

## CHAPTER 15

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# Distinguishing between True and False Confessions

The impact of a confession on a jury in a capital case is so powerful that a defense attorney who does not attempt to suppress it risks charges of providing inadequate counsel. While there are legal safeguards afforded a defendant at trial to refute the voluntariness or trustworthiness of a professed confession, a false confession should be recognized long before it is entered into evidence against an innocent defendant. Ultimately the responsibility of determining whether a confession is true or false falls upon the investigator who obtained it.

A widely known critic of police interrogation addressed an audience and stated that in his years of reviewing confessions he has seen both noncoerced reliable confessions and confessions from innocent people who were convinced by the police that they were guilty. He went on to state that if he distributed ten of those confessions to everyone in the audience and had them place the confessions into two piles, five of which were true confessions and five of which were false, that everyone could do it accurately.<sup>1</sup> Perhaps in the theoretical world the task of distinguishing between true and false confessions is obvious. However, in the real world tens of thousand of hours are spent each year during suppression hearings to resolve that very issue.

There is no question that interrogations have resulted in false confessions from innocent suspects. However, the reported incidence of false

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<sup>1</sup>R. Ofshe, "I'm Guilty If You Say So," in *Convicting the Innocent*, ed. Donald S. Connery (Cambridge, Mass.: Brookline Books, 1996), 95.

confessions varies widely.<sup>2</sup> Even critics of police interrogation agree that most confessions are true. At issue, therefore, is identifying those characteristics that might help identify confessions that are likely to be false.

To identify a false confession, it might be tempting to look directly at the confession itself. However, for psychological and legal reasons, a confession should not be separated from the interrogation that produced it. To understand factors that may result in a false confession we will begin by looking at categories of false confessions. As a second topic, factors influencing the voluntariness and trustworthiness of a confession will be presented, as well as the importance of corroborating a confession. We will end this chapter with an overview of research and studies that have investigated the issue of false confessions.

## CATEGORIES OF FALSE CONFESSIONS

### Coerced Compliant Confessions

An allegation of a coerced compliant confession occurs when the suspect claims that he confessed to achieve an instrumental gain. Such gains include being allowed to go home, bringing a lengthy interrogation to an end, or avoiding physical injury. In a review of 350 trials occurring during the twentieth century involving persons believed to have been innocent, 49 of those cases (14 percent) involved a possible false confession. Of those 49 confessions, the coerced compliant was the most prevalent category (45 percent).<sup>3</sup>

An example of a coerced compliant confession was related by a gang member who was interviewed by one of the authors of this book. The member explained that at age 14, while under the influence of drugs, he shot his best friend in the head. During his interrogation he maintained his innocence until the detective beat him with a phone book. After enduring

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<sup>2</sup>The most extreme example of this is the statement that “police routinely elicit false confessions.” See R. Leo and R. Ofshe, “The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation,” *Journal of Criminal Law and Criminology* 88 (1998), 429.

<sup>3</sup>Reported in A. Bedau and M. Radelet, “Miscarriages of Justice in Potentially Capital Cases,” *Stanford Law Review* 40 (1987): 21–179.

this for a period of time, he “gave up” and led the detective to where he had hidden the gun.

As this example illustrates, not all coerced compliant confessions are false. However, even if a confession is undoubtedly true, it may still be suppressed if it was illegally obtained. The issue involved in a coerced compliant confession is what motivated the suspect to confess. The mere presence of a motivation or incentive in conjunction with a confession does not remove the subject’s “free will,” nor does it render the confession involuntary. Indeed, the only true “voluntary” confession is one that the suspect offers independent of any police questioning.

Consequently, almost all trustworthy confessions are the result of police questioning and, oftentimes, interrogation. The interrogation process must provide some incentive or motivation for these suspects to choose to tell the truth. There are legally permissible incentives to persuade a suspect to confess and others that are not permissible because they are apt to cause an innocent person to confess.

### **Voluntary False Confessions**

Criminal offenders, whose guilt is unknown to the police, will rarely surrender themselves and confess their guilt. The instinct for self-preservation stands in the way. An investigator should view with considerable skepticism any “conscience-stricken” confession. Especially following well-publicized and heinous crimes, it is common for individuals who had nothing whatsoever to do with the crime to come forward and confess. A. Bedau and M. Radelet reported that 34 percent of false confessions fall within this category.

The following is an example of a voluntary false confession. A high school reported a burglary in which electronic equipment was stolen from a band room. A student came forward and told the police that another student was bragging about the burglary. This second student was subsequently interviewed and readily admitted responsibility for the burglary. His confession, however, contained incorrect information about the crime and he offered a feeble excuse as to what became of the electronic equipment, which he could not produce. Further investigation of this case revealed that this student was in no way involved in the burglary and theft of the electronic equipment. He stated that his motive for offering the false confession was to impress a girlfriend.

In some of these situations the voluntary false confessor is suffering from an underlying organic or functional mental disorder.<sup>4</sup> In other cases the confession may stem from an otherwise normal person's effort to incur a temporary police detention in order to gain some other deliberately conceived objective. Among these possibilities are instances where an individual may merely be seeking free transportation back to the state or community where the crime was committed. In other instances the purpose may be that of being incarcerated, either for a brief or a relatively long period, in order to evade police consideration of him as a suspect for a much more serious crime. Furthermore, a suspect with guilty knowledge of a crime may come forward and confess to protect a loved one. Then, too, there are times when the only motive of a voluntary false confession is the publicity and esteem the confessor seeks to achieve.

### **Coerced Internalized Confessions**

Coerced internalized confessions are confessions that are allegedly false and occur when the investigator successfully convinces an innocent suspect that he is guilty of a crime he does not remember committing. This condition has been referred to in the literature as the "memory distrust syndrome"<sup>5</sup> or "faulty memory syndrome" and, according to Bedau and Radelet, accounts for 21 percent of false confessions.

There are three categories of suspects who may claim that a faulty memory affected the trustworthiness of their confessions. The first is the guilty suspect who has given a voluntary and trustworthy confession but who is anxious to discredit the validity of his confessions. In the second category is the suspect who is guilty of the crime but legitimately does not remember committing it. Even though during his confession he accepts responsibility for the crime, the confession must be considered untrustworthy because it is not derived from factual recollections. A final category is

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<sup>4</sup>Mental illnesses associated with voluntary false confessions include psychosis, endogenous depression, and Munchausen syndrome. For a review of the latter, see Riadh Abed, "Voluntary False Confession in a Munchausen Patient: A New Variant of the Syndrome?" *Irish Journal of Psychological Medicine* (March 1995).

<sup>5</sup>G. Gudjonsson and J. MacKeith, "False Confessions—Psychological Effects of Interrogation: A Discussion Paper," in *Reconstructing the Past: The Role of the Psychologist in Criminal Trials*, ed. A. Trankell (Stockholm: P.A. Norstedt and Soners Forlag, 1982).

the innocent suspect who, of course, has no recollection of committing the crime but is convinced through the interrogation process that he must be guilty and, therefore, accepts responsibility for committing the crime through a confession.

A claim that a confession was coerced internalized is an inviting defense for a guilty defendant who chooses to retract his confession. Unlike the coerced compliant confession, where the defendant must claim that the investigator used threats or promises to extract a confession, with the coerced internalized confession all the defendant has to do is take the position that at the time he confessed he believed that he was guilty of the crime. As a defense strategy, this is similar to the “temporary insanity plea” that a defendant may claim when the prosecutor has a very compelling case.

The most often cited example to support the incidence of coerced internalized confessions is the 1986 case of Tom Sawyer.<sup>6</sup> Tom’s next door neighbor’s body was found nude in her bed, murdered by manual strangulation. Sawyer was considered a suspect because of the “nervous demeanor” he displayed during initial questioning. Following a full day’s work, Tom was invited to the police station to make a formal statement. This questioning started at 4:00 P.M. and culminated in a confession following a polygraph examination at 8:00 A.M. the next morning. During questioning, Sawyer revealed that he had an anxiety disorder and had also been severely alcoholic for more than a decade. After treatment through Alcoholics Anonymous, he had maintained sobriety for the previous 12 months. Following an interrogation, which centered on “why Tom didn’t remember the killing,” the suspect accepted responsibility for the murder. During his confession, the suspect suggested that because the aftershave lotion he used contained alcohol, it might have caused some sort of post-alcoholic-related blackout during which time he must have committed the murder. As part of his confession, he also related specific corroboration of the crime, such as the fact that he vaginally and anally sexually assaulted the victim and that he removed one of the victim’s kitchen knives from the scene of the crime. A subsequent autopsy, however, revealed that the victim was not sexually assaulted. In addition, witnesses reported that the kitchen knife had been missing for some time before the murder occurred.

