

**The Social Psychology of Police Interrogation:
The Theory and Classification of True and False Confessions**

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and

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE
EXTRADITION OF
KEVIN BARRY JOHN ARTT
Case No. CR 92-0151-MISC-CAL

PLAINTIFF Exhibit No. 47

Date Entered: _____

Richard W. Wicking, Clerk

By: _____
Deputy Clerk

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I. Introduction

Through the first third of the twentieth century, American police used the *third degree* to obtain confessions. Because police routinely threatened, beat, and tortured suspects, it is readily understandable that they wrung confessions from the guilty and the innocent alike (Bedau and Radelet, 1987; Wickersham Commission Report, 1931). Since the 1930s, police have been forced to abandon the third degree and now depend almost exclusively on psychologically-based procedures to obtain confessions. Contemporary American interrogation methods rely on suggestion, deception and, too often, superficially disguised threats of punishment and promises of leniency to move suspects to confession.

Now that third degree methods have largely disappeared, it is no longer immediately obvious why the innocent confess.⁴ While the phenomenon of psychologically-induced false confession may seem irrational and counter-intuitive, the literature documents that some illicit and some routinely used interrogation techniques lead the innocent to falsely confess (Gudjonsson and MacKeith, 1994; Wrightsman and Kassin, 1993; Gudjonsson, 1992; Gudjonsson and MacKeith, 1990; Ofshe, 1989).⁵

With the shift to psychological methods, accusatory interrogation has become more subtle, more sophisticated and more differentiated. Consequently, the analysis of the

⁴Mock jury research shows that people find it difficult to believe that anyone would confess to a crime that he or she did not commit (see Kassin and Wrightsman, 1981, 1980).

⁵For the purposes of this paper, a false confession is defined as a detailed admission to a criminal act that the confessor either did not commit or is, in fact, ignorant of having committed. As the term is used, false confession is not a matter of degree: rather, the cases discussed in this paper involve individuals confessing to offenses of which they are entirely innocent.

interrogation process has become more complicated. While some scholars attempt the analysis of false confessions separately from that of true confessions (see, e.g., Wrightsman and Kassir, 1993), the similarities between true and false confessions are more impressive than their differences. Modern interrogation methods were, after all, developed to manipulate the decision-making of a person who committed the crime under investigation and are meant to be directed only against the guilty. Even the most popular police training manual acknowledges that accusatory interrogation should only be undertaken when there is sufficient evidence against a person that the interrogator is sure that this individual is the perpetrator (Inbau, et al. 1986, p.77). False confessions are caused by the inappropriate, improper and inept use of the methods of psychological interrogation.

This article develops a model of interrogation influence that starts with the assumption that because they are elicited by variants of similar methods, both true and false confessions can be explained by a single formulation. The model describes both the tactics of influence employed during interrogation and the decision-making principles that guide a suspect's choices and behavior. It accounts for the similarities common to interrogations that yield true and false confessions and identifies the particular tactical differences that produce one or the other outcome.

The topics that follow are: (1) Presentation of a social psychological decision-making model that describes, in brief, the procedures of influence through which interrogation proceeds and identifies the factors leading the guilty and the innocent to decide to confess; (2) Specification of the sequence and effects of the tactical moves through which interrogators influence suspect's decisions; (3) Description of the variety of types of confessions and their

differentiating characteristics; and (4) Development and illustration through case materials of a classification system for categorizing types of statements made in response to interrogation. Together, the decision-making model and the expanded classification system provide a framework for explaining the process of police interrogation as it is practiced in the United States.

II. The Frequency and Importance of False Confessions

Police-induced false confessions have long been recognized as one of the leading causes of miscarriages of justice in America (Huff et al., 1996; Radelet et al., 1992; Yant, 1991; Bedau and Radelet 1987; Frank and Frank, 1957; Borchard, 1932). Nevertheless, the incidence⁶ and prevalence⁷ of false confessions is not presently known.

There are at least three reasons why this statistic has eluded investigators. First, for the most part custodial interrogation is conducted in secret: Police question suspects in private, and typically do not record the entire interrogation in stenographic, audio or video form. Second, police do not keep records or collect statistics on the number or frequency of accusatory interrogations they conduct. Therefore, we know neither how often suspects are interrogated nor how often they confess, whether truthfully or falsely. Third, many cases of false confession are likely to go entirely unreported. Even in reported cases it is frequently difficult to

⁶Incidence refers to the number of false confessions occurring in a specific time period.

⁷Prevalence refers to the number of false confessions in the population accumulated across all time periods.

unequivocally establish the *ground truth* about the crime (i.e., what really happened), especially since in confession driven prosecutions the suspect is likely to be convicted.⁸ Because it is not possible to reliably estimate the "dark figure"⁹ of false confessions,¹⁰ it is also impossible to estimate how often false confessions lead to wrongful convictions.

Nevertheless, at least three sources of empirical evidence suggest that false confessions occur regularly: case studies, laboratory research, and these authors' published and unpublished study of interrogations that result in false confession. First, in recent years scholars and journalists have documented numerous cases of psychologically induced false confessions in America (see, for example, Connery, 1996; Parloff, 1996; Huff et al., 1996; Sauer 1996; Hourihan, 1995; Mones, 1995; McMahon, 1995; Thomas, 1995; Leo, 1995; Gray and Edelhart, 1995; Sigman 1995; Linscott, 1994; Shapiro 1994; Wrightsman and Kassin, 1993; Kimball and Greenberg, 1993c, 1993b, 1993a; Rossmiller and Creno 1993; Davis and Friedberg 1993; Ofshe, 1992a; Radelet et al., 1992; Underwager and Wakefield, 1992; Perske, 1991; Yant, 1991; Pratkanis and Aronson, 1991; Demoretcky 1991; Paxton 1990; Ofshe, 1989; Weiss, 1989; Coons, 1988; Derian 1988; Lykken, 1981; Hart, 1981; Connery, 1977; Foster, 1969; Shapiro,

⁸In addition, innocent individuals -- even if they are convicted -- do not always publicly retract their false confessions (Gudjonsson, 1992).

⁹The dark figure of false confessions refers to the actual number of unknown false confessions that occur every year.

¹⁰Nevertheless, Cassell (1996: 482) has estimated that 35 false confessions occur every year. There is no reason to believe that Cassell's estimate bears any relation to reality. With no empirical foundation, Cassell simply speculates that 350 miscarriages of justice occur every year and that approximately 10% of those are false confessions. Even if there existed a reasonable basis for Cassell's speculation, it would miss the number of false confessions that occur every year that do not lead to erroneous convictions. At the other extreme, Huff et al., (1996) have estimated that approximately 10,000 miscarriages of justice occur annually.

1969).¹¹ Because a multitude of factors contribute to false confessions going unnoticed, unreported or unacknowledged (See Pp. 9-10), it is reasonable to presume that the reported cases represent the tip of the iceberg. Only the most egregious and high profile cases involving demonstrably false confessions are likely to be written about in the academic or the popular literature.

Second, psychological research has demonstrated through controlled laboratory experimentation that a very **commonly used** interrogation technique has a coercive impact on suspects and is thus likely to be a source of false confession. Kassin and McNall (1991) examined how the sentencing expectations of seventy-five subjects were affected by the two prongs of the accident strategy: "*maximization*" (i.e., exaggerating the strength of the evidence, magnitude of the charges, or seriousness of the offense) and "*minimization*" (i.e., playing down the strength of the evidence, magnitude of the charges or seriousness of the offense). Using the video-tape of a police interrogation and accompanying transcript but varying the information presented, Kassin and McNall (1991) found that through "*pragmatic implication*,"¹² maximization effectively communicates a threat of harm, while minimization communicates a promise of leniency. The technique is advocated by the leading interrogation training manual (see Inbau et. al., 1986: 102-106) and commonly used in practice (Leo, 1996a; Wald et. al.,

¹¹In England, where police interrogation techniques are far milder than in America, researchers have also recently documented numerous cases of false confessions to police (see Gudjonsson, 1992). Since 1986, English police have been required to contemporaneously record custodial interrogations (See Zander, 1990).

¹²"*Pragmatic implication*" refers to information processing that occurs "between the lines" or is inferred from what the speaker is saying or suggesting. Cognitive and language research indicates that this phenomenon is commonplace and normal (See Harris and Monaco, 1978).

1967).

Reading "between the lines," suspects exposed to these tactics infer harsh or lenient sentencing outcomes just as if the differing consequences had been blatantly threatened or promised. Both direct and indirect techniques for communicating threats or promises rely on the same logic to precipitate a suspect's decision to confess. They change the result of the person's rational calculation about what to do through the introduction of a strong incentive to confess (leniency), and/or a strong disincentive to remain silent (threat of harsh punishment).

As Kassin and McNall comment:

Although the courts take promises and threats more seriously when they are made explicitly than when they are implicit in an interrogator's remarks, our data indicate that because people often process information 'between the lines'...these means of communication are functionally equivalent in their impact (1991: 248; see also Hilton, 1995; Nisbett and Ross, 1980; and Nisbett and Wilson, 1977).

