 2's apartment and took his stolen items back	3	X		
Offender 1 took Offender 2's shoes for collateral	2	X		
Description of stolen shoes	1			X
Offender 2 enters Offender 1's apartment via patio door	3	X		X
Offender 1 and Offender 2 fought	1	X		X
Offender 1 was assaulted by 3 men (one being Offender 2)	3	X	X	
Offender 2 had a BB gun	2	X	X	X
Fight occurred from the bedroom, through the hallway into the kitchen	1	X		
Damaged walls (with blood) in hallway	1			

Kitchen is disarray (signs of a scuffle)	1		
Offender 1 hit Offender 2 with a pot	2	X	X
Offender 1 stabbed Offender 2 in the back with a knife	1	X	
Offender 1 fled scene with girlfriend	2	X	
Offender 2 fled scene	2		
Blue Durango seen leaving the apartment with at least 2 men	3		
White bloody shirt left outside of apartment building	1		
Handle of a knife with the blade broken off	1		
8-inch skillet outside of the apartment building	1		

Case 4 had the following physical evidence:

- A white bloody shirt
- Photos of the broken patio door
- Photos of the apartment where the offenders fought
 - Damaged hallway walls
 - Blood smeared on hallway walls
- A wooden knife handle with the blade broken off

APPENDIX H

Case 5

Table H1 : Case 5 Facts*

Crime: Theft under \$1,500

True Facts	Class of Evidence	Confession	Leaked
Theft located at near-by gas station	2		
White Lawn truck with weed eaters	2	X	
2 stolen weed eaters	1	X	
Followed offenders in a 4-door grey vehicle	2		
Victims followed offenders in their silver car	2	X	
Offender pulled over in apartment complex	2		
Hispanic male (offender) talked to victim	2	X	
Hispanic female in car with Hispanic male	2	X	
Offender returned weed eaters to victim	1	X	
Male offender had tattoo on left ring finger	2	Confirmed	
Victim noted license plate	2		
Vehicle registration matched to Hispanic female	1		

Hispanic male with tattoo on left ring finger was in Hispanic female's apartment	1	
Bike stolen from local bar	2	X
Bike was a specialized 21 speed bike	1	X
Bike was found at local pawn shop	1	X
Employee of local pawn shop gave a description matching the suspects	2	
Another bike stolen near downtown	2	X
2 nd bike stolen was a green Murray Mountain bike	1	X
2 nd bike was found at a different local pawn shop	1	
Employee of second pawn shop gave descriptions matching the two suspects	2	
Pawn receipts (4)	1	

* Written confession provided with report.

As seen in Table 7, the only items of physical evidence collected were four pawn receipts. However, there were many pieces of evidence that directly implicated the suspect. The witness to the theft of the trimmers interacted with the suspect long enough to give a detailed description of the suspect and the license plate of the car he and his accomplice were driving. After further investigation, officers were able to confirm the identity of the suspect by cross-referencing the license plate with the last known residence and the local utility center. While this was not physical evidence, the accumulation of the aforementioned facts was classified as level 1 evidence.

APPENDIX I

Case 6

Table I1: Case 6 Facts

Crime: Theft under \$1,500

True Facts	Class of Evidence	Confession	Leaked
Theft was committed by an employee in the tire department	1	X	
Put money on gift card for groceries	2	X	
“Refunded” special order purchases on gift card	1	X	
Used random membership accounts	2	X	
Issued 3 or 4 cards	2	X	
Used gift cards for groceries at various stores	1	X	
5 gifts cards were used (1 did not go through)	1		
Copies of transactions	1		
Husband was not involved	2	X	

The physical evidence collected in Case 6:

- Video of the offender falsifying the transaction
- Paper copy of the transactions made
- Video of the offender using the gift cards in various other stores