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<sup>6</sup>Reported in R. Ofshe, “Coerced Confessions: The Logic of Seemingly Irrational Action,” *Cultic Studies Journal* 6, 1 (1989): 1–15.

Partly based on the faulty corroboration, Sawyer's confession was suppressed.<sup>7</sup>

### **The Nonexistent Confession**

This is a statement made by a suspect in which there is no acceptance of responsibility for committing the offense. While the statement may contain information that is incriminating (such as a false alibi, acknowledgments of opportunity or access, or unreasonable explanations for being in possession of incriminating evidence), there is no statement, involuntary or otherwise, where the suspect acknowledges committing a crime.

To illustrate the nonexistent confession consider the following case. The owner of a small retail clothing store experienced a theft from a deposit. There were only two employees who worked at the time of the theft. The employee who reported the theft was the manager and had been at the store for more than a year. The other employee had only been working at the store for several months and was younger. Based on these investigative facts, the younger employee was interrogated. After about 20 or 30 minutes of interrogation she broke down and said, "Listen, I'll pay the money back, but I didn't steal it!" Despite further efforts, the investigator could not persuade her to acknowledge stealing the missing money.

Because this employee did not confess, it was suggested that the manager be given a polygraph examination, if for no other reason than to eliminate her as a possible suspect. However, the manager's polygraph examination indicated deception and a subsequent interrogation of the manager resulted in a full confession. In her written statement the manager explained that she had been stealing money from the store for several months and was concerned that her thefts may be discovered. She believed that by "setting up" the younger employee for the one reported theft, the owner would also blame that employee for the other thefts.

The younger employee, who turned out to be innocent, certainly did not confess and her willingness to repay the stolen funds cannot be considered a false confession. Similarly, a defendant who maintains his innocence but agrees to plead guilty to a crime cannot be considered as a

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<sup>7</sup>It should be noted that the judge suppressed Sawyer's confession based on coercion as well as violation of the suspect's *Miranda* rights.

false confessor if, at some later time, his innocence is proven; he never offered a confession.

## CONFESSION VOLUNTARINESS

### Coercion

As previously noted, no confession following interrogation is completely voluntary in the psychological sense of the word. When applying a legal characterization of voluntariness, a common concept is, “overbearing the suspect’s free will.”<sup>8</sup> At what point an investigator’s words, demeanor or actions are so intense or powerful as to overcome the suspect’s will cannot be universally defined. Each suspect must be considered individually, and consideration must be given with respect to such factors as his previous experience with police, his intelligence, mental stability, and age.

To illustrate the ambiguous nature of overbearing a suspect’s free will, consider a burglary suspect who, during interrogation, is presented with the following factual information: the suspect’s fingerprints were found inside the victim’s home, a search of the suspect’s apartment revealed articles stolen from the burglary, and a surveillance camera filmed the suspect carrying the stolen property into his apartment. Given this substantial physical evidence of guilt, has the suspect’s free will to maintain his innocence been impaired? In light of the overwhelming evidence, any reasonable suspect would perceive no choice but to confess. However, to argue that the suspect’s confession to the burglary ought to be suppressed on the grounds that his will was overborne would be clearly ridiculous.

As this example illustrates, even though overbearing a suspect’s free will could, in a broad sense, incorporate cognitive elements, the legal essence of coercion involves real or threatened physical activities. These tactics include harming the suspect or subjecting him to threats of such harm. A similar claim may be made if the investigator threatens the suspect with inevitable real consequences (for example, “With the evidence we

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<sup>8</sup>Ironically, the concept of “overbearing a person’s will” has no foundation in psychology. Provided a person is free to make a choice—any choice—he is still in possession of his will. See the amicus curiae brief filed by the American Psychological Association in *Connelly vs. U.S.*, U.S. 85–660 (March 1986).

have there is no doubt that you are going to prison”). Promises of leniency, where the suspect is reassured that he will face less severe consequences if he confesses, may also fall under the category of a coerced confession because physical activities are referenced (such as freedom to leave or less prison time).

Psychologically, a promise of leniency has a much lesser persuasive impact on a person’s decision to confess than when the promise is coupled with a threat. That is, under ordinary circumstances a suspect who is improperly told that because this is his first offense he will not go to jail, under ordinary circumstances, will not be sufficiently motivated to confess. However, when this stated promise is followed by the threat—“If you just sit there and say nothing I will not only charge you with this offense but also with obstruction of justice, which involves a mandatory prison sentence”—the suspect now has a real and tangible motive to offer a confession. Because this incentive could cause an innocent person to confess, it is improper.

As a general guideline, areas that are considered impermissible as topics of threats or promises during an interrogation address *real consequences*. Real consequences affect the suspect’s physical or emotional health,<sup>9</sup> personal freedom (arrest, jail, or prison), or financial status (losing a job or paying large fines). It should be emphasized that merely discussing real consequences during an interrogation does not constitute coercion. It is only when the investigator uses real consequences as leverage to induce a confession through the use of threats or promises that coercion may be claimed. Our long-standing position has been that interrogation incentives that are apt to cause an innocent person to confess are improper.

An example of a confession that clearly resulted from coercion involved a female who was interrogated concerning the theft of money from her employer. Three off-duty male police officers who were moonlighting as security personnel for the company conducted the interrogation. They sat the employee down in a small room, stood over her, and purposefully exposed their firearms. All three officers took turns asking accusatory questions, including threats of going to jail, but she maintained her

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<sup>9</sup>An example of a tactic that threatens a suspect’s emotional health was revealed by a criminal investigator who operated in a Middle East country. Prior to an interrogation, the suspect is asked to complete a written psychological test. The thrust of the interrogation is that the suspect’s test scores indicate that he is on the verge of a psychiatric breakdown that can only be avoided through confession. Furthermore, if the suspect does not confess, the test results will be used to send him to a mental institution.

innocence. The impetus for the confession was when one officer stated that if she did not confess they would spread the rumor around town that she was a thief and she would never work again. At this point she agreed to sign a confession written by one of the officers.

After being discharged for theft, the employee sued the employer for false imprisonment and wrongful discharge. We were subsequently contacted to offer expert testimony that the interrogation was proper. Needless to say, after reviewing the case we were unable to defend the voluntariness of the confession. It is not known whether this employee did steal the money, but the manner in which the confession was obtained cannot be justified.

### **Permissible Incentives for a Confession**

The purpose for interrogation is to persuade a suspect whom the investigator believes to be lying about involvement in a crime to tell the truth. The only way this can be accomplished is by allowing the suspect to believe that he will benefit in some way by telling the truth. Ordinary people do not act against self-interest without at least a temporary perception of a positive gain in doing so. There are a number of possible benefits for telling the truth that an investigator can offer a suspect during an interrogation that, in no way, address the real consequences the suspect faces and, therefore, would not be apt to cause an innocent person to confess. These include:

- The suspect will experience internal relief by reducing guilt feelings associated with committing the crime.
- The suspect will be respected by loved ones for having the courage to face the truth.
- By telling the truth the suspect will learn from his mistake and not commit worse crimes in the future.

For some suspects it is unlikely that these “personal redemption” incentives offer sufficient motivation to confess when a lengthy prison sentence is the probable outcome. In fact, many suspects develop more tangible incentives as part of their decision to tell the truth. These incentives may include the following thoughts:

- a vengeance motive whereby the suspect believes that he “beat the system” by distorting or withholding certain information relative to his crime
- a belief by the suspect that he is likely to suffer consequences regardless of a confession and by offering the confession he has control over the presentation of his crime to loved ones (for example, motives or amount of planning)
- an effort to disprove erroneous assumptions about his crime, such as possible exaggerated claims by the victim or involvement in crimes he did not commit
- a belief that the suspect will receive a lesser sentence if he fully cooperates, confesses, and expresses remorse for his crime

Communicating these incentives in a legal manner is an important consideration of confession admissibility. Courts will generally frown upon confessions wherein the investigator directly tells the suspect, “Listen, Joe, if this is the first time you did something like this I’ll talk to the judge and make sure that he gives you probation.” This statement clearly reflects a promise of leniency. In contrast, the following statement is ambiguous: “Joe, if this is something that happened on the spur of the moment, that would be important to include in my report.” In this example, the suspect is allowed to attach his own interpretation as to why it would be important to tell the truth. The reason he selects could be any of the previously mentioned incentives. The key is that the suspect arrives at the reason through his own thought process. Perhaps of more importance, such an ambiguous statement would not cause an innocent suspect to believe that it would somehow be in his best interest to confess.