It is well-settled that because directly stated offers of leniency and threats are coercive, can overbear a suspect's will, and can result in false confession, they are an unconstitutional means for obtaining a confession. The modern interrogator's shift from a direct to an indirect method for communicating benefits or harms is little more than a method for eliciting confessions by circumventing well-established legal protections.

Third, these authors have discovered numerous examples of probable or confirmed false confessions (several of which are discussed below). One line of research involves the analysis of well over 150 interrogation transcripts, case files, interviews of police and suspects, and the analysis of sworn testimony describing interrogations (see Ofshe, 1996, 1992a, 1989). The second line involves studying nearly 200 interrogations, interviewing approximately 100 police

interrogators, analyzing interrogation transcripts, and collecting data on approximately 175 likely or proven post-Miranda era false confessions (Leo, 1996a, 1995, 1994). Both lines of inquiry have led to repeated observations of the process whereby interrogators manipulate suspects and coerce or persuade them to confess to crimes that they did not commit. In some interrogations, such as those directed against the mentally handicapped, false confessions can be elicited rapidly and with minimal inducements. Most often, however, eliciting a false confession takes strong incentives, intense pressure and prolonged questioning.

Although there is little evidence that American police intend to extract confessions from the innocent, they too frequently become so zealously committed to a preconceived belief in a suspect's guilt or so reliant on their interrogation methods that they mistakenly extract an uncorroborated, inconsistent, and manifestly untrue confession. Too often interrogators appear to give no thought to the possibility that the confession they have extracted could be false. Generally, police in America are neither trained how to avoid causing false confessions, how to recognize different types of false confessions, or how to identify the telltale characteristics of false confessions.¹³ Even when the sum of the evidence establishes the suspect's innocence beyond any reasonable doubt, police rarely admit that they have mistakenly elicited a false

¹³Police interrogation training courses and seminars (including the introductory and advanced courses put on by the Chicago-based firm Reid & Associates) rarely, if ever, even mention the subject of false confessions (See Inbau et al., 1986; Leo, 1994). American police interrogation training manuals also fail to advise police of the social psychology of false confessions or instruct them how to recognize when their tactics are leading an innocent suspect to falsely confess. In short, text writers and interrogation trainers demonstrate a studied indifference to the extensive psychological research literature on false confessions (See e.g., Jayne and Buckley, 1992; Inbau, et al., 1986). In contrast, English police interrogation manual writers are well aware that psychological interrogation methods may induce confessions from the innocent (See Walkley, 1987).

confession or that their errors have caused someone to be wrongfully convicted, imprisoned or executed.¹⁴

Police-induced false confession is likely to lead to the wrongful conviction of innocent individuals because confession evidence is likely to be treated as enormously damning and as persuasive as any evidence that can be brought against a defendant (Leo, 1996a; Simon, 1991; Kassin and Wrightsman, 1985; Miller and Boster, 1977; Wigmore, 1970). Because of the weight given to confession evidence, false confession is at least as prejudicial to a defendant's right to a fair trial as any type of erroneous, incriminating evidence. Confession creates a virtually irrebuttable presumption of guilt among criminal justice functionaries, who, like most Americans, rarely question the veracity of self-incriminating statements. As a result, once a confession is introduced in court any attempt to refute it is likely to be futile (Wrightsmann and Kassin, 1993).

A suspect who confesses will not only be presumed guilty from the start, but will also be pressured to plead guilty and treated more harshly by every criminal justice official and at every stage of the trial process (Leo, 1996a). Once police elicit a confession -- even if it is obtained by coercion, is internally inconsistent, does not lead to corroboration, and is contradicted by the facts of the case -- they too often "clear" the case and consider it solved. Retractions are not believed and are treated as evidence of the defendant's cunning. Defendants who have confessed experience greater difficulty making bail, a disadvantage that significantly

¹⁴For example, the police interrogators who elicited demonstrably false confessions in the well-known cases of Peter Reilly, Tom Sawyer, and Paul Ingram still insist that these individuals are factually guilty (See O'Brien 1993; Weiss 1989; Wright 1994). For an example of a forthright post-hoc analysis of an investigation and series of interrogations gone horribly wrong, see Kimball and Greenberg (1993a, 1993b, 1993c).

reduces their likelihood of acquittal (Walker, 1994). Confession almost always insures that prosecutors will file charges (Cassell and Hayman, 1996), charge high and make the confession the centerpiece of the case. Defense attorneys may encourage clients to accept a plea bargain and concede guilt solely because of the enormous risk of a harsh sentence after being found guilty at trial (Nardulli et al., 1988; Wald, et al., 1967). At trial, the jury will probably treat the confession as more probative of the accused's guilt than any other type of evidence (Miller and Boster, 1977),¹⁵ and if convicted, an innocent, false confessor may be sentenced harshly for failing to show remorse.¹⁶

III. Explaining True and False Confessions: A Decision Model¹⁷

A. Guilty or Innocent: Why Shift From Denial to Admission

All approaches to the analysis of human behavior that presume rationality would, if

¹⁵Jurors appear to simultaneously weigh confession evidence too heavily and to be generally unaware of the reality of false confessions (See Wrightsman and Kassir, 1993).

¹⁶This happened in the well-known cases of Paul Ingram and Bradley Page (See Ofshe 1992; Page 1990).

¹⁷For an introduction to maximization of expected utility approaches to decision-making see generally: Ofshe and Ofshe, 1970; Edwards and Tversky, 1967; Luce, 1967; Rapoport and Chammah, 1965; Von Neumann and Morgenstern, 1944. For application of decision-making theory to confession see: Hilgendorf and Irving, 1981; Irving and Hilgendorf, 1980.

The brief analysis of the decision to confess presented here sketches out only the general principles of interrogation influence and suspect decision-making in the context of an abstract rather than a concrete interrogation. (The case materials included in this article illustrate many of the influence tactics in operation and demonstrate suspects' responses to them). This presentation will forgo discussion of the interrogation environment and the details through which the strategies discussed are implemented. The present focus is on variables that directly influence the decision to confess. The decision model will be further explicated and directly applied to actual interrogations in Ofshe and Leo (in preparation).

applied superficially, classify confession as an irrational act -- whether the person is innocent or guilty of the crime. This conclusion holds only if the act of confessing is considered outside of the complexity of the influence environment that is created by the process of modern police interrogation. Psychological methods of interrogation have evolved for the purpose of influencing a rational person who knows he is guilty to alter his¹⁸ initial decision to deny culpability and decide instead to confess. Police accomplish this change in a person's behavior by strategically manipulating the suspect's analysis of his immediate situation, structuring the choices before him and dwelling on the likely consequences that attach to these choices. The tactics that the interrogator uses in response to a denial of guilt are intended to lead the suspect to perceive confession as the optimal choice among the alternatives that he is considering.

During the portion of an interrogation that centers on causing a suspect to shift from denial to admission (the *pre-admission phase*) police use two groups of tactics to achieve two major goals: One set of tactics is focused on changing the suspect's perception of his immediate situation while another other set is used to communicate information about incentives for confessing and disincentives for holding to denial. The process of interrogation produces confession because it results in the suspect being convinced either that he has been caught (if he is guilty) or that his situation is hopeless (if he is innocent), that further denial is pointless and that it is in his self-interest to confess. For both innocent and guilty suspects, confessing is something ~~neither~~ would have chosen to do prior to the start of the interrogation and something each would have predicted he would have resisted to his last breath.

¹⁸Because the large majority of interrogators and criminal suspects are men, we will use male pronouns throughout this article.

Although contemporary interrogation methods are intended to produce true confessions from the guilty they can, unfortunately, also produce false confessions from the innocent. Interrogations are, by design, relentless in their focus on moving the suspect to confess and are insensitive to denials or protestations of innocence. Interrogators employ tactics that create a sequential influence process that can effectively succeed in overcoming the resistance of a person who has no reason to confess and is, at least initially, unwilling to do so. To understand how and why false confessions occur, it is important to recognize that the techniques and tactics used to alter a suspect's initial choice to deny culpability **do not depend** for their efficacy on the suspect being guilty and knowing it. They depend on creating circumstances in which the suspect's analysis of his situation and of the consequences of the choices before him lead him conclude that confession is both a rational choice and his best option.

The promoters of psychological interrogation methods give no significant thought to how they will affect the innocent, but instead merely assume that the methods they advocate will not cause an innocent person to confess (See Inbau et. al., 1986; Jayne and Buckley, 1992). The unanticipated and unappreciated fact about psychological methods of interrogation is that they are so influential that if allowed to go forward without restraint or are directed at the exceptionally vulnerable they will have devastating consequences. These methods produce false confessions because they convince innocent suspects that their situations are hopeless just as surely as they convince the guilty that they are caught.