APPENDIX J

Case 7

Table J1: Case 7 Facts*

Crime: Duty on Striking Fixed Object (Hit and Run)			
True Facts	Class of Evidence	Confession	Leaked
Location of accident	1	X	
Hit a telephone pole and lines were down	1	X	
Wallet, with driver's license, was located in the middle console	1	X	
3 men were seen fleeing the accident site	3	X	
Witness had called after 3 men who hit the telephone pole	2	X	
3 offenders ran into local apartment complex	3		
Keys to the truck were found by the apartments' poolside	2		

* Written confession provided with report

The physical evidence within Case 7 included:

- Damage to the telephone poll
- Damage to the offender's truck

APPENDIX K

Case 8

Table K1: Case 8 Facts*

Crime: False Report of Assault-Family Violence			
True Facts**	Class of Evidence	Confession	Leaked
Date and location of the "assault"	2	X	
Victim was waiting for her boyfriend to come home	2	X	
Boyfriend came home with female	2		
Victim was hit across the face	2		
Victim's left cheek was red (from slap)	1		
Cut on victims knee and foot (from falling)	1		
Bruising on victim's wrist	1		
Victim was pregnant	1		
Boyfriend was the offender	3		
Other female was the offender	3	X	

* Written confession provided with report

** In this case, the victim originally stated her boyfriend was the offender, however, when she came in for questioning at a later date, she changed her story and said it was actually the female who had hit her. Consequently, due to the lack of internal cohesion in the victim's statement/confession, and inability to differentiate which facts were true and which were false, facts from both statements were provided.

Physical evidence for Case 8 are:

- Physical injuries to the victim

APPENDIX L

Case 9

Table L1: Case 9 Facts

Crime: Theft of Property (\$500-\$1,500)			
True Facts	Class of Evidence	Confession	Leaked
Offender worked as cashier for the company	1	X	
20% discounts were given to employee friends and family	1	X	
Discount requires manager approval and customer service forms	1	X	
Offender voided items that were supposed to be purchased	1	X	
Voided items for step-father	2	X	
The theft was for less than 10 items	2	X	
Theft occurred around tax-free weekend	2	X	
Conducted a manual override on multiple occasions	2	X	X
Occurred on four dates	1	X	X

Physical evidence for Case 9 included:

- Print out of all the transactions under the offenders employee number with an output of "Store Manager Price Override"

APPENDIX M

Case 10

Table M1: Case 10 Facts*

Crime: Theft of Service			
True Facts	Class of Evidence	Confession	Leaked
Cab ride from City1 to City2	1	X	
Ride home was from a football game	2	X	
Stopped at a gas station for a drink and cigarettes	1		
Took off running into apartment complex before paying for the cab fare	2	X	
Fare was approximately \$70	2	X	
Suspect was W-male approximately 6'4"	3	Matched	
Suspect was wearing orange shirt, blue jeans, and a bandana	2	X	
Suspect was wearing a black cowboy hat	1	X	X
Video of offender buying drink and cigarettes from the gas station	1		
Receipt from gas station with suspect's credit card info buying drink and cigarettes	1		
Black cowboy hat, matching the offender in the video, in the suspect's apartment	1		

* Written confession provided with report

Physical evidence collected in Case 10's investigation comprises of:

- Video footage of the offender at the gas station buying the drink and cigarettes
- Credit card receipt with the suspect's information

APPENDIX N

Case 11

Table N1: Case 11 Facts*

Crime: Sexual Assault of a Child/Theft (\$20,000-\$100,000)			
True Facts	Class of Evidence	Confession	Leaked
Offender driving stolen car	1		
2 stolen debit cards (to pay for various hotel rooms in 3 different cities)	1	X	
Accompanied with a minor	1	X	
Offender had sexual relations with the minor for at least 2 months	2	X	
1 of 2 beds used with bodily fluid found on pillow cases, fitted comforter, flat sheet, fitted sheet, and mattress pad	1		
Receipt for a hotel-using one of the victim's credit card	1		
Broken sunglasses in trash	1		
Pawn tickets in stolen car	1		
Location of pawned items to pay for trip (3 cameras and 1 laptop)	1		

* In this particular case, the offender was caught at the hotel with the female minor.