The distinction between statements that outright threaten or promise the suspect and statements that are ambiguous in nature is considered insignificant by some opponents of contemporary interrogation. One writer refers to such ambiguous statements as “communicating promises and threats by pragmatic implication.”<sup>10</sup> The chain of logic is as follows: (1) threats and promises may cause false confessions, (2) ambiguous statements may be perceived as a threat or promise, therefore (3) ambiguous statements cause false confessions.

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<sup>10</sup>S. Kassin and K. McNall, “Police Interrogation and Confessions: Communicating Promises and Threats by Pragmatic Implication,” *Law and Human Behavior* 15 (1991), 233–251.

The fallacy of this argument lies within defining the concept of “threats and promises” as they relate to a suspect’s decision to confess. Not every belief that results in a favorable feeling is the result of a “promise,” nor is every anxiety state necessarily the result of a “threat.” For example, if during a homicide interrogation the investigator places blame onto the victim for causing the suspect to become angry and lose emotional control, could that statement cause some suspects to believe that they might be sentenced less severely? Does the investigator’s sympathetic and understanding approach imply to some suspects that a judge will also be understanding and sympathetic? Will the investigator’s intentional avoidance of mentioning negative consequences lead some suspects to believe that the consequences of their crime are not that severe? In truth, we cannot answer any of these questions with definite certainty, but we would have to acknowledge the possibility that some suspects may form these beliefs. However, the important question to ask is, Would an innocent suspect be likely to form these beliefs and decide to confess because of them? To this, the answer is clearly “No!”

All persuasive efforts center on a basic concept: saying the right thing to the right person. Because persuasion requires interpretation and perceptual distinctions, it must be oriented toward the right audience to be effective. Advertisers spend thousands of dollars every year identifying characteristics about potential buyers of a product to identify to whom to expose the persuasion and what message to deliver. For example, researchers may discover that the “right” target for a toothpaste advertisement is someone who is relatively educated, single, interested in dating, and self-conscious about his appearance. People falling outside this profile would not be persuaded to buy the toothpaste with the message presented. This difference introduces an extremely important element of the persuasion process: a person’s expectations and orientation significantly impact the way in which an ambiguous message is perceived.

To understand the distinction between messages that are implied versus stated outright, it must be remembered that innocent and guilty suspects have completely different expectations and orientations during an interrogation. Consequently, when they are exposed to the same ambiguous message they will interpret it differently. An innocent suspect who is told that it is important to explain the reason behind committing the crime will predictably reject the investigator’s entire premise and explain that he had no involvement in the crime whatsoever. A guilty suspect who hears exactly this same message may start to entertain possible benefits as to why

it might be important to tell the truth. Because of the fundamental differences between innocent and guilty suspects, they respond differently to the investigator's persuasive efforts during an interrogation, provided those efforts do not explicitly state promises of leniency in exchange for a confession or threaten inevitable harm absent a confession.

In summary, the concept of pragmatic implication is meaningless unless it can be demonstrated that innocent criminal suspects would be likely to interpret the investigator's statement as such a significant incentive (a promise of leniency or threat of inevitable consequence or physical harm) as to cause a false confession. There are absolutely no data, empirical or statistical, to support such a claim.

## **Duress**

To evaluate the probable effect of interrogation on the voluntariness of a suspect's confession requires the assumption that the suspect is functioning in a normal psychological and physiological manner. When fatigue, withdrawal, hunger, thirst, or a craving for other biological needs serve as the *primary incentive* for a confession, duress may be claimed.

Holding a suspect who is addicted to heroine and waiting until he shows signs of withdrawal before starting the interrogation would be an example of a circumstance that may invite a defense claim of duress. This argument would be strengthened considerably if the investigator had also promised methadone treatment, to relieve his distress, if the suspect confessed. When considering duress, the severity of physical discomfort must be taken into consideration. For example, a suspect who claims that he was not allowed to smoke until after he confessed has not offered a compelling argument of duress.

The most common circumstance supporting a claim of duress is the length of an interrogation. At what length an interrogation approaches the level of duress associated with an involuntary confession is individually defined. A guideline to follow in this regard is whether or not investigators intentionally prolonged the interrogation and kept the suspect isolated as an interrogation tactic to "break his will." Such a claim may be difficult to refute if the suspect was purposefully moved miles away from contact with others and left alone for extended periods of times between questioning sessions. Similarly, duress may be alleged if a tag-team approach is used

during an interrogation, where one investigator questions the suspect for hours and is then relieved by a second “fresh” investigator.

Many guilty suspects who confess after several hours of interrogation will claim: “The pressure was so intense I would have said anything to bring it to an end.” A properly conducted interrogation that lasts three or four hours, for the ordinary suspect, is certainly not so long as to cause the levels of emotional or physical distress that constitute duress. However, if physical coercion was involved, even a 30-minute interrogation may warrant such a bona fide claim. The following guidelines are offered to evaluate claims of duress:

1. Can the excessive length of interrogation be explained by the suspect’s behavior? For example, did the suspect offer a series of different versions of events before offering the first incriminating statement? A suspect who has maintained his innocence and made no incriminating statements for eight or ten hours has not offered any behavior to account for this lengthy period of interrogation.
2. Did the suspect physically or verbally attempt to seek fulfillment of biological needs? If so, were such requests denied or used as leverage to obtain the confession (for example, “You can use your asthma inhaler after you confess”). A suspect who made no such verbal requests or physical efforts to bring the interrogation to a close has a much weaker case. In this instance, it would appear that only in retrospect, after reviewing the interrogation in his mind (or with an attorney), did the suspect decide that the conditions of the interrogation were intolerable.
3. Were there any threats made with respect to denying the suspect basic biological needs unless he confessed (for example, “You’re not leaving here until you tell me what happened—no matter how long it takes”).

## **Summary**

For a confession to be admissible as evidence, it must essentially be the product of the suspect’s free will. All interrogations that result in a confession involve an incentive. There are legally permissible incentives, which would not be apt to cause an innocent person to confess, and others

that are not permissible, such as threats to the suspect's physical well-being.

How incentives are communicated during an interrogation forms an important basis as to the perceptual choices available to interpret that message. A direct statement such as, "If you don't confess right now, I'm locking you up until you decide to tell the truth!" leaves little room for interpretation—the suspect, regardless of his guilt, has to believe that he will suffer negative consequences through his silence. Such is not the case with the following statement: "If this is something that you didn't plan out long in advance and it just happened on the spur of the moment, I want to be able to include that in my report." While this ambiguous statement may cause the guilty suspect to perceive some benefit of confessing, upon hearing this same message an innocent suspect is not apt to decide that it would somehow be in his best interest to falsely confess to committing the crime.

## **CONFESSION TRUSTWORTHINESS**

Whether a confession is voluntary is a separate and distinct legal test from whether it is trustworthy; an involuntary confession may be true or false. However, for a confession to be considered trustworthy the admission of criminal involvement must be factual. In this section we will look at voluntary confessions, coerced internalized confessions, the impact of trickery and deceit, and the influence of psychological impairment or diminished mental capacity on the trustworthiness of a confession. The section will conclude with guidelines to help identify whether a confession is trustworthy.

### **Voluntary Confessions**

The trustworthiness of voluntary confessions that occur independent of any police questioning should be viewed with skepticism. A genuine conscience-stricken confessor will give the appearance of a person who has been broken in health and spirit as a result of a troubled conscience, depending on the crime for which he is confessing. Perhaps with the exception of the mentally ill person, the false confessor is apt to be rather

untroubled in appearance and conduct. He readily acknowledges all elements of the crime and fully accepts the pending consequences for the crime—in short, he lacks the emotional turmoil and expressions of remorse associated with the true confessor who comes forward voluntarily.

One method for checking the authenticity of a voluntary confession, or one that seems to be the result of mental illness, is to introduce some fictitious aspects of the crime and test whether the suspect will accept them as actual facts relating to the occurrence. This tactic presupposes that all the true facts of the case have not already been disclosed to the subject and media. As stated elsewhere in this text, such disclosures should be withheld for this very reason, as well as for other considerations.