In recent years, the continuous development of psychological tactics for overcoming resistance has given interrogator's the tools necessary to actually persuade some persons that they committed murders about which they have no personal knowledge. The combination of

tactics that undercut a suspect's confidence in the accuracy of his memory together with commonplace false evidence tactics and the use of incentives can combine to persuade a suspect that he is guilty of a crime about which he knows nothing and lead him to made the decision to confess.

Accusatory interrogation (as distinct from interviewing) is not useful for identifying a likely suspect; rather, it is a purposive and highly stylized attempt at influence. It has only one goal: to obtain a confession from whoever is selected for processing. The interviewing and information-gathering activities of an investigation should precede interrogation and culminate in the selection of a suspect. Once an interrogation commences, information gathering -- including checking on any alibi a suspect might offer in response to being confronted -- is typically suspended pending the outcome of questioning.

The choice of who to interrogate may be well-founded (e.g., based on solid evidence), in error (e.g., based on information that latter turns out to be erroneous), or reckless (e.g., based on no evidence but solely on a hunch or an unjustified assumption about the statistical likelihood of a particular suspect's guilt). No matter why a suspect is selected, the interrogation process that follows will, at least superficially, be the same.

There are, however, major and non-obvious differences that distinguish interrogations directed at well-chosen targets from those misdirected at the innocent. The differences can be detected by comparing the interaction paths taken by the interrogator and the suspect, the points of conflict that erupt between them and fit between the contents of confession statements they produce and the facts of the crime being investigated. Noting these differences and their causes is worthwhile because their identification contributes to understanding both why interrogation

works well (as it does frequently) and why it goes wrong.

When the choice of who to process is well-founded, the interrogator has solid evidence with which to confront the suspect and thereby has a considerable advantage. He can, if necessary, produce the evidence he claims (i.e, witness' statements, co-perpetrators' confessions, laboratory reports, etc). In addition, since a well-selected target is likely to be guilty, the suspect's awareness of his guilt works very much to the interrogator's advantage. The guilty suspect starts the interrogation concerned about the risk of detection and punishment. Knowledge of his guilt renders the suspect genuinely vulnerable to the interrogator's tactics and ploys and makes them more likely to succeed at convincing the suspect that he has been caught. Only under the rarest of circumstances do an interrogator's ploys persuade an innocent suspect that he is guilty and has been caught. When this rare event happens, the interrogation will be marked by certain characteristics that distinguish it's history from the interaction paths that are the histories of interrogations that lead to other types of confession.

When an interrogation is poorly founded and solid evidence is lacking, either because the suspect is innocent or because the selection of a guilty suspect was based on a lucky hunch, the interrogator necessarily lacks a valid basis from which to confront the person. The interrogator is necessarily reduced to relying entirely on deception and interpersonal dominance to gain a confession. He runs the risk of fabricating evidence that a guilty suspect can either easily explain away or will recognize as a bluff. The innocent suspect necessarily recognizes that the interrogator's ploys are inaccurate, but since they impact the suspect's realization that his situation is hopelessness rather than the realization that he is caught, the interrogator's choice of which ploys to use typically makes little difference.

Unlike the guilty suspect, who is genuinely vulnerable to the interrogator's accusations, the innocent suspect has a valid basis for denying involvement. The interrogator is forced to contend with the heartfelt resistance of someone who knows he is being falsely accused. Although motivated by righteous indignation, the innocent suspect is likely to experience far greater shock and disorientation at being accused than is the guilty suspect. The innocent is not in the least prepared for the confrontation and accusations that signal the start of serious business during an accusatory interrogation. He will likely be unable to understand how the interrogator could possibly suspect him. As the process unfolds and the interrogator reveals a lengthening list of damning evidence, the innocent is likely to become progressively more distressed, confused and desperate. In the end, the innocent is likely to be more emotionally distressed than the guilty party, who has only to accept the fact that he has been found out.

Interrogators rightly expect that almost all suspects will deny involvement in the crime when first confronted and so treat denials as unimportant. Investigators are, however, often misled by their training to believe that there are simple signs and behavioral indicators readily observable in a suspect's demeanor that distinguish truth-tellers from liars. In fact, rarely will an interrogator be able to discern that a suspect is guilty or innocent based on his demeanor (Ekman and O'Sullivan, 1991).¹⁹ Because the guilty suspect who lies when denying his guilt

¹⁹Despite the fact that Inbau, Reid and Buckley's (1986) text on interrogation methods offers neophyte interrogators lists of supposedly telltale signs of innocence and guilt that can be readily detected in the behavior of suspects, there is no empirical evidence that confirms their down home wisdom. As a practical matter, teaching interrogators that they can distinguish the guilty from the innocent based on behavioral symptoms is likely to do nothing more than reinforce their belief that the suspect they have chosen to interrogate is guilty. Because it confirms his presumption of the suspect's guilt, the interrogator will be likely to selectively perceive and remember out of context examples of behaviors he has been taught are indicators of deceptiveness or guilt (See Ekman, 1992; Rosenthal, 1976). There are no behavior cues that

and the innocent suspect who tells the truth when denying his involvement are indistinguishable to the interrogator, they are in exactly the same functional position throughout an interrogation.

Since the goal of accusatory interrogation is to obtain a confession rather than to evaluate whether the suspect is guilty, the interrogator will be insensitive to and ignore the evidence the suspect offers to support his protestations of innocence. As the questioning moves forward, the interrogator focuses his attention on how close the suspect is to admitting guilt, and his thinking is directed toward the question -- "what can I do now to move the suspect closer to giving a confession?"

The important differences between guilty and innocent suspects are not reflected in their demeanor, but rather, are present in their internal perceptions, cognitions about their immediate situation, their memories (including the presence or absence of knowledge of having committed the crime) and their ongoing mental activities and decisions. Although indicators of a suspect's true state of innocence or guilt can be identified in the suspect's conduct in response to the interrogator's tactics, the differences between the guilty and the innocent **only become reliably and objectively observable** after each has made the decision to confess. The differences between the suspect's true state of guilt or innocence can only be detected with great confidence by analyzing the **contents** of their respective confession statements -- the statement which follows the person's admission of involvement.

reliably distinguish a person who is upset and distressed about being accused of a crime he committed from a person who is upset and distressed about being accused of a crime that he did not commit.

B. The Two Phases of an Interrogation

Modern interrogations can be divided usefully into two sub-parts. The first, the *pre-admission phase*, is organized to change the suspect's decision to deny responsibility and elicit the statement "I did it." The goal of the second segment of the interrogation is to obtain from the suspect a *post-admission narrative* of the crime that proves the suspect's guilt. Although interrogators are not trained to recognize this fact, the suspect's post-admission narrative can also provide powerful evidence tending to prove the suspect's innocence.

By following a simple formula, interrogation progressively leads a suspect to see himself as caught and/or hopeless. Early on, police challenge his denial and accuse him of committing the crime. Their accusations are repeated frequently throughout this phase of questioning. They are more strongly made with each repetition and as evidence for them is revealed. Eventually, the accusations are presented as facts. Throughout, the interrogator pretends absolute personal certainty of the suspect's guilt no matter how confident or doubtful he may be.

If police have evidence linking a suspect to the crime, they slowly reveal it to bolster their accusations and justify their apparently certain position. Even if the interrogator has no evidence linking a suspect to the crime, he will nevertheless claim to possess incontrovertible proof of the person's guilt. Interrogators commonly claim that they have witnesses, fingerprints, hair, blood, semen or other evidence when they have little or nothing. Whether revealing evidence or telling lies, the interrogator labors to convince the suspect that the case against him is so overwhelming that he has no choice but to face the fact that he has been caught, will shortly be arrested, successfully prosecuted and severely punished. This sets the stage for eliciting an admission of guilt in exchange for the smallest of benefits.

Once the suspect makes an "I did it" admission, the second part of the interrogation commences. The interrogator turns his efforts toward obtaining a post-admission narrative of the crime -- a detailed description of the suspect's actions -- including his motive, his planning, the circumstances leading up to the crime, how he executed it, facts about the crime scene and the location of evidence unknown to the police. The voluntariness of a confession is determined by the tactics and incentives police use to shift the suspect from denial to admission. The truth of the suspect's admission ("I did it") is established by the accuracy of the information elicited during the post-admission narrative phase of interrogation.

The *fit* between the suspect's post-admission narrative and the facts of the crime provides undeniable and strong evidence of whether the suspect possesses actual knowledge of the crime or is ignorant of information that would be known to the perpetrator. While confession evidence (the statements the suspect makes during the post-admission phase) is often both powerful and persuasive, the important question remains: does the confession statement yield evidence of guilt or innocence? Evaluating the fit answers this question.

The post-admission narrative gathering phase for a true confession has the potential to prove the suspect's guilt in a fashion that can never be repudiated. A thorough post-admission narrative can link a guilty suspect to the crime so strongly that virtually anyone willing to evenhandedly evaluate his statements will conclude that he is guilty. For example, a guilty suspect can supply information known only to the offender, can lead police to missing evidence, can provide them with missing information, and can explain any seemingly anomalous facts about the crime.