APPENDIX O

Case 12

Table O1: Case 12 Facts*

Crime: Theft of Service				
True Facts	Class of Evidence	Confession 1	Confession 2	Leaked
Missing wallet at 7-11	1	X		
Offender works at 7-11 and was working the night of the theft	1	X		
Supplied CC account information to accomplice	2	X	X	
Bank account statement indicating 3 unknown purchases	1			
\$75 spent at 7-11	1	X		
\$304 on E-bay for an X-box	1		X	
\$35 on E-bay for a 3-stone wedding ring	1		X	
PayPal account number and corresponding address	1		X	
Location of the wedding ring	1	X**		

* Written confession provided with report

**Information was given during a different time than the interrogation

Physical evidence collected in Case 12 entailed the following:

- Bank statement with all of the unknown purchases (x-box, ring set, 7-11)
- PayPal account information and address of suspect 2
- Video of suspect 1 taking the CC information

REFERENCES

- (2010) *Innocence Project*. Retrieved from: <http://www.innocenceproject.org/>
- Admissibility of Confessions, 18 USC section 3501 (1968).
- Alpert, G. P., & Noble, J. J. (2009). Lies, true lies, and conscious deception: Police officers and the truth. *Police Quarterly*, 12(2), 237-254. doi: 10.1177/1098611108327315
- Arizona v. Fulminante*, 499 U.S. 279 (1991).
- Alying, C. (1984). Corroborating confessions: An empirical analysis of legal safeguards against false confessions. *Wisconsin Law Review*, 1984, 1121-1204. Retrieved from: <http://www.lexisnexis.com/hottopics/lnacademic/>
- Berghuis v. Thompkins*, 560 U.S. ____ (2010).
- Blair, J. P. (2005a). A test of the unusual false confession perspective using cases of proven false confessions. *Criminal Law Bulletin*, 41, 127-144. Retrieved from: <http://www.reid.com/pdfs/20060309.pdf>
- Blair, J. P. (2005b). What do we know about interrogations in the United States? *Journal of Police and Criminal Psychology*, 20(2), 44-57. doi: 10.1007/BF02852652
- Blair, J. P. (2007). The roles of interrogation, perception, and personality in producing compliant false confessions. *Psychology, Crime & Law*, 13(2), 173-186. Retrieved from: <http://www.informaworld.com/smpp/content~db=all~content=a773408309>
- Bok, S. (1979). *Lying: Moral choice in public and private life*. New York: Vintage Books.
- Brown v. Mississippi*, 297 U.S. 278 (1936).
- Cassell, P. G. (1998). Protecting the innocent from false confessions and lost confessions and from Miranda. *Journal of Criminal Law and Criminology*, 88, 497-556.
- Ceci, S. J. (1994). Cognitive and social factors in children's testimony. In B. Sales, & G. R. VandenBos (Eds.), *Psychology in litigation and legislation*. (11-54). Washington, DC: American Psychological Association. doi: 10.1037/11103-001