The following guidelines may provide assistance in assessing whether a voluntary confession is trustworthy:

1. Evaluate the suspect's stated motives for confessing. Almost all truthful voluntary confessors will be able to articulate a specific and reasonable motive that led them to come forward. Consider, for example, a hit-and-run suspect who turns himself in after first being questioned by his wife, who is aware that a similar accident has been reported on the front page of the local newspaper, and that her husband's vehicle recently sustained front-end damage. Conversely, a person offering a voluntary false confession is apt to respond in vague terms as to why he decided, on this date and at this time, to confess. His explanation may reference a guilty conscience or that he felt that he deserves punishment.
2. If the confessor first told a loved one about his crime, this would be typical of a truthful confession. Often, in fact, the loved one is instrumental in convincing the suspect to come forward and confess. It would be suspicious, however, if a police investigator is the only person the suspect has confessed to when he had earlier opportunities to talk to family members, friends, or a clergyman about his crime.
3. When the suspect is able to provide independent corroboration of his crime, it must certainly be true. Consider, for example, the actual case of a distraught man in Japan who shot and killed his wife and three children; he then loaded their bodies into the family car and drove to the police station and confessed. The truthfulness of a confession should be questioned, however, when the suspect is unable to provide any corroboration beyond the statement, "I did it."

### Coerced Internalized Confessions

Defendants have argued with increased frequency that their confessions are false because, at the time of the interrogation, they were persuaded by the investigator that they must be guilty of the offense under investigation. In other words, they claim to be victims of faulty memory syndrome. It should be noted that, at the time of this writing, coerced internalized confessions represent a hypothesis. Researchers have clearly demonstrated, without a doubt, the existence of coerced compliant and voluntary false confessions. However, the validity of cases involving claims of coerced internalized false confessions are based on circumstantial evidence and clearly controversial.

The concept of faulty memory is familiar to us all. For example, two adult siblings may be discussing the same vacation they took as children. One sibling mistakenly attributes an event from a different vacation to the one being discussed and, through distorted recollections, eventually both siblings falsely associate that event with the wrong vacation. Not surprisingly, under low motivational circumstances, false recollections have been demonstrated to occur. Consider the laboratory study where college students were persuaded by evidence that they had pushed the ALT key on a computer keyboard when, in fact, they had not.<sup>11</sup> Interrogation opponents frequently cite this study as proof that coerced internalized confessions can occur. However, it is a tremendous leap in logic to go from persuading someone that he accidentally pushed a computer key when he did not to persuading a criminal suspect that he intentionally killed his neighbor or sexually molested his child when he did not.

Putting the faulty memory syndrome into perspective, as it relates to criminal interrogation, there are three important prerequisites to consider when dealing with the claim of a coerced internalized confession. The first is that the suspect must believe, at some level, that it is possible for him to have committed the crime. To illustrate this concept the reader may ask himself, "Is it possible that last night I killed my next door neighbor but have no memory of it?" The vast majority of readers would reject this possibility. In the true case of a coerced internalized confessor, this inclination for self-doubt suggests some underlying psychopathology that goes beyond a simple lack of self-confidence or esteem—

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<sup>11</sup>S. Kassin and K. Kiechel, "The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation," *Psychological Science* 7, 3 (1996), 125–128.

through introspection the suspect must believe that he is capable of committing the act. As a second prerequisite, the reader must account for his memory loss. This may involve alcoholic or drug-induced blackouts, multiple personality disorder, or amnesic episodes resulting from a neurological disorder such as epilepsy. As the final prerequisite, during the interrogation an investigator must have laid the foundation for the suspect to ultimately accept responsibility for a crime that he does not remember committing.

Considering these prerequisites in order, certainly some innocent suspects may have a motive, and others even a propensity, to commit the crime under investigation. Second, some individuals do suffer from mental or physical health problems that produce periods of amnesia. The likelihood of both of these conditions existing within the same suspect is, at best, rare—but not implausible. Under this circumstance, the investigator must be certain not to add the third prerequisite, which is to suggest that the suspect committed the crime but has no recollection of doing so.

While this concept has been addressed frequently in this text, it is worth repeating again—at no time should an investigator attempt to persuade a suspect that he is guilty of a crime he claims he does not remember committing. It is one thing to express high confidence in a suspect's guilt (which will not cause an innocent person to confess), but it is quite another to make statements designed to convince a suspect, who claims to have no recollection of committing the crime, that he must be guilty of the offense.

Absent these criteria, a defendant's claim of a coerced internalized confession should be viewed with extreme skepticism by the court. However, the ultimate test of the trustworthiness of any confession will be the degree and kind of corroboration included within the confession itself.

### **Trickery and Deceit**

Many of the interrogation techniques presented in this text involve duplicity and pretense. To persuade a guilty suspect to offer an admission against self-interest, the investigator may have to falsely exaggerate his confidence in the suspect's guilt, sympathize with the suspect's situation, and display feelings toward the suspect or his crime that are far from genuine. The investigator may suggest a face-saving motive for the commission of the crime, which he knows is not true. In some cases an

investigator may falsely imply, or outright state, that evidence exists that links the suspect to the crime.

As these examples illustrate, trickery and deceit represent a continuum of false representations ranging from demeanor and attitude to outright lies concerning the existence of evidence. This latter behavior has been most criticized. Specifically, critics of interrogation argue that lying to a suspect about incriminating evidence may cause an innocent suspect to offer a false confession.<sup>12</sup>

The important question to answer is whether it is human nature to accept responsibility for something we did not do in the face of contrary evidence. Upon checking a sales receipt a customer may discover that the clerk rang up the same item twice. Under this circumstance, certainly the customer would challenge the evidence (the sales receipt) rather than pay for something not purchased. When Internal Revenue Service correspondence indicates an error in a tax return that the taxpayer knows did not occur, he will challenge the evidence rather than pay the requested back taxes. The ordinary citizen is outraged and indignant when presented with supposed “evidence” of an act he knows he did not commit.

These common experiences involve relatively minor consequences. The same principle applies, to an even greater extent, when the fictitious evidence implicates the suspect in a crime that may involve years of incarceration. Consider an innocent rape suspect who is falsely told that DNA evidence positively identifies him as the rapist. Would this false statement cause an innocent person to suddenly shrink in the chair and decide that it would be in his best interest to confess? Would a suspect, innocent of a homicide, bury his head in his hands and confess because he was told that the murder weapon was found during a search of his home? Of course not!

However, consider that such false statements were then used to convince the suspect that regardless of his stated innocence, he would be found guilty of the crime and would be sentenced to prison. Further, the investigator tells the suspect that if he cooperates by confessing, he will be afforded leniency. Under these conditions it becomes much more plausible that an innocent person may decide to confess—not because fictitious evidence was presented against him, but because the evidence was used to

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<sup>12</sup>This view is strongly expressed in S. Kassin, “The Psychology of Confession Evidence,” *American Psychologist* (March 1997), 221–231. See also J. Skolnick and R. Leo, “The Ethics of Deceptive Interrogation,” *Criminal Justice Ethics* (Winter/Spring 1992), 3–12.

augment an improper interrogation technique (the threat of inevitable consequences).

It is our clear position that merely introducing fictitious evidence during an interrogation would not cause an innocent person to confess. It is absurd to believe that a suspect who knows he did not commit a crime would place greater weight and credibility on alleged evidence than his own knowledge of his innocence. Under this circumstance, the natural human reaction would be one of anger and mistrust toward the investigator. The net effect would be the suspect's further resolution to maintain his innocence. This presumes that the investigator does not engage in any of the previously mentioned improper interrogation techniques that would be apt to cause an innocent person to confess. This statement also assumes that the suspect is not mentally, emotionally, or intellectually impaired.

The authors offer these recommendations with respect to introducing fictitious evidence during an interrogation:

1. Introducing fictitious evidence during an interrogation presents a risk that the guilty suspect may detect the investigator's bluff, resulting in a significant loss of credibility and sincerity. For this reason, we recommend that this tactic be used as a last resort effort. Clearly, there are disadvantages to introducing evidence, real or fictitious, during early stages of an interrogation.
2. This tactic should not be used for the suspect who acknowledges that he may have committed the crime even though he has no specific recollections of doing so. Under this circumstance, the introduction of such evidence may lead to claims that the investigator was attempting to convince the suspect that he, in fact, did commit the crime.
3. This technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime.