Similarly, if a suspect is innocent, carrying out a thorough post-admission information

gathering exercise can generate persuasive evidence showing that he has no actual knowledge of the crime. A post-admission narrative that is riddled with errors, demonstrating the suspect's inability to correctly describe significant facts, inability to provide corroboration (e.g. correct information regarding the missing murder weapon, loot, etc.) and inability to contribute a host of specific details the perpetrator should know must lead to the conclusion that the suspect is ignorant of the crime. Therefore, anyone willing to evenhandedly evaluate the suspect's statements should find that he is almost certainly innocent.²⁰ For example, in the Garrett case (see Pp. ⁷⁵⁻⁸¹72-78), an innocent man who falsely admitted "I did it" did not know any of the key details of the crime other than what he had learned from his interrogators and his post-admission narrative provided police (and the jury at his trial) with information that demonstrated gross inaccuracies and ignorance of even how his daughter was killed.

C. The Steps in Shifting from Denial

1. The Decision to Allow Questioning

Choosing to allow interrogation to commence is the first major event in the decision analysis. Even if the suspect is not in custody, the police may remind him of his constitutional rights to remain silent and to have counsel present. Both innocent and guilty suspects waive their rights because they perceive themselves as better off by permitting questioning to proceed than by terminating the process.

The reasons for allowing the interrogation to go forward are, however, quite different for guilty and innocent suspects. A suspect who knows that he is guilty is likely to be acutely

²⁰See Pp. 48-53 for further discussion about estimating the fit between the contents of a confession statement and the crime facts.

aware of his jeopardy when a detective indicates a desire to question him, and is motivated to avoid detection, arrest and punishment. A guilty suspect may be thought of as engaging in a game with the interrogator in which each has as his goal manipulating and deceiving his opponent. The decision to allow questioning to proceed by a guilty suspect who is aware that he can, in fact, refuse to be questioned only makes sense if the suspect is motivated to mislead the interrogator, convince him of his innocence and perhaps gain information about what evidence, if any, the police have against him.

The innocent suspect perceives his situation differently. Knowing that he is uninvolved in the crime, he is likely to believe that speaking to police carries no significant risk. Because he believes that he has nothing to hide, the innocent suspect is likely to perceive the Miranda warning as an unimportant formality. Unlike the guilty suspect, who is aware of his potential risk from the start, the innocent suspect only becomes aware of his growing jeopardy as the process unfolds. It takes a while before he realizes that the interrogator will not accept the idea that a mistake has been made. By then, his assessment of his situation has been altered by the interrogator's tactics. His Miranda rights are still likely to seem unimportant, but now because it is too late to invoke them. The suspect is already being accused of a crime and threatened with arrest, but certain of his innocence he is likely to see continuing to interact with the interrogator as the most straightforward way to deal with the problem.

Neither the guilty nor the innocent suspect is likely to appreciate that the methods of accusatory interrogations are designed to initially encourage the belief that questioning is relatively risk free. The opening procedures are intended to allow the guilty suspect to entertain the idea that he can start the questioning, mislead the interrogator and emerge in a more secure

position by having allowed police to question him. Refusal, he is likely to believe, would cause the investigator to single him out for more rigorous investigation.

The initial structure of an interrogation (both as to its physical characteristics and psychological aspects) is designed not only to encourage the belief that the questioning will be relatively risk free, but also to create the impression that the interrogator has the power to radically alter the suspect's life. On the one hand, he appears benign -- perhaps easily fooled, or simply seeking to do good by solving the crime. His potential power is, however, awe-inspiring: the interrogator wields the power of the state to take the suspect into custody, detain him against his will, and subject him to a trial that can lead to severe punishment. The location at which the interrogation happens, the physical setting in which questioning takes place and the demeanor of the interrogator are chosen to produce the suspect's initial impression of the interrogator as benign and at the same time possessing enormous potential power.

2. Shifting The Suspect From Confident To Despairing

The decision model assumes that both innocent and guilty individuals consent to police interrogation because they expect to emerge unscathed from questioning. As the process unfolds, however, the interrogator works to drive down the suspect's initial subjective certainty that he will survive the interrogation and reduce to near zero his expectation that will be able to leave when questioning ends. The interrogator works to convince the suspect that all his future holds is certain arrest, trial, conviction and punishment.

The interrogator typically begins by obtaining an account of the suspect's relations with the victim and his whereabouts at the time the crime occurred.²¹ Under the non-threatening

²¹This discussion presumes that a homicide is being investigated.

guise of information-gathering, he may require the suspect to repeatedly describe his relations with the victim and activities. Once he obtains the suspect's baseline account, the interrogator changes his style, becomes accusatory and begins to press for an admission. He typically opens the accusatory phase by pointing out contradictions in the suspect's account and confronting him with evidence of one or more flaws in his story.

The interrogator's opening gambit and virtually every move he makes thereafter will affect innocent and guilty suspects differently. Even if the interrogator's choice of a suspect is well-founded and he has solid information that contradicts the suspect's account, he will carefully conserve his supply of real evidence, revealing only enough to make confrontation appear reasonable. The interrogator's strategy is to return to this storehouse of evidence to neutralize each objection in the long series of roadblocks he anticipates that the suspect will erect. The tactic of introducing something new in response to each objection helps create the impression that the interrogator's supply of information is endless.

If the interrogator lacks solid information, he will be forced to open his game either with a report of contradictory evidence that may be erroneous and easily countered or with an entirely fabricated claim. In some instances, interrogators attempt to capitalize on inconsistencies that arise simply from the suspect having to tell and re-tell his account. While a guilty suspect's repeated accounts may sometimes reveal one or more gross and material inconsistencies, an innocent suspect's accounts will contain nothing more than trivial omissions or additions that appear because of the normal variability attendant to repeating a complicated story or because he chooses to keep private something that he sees as unrelated to the crime. When aggressively confronted over a trivial inconsistency or irrelevant omission, an innocent suspect is likely to

perceive the interrogator as unreasonable, hostile, suddenly suspicious and accusatory for no good reason.

As the interrogation progresses, the basic pattern of revealing evidence -- whether valid or fabricated -- that links the suspect to the crime is repeated often. When the investigation is well-founded, the interrogator's presentation of actual evidence implicating the suspect, together with fabricated evidence, creates the impression of an airtight case. For a guilty suspect who recognizes that much of the evidence is true and that the interrogator probably has all he claims, the effect of revealing a grossly overstated case is likely to be sobering and effective.

For an innocent suspect exposed to the same interrogation ritual, the experience is radically different. Knowing that he is innocent, the suspect is likely to be shocked when confronted with erroneous or fabricated evidence. He is initially likely to react to the so-called evidence by saying that a mistake has been made and offering reasons why the interrogator's reported evidence is in error. The interrogator will reject the innocent's denial just as he would if it were made by a guilty suspect -- by expressing great confidence in the reliability of the evidence, assuring the suspect that no mistake is possible and perhaps emphasizing that the suspect's reaction is itself further evidence of his guilt (e.g., "You know you did it, I can see it in the expression on your face").

The interrogator unveils for the innocent suspect the outline of an apparently airtight case. With the possible exception of mistaken evidence, everything the interrogator claims to have that points to the innocent suspect is fabricated. Because part of the interrogator's stylized role is to present a demeanor and attitude that communicates certainty, he will try to exude unwavering confidence in the suspect's guilt even while confronting him with completely false

evidence.

For an innocent suspect, the steadily growing list of inculpatory facts makes it increasingly difficult to classify what is going on as a simple mistake. Wrongly accused suspects frequently come to see themselves as either being set up by someone or railroaded by the police.²² Regardless of the theory that the innocent suspect entertains, the dominant fact before him is the interrogator's message that the case against him is airtight and his arrest is inevitable.

As the process unfolds and more evidence is revealed or invented, the interrogator repeatedly runs through the string of facts linking the suspect to the crime. This tactic functions both to emphasize the strength of the case and to make it effectively impossible for the suspect to coherently respond to the interrogator's massed presentation of evidence. Each time the suspect objects and claims to be innocent, the interrogator is handed the opportunity to repeat the list of facts that seem to irrefutably confirm the suspect's guilt.

An interrogator may sometimes invite the suspect to evaluate the evidence against him and to critique the reasoning and logic of the interrogator's position. This tactic forces a suspect (at least privately) to recognize that the evidence is overwhelming, and forces him to conclude that there is a more than sufficient basis for his being arrested.

False evidence ploys based on eyewitness reports are likely to exert a less powerful

²²Some innocent suspects report that they eventually give up trying to understand what is happening, accept that they will be unable to convince the interrogator of their innocence and decide to try to find a way to tell the interrogator what he demands to hear without admitting guilt -- in other words, they try to explain away false inculpatory facts because the pressures of the interrogation have overwhelmed them. They continue to maintain their innocence, but defend themselves in terms of the interrogator's invented evidence. They find themselves trying to craft a story that offers an explanation for the fabricated evidence that does not involve them in a crime.

influence than false evidence ploys based on scientific procedures. When confronted with fabricated eyewitness evidence, suspects can always respond that the identification is mistaken or that the witness is lying. Anytime a suspect can counter an interrogator's evidence ploy with a plausible alternative explanation or is able to diminish the apparent strength of the evidence, he impedes the interrogator's progress toward confession. Whenever an issue is not resolved in the interrogator's favor, the suspect's ability to resist the interrogator's demands is strengthened.