- Ceci, S. J., & Bruck, M. (1993). Suggestibility of the child witness: A historical review and synthesis. *Psychological Bulletin*, *113*(3), 403–439. doi:10.1037/0033-2909.113.3.403
- Colorado v. Connelly*, 479 U.S. 157 (1986).
- Colorado v. Spring*, 479 U.S. 564 (1987).
- Corley v. United States*, 556 U.S. ____ (2009).
- Dickerson v. United States*, 530 U.S. 428 (2000).
- Drizin, S. A., & Leo, R. A. (2004). The problem of false confessions in the post-DNA world. *North Carolina Law Review*, *82*, 891–1007. Retrieved from: <http://www.lexisnexis.com/hottopic/academic/>
- Drizin, S. A., & Reich, M. J. (2004). Heeding the lessons of history: The need for mandatory recording of police interrogations to accurately assess the reliability and voluntariness of confessions. *Drake Law Review*, *52*, 619–646. Retrieved from: <http://www.lexisnexis.com/hottopic/academic/>
- Dunn, A. R. (1995). Questioning the reliability of children's testimony: An examination of the problematic events. *Law and Psychology Review*, *19*, 203–215. Retrieved from: <http://www.lexisnexis.com/hottopic/academic/>
- Dunwoody, P. T. (2009). Theories of truth assessment criteria in judgment and decision making. *Judgment and Decision Making*, *4*(2), 116-125.
- DePaulo, B. M., Lindsay, J. J., Malone, B. E., Muhlenbruck, L., Charlton, K., & Cooper, H. (2003). Cues to Deception. *Psychological Bulletin*, *129*(1), 74-118. doi:10.1037/0033-2909.129.1.74
- DePaulo, B. M., & Pfeifer, R. L. (1986). On-the-job experience and skill at detecting deception. *Journal of Applied Social Psychology*, *16*, 249-267. Retrieved from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1559-1816.1986.tb01138.x/abstract>
- Fare v. Michael C.*, 442 U.S. 707 (1979).
- Findley, K. A. (2008). Can we reduce the amount of wrongfully convicted people without acquitting too many guilty?: Toward a new paradigm of criminal justice; How the innocence movement merges from crime control and due process. *Texas Tech Law Review*, *41*, 133-173. Retrieved from: <http://www.lexisnexis.com/hottopic/academic/>
- Fikes v. Alabama*, 352 U.S. 191 (1957).

- Forrest, K. D., Wadkins, T. A. & Larson, B. A. (2006). Suspect personality, police interrogations, and false confessions: Maybe it is not just the situation. *Personality and Individual Differences*, 40, 621-628. doi:10.1016/j.paid.2005.09.002
- Frazier v. Cupp*, 393 U.S. 821 (1969).
- Gallegos v. Colorado*, 370 U. S. 49 (1962).
- Garrett, B. L. (2010). The substance of false confessions. *Stanford Law Review*, 62(4), 1051-1118.
- Goodman, J. (2006). Getting to know the truth: Analysis and argument in support of the Reid technique of interview and interrogation. *Maine Bar Journal*, 21, 20-25.
- Greenwald v. Wisconsin*, 390 U.S. 519 (1968).
- Grisso, T. (1981). *Juveniles' waiver of rights: Legal and psychological competence*. New York: Plenum.
- Grisso, J. T & Pomicter, C. (1977) Interrogation of juveniles: An empirical study of procedures, safeguards, and rights waiver. *Law & Human Behavior*, 1(4), 321-342.
- Gudjonsson, G. H. (1987). A parallel form of the Gudjonsson Suggestibility Scale. *Personality and Individual Differences*, 5, 303-314. Retrieved from: <http://www.ncbi.nlm.nih.gov/pubmed/3664038>
- Gudjonsson, G. H. (2003). *The psychology of interrogations and confessions: A handbook*. Hoboken, NJ: Wiley.
- Gudjonsson, G. H., Sigurdsson, J. F., Asgeirsdottir, B. B., & Sigfusdottir, I. D. (2007). Custodial interrogation: What are the background factors associated with claims of false confession to police. *The Journal of Forensic Psychiatry & Psychology*, 18(2), 266-275. doi: 10.1080/14789940701284312
- In re Gault*, 387 U.S. 1 (1967).
- Haley v. Ohio*, 332 U. S. 596 (1948).
- Hall, G. S. (1980). Children's lies. *American Journal of Psychology*, 3, 59-70. Retrieved from: <http://www.press.uillinois.edu/journals/ajp.html>
- Horselenberg, R., Merckelbach, H., Smeets, T., Franssens, D., Peters, G. Y., & Zeles, G. (2006). False confessions in the lab: Do plausibility and consequences matter? *Psychology, Crime & Law*, 12(1), 61-75. doi: 10.1080/1068310042000303076