### **The Influence of Psychological Factors on Confession Trustworthiness**

Research suggests that there are identifiable psychological differences between suspects who confess during an interrogation and those who do

not.<sup>13</sup> These differences appear to be intrinsic, as opposed to social or economic. A study of 182 interrogations found that variables such as age, race, gender, or economic background did not predict interrogation outcomes.<sup>14</sup>

That there are fundamental intrinsic psychological differences between suspects who confess and those who do not is hardly a surprising finding. The mere fact that a guilty suspect confessed because he was susceptible to the interrogation technique used or was somewhat careless or unlucky (being caught with stolen property in his car) should, in no way, impact on the decision to admit the confession. While it may be unfair, some guilty suspects experience greater levels of guilt and anxiety over their crimes and are thus more likely to confess than other suspects who perceive the entire interrogation process as a game. A good example of this inequity within the criminal justice system is that suspects with prior criminal records are more likely to invoke their *Miranda* rights than first-time offenders.

It is important to point out that studies investigating these characteristics consist entirely of suspects who were believed to be guilty. There is no question that some guilty suspects have a low stress tolerance, lack self-confidence, and more easily form dependencies on others. Many of these individuals may have legitimate psychiatric diagnoses or personality disorders. However, the question left unanswered by researchers is whether any of these psychological characteristics offer a meaningful prediction as to which ones may lead to a false confession.

It is an unfortunate reality that many people guilty of criminal acts also suffer from personality disorders, including poor impulse control and substance abuse. When the majority of these people confess, their confession represents the truth. It is therefore an insupportable argument to state that the mere presence of a psychological disorder caused a false confession. While underlying psychopathology, in some cases, may contribute to a false confession, something else within the interrogation process must have occurred to stimulate the false confession (for example, coercion or duress).

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<sup>13</sup>G. Gudjonsson, "Compliance in an Interrogative Situation: A New Scale," *Personal Individual Differences* 10, 5 (1989): 535–540.

<sup>14</sup>R. Leo, "Inside the Interrogation Room," *Journal of Criminal Law and Criminology* 86, 2 (1996), 266–303.

Certainly there are some suspects who suffer from such severe mental disorders as to cause them to be inherently unreliable sources of information. Such people include individuals who are obviously suffering from delusions or hallucinations. Individuals who are significantly mentally retarded and unable to distinguish between truth and falsehood would also fall into this category. However, absent severe diminished mental capacity, the causal relationship between false confessions and underlying psychopathology becomes much less clear. Consider the following case involving a 14-year-old girl with no psychiatric history and an average IQ.

The girl baby-sat for grandchildren of an elderly couple on a number of occasions. Following one of the visits the grandmother claimed that some jewelry was missing from her bedroom and immediately called the police. That same night the 14-year-old girl was visited by the police and she gave them permission to search her room and clothing; her parents were not home. The missing jewelry was not found. The girl was then transported to the police department, where she was interrogated. According to the girl, the investigator told her that because she was a juvenile her record would be sealed for life and that the only way to avert public scandal against her parents would be to sign a confession, which she did. The confession was merely an acknowledgment that "I, K.K., do admit stealing two emerald earrings from the premises of. . . ." There was no corroboration of her "confession" whatsoever.

The girl never acknowledged to anyone, including the police, that she stole the jewelry. She simply signed a prepared confession to that effect; this resulted in a guilty plea and court supervision. It is not known if this girl did, in fact, steal the jewelry. However, the suspect's young age or vulnerability to persuasive techniques is not at issue. The nature of the interrogation involved a clear promise of leniency (that the record would be sealed) and threats (avoiding public scandal). Furthermore, this is an example of a nonexistent confession. A signed statement—"I did it"—does not constitute a confession.

A review of anecdotal accounts reporting false confessions includes a high proportion of mentally handicapped suspects.<sup>15</sup> A suspect with legiti-

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<sup>15</sup>It must be recognized that a defense attorney may present his perfectly normal client as suffering from a mental handicap in an effort to persuade the judge to suppress a confession. Because this statement, or testimony to that effect, is on the record, the case could be included in the anecdotal reports compiled by Radelet, Bedau, Leo, Ofshe, and others anxious to discredit interrogation.

mate mental disabilities generally lacks assertiveness and experiences diminished self-confidence. In many cases he will have a heightened respect for authority and experience inappropriate self-doubt. Each of these traits, *if actually present*, may make the suspect more susceptible to offering a false admission when exposed to active persuasion. On the other hand, such suspects are not skilled or confident liars and will often reveal the truth through the interviewing process. If accusatory interrogation is deemed necessary, the investigator should cautiously employ persuasive tactics and rely, primarily, on simple logic to convince the suspect to tell the truth. The investigator should take great care in obtaining corroborative information to verify the trustworthiness of the statement by this type of suspect and should approach the investigation in a manner similar to that used to obtain a confession from a young suspect.

## CONFESSION CORROBORATION

### Types of Corroboration

Proper corroboration of a confession has been emphasized throughout this chapter, as it represents the best measure of the trustworthiness of a confession. It is extremely convincing to a judge or jury to hear a confession that contains information only the guilty person could know, but there are many factors that influence the detail and accuracy of a confession. These factors must be carefully considered, especially when relying on the suspect's signed confession as the primary proof of trustworthiness.

There are three types of corroborative information a confession may contain. The first is called *dependent corroboration*. This consists of information about the crime purposefully withheld from all suspects and the media. In other words, the only people who should know this information are the investigators and the guilty suspect. Examples of dependent information include the denomination of currency stolen in a theft, the origin of a fire in an arson, or the nature and location of injuries to a homicide victim.

Upon arriving at a crime scene, the lead investigator should decide, and document on the case folder, what information will be kept secret. The reason for this formal documentation is to refute the defense attorney's question in court, "Isn't it possible that you inadvertently released this information to my client during your questioning of him?" If this informa-

tion has been documented, the investigator can more confidently refute the implication within the attorney's question.

Dependent corroboration does have a weakness in that sometimes the information is unknowingly released to innocent suspects. A group of Buddhist monks were found shot to death during an apparent robbery. During the course of the investigation, police obtained confessions from four suspects, all of whom turned out to be innocent of the crime.<sup>16</sup> These four verified false confessions containing specific details about the crime scene that should have only been known to the guilty person. How were the innocent suspects able to provide these details? In part because crime scene photographs were used extensively during these lengthy interrogations and the suspects memorized (or had internalized) the crime scene.<sup>17</sup>

The second type of corroborative information is called *independent corroboration*. This describes information about a suspect's crime that was not known until the confession and was independently verified by the investigator. Examples include the location of a confirmed murder weapon, the recovery of stolen property, or verification of the suspect's planning activities before the crime was committed or post-crime activities. Every investigator should strive to not only develop independent corroboration within a confession, but to actually go out and verify it. Once this type of information is documented, it is difficult for a defense attorney to refute it.

Unfortunately, not all crimes offer obvious or verifiable independent corroboration. Consider a rape case we were consulted on in which the victim claimed that her date broke down the door of her apartment, undressed her, and penetrated her two times. The suspect openly acknowledged breaking down the door (accidentally, in an effort to talk to the victim) and admitted removing some of the victim's clothing (at her request). Absent DNA or other physical evidence, the confession of having sexual intercourse with the victim essentially boils down to a statement of "I did it." Under this circumstance, what can the investigator do to help validate the credibility of the confession?

In such a case there may be dependent corroborative information to develop (for example, a verbal threat to the victim or the placement of the

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<sup>16</sup>Reported in Leo and Ofshe, "Consequences of False Confessions."

<sup>17</sup>Showing the suspect morbid crime scene photographs is rarely appropriate during an interrogation. The supposed purpose in doing so is to increase the suspect's guilt over his crime. More often, however, such morbid photographs remind the suspect of the seriousness of the crime and thus reinforce the consequences for committing it.

suspect's hands around the victim's throat). In this particular case, however, the victim related only that she was undressed in an intoxicated state and that her date had sex with her. To corroborate this confession, the investigator may be left with nothing more than the suspect's recounting of the crime. This could be referred to as *rational corroboration*. Elements of rational corroboration include a statement accepting personal responsibility for committing the crime as well as a detailed description of how the crime was committed, why it was committed, and, perhaps, how the suspect felt after committing the crime. In other words, the credibility of the confession is assessed by evaluating whether the described behaviors appear rational. This represents the weakest form of corroboration and courts should view it with the most scrutiny.