Claims of scientific test results or high-tech evidence are more influential than claims of possibly erroneous eyewitness evidence. False scientific evidence can be presented so as to leave little opportunity for counters. Interrogators represent positive results of fingerprint, hair or DNA tests as error free and therefore unimpeachable. Interrogators sometimes go through long dissertations about the infallibility of the test results they are about to report, whether the results are real or fabricated. Some even tell suspects of fabricated, new scientific technologies that prove involvement in the offense. For example, in one case an interrogator told a suspect that a proton/neutron test showed that he had handled a cloth bag that was central to the crime.

The polygraph examination is one of the most frequently used pseudoscience influence devices relied on during interrogation. Although under optimal conditions polygraph may allow an examiner to detect deception more accurately than by chance, in interrogations that produce false confessions polygraph examination usually functions as an influence tactic with about the same scientific significance as the proton/neutron test. While the nominal purpose of the polygraph test is to diagnose the subject as "truthful" or "deceptive," the primary function of lie detectors during an accusatory interrogation is to induce confessions. By playing on a

suspect's fear of arrest and by creating the impression that the procedure is infallible, the polygraph examination becomes a powerful pseudoscientific tool of persuasion and manipulation.

In addition to providing the opportunity to claim new evidence against the suspect, polygraph examination allows for another interrogator to enter the process. This operative (whether a police officer or a hired technician) represents himself as an objective and disinterested party, emphasizes the supposed scientific validity of the test results and then behaves as an interrogator, seeking to obtain a confession in the post-polygraph confrontation with the suspect (typically called an interview and supposedly directed at clarifying the readings obtained from the machine).

The polygrapher is in an ideal position to add new, damning evidence to the string of facts with which the interrogator has confronted the suspect. In the course of setting up a basis for countering denials that the suspect may issue after being told that he has failed the examination, polygraph examiners often claim that their machine will detect the truth of the suspect's involvement, even if the suspect is ignorant of it. For an innocent suspect who has already been told of overwhelming evidence of his guilt, the bogus claim that the polygraph machine reads his "unconscious" knowledge and thereby proves his involvement can be devastating. It can start the process of shattering a suspect's confidence in his innocence.

3. Eliciting the Admission

Eventually the interrogator will shift the point of his influence attempts away from creating a sense of hopelessness to persuading the suspect to make the crucial admission. The ideal turning point occurs when the suspect's subjective estimate of successfully surviving the interrogation without being arrested is at or approaching zero. The closer the suspect is to

certainty that his future is both determined and unpleasant, the easier it is for the interrogator to precipitate a decision to confess.

The decision analysis assumes that at the beginning of interrogation the suspect expects to survive the experience without being arrested. A suspect who perceives his situation in this way is unlikely to respond to an initial or premature suggestion that he confess. However, as the suspect's perception of his situation changes and his subjective estimate of surviving sharply declines, the psychological cost of confessing diminishes. What, after all, is the harm of confessing if a person knows he is guilty and believes that he has been caught?

As the apparent cost of confessing diminishes, so too does the magnitude of the incentive necessary to precipitate a decision to confess. Even if a suspect believes that arrest is virtually certain, it is still irrational for him to volunteer a confession. However, once the suspect has accepted the fact that he can not convince the interrogator of his innocence and that he will be arrested, he may reason that confessing alters his situation very slightly. At this moment, when his struggle seems to have ended in defeat, he may be influenced by a minimal, or even a trivial incentive. It doesn't take much of benefit to make it seem that confession has some small, even interpersonal advantage. Even a small incentive may be sufficient to precipitate the decision to confess if it is offered at the right moment.

When an interrogator feels that he has succeeded in convincing the suspect that his fate is certain and has substantially reduced the strength of his resistance to the accusation that he is guilty, or has simply exhausted his resources, the interrogator shifts the focus of his efforts. The shift to a principle focus on eliciting the admission "I did it" is sometimes signaled by an interrogator announcing that he is no longer interested in wasting time debating whether or not

the suspect committed the crime. He may summarize the evidence supporting his position yet again and say that "all I'm really interested in is why you did it."

From this point forward the interrogator suggests reasons why making an admission is to the suspect's advantage. The incentives used to induce a confession can be arrayed on a continuum ranging from legally permissible psychological benefits (e.g., the suspect will feel better) to the strongest coercive threats and promises (e.g., the suspect will be charged with capital murder if he does not confess or permitted to go home if he does).

At the low end of the continuum, suggestions include the ideas that the suspect will continue to experience distress if he does not confess but that he will experience moral or self-image benefits if he does. Interrogators sometimes trade on the remorse that a suspect actually feels and urge him to demonstrate his feelings, perhaps emphasizing that he will experience relief by getting it off his chest. For example, an interrogator may tell a suspect that taking responsibility is manly or the Christian thing to do. They sometimes tell suspects that the victim's family is suffering and that if the suspect is a decent human being, he will disclose the body's location so that the family can provide a proper burial.

If appeals based on the benefit of reducing feelings of guilt, doing the right thing or expressing empathy for the victim's family do not succeed in precipitating the decision to confess, an interrogator is likely to emphasize more tangible benefits for cooperation. Once the interrogator **does this** by suggesting that there are *systemic* benefits for confessing and *systemic* punishments for failing to confess, he moves dangerously close to introducing legally coercive threats of harm and offers of leniency.

Interrogators often manipulate suspects so as to lead them to conclude that confession

versus continued denial will result in different sentencing outcomes. To communicate that there is a material benefit for confessing, an interrogator need not promise that he will obtain the particular benefit for the suspect. Nor need he explicitly threaten the suspect in order to communicate that the suspect can expect a harsh punishment if he does not confess. It can be sufficient to lead the suspect to believe that there are systemic benefits that follow from confession or silence. When leading a suspect to recognize a systemic benefit, the first step is to impress upon him that certain consequences follow "naturally" from what he does *now* -- during the interrogation.

For example, an interrogator may emphasize that the suspect should think about how the prosecutor, the judge and the jury will react to the litany of denials that he has been issuing, or how they are likely to be affected by a demonstration of remorse. An interrogator may tell the suspect that now is the time for him to choose how he will be viewed in court. The obvious implication is that the contrite, remorseful defendant asking for mercy will receive a lesser sentence. The interrogator's strategy is to bring into the room considerations and outcomes that favor confessing. If he succeeds, the interrogator effectively changes the mix of factors the suspect actually considers when making the decision to confess or to remain silent.²³

This strategy permits the interrogator to avoid having to suggest or promise that he will

²³The major difference between the economist's hypothetical, rational, fully informed decision-maker and the social psychologist's analysis of the decision maker is that the economist assumes that the decision-maker chooses among all the possible alternatives whereas the behavioral analyst seeks to determine what alternatives the decision-maker considered when the decision was actually made. To be rational is to select the best of the alternatives under consideration. The classical economist's decision-maker is thorough in his search for alternatives as well as rational, whereas actual decision-makers often make choices based on incomplete or flawed information.

act to procure the benefit for the suspect. He manipulates the suspect by persuading him to view the operations of the justice system as naturally conferring rewards for confessing his guilt and naturally meting out punishment for denial. The interrogator seeks to reduce the variability, uncertainty and unpredictability of prosecution and defense to a few simple principles -- that, of course, support the line of action the interrogator favors. This approach is intended to motivate the suspect to confess by leading him to conclude that he will be more or less severely punished depending on whether he confesses at this moment in time.²⁴

Once an interrogator attempts to influence a suspect's decision by offering an incentive, his natural reaction to continued resistance is to increase the value of the benefit that he is offering. If an interrogator moves up the incentive scale, he may emphasize that he wants to "help" the suspect (in some deliberately vague fashion), but that first the suspect must reveal his side of the story. For example, an interrogator told Cheval Wright that when the interrogation ended his best opportunity to save himself would be gone (Wright Transcript, 1993). If he did not confess, he would be in worse shape because the interrogator would not be able to help him in the future. Wright was told that his lawyer would never let him take the witness stand at trial. The investigator painted a picture in which he (the investigator) takes the stand at trial, and is regarded as the professional witness by the jury. The interrogator continued by telling Wright that his account of what happened would be believed by the jury. If Wright would only

²⁴Whether a confession elicited by an interrogator's direct appeal to a system benefit constitutes a coerced statement is obviously a legal decision. If, however, the facts of a particular interrogation fit the pattern outlined in the decision model, it would be appropriate to conclude that the confession was elicited because the interrogator succeeded in leading the suspect to believe that a significant benefit (in the form of lenient treatment) flowed from choosing to confess.

confess to the accident scenario, he would be saved.²⁵

The uppermost end of the incentive scale is to threaten direct physical harm (a tactic that is sometimes still used), the death penalty, a lengthy prison sentence or to directly promise that confession will result in prosecutorial leniency. Although these kinds of incentives are generally recognized as improper and coercive, they are often employed either directly or in a superficially disguised manner. Police use of these incentives is illustrated below in the excerpted exchanges from the interrogation transcripts of Dante Parker (See Pp. 68-75) and Tom Sawyer (See Pp. 81-86).