- Henkel, L. A., Coffman, K. A. J., & Dailey, E. M. (2008). A survey of people's attitudes and belief about false confessions. *Behavioral Sciences and the Law*, 26, 555-584. doi:10.1002/bsl.826
- Huff, C. R. (2002). Wrongful conviction and public policy *The American Society of Criminology* 2001 Presidential address. *Criminology*, 40, 1-18. doi:10.1111/j.1745-9125.2002.tb00947.x
- Illinois v. Perkins*, 496 U. S. 292 (1990).
- Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2001). *Criminal interrogation and confessions* (4th ed.). Gaithersburg, MD: Aspen.
- Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2009). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior*, doi: 10.1007/s10979-009-9188-6
- Kassin, S. M., & Gudjonsson, G. H. (2004). The psychology of confessions: A review of the literature and issues. *Psychological Science in the Public Interest*, 5(2), 33-67. doi:10.1111/j.1529-1006.2004.00016.x
- Kassin, S. M., & Kiechel, K. L. (1996). The social psychology of false confessions: Compliance, internalization, and confabulation. *Psychological Science*, 7, 125-128. doi:10.1111/j.1467-9280.1996.tb00344.x
- Kassin, S. M., & McNall, K. (1991). Police interrogations and confessions: Communicating threats and promises by pragmatic implication. *Law and Human Behavior*, 21, 233-251. Retrieved from: <http://ejournals.ebsco.com/Issue.asp?IssueID=837178>
- Kassin, S. M., & Wrightsman, L. (1985). Confession Evidence. In S. M. Kassin & L. Wrightsman (Eds.), *The psychology of evidence and trial procedure* (pp. 67-94). Beverly Hills, CA: Sage.
- Kirkman, R. L. (1992). *Theories of truth: A critical introduction*. Cambridge, MA: The MIT Press.
- Lassiter, G. D., Diamond, S. S., Schmidt, H. C., & Elek, J. K. (2007). Evaluating videotaped confessions: Expertise provides no defense against the camera-perspective effect. *Association for Psychological Science*, 18(3), 224-226. doi:10.1111/j.1467-9280.2007.01879.x
- Leo, R. A. (1994). Police interrogation and social control. *Social & Legal Studies*, 3(1), 93-120.
- Leo, R. A. (1996). Inside the interrogation room. *Journal of Criminal Law and Criminology*, 86, 266-303. doi: 10.2307/1144028

- Leo, R. A. (2001). False confessions: Causes, consequences, and solutions. In S. D. Westervelt & J. A. Humphrey (Eds.), *Wrongly convicted: Perspectives on failed justice* (pp. 36-54). New Brunswick, NJ: Rutgers University Press.
- Leo, R. A. (2008). *Police interrogation and American justice*. Cambridge, Massachusetts: Harvard University Press.
- Lynumn v. Illinois*, 372 U.S. 528 (1963).
- Mallory v. United States*, 354 U.S. 449 (1957).
- Maryland v. Shatzer*, 559 U.S. 1213 (2010).
- Massiah v. United States*, 377 U.S. 201 (1964).
- Miles, K. L., Powell, M. B., Gignac, G. E., & Thomson, D. M. (2007). How well does the Gudjonsson Suggestibility Scale for children, version 2 predict the recall of false details among children with and without intellectual disabilities. *The British Psychological Society*, 12, 217-232. doi: 10.1348/135532506X116750
- Milhizer, E. R. (2006). Rethinking police interrogations: Encouraging reliable confessions while respecting suspects' dignity. *Valparaiso University Law Review*, 41, 1-108. Retrieved from: <http://www.lexisnexis.com/hottopic/lnacademic/>
- Milhizer, E. R. (2008). Confessions after Connelly: An evidentiary solution for excluding unreliable confessions. *Temple Law Review*, 81, 1-64. Retrieved from: <http://www.lexisnexis.com/hottopic/lnacademic/>
- Mincey v. Arizona*, 437 U.S. 385 (1978).
- Miranda v. Arizona*, 384 U.S. 436 (1966).
- Ofshe, R. (1989). Coerced confessions: The logic of seemingly irrational action. *Cultural Studies Journal*, 6, 6-15.
- Ofshe, R. J., & Leo, R. A. (1997). The social psychology of interrogation: The theory and classification of true and false confessions. *Studies in Law, Politics, and Society*, 16, 189-251.
- Oregon v. Elstad*, 470 U.S. 298 (1985).
- Oregon v. Mathiason*, 429 U.S. 492 (1977).
- Payne v. Arkansas*, 356 U.S. 560 (1958).