Under this circumstance, the investigator should pursue some mundane aspect of the crime that lends credibility to its trustworthiness. For instance, a burglary suspect confessed that while kicking through the homeowner's front door his foot got caught in the door panel and he stumbled on the front porch. While there was no way to verify his account (other than the existence of a broken door panel), this out-of-the-ordinary description lent credibility to his confession. In this regard, investigators should attempt to include not only the legal elements of the crime within a written confession, but also the human elements as well. Almost every suspect who offers a truthful confession will be able to tell the investigator something unique or memorable about his crime. Including this spontaneous information within a confession greatly contributes to its credibility.

### **Accuracy of Corroboration**

It is not reasonable to require that everything a suspect includes in his confession represent the absolute and complete truth, but rather that his admission of criminal involvement be factual. Individuals who are not involved in actual criminal interrogations may fail to understand why a guilty suspect would tell the truth about committing a crime but withhold other information related to his crime or even lie as to certain aspects of the crime. The most common element of a confession for a suspect to lie about is his true motivation for committing it, so that will be used as an example.

The truthful confession of a child molester may contain accurate information with respect to the room in which the abuse occurred, the approximate length of time spent alone with the child, and the statement made to

the child eliciting a promise not to tell anyone about their “secret.” However, when discussing the specific sexual behaviors engaged in with the child, the suspect may offer less detail. He may acknowledge touching the girl’s vagina and that his bare penis also touched her lips, but there may be little elaboration beyond the basic elements of sexual contact. The reason for this is that at the stage of confessing (Step 8, see Chapter 13), while the suspect is willing to discuss his crime, he does so selectively. He will predictably avoid details that are embarrassing or difficult to personally acknowledge. If the investigator attempts to pin him down by asking specific questions, he may now choose to lie by minimizing some of his actions or claim that he cannot remember. Again using the child molesting example, it would be rare indeed for the confessor to state, “I manipulated this young girl to undress and forced my erect penis in her mouth until I ejaculated and experienced the orgasm I found could only be achieved with children.” Inclusion of such details should not be a requirement for confession admissibility.

Beyond embarrassment, there are other, more tangible motivations for a guilty suspect to lie during portions of his confession.<sup>18</sup> For example, a robbery suspect may lie about where he got the gun used in the robbery so as to not implicate himself in a burglary where the gun was stolen. During a confession a suspect may lie about how he left the scene of the crime in an effort to protect an accomplice who drove the getaway car. Theft suspects may lie about how stolen money was spent. For example, part of the money from a robbery may have gone toward paying bills, but the rest was spent on illegal drugs. In the confession, conveniently, the suspect explains that all the money was spent to pay bills or outstanding debts. In a gang rape confession the suspect may acknowledge having forced sex with the victim but lie about his dominant role in selecting and abducting her.

Rarely will a suspect tell the complete and absolute truth during a confession. If a confession lacks details in certain areas, or even contains information that turns out to be false, this alone should not serve as a clear indication that the entire confession is false. However, when a judge decides whether to admit a particular confession, the import of that decision will center on corroboration. Because of this, an investigator must

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<sup>18</sup>For additional suggestions on these motives, see P. Cassell, “The Guilty and the Innocent: An Examination of Alleged Cases of Wrongful Conviction from False Confessions,” *Harvard Journal of Law & Public Policy* 22, 2 (2000): 594–595.

make every reasonable effort to develop corroborative information within a confession to assure its trustworthiness.

Based on the foundation presented thus far, the following guidelines are offered to assist in identifying possible true or false confessions.

*A confession that was not retracted until days or weeks after it was made is probably truthful.* When a significant period of time elapses before a confession is retracted, this is much more typical of the guilty person who is anxious to prepare a legal defense. An innocent suspect will know at the time of the confession that it is false, except in the case of the alleged coerced internalized confession.<sup>19</sup> As soon as the threat of the interrogation has been removed it would be expected that the innocent suspect would denounce his confession and protest his innocence to anyone willing to listen. Therefore, a suspect who has visited with family members or loved ones after the confession but does not retract it until he meets with his attorney sometime later is offering a suspicious statement.

However, no opinion should be drawn based on a suspect's immediate retraction of a confession. As we emphasized in Step 9 of the interrogation (see Chapter 13), it is not uncommon for guilty suspects to immediately retract their confession, even if left alone for too long after making it and being asked to sign it. The same behavior would be expected from an innocent person who confessed. Consequently, the fact that a confession was retracted shortly after it was made does not offer guidance, one way or the other, as to the confession's validity.

*The suspect's explanation for offering a false confession should be carefully scrutinized.* In addition to the retraction of a confession, the court must recognize that something must have occurred during the interrogation to cause an innocent suspect to confess. It is not unreasonable to ask the suspect what happened, or was said, to cause him to offer a false confession. The explanation for offering a false confession becomes a critical determinant of the confession's validity.

Typical of the guilty suspect are excuses based on perceptions rather than specific statements or actions (for example, "I felt I had no choice but to confess," "I just told them what they wanted to hear," or "I was confused and didn't know what I was saying"). A suspect who truly offered a false

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<sup>19</sup>A suspect who claims that he offered a coerced internalized false confession would not be expected to retract his confession until some time after the confession was made (if at all). After all, his position is that, at the time of the confession, he believed that he was guilty.

confession should be able to articulate a specific cause for doing so. Examples of such causes include statements that threatened the suspect's well being, a clear promise of leniency, or a confession motivated to protect the guilty person.

In our experience, the vast majority of retracted confessions are, in fact, trustworthy statements coming from the person who committed the crime. However, the following case illustrates a retracted confession that was indeed false. A man was shot to death at a New Year's Eve party. When the police arrived at the scene, the host's 16-year-old son came forward and voluntarily confessed to the killing, offering details that were consistent with the crime scene. The boy was arrested and eventually met with a public defender to whom he explained that he had witnessed his father shoot the victim. The boy related that his father talked him into confessing, explaining that little would happen to him because he was a juvenile, but if the father confessed the boy would have no home to live in or food or clothes. The attorney arranged to have the boy take a polygraph examination, which indicated his truthfulness. The father was then scheduled for a polygraph examination but confessed before the examination was administered. He later pled guilty to the homicide. In this case, the suspect's explanation for offering the false confession was specifically articulated and reasonable.

*The absence of any specific corroboration within the confession should be viewed suspiciously.* A confession that merely acknowledges involvement in a crime, but contains no additional details, should be viewed suspiciously. Three issues to be considered are:

1. Did the investigator fail to elicit such information?
2. Was the suspect unable to provide the information?
3. Did the subject refuse to provide the information?

In the first two instances, the statement may be what we refer to as a "nonexistent confession" and appropriately may not be given much weight as evidence. In the third instance, the guilty suspect may have had second thoughts about further incriminating himself once the first admission of guilt was offered and decided to no longer cooperate with the questioning process. Under this circumstance the investigator may be able to credibly explain the absence of the corroboration, but an obvious question arises: What caused the suspect, on the one hand, to acknowledge, yes I did this,

and shortly thereafter refuse to further discuss his crime? Our experience has been that if a guilty suspect can be persuaded to admit committing the crime, then he will also discuss the details of his crime, at least to some extent.

*It is not unusual for a true confessor to accept full responsibility for committing the crime but omit specific emotional details, especially when blamed on memory failure.* It is not at all uncommon for a guilty suspect to claim, during a confession, not to remember certain elements of the crime.<sup>20</sup> This lack of memory may be convenient on his part (for example, when he does not want to reveal the location of stolen money or property). However, it is possible that guilty suspects are legitimately unable to recall their crime in full detail, especially when confessing to a particularly traumatic or emotional crime.

A number of factors can inhibit a guilty suspect's ability to recall specific details of a crime during a confession. Among the most common are being under the influence of drugs or alcohol at the time the crime was committed or when many months or years have passed since the commission of the crime. In addition, during the commission of a crime the suspect will suffer attention biases as a result of being nervous, angry, or excited. These biases will result in his mind storing certain focused memories and ignoring peripheral events. In a particularly heinous crime, natural defense mechanisms may account for legitimate memory loss where the suspect's mind has repressed certain unpleasant memories.