One of the most frequently used techniques through which confessions are coerced is known as the "accident" technique or scenario. After the interrogator shifts his focus, he may attempt to elicit an admission to a version of the crime that involves a lesser criminal act and lesser punishment. The interrogator seeks to obtain an admission that both he and the suspect know to be untrue (i.e., a confession not to the crime as it actually happened, but to a version of events different from what the interrogator believes to have occurred).

The interrogator is likely to introduce this technique shortly after he signals his shift in focus. For example, he might conclude his refusal to further discuss the suspect's guilt by declaring, "all I'm interested in knowing is whether you planned to do this or whether it was an accident."

As the technique is used, the interrogator suggests a version of the facts that drastically

²⁵Following the interrogation, the detective administered a questionnaire to Wright. One of the questions asked was: Why did you decide to "tell the truth" (i.e., confess)? The reason, Wright answered, was that the interrogator could get the jury to believe a version of what happened that it would not accept from him.

lowers the charge appropriate for the confessed crime in comparison with what charge would be appropriate for the actual crime. The interrogator puts forward a scenario that describes an event that might not even be a criminal act. For example, assume that the crime scene describes a homicide that was a rape and murder involving significant torture. The scenario, as put forward by the interrogator, instead describes an event that was not pre-meditated, but rather happened because of something beyond the suspect's control -- the accident. Perhaps the gun went off accidentally or the suspect understandably lost his temper or was understandably driven temporarily mad by the temptress who was killed.²⁶

²⁶Richard Ofshe served as a consultant to the defense in State of Florida v. Martin Salazar (1996), had access to the complete file and testified on Mr. Salazar's behalf at a motion to suppress his confession. Due to the events reported below, the suppression hearing was never completed.

In the interrogation of Martin Salazar, the interrogator used the accident scenario technique to describe a crime that was a strangulation by ligature following a vicious beating and a possible rape. The accident scenario recast the crime as an accidental death that happened in the course of the victim's requested "rough sex" and desire for a near asphyxiation sexual experience.

One of the problems with the accident scenario technique is that some interrogators appear to use it almost as a matter of regular practice in their cases, as in the Salazar case. If used without any thought about whether the technique could realistically work with someone actually knowledgeable of the crime and directed against a desperate and demoralized innocent suspect, the "accident scenario" can end up being more effective for eliciting confessions from the innocent than from the guilty.

Given the crime scene facts, the killer had to know that the victim had been severely beaten, that a knotted extension cord was pulled so tightly around her neck that it was buried deeply, and that her jewelry was stolen. A suspect who had actual knowledge of the crime facts would probably be less likely to take the accident lure, since he would recognize the impossibility of an accident explanation for the crime. The detective who formulated the accident scenario admitted that he recognized that the crime could not possibly have happened as he described it in the scenario presented to Martin Salazar (Deposition of James Mahoney, 1996). Mr. Salazar, however, lacking actual knowledge of the crime scene, agreed to the accident scenario after detectives introduced erroneous and false evidence that placed him at the scene of the murder. If Mr. Salazar had known the crime facts, it would have been more difficult for him to agree to the detective's obviously false confession scenario.

The post-admission narrative was taken by detectives who were not present when

As discussed previously (Pp. 6-7), this technique elicits a decision to confess because it communicates the understanding that the suspect will receive a reduced level of punishment if he admits to the lesser crime. The accident technique lies at the heart of the Reid method of interrogation (See Inbau et. al., 1986: 102-106). Even Inbau, Reid and Buckley (1986) grant that the accident technique first elicits a confession that everyone (interrogator and suspect, whether guilty or innocent) knows is a false confession and that the false confession is to a lesser crime (Inbau et. al., 1986: 103-106).

Inbau, Reid and Buckley fail to explain to their readers that the technique works by means that are coercive. The suspect is motivated to act by a threat of harm (a more serious charge) or a desire for a benefit (a lesser or no criminal charge). The accident scenario theme

Detective Mahoney used the accident technique. Mr. Salazar was asked to provide a detailed description of the crime and was unable to do so. He also refused to agree that he had done any of the acts that correctly described the crime. He eventually broke down and admitted that he was lying -- he had not seen the victim the day she died and was only telling the false story because Detective Mahoney had told him he would never get out of jail if he did not confess, but could go home if he agreed her death was an accident (Salazar Transcript, 1996).

Subsequent to selecting the Salazar case as one that illustrated the use of the accident technique to elicit a false confession and writing what precedes this paragraph certain additional facts came to light. A fingerprint impression, in the victim's blood, was found on the socket end of the extension cord used to strangle her. It was undoubtedly the fingerprint of the killer. The Prosecutor, Bunnie Lenhardt sent the extension cord along with Martin Salazar's fingerprint to the Florida Department of Law Enforcement for comparison. She reported to Mr. Salazar's defense attorney, Peggy Natale that although Mr. Salazar's print was not a match, he could not be excluded.

Shortly before trial, Ms. Natale took the deposition of the technician who did the examination and learned that Mr. Salazar was excluded. The technician also reported that this fact had been passed on to both Ms. Lenhardt and to the police. Immediately after Ms. Natale filed a motion bringing this flagrant violation of Brady to the court's attention, the State's Attorney for Palm Beach County dismissed charges against Mr. Salazar.

After months of awaiting trial in a death penalty case based on nothing but his false confession, Mr. Salazar was released on October 10, 1996 and resumed his life as a free man.

functions to systematically persuade a suspect that the beneficial consequences of confessing outweigh the harmful consequences (Kassin and McNall, 1991).

Remarkably, Inbau and associates rationalize this interrogation strategy and defend it as permissible so long as the interrogator alters only the suspect's perception, but not the reality, of what happens during an interrogation:

During a legal interrogation, reality cannot be changed. A confession will be inadmissible as evidence if the interrogator takes away the consequences of the confession (promises), or physically adds anxiety (threats, abuse) during the interrogation. However, the interrogator can legally change the suspect's *perception* of the consequences of confessing or the suspect's *perception* of the anxiety associated with deception through influencing the suspect's beliefs (Inbau et. al., 1986: 333).

The distinction made by Inbau, Reid and Buckley is nonsense. There is no real difference between manipulating a suspect's perceptions about anticipated punishment outcomes and manipulating the reality of anticipated punishment outcomes-- a person's perceptions are his reality.

The interrogator's reality may well be that he has no intention of going through with the implied "deal" to accept the accident scenario of the crime and use it as the basis for his decision about the appropriate charge for which to arrest the suspect. Inbau and associates fail to appreciate that what is at issue is the suspect's will to resist and whether it is overcome by the conduct of the interrogator, not whether in the interrogator's mind his threat or promise is sincere.

While the private thoughts, mental activity, and contemporaneous verbalizations made by innocent and guilty suspects are different, these differences are less impressive than the similarities that a modern accusatorial interrogation can produce in suspects' decision-making

that he has been caught and pointing out or offering incentives that suggest he will be better off by confessing. Whether the suspect is innocent or guilty, the variable that explains his decision to confess is his subjective estimate of the likelihood of surviving police questioning without being arrested and punished. While innocent and guilty suspects comprehend and react differently to an interrogator's accusations of guilt and claims about evidence linking them to the crime, they both experience growing certainty that they will soon be arrested and ultimately punished -- which explains why and when they give confessions to police.

IV. Classifying Confessions

A. Kassin and Wrightsman's Classification System

Kassin and Wrightsman's (1985) typology posits three conceptually distinct types of false confessions: Voluntary, coerced-compliant, and coerced-internalized.²⁷ This typology is held together by two essential distinctions: whether the confession is initiated by the suspect or elicited by police (voluntary vs. coerced); and whether the suspect acquiesces to the interrogator's influence attempts (tactics) for instrumental reasons or because he comes to believe the interrogator's suggestions of guilt (compliance vs. internalization). Accordingly, the distinguishing feature of a voluntary false confession is that it is spontaneous and thus does not arise in response to significant police questioning or pressure. The distinguishing feature of a

²⁷For early research on the social psychology of police-induced false confessions in America, see Bem (1966, 1967), Driver (1968) Zimbardo (1967, 1971) and Maslach (1971). In England, the problem of false confessions has been the subject of extensive study for almost two decades (See Gudjonsson 1992 for a review).

coerced-compliant false confession is that the suspect knowingly confesses to a crime he did not commit in order to escape the pressures of an aversive interrogation process and/or gain a benefit such as leniency. For a coerced-internalized false confession the distinguishing feature is that the suspect confesses only after he comes to believe that he committed the offense.