- Redlich, A. D., & Goodman, G. S. (2003). Taking responsibility for an act not committed: The influence of age and suggestibility. *Law and Human Behavior*, 27, 141-156.
- Richardson, G., Gudjonsson, G. H., & Kelly, T. P. (1995). Interrogative suggestibility in an adolescent forensic population. *Journal of Adolescence*, 18, 211–216. doi:10.1006/jado.1995.1014
- Rochin v. California*, 342 U.S. 165 (1952).
- Rossmo, D. K. (2009) *Criminal Investigative Failures*. Boca Raton, FL: CRC Press.
- Russano, M. B., Meissner, C. A., Narchet, F. M., & Kassin, S. M. (2005). Investigating true and false confessions within a novel experimental paradigm. *Psychological Science*, 16, 481-486.
- Saks, M. J. and Koehler, J. K. (2005). The coming paradigm shift in forensic identification science. *Science*, 309(5736), p 892-895. doi: 10.1126/science.1111565.
- Sangero, B. (2007). Miranda is not enough: A new justification for demanding “strong corroboration” to a confession. *Cardoza Law Review*, 28, 2791-2828. Retrieved from: <http://www.lexisnexis.com/hottopics/lnacademic/>
- Slobogin, C. (2007). Lying and confessing. *Texas Tech Law Review*, 39, 1-18. Retrieved from: <http://www.lexisnexis.com/hottopics/lnacademic/>
- Sigurdsson, J. F., & Gudjonsson, G. H. (1994). Alcohol and drug intoxication during police interrogation and the reasons why suspects confess to the police. *Addiction*, 89, 985–997. doi:10.1111/j.1360-0443.1994.tb03358.x
- Sigurdsson, J. F., & Gudjonsson, G. H. (1996) The psychological characteristics of ‘false confessors.’ A study among Icelandic prison inmates and juvenile offenders. *Personality & Individual Differences*, 20(3), 321-329.
- State v. Gaven*, N.W.2d (2002).
- State v. Kelekolio*, 849 P.2d (1993).
- Stuntz, W. J. (1989). Waiving rights in criminal procedure. *Virginia Law Review*, 75, 761-842. doi: 10.2307/1073136
- Spano v. New York*, 360 U.S. 315 (1959).
- The Justice Project. (2008). Electronic recording of custodial interrogations: A policy review. Washington, D.C. 1-24. Retrieved from: http://www.thejusticeproject.org/wp-content/uploads/polpack_recording-fin2.pdf

- Thomas, G. C. (2007). Confessions and police disclosure: Regulating police deception during interrogations. *Texas Tech Law Review*, 39, 1293-1319.
- Vrij, A. (2000). *Detecting lies and deceit: The psychology of lying and the implications for professional practice*. New York: John Wiley.
- Westervelt, S. D., & Humphrey, J. A. (Eds.). (2001). *Wrongly convicted: Perspectives on failed justice*. New Brunswick, NJ: Rutgers University Press

VITA

Patricia A. Hom attended Texas State University-San Marcos where she obtained a Bachelor of Science in Criminal Justice with Sociology and Forensic Psychology minors. After graduating with her Bachelors of Science in Criminal Justice in 2008, Ms. Hom started the Criminal Justice master's program at Texas State. She was employed as a research assistant at the Center for Geospatial Intelligence and Investigation under the direction of Dr. Kim Rossmo and Dr. J. Pete Blair.

Permanent Email: patricia_a_hom@yahoo.

This thesis was typed by Patricia A. Hom.