One study revealed that 26 percent of men who had been convicted of murder or manslaughter stated that they could not remember committing the crime; in other studies, between 25 and 65 percent of convicted murderers report some level of amnesia associated with their crime.<sup>21</sup> Most experts agree that numerous alleged amnesias for violent crimes are feigned, but there is no general agreement concerning how to tell genuine cases of limited amnesia from the simulated ones.

It is unreasonable to expect that all guilty suspects offer a fully detailed description of their crime, from the planning stage, through its commis-

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<sup>20</sup>This statement should not be confused with the previously described coerced internalized confession where the suspect takes the position *before* making any admission, "If I did commit this crime I don't remember doing it."

<sup>21</sup>See P. Taylor and M. Kopelman, "Amnesia for Criminal Offenses," *Psychological Medicine* 14 (1984): 581–588; D. Schacter, *Searching for Memory: The Brain, the Mind, and the Past* (New York: HarperCollins, 1996), 226.

sion, to the suspect's post-crime behavior. For a number of reasons, the suspect simply may not be willing or able to offer all these details. However, the confession should contain enough corroborative information to demonstrate that the suspect, in fact, is telling the truth when he accepts personal responsibility for committing the crime.

Faulty corroboration within a confession needs to be evaluated with respect to reasonable motivations. In the absence of identifying such motivations, faulty corroboration may be an indication of a false confession. The most common reason for faulty corroboration is to achieve some type of secondary gain. A rape suspect may lie about elements of his modus operandi for the present crime so as to not implicate himself in other rapes for which he is not yet a suspect. A suspect, who was given the combination to a safe from which funds were stolen, may lie and state that he found the safe unlocked in an effort to protect his accomplice. A rapist may claim that he met his victim at a bar, when, in fact, he had stalked her upon leaving the bar and abducted her in the parking lot.

When the confession contains specific details of the offense that turn out to be false, and these details would have been emotionally difficult to disclose, this suggests the possibility that the suspect may have been simply agreeing with suggestions offered by the police and the confession was not the product of spontaneous recall on the part of the suspect. Consider, for example, a homicide that the police initially believed to be sexually motivated. If a suspect's confession includes sexual intercourse with the victim, but this is later refuted by crime lab evidence (which states that there was no sexual contact whatsoever), it is appropriate to question why a guilty suspect would falsely include such an emotional detail of the crime that turned out to be untrue. The implication is that the inclusion of this highly sensitive information was suggested by the investigator and one has to wonder what other incriminating information contained within the confession may be false.

The opposite scenario, where a suspect's confession fails to include emotional elements, certainly does not suggest a false confession. Suppose, in the previous case, that the suspect confessed only to killing the victim and provided corroborative details of the killing. The fact that a subsequent crime lab report indicates that the victim was sexually assaulted just prior to her death does not, by itself, diminish the trustworthiness of the suspect's statement that he killed her. In fact, this is precisely the type of information a guilty suspect would attempt to withhold during a factual and trustworthy confession.

*Inconsistencies between the confessor's statement and those of the victim are commonplace in true confessions.* For a number of reasons, a guilty suspect may report activities during his crime somewhat differently than the victim's account to the police. In addition to the already mentioned factors of embarrassment or attention biases, it must be remembered that a legitimate victim sometimes exaggerates certain behaviors or may fabricate statements in an effort to better "fit the model" of the truthful victim.

We have encountered numerous cases involving suspects who confess 90 percent of what the victim reported but vehemently deny the other 10 percent. The portions denied often are incidental, such as who unzipped the victim's pants, whether a verbal threat of retaliation followed a rape, or whether a robber walked away from the scene or rode a bike. Suffice it to say, a perfect match between the victim's account and the suspect's confession should not be required to support the validity of the acknowledgment of the criminal act.

This guideline applies not only to statements by victims or witnesses, but also covers inconsistencies within the crime scene as well. Consider the confession of a suspect who is able to tell police that the rope he used to strangle a young girl is in the trunk of his car. The crime lab has matched the recovered rope as the murder weapon. However, the suspect's description of the victim's clothing is not accurate. The victim was found wearing a white T-shirt and black jeans, but, in his confession, the suspect described her wearing a tan sweatshirt and blue jeans. In this case the faulty corroboration should in no way taint the credibility of the confession.

Such discrepancies may be accounted for by what psychologists call "mood-congruent" retrieval. According to one expert: "When a person has actually experienced a trauma, the central core of the experience is almost always well remembered; if distortion does occur, it is most likely to involve specific details."<sup>22</sup>

## Summary

This chapter began with a discussion of separating true and false confessions into two different piles and the admonition that the task is more difficult than was suggested. To identify the probable trustworthi-

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<sup>22</sup>D. Schacter, *Searching for Memory: The Brain, the Mind, and the Past* (New York: Basic Books, 1996), 211.

ness of a confession clearly requires an analysis of the circumstances and content of the interrogation, as well as intrinsic factors within the suspect who offered the confession. Because confessing to a crime runs contrary to survival instincts, when a false confession does occur, something must have caused it. If a defense expert is unable to specifically identify conditions, statements, or circumstances that caused, or would be likely to cause, a particular suspect to falsely confess, a signed confession acknowledging personal responsibility for committing the crime, regardless of its inadequacies, is likely to be trustworthy.

The investigator should attempt, in every case, to obtain a confession that contains independent or dependent corroboration. It must be remembered, however, that the same instincts that cause most guilty suspects to initially deny their crime also result in confessions that contain missing or erroneous information. The requirement that a confession perfectly match the crime scene, victim's account, or be completely accurate in every detail would invalidate most confessions. Rather, a balance of interests must be achieved wherein the court, when deciding the trustworthiness of a confession, considers the totality of circumstances surrounding the confession.

## **INTERROGATION RESEARCH**

There exists no controlled study investigating the validity or reliability of field interrogations. The only meaningful approach to address these issues would be to subject actual persons, who had essentially the same personalities and backgrounds, to identical interrogation techniques. If half of the sample was known, without a doubt, to be innocent of the crime, and the other half was known to be guilty, statistical analysis could be performed to establish the effectiveness of the interrogation techniques on innocent and guilty suspects who confessed. Not only is this an immensely impractical methodology, but it would clearly violate ethical research standards established by the American Psychological Association.

Consequently, statistics on interrogation practices must be collected indirectly. Existing research in the area of criminal interrogation can be divided into the following three categories:

- *anecdotal reports*: a collection of data selected because it supports a hypothesis

- *laboratory studies*: a simulated situation is created to study the incidence or frequency of a particular phenomenon (for example, false memories, suggestibility)
- *surveys*: data collected on actual interrogation or confessions either through observation, review of documents, or self-reporting

Anecdotal reports are useful to demonstrate that something can happen. For example, reports of ten patients who died from being prescribed the same medication may be cited to demonstrate that the medication is dangerous and should not be on the market. While such reports may have great emotional impact, they fail to disclose the incidence of an occurrence because the sample studied is selective. On the other hand, if random sampling of 1,000 patients who had taken the medication reflected that 30 percent died, that would be a meaningful statistic. Anecdotal reports are chosen precisely because they appear to support an underlying hypothesis that may or may not have any statistical significance.

Anecdotal reports also suffer in that they do not establish causal relationships. In the previous example, while it is true that ten patients who had taken the medication died, this does not necessarily mean that the medication caused their death. This approach of collecting data does not control for dependent or independent variables to help ascertain what may have caused or influenced a particular finding.

Finally, an inherent weakness of many anecdotal reports is a failure to establish ground truth. In the instance of false confessions, for example, how does a researcher go about proving that any given confession is actually false? Earlier in this chapter an anecdotal report was cited concerning 350 cases of miscarriages of justice. While the authors spent a great deal of time explaining how they established the innocence of these people, a retort argued that a number of the suspects considered as innocent were, in all probability, guilty.<sup>23</sup>

A social psychologist named Richard Ofshe, who frequently offers testimony for the defense on confession cases, establishes the platform of his testimony around anecdotal accounts of presumably false confessions.

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<sup>23</sup>S. Marksman, and P. Cassell, "Protecting the Innocent: A Response to the Bedau-Radelet Study," *Stanford Law Review* 22, no. 2 (November 1988), 121–161.

In a study Ofshe coauthored, he identified 60 possible false confessions.<sup>24</sup> Thirty-four of these were allegedly proven to be false, eighteen were presumed to be false and eight were considered to be highly probable false confessions.<sup>25</sup> Even though these 60 cases occurred over a 24-year time period (in which tens of thousands of confessions would have been obtained), Ofshe maintained that the 60 cases represent proof that “police-induced false confessions regularly occur.” Further, without any basis, the authors conclude that these false confessions were caused by the “illegitimate use of psychological methods of interrogation.” No attempt was made to objectively assess, let alone statistically test, for such a variable.