Kassin and Wrightsman point out that this conceptual framework is consistent with several important insights into the causes and consequences of false confessions. First, while police will most effectively elicit compliant responses through powerful or extreme interrogation methods, they will most effectively elicit internalized responses through more subtle or persuasive methods of questioning (see also Ofshe, 1989; Gudjonsson and MacKeith, 1988). Second, while compliance and internalization may be closely related processes, compliant behaviors persist only to the extent that they have instrumental value whereas internalized behaviors "persist over time and across a variety of situations" (Kassin and Wrightsman, 1985: 77). Kassin and Wrightsman expect that coerced-compliant false confessions will be retracted shortly after the suspect leaves the interrogation, whereas coerced-internalized false confessions can lead to enduring belief change by permanently altering a suspect's memory, "making its original contents potentially irretrievable" (1985: 78). Third, they argue that coerced-compliant false confessions can be explained by the individual's desire to escape the aversive pressures of interrogation and secure a favorable outcome.

Wrightsmann and Kassin (1993) identify three factors that explain coerced-internalized false confessions: (1) The conditions of interrogation may induce a state of hypnotic trance that causes the suspect to confuse truth with confabulation; (2) As self-perception theory would predict, suspects induced to tell lies under conditions associated with telling the truth may come

to believe those lies as the truth (see Bem, 1972, 1966); and (3) Individuals prone to high levels of "interrogative suggestibility" are more likely to actually accept a police interrogator's suggestions of guilt.²⁸

Kassin and Wrightsman's threefold typology applies social psychological principles to the categorization and explanation of false confessions and offers a conceptual framework with which to classify, identify the variation in, and presumably explain false confessions to police. In the last decade their classification scheme has provided a useful framework for studying false confessions, has generated a series of research questions (see Gudjonsson, 1992) and has been relied upon by confession scholars, including these authors (Ofshe, 1992, 1989; Leo, 1992).

In light of further research, it has become clear that Kassin and Wrightsman's classification scheme is in some ways inadequate and is based, in part, on erroneous assumptions. There are three weaknesses in their scheme. First, it presents a different explanation for true and false confessions when both are driven by the same underlying logic and arise from interrogations that are to a considerable degree similar.

Second, their classification scheme fails to encompass the entire range of police-induced false confessions that are not coerced (Davison and Forshaw, 1993). A satisfactory classification scheme should recognize and be consistent with an explanation for how and why individuals falsely confess in response to police pressures that do not include elements of classical coercion (e.g., threats and/or promises of benefit).

Third, their classification scheme misapplies the concept of internalization to the

²⁸This partial explanation of coerced-internalized false confessions builds on the work of Gudjonsson (1991, 1990, 1989, 1988, 1987, 1986, 1984b, 1984a) and his colleagues (Gudjonsson and Hilton, 1989; Gudjonsson and Clark, 1986; Hansdottir, et. al., 1990).

phenomenon of false confessions. Internalization refers to the social psychological process by which individuals come to learn and accept a set of enduring values and beliefs. Internalized values and beliefs, as Kassin and Wrightsman correctly note, therefore persist over time and across a variety of situations. No reported case nor any case known to these authors has produced this type of relatively stable belief.²⁹ Ordinary police interrogation is not sufficient to produce transformative or internalized belief change. Even in political thought reform programs that take months to execute, the internalization of belief change is so rare as to be regarded as anomalous and attributable to a personality characteristic of the target of influence (Schein, 1961; Ofshe, 1992b).

The case literature suggests that police-induced belief change during interrogation is temporary, inherently unstable, and situationally adaptive; it has never been observed to endure long after the influences and pressures of interrogation have been withdrawn. Individuals who falsely confess because they come to believe that they committed the crime do not demonstrate internalization of a belief in their guilt in any meaningful way. Rather, they confess falsely because they have been **temporarily persuaded** by the tactics of the interrogation to accept responsibility for a crime they have no actual knowledge of having committed. The person who has been persuaded to falsely confess is, at the moment of confession, only more certain than

²⁹Even the famous interrogation of Paul Ingram failed to produce an internalized belief (Ofshe 1992; Wright 1994), despite the fact that Mr. Ingram believed that he was the leader of a satanic cult for approximately six months. Once the social structure (police, authority figures and family) supporting and shoring up Mr. Ingram's fragile belief system was withdrawn, his confidence ebbed, he realized that his new beliefs were insupportable by fact and he rejected them. Although Mr. Ingram's belief endured for an exceptionally long time, so did his interrogation. The beliefs he developed crumbled once his six-month long series of interrogations ended.

not that he committed the crime.

The persuaded but innocent suspect is neither certain of his innocence nor of his culpability. As a result of particular interrogation tactics, the suspect becomes convinced that he is probably guilty of the crime under investigation. While his subjective state is one of uncertainty, he is over the line -- more certain than not that he committed the crime. His inability to retrieve actual memories of the crime explains his inability to achieve complete certainty of his guilt. The tactic of claiming overwhelming evidence of culpability prevents him from remaining certain of his innocence.

Accurately describing the persuaded false confessor's belief state is important because it leads to identification of the particular interrogation tactics that produce this type of false confession, explains why it happens, and explains why characteristics of the confessor's behavior are different from the behaviors of true confessors and those who give coerced-compliant false confessions (Ofshe and Bjorkenwall, in preparation; Gudjonsson, 1992; Ofshe, 1989). Like other false confessors, persuaded false confessors will typically recant their confession shortly after they escape the aversive pressures and reinforcers present in the interrogation environment.

B. A Category System for Classifying Confessions

The following categorization scheme is useful for classifying and explaining the decision to make a true or false statement in response to interrogation.

TABLE 1: Type of Confession and Its Legal Implications

Type of Confession	Whether Confession is True or False	
	True	False

Voluntary	Voluntary/Reliable	Voluntary/Unreliable
Stress-Compliant	Involuntary/Reliable	Involuntary/Unreliable
Coerced-Compliant	Involuntary/Reliable	Involuntary/Unreliable
Non-Coerced-Persuaded	-- Impossible --	Voluntary/Unreliable
Coerced-Persuaded	-- Impossible --	Involuntary/Unreliable

(1) Voluntary Confessions -- Reliable and Unreliable. Voluntary confessions arise in the absence of accusatory interrogation. Kassin and Wrightsman (1985) propose that individuals make voluntary unreliable (false) confessions for several reasons: to receive attention or fame, to expiate guilt, to receive a recommendation of leniency, to protect or aid the real offender,³⁰ or out of an inability to distinguish between fact and fantasy. Gudjonsson (1992) suggests that the motives for voluntary unreliable confessions range from a normal desire to protect loved ones to depression, pathological feelings of inadequacy and mental illness. High profile crimes such as the Lindbergh kidnapping in the 1930s and the Black Dahlia murder in the 1940s attracted hundreds of voluntary unreliable confessions (Corwin, 1996). Little is known about

³⁰This appears to be common among juveniles who make voluntary false confessions (See Gudjonsson, 1992).

the frequency or risks of a miscarriage of justice attributable to voluntary unreliable confessions.

(2) Stress-Compliant Confessions -- Reliable and Unreliable. Distinguishing between stress-induced and classically coerced confessions is helpful for understanding the causes and variety of statements made to police in response to interrogation.³¹ The former are elicited by the excessive use of psychological, and sometimes physical, stressors that, at a lower level of intensity, are ubiquitous in accusatorial interrogation. The latter are precipitated by classical forms of coercion (e.g., threats and promises).

Too intense use of the stressors in play during custodial interrogation can be sufficient (even absent classical coercion) to precipitate both reliable and unreliable confessions. Suspects make stress-compliant statements when the aversive interpersonal pressures of interrogation become so intolerable that they comply in order to terminate questioning. As the term is defined, a stress-compliant confession (1) is elicited in response to the exceptionally strong use of the aversive stressors typically present in interrogations; and (2) is given knowingly by the suspect **in order to escape** the punishing experience of interrogation. If the suspect is guilty, he confesses because of the stress of the interrogation and is fully aware of his guilt; if the suspect is innocent, he confesses because of the stress of the interrogation despite full awareness of his innocence.

³¹The ~~stress~~ factors involved in a stress-compliant confession are aversive (i.e., punishing and painful) and might reasonably be termed coercive in the legal literature and in the law. For analytic purposes, however, it would be a mistake to lose the distinction between cognitive factors that influence a decision (e.g., promises of harsh or lenient punishment) and stressors that impact decisions (e.g., intense verbal aggression, displays of hostility, insult or even deprivation of a necessity such as food, water, or sleep). The classificatory system presented above distinguishes between two causes of compliant confession and necessitates that a judgment be made in every case about the confession's principle cause.

The causal structure of stress-compliant confessions can be readily understood. Interrogation is stressful by design. The multiple stressors built into the interrogation environment are present because they function to exert pressure on the suspect to comply with the interrogator's demand for confession.³² The suspect is confined in an unfamiliar setting, isolated from any social support, and perceives himself to be under the physical control of the interrogator. He exercises little or no control over the timing, duration or the emotional intensity of the interrogation, the outcome of which remains uncertain. In extreme cases, fatigue, hunger and cold may function to additionally stress the suspect.