Anecdotal reports of false confessions have emotional appeal to the uninformed audience. However, they offer no insight as to the actual frequency or cause of false confessions. As such, they offer no scientific basis for drawing any conclusions as to false confessions, other than that some suspects historically have falsely confessed.

Laboratory studies attempt to reproduce, under controlled circumstances, what goes on in real life. A significant weakness of such studies is that, in the laboratory, it is impossible to reproduce the real life motivational incentives of someone facing serious consequences as in an actual interrogation. The level of motivational incentives operating within the guilty and innocent suspects during an actual interrogation would be impossible to ethically replicate in the lab. Nonetheless, laboratory studies purporting to study interrogational phenomena have been conducted.

In one such study previously described, investigators demonstrated that subjects, suffering no significant negative consequences, could be convinced that they mistakenly pressed a key on a computer keyboard.<sup>26</sup> In another study it was demonstrated that college students produced signifi-

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<sup>24</sup>R. Ofshe and R. Leo, “The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation.” *Journal of Criminal Law and Criminology* 88 (1998), 429.

<sup>25</sup>Paul Cassell reexamined a number of these cases and argues that these defendants, in all probability, were guilty of the crime. See P. Cassell, “The Guilty and the Innocent: An Examination of Alleged Cases of Wrongful Conviction from False Confessions,” *Harvard Journal of Law and Public Policy* 22, 2 (2000), 526–603.

<sup>26</sup>Kassin and Kiechel, “The Social Psychology of False Confessions,” 125–128.

cant errors of recall involving which words within a list were crossed off.<sup>27</sup> These studies attempted to support the prevalence or possibility of coerced internalized confessions. Even the naive observer should recognize the inherent motivational differences between a laboratory subject who is unable to recall which words from a list were crossed off and an actual criminal suspect who may be facing life in prison if he acknowledges committing a crime.

Perhaps because of ethical considerations, many laboratory studies approach the issue of criminal interrogation in such a removed sense that the phenomenon being studied is so remotely related to the actual event, that regardless of the statistical significance reported, one is left with the question, What does this prove? An example of this is a study conducted by S. Kassir and K. McNall, where the effects of different interrogation techniques on levels of perceived guilt or responsibility were investigated. The authors had students read five different interrogation transcripts of a murder suspect. In the first, the investigator made an explicit promise of leniency, in the second the suspect was threatened with a harsh sentence, in the third the victim was blamed, and in the fourth the suspect was falsely told that his fingerprints were found on the murder weapon. The fifth transcript contained none of these variables. After reading each transcript the students rendered opinions as to how long the suspect would be sentenced.<sup>28</sup>

The researchers found it significant that the students believed the sentence would be less severe in the transcript where the victim was blamed for the homicide. What does this tell us about real-life themes that place blame onto the victim? The authors of this study argue that the perceived leniency attributed to such a theme could cause false confessions through “pragmatic implication.”

Statistics arrived at through opinion data are highly susceptible to evaluator bias. It would be anticipated that judges and police investigators would probably hold different opinions toward interrogation practices than college students or defense attorneys. As the authors of this study correctly point out, “because our findings are based on inferences drawn by college

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<sup>27</sup>D. Bem, “Inducing Belief in False Confessions,” *Journal of Personality and Social Psychology* 3, 6 (1966).

<sup>28</sup>S. Kassir and K. McNall, “Police Interrogations and Confession: Communicating Promises and Threats by Pragmatic Implication,” *Law and Human Behavior* 15, 3 (1991), 233–254.

students, relatively uninvolved but highly educated observers, it remains to be seen whether similar inferences are drawn by real crime suspects.”

The fundamental problem with laboratory studies is the inability to generalize those findings to the field situation. For example, just because pragmatic implication can be suggested in the laboratory, this offers no level of certainty, or even probability, that the same phenomenon occurs during an actual interrogation. An important distinction between the innocent and guilty suspect during an interrogation is their respective motivational states. The innocent person actively avoids being wrongly punished for a crime he did not commit, whereas the guilty suspect actively seeks psychological or real remedies to reduce the consequences associated with the crime that he did commit. Laboratory studies in the field of interrogation will undoubtedly continue but, by their nature, will be inherently inadequate to answer relevant questions addressing actual field interrogations.

Surveys offer perhaps the best source of raw data on the effects of the interrogation process because they have the potential of reporting what actually happens in the real world of interrogation. When interpreting survey results there are a number of important considerations. First is the sample studied. A small sample (less than 120) or a restricted sample (two or three police departments) greatly limits the ability to generalize those findings to all interrogations. This is especially so when the sample is not collected randomly, that is, there is a purposeful effort (or unavoidable circumstance) to exclude or include certain data.

Second, the nature of the data collected is most valid if it is objective. Objective statistics do not require interpretation and are subject to irrefutable verification. For example, either a suspect waived his Miranda rights or he did not, he either attempted to suppress his confession at trial or he did not, the suspect either pled guilty or he did not, and so on.

Impressionistic data in such a survey weaken the conclusions that can be drawn because such data are easily influenced through researcher bias (to support a particular hypothesis). Examples of impressionistic data include whether an interrogator “appealed to the suspect’s pride” or “attempted to minimize the crime.” One way to lessen the biases involved when evaluating impressionistic data is to have a number of different people render judgements or interpretations relative to the assessment. For example, if three out of four evaluators agree that an investigator was sympathetic and understanding toward the suspect during the interrogation, this holds much greater weight than if the researcher alone made this assessment.

If survey data are collected in a random and representative manner, this offers the greatest possible insight on factors that are important to consider within real-life confessions. One such study is reported by R. Leo, who surveyed 182 interrogations conducted by three metropolitan police departments.<sup>29</sup> Among the cases analyzed, not a single false confession was reported within the somewhat random sample. He did, however, report that 2 percent of the interrogations involved coercive techniques.<sup>30</sup>

## CONCLUSION

Innocent suspects have been induced to confess to crimes they did not commit. The most prevalent form of a false confession is one that is coerced compliant. While the *Miranda* ruling and education of police interrogators has undoubtedly decreased the incidents of “third-degree” tactics used since 1966, abusive interrogation practices continue into the twenty-first century. These tactics have been admonished by the courts and correctly used as grounds to suppress confessions. However, a small group of psychologists and sociologists would like to expand the grounds for excluding confessions by persuading courts to suppress confessions that were obtained through the use of “psychologically sophisticated” interrogation techniques.

The studies and research citing support of their belief that psychologically sophisticated interrogations routinely produce false confessions, in our opinion, offer no substantive evidence to support this claim. In fact, our experience has been that such interrogation techniques, if used in accordance with guidelines offered in this text, greatly reduce the risk of an innocent suspect confessing.

The self-preservation instincts of an innocent suspect during an interrogation conducted in accordance with the techniques taught in this text are sufficiently strong to maintain the suspect’s stated innocence. When an innocent suspect accepts responsibility for a crime he did not commit, this

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<sup>29</sup>R. Leo, “Inside the Interrogation Room,” *Journal of Criminal Law and Criminology* 86 (1996): 266–303.

<sup>30</sup>Leo developed a list of 10 possible conditions that he believed constituted coercion. If any were present, he considered the interrogation as coercive. A number of the criteria are certainly questionable, such as failing to read *Miranda* warnings, an interrogation lasting longer than six hours, or when the suspect’s will appeared to be overborne (282).

strongly suggests that improper inducements, such as threats and promises, or deprivation of biological needs were used.

When evaluating the trustworthiness of a confession a key question to ask is, What motivated the suspect to confess? Some incentives are much more likely to result in false confessions than others. In addition, the nature of the confession itself may offer helpful insight. A confession that contains no corroborative information beyond merely accepting personal responsibility for committing the crime suggests the possibility that improper inducements were used to elicit the confession, and the confession may well be false.

The research conducted on false confessions offers little specific direction to courts when deciding whether a particular confession is true or false. A summary of the research findings presented in this chapter reveals that false confessions do occur, but that they are rare occurrences, even when “coercion” is judged to be present during an interrogation. Finally, as a population, suspects suffering from diminished mental capacity or mental illness appear to be more likely to offer false confessions.

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