Since the purpose of interrogation is to elicit a legally voluntary admission of guilt by breaking down a suspect's resistance to self-incrimination, interrogators quite properly use whatever methods the law allows. To this end, they are permitted to employ techniques that are intended to induce distress and anxiety, attack the suspect's self-confidence, and reinforce the interrogator's position that the suspect's guilt is certain. Stress at any level of intensity advantages the interrogator because the suspect can only escape continuing discomfort through compliance.

An interrogator may create stress through the use of a variety of interpersonal styles and techniques. The routine tactics of an accusatory interrogation are inherently distressing even when an interrogator actively works to minimize the punishing aspects of interrogation. Often, however, interrogators choose to make statements that increase a suspect's anxiety or choose to adopt a hostile style to maximize distress and enhance the effect of certain influence tactics. An

³²See, for example, Inbau, Reid and Buckley's (1986) description of how to establish the power of the interrogator, how to control and design the physical setting of the room, the importance of the interrogator's demeanor and how to manipulate a suspect's anxiety.

interrogator's choice to use a hostile, confrontational interpersonal style together with other factors (such as the duration of the process) can stress some suspects to the point that their desire for release from the painfully aversive interrogation results in a decision to comply with the interrogator's demand for confession.³³

³³Since both of the cases described below are current as of this writing and have not yet been resolved, the names of the defendants have been changed. Sometimes interrogators discover and capitalize on a suspect's exceptional vulnerabilities. For example, the day-long interrogation of Jane Doe (State v. Jane Doe, 1966) took place during an auto trip from Small City to a point a few hours away on the coast. Early in the day Ms. Doe revealed that she had a life-long intense fear of heights. When the group arrived at the beach and the adjacent high bluffs from which Ms. Doe's male friend had disappeared weeks earlier, the interrogators insisted that Ms. Doe accompany them up a narrow trail that worked its way up the sheer bluff. They believed that it was from this trail that the victim had fallen to his death in the ocean. Ms. Doe resisted going on the walk because of her fear of heights. She protested that she would be of no help on the trail since she had not accompanied the decedent on the walk from which he never returned. In fact, there was no evidence that the victim had fallen from the bluffs. All that was known was that he disappeared and his body washed-up weeks later on the coast many miles north of the beach at which he was last seen.

Prior to maneuvering Ms. Doe onto the trail, the interrogators had been suggesting that she knew something about the killing that she was not telling them or that she had blocked-out her knowledge. Ms. Doe maintained that she knew no more about the circumstances of her friend's disappearance than what she had originally reported. The interrogators had also emphasized that if an accident happened there was nothing to be afraid of as far as the law was concerned and that they were overworked and needed to close this file. Part way up the trail pressure was again directed at Ms. Doe to agree to the accident scenario. This time the additional distress caused by her fear and panic related to heights, in conjunction with the suggestion that admitting to the accident had no cost led Ms. Doe to comply.

John Doe was a seventeen year old middle class black male at the time he was interrogated by police in Major City (State v. John Doe, 1996) about his alleged connection to a murder in his neighborhood. Mr. Doe had been implicated by the statement of a young woman who claimed that her former boyfriend and Mr. Doe had conspired to murder and rob a local drug dealer. She subsequently recanted her statement and Grand Jury testimony explaining that she was angry at her former boyfriend because he had abandoned her for another young woman. This left her alone, pregnant and penniless. Mr. Doe was an acquaintance of her boyfriend's and was implicated simply because two people had to be involved in the killing.

Both John and his mother believed that he had been requested to appear at the police station because he was a witness who supported a complaint made by a group of neighbors that a certain young man was carrying a gun around their neighborhood. Mr. Doe was separated from his mother at the station. She was prevented from speaking with him when she realized

An interrogator may use some or all of the following tactics as he presses for a confession: invading the suspect's personal space; falsely confronting the suspect with "incontrovertible" evidence of his guilt; accusing the suspect of fictitious crimes; plying the suspect with leading questions; asserting the futility of denying guilt; pointing out inconsistencies in the suspect's account; alternating displays of sympathy with displays of hostility; preventing the suspect from verbalizing his innocence; or offering to support or personally help the suspect only if he confesses. These and other influence techniques will likely be used repeatedly and in combination. Any normal individual facing an accusatory interrogation will conclude that he is being accused of a serious crime, his future is uncertain and may well involve prison. No matter how "soft" the interrogator's style, the interrogation experience will inevitably be distressing and anxiety-provoking to a significant degree.

If, as interrogation progresses, the detective relies excessively on an interpersonally oppressive methodology, the suspect's stress will be enhanced, and he may become physically exhausted, emotionally distraught or mentally confused. Confronted by an aggressive, demanding, overbearing interrogator who refuses to take no for an answer, a suspect may reason that telling the interrogator what he wants to hear -- confessing to the crime -- is the only way to escape from the physical confinement, fatigue and distress of continuous questioning.

that something unusual was happening. John was interrogated and denied any involvement in the killing.

At one point he was left to stew about the accusations and his situation in a very small, windowless room. Although he had always tried, unsuccessfully, to hide the fact from his friends and his family Mr. Doe was claustrophobic and suffered intense anxiety when confined in a small space. His desire to escape the room in which he was being held became so intense that when a State's Attorney came to ask him if he was ready to confess he agreed on the condition that he be allowed to give the confession in another room. She was more than willing to comply with John's odd request and took his confession.

Gudjonsson (1984b, 1987) has constructed a measure of "interrogative suggestibility" -- the extent to which a person is likely to comply with the pressures of interrogation.³⁴ A predisposing characteristic of an individual, interrogative suggestibility provides an important index of how inherently responsive and differentially vulnerable a particular suspect is to the demands and stresses of interrogation. Intellectually normal individuals are likely to vary in the degree to which they are vulnerable to interrogative pressure. Gudjonsson's research demonstrates that their personality characteristics explain some of the variance in who confesses and who does not.

While individuals in the generally population vary widely in their capacities to resist the stresses of interrogation, the mentally handicapped are unusually responsive to pressure to submit and to comply with the demands of authorities (See Gudjonsson et. al., 1993). As illustrated through excerpts from the interrogation of Johnny Lee Wilson (See Pp. 61-67), the mentally handicapped are especially vulnerable to the pressures of accusatorial interrogation. For this reason, even the average level of stress built into an interrogation can be excessive and overbearing for them.

Two legal points follow from the analysis of stress-compliant confessions. First, since classical coercion is not necessarily an element used to induce a stress-compliant unreliable confession, the Fourteenth Amendment due process voluntariness test is not likely to provide an adequate safeguard against the admission of confession evidence when the statement is elicited through the induction of psychological stress that overbears a suspect's will to resist (See, for

³⁴Gudjonsson and his colleagues have also conducted extensive research on individual differences in interrogative suggestibility, showing that it is related to personality traits such as intelligence, memory, assertiveness and self-esteem (See Gudjonsson, 1992 for a review). ✓

example, Gudjonsson, 1992: 247-251).

This is contrary to current legal understandings about both the psychological causes of false confessions and the legal safeguards that exist to prevent their admission in court. For example, the Department of Justice (1986: 99) has written that, "[s]o long as coercion is avoided incriminating statements are highly probative evidence, since innocent people are not prone to make false confessions." Like the Department of Justice, many legal professionals wrongly assume that only cognitively or physically coercive police tactics will induce false confessions. However, stress-compliant unreliable confessions may mistakenly be admitted into evidence against the accused and therefore pose a significant risk of wrongful conviction. Current constitutional safeguards do not provide an adequate bar to the admission of involuntary and often unreliable confessions. (See White, 1996).

Second, the special situation of the mentally handicapped perhaps most clearly illustrates the problem of stress-induced compliance. Whereas some intellectually normal individuals are especially responsive to stress, they are not easily identified as being vulnerable at the time they are selected for interrogation. The situation is quite different for individuals who are intellectually impaired. As is generally recognized, they are quite likely to be highly vulnerable to the stress inherent in a modern accusatory interrogation (Ellis and Luckasson, 1985). The psychological pressures and demand characteristics of even routine accusatorial interrogation can lead mentally handicapped suspects to confess -- whether truthfully or falsely -- in order to placate a police officer and avoid what for a normal individual would be a tolerable level of psychological stress.

The mentally handicapped suffer not only from impaired intelligence, but are also likely

to possess limited social skills, and lack the ability to appreciate the seriousness of a situation. Because of these characteristics, the submissive mentally handicapped learn to accommodate to a variety of situations in life by readily agreeing with the suggestions of others. They thus tend to give consistently affirmative responses to questions, and tend to be unusually responsive to authority. As the President's Panel on Mental Retardation noted in 1963 (Ellis and Luckasson, 1985: 451):

A retarded person may be hard put to distinguish between the fact and the appearance of friendliness. If his life has been molded into a pattern of submissiveness, he will be less able than the average person to withstand normal police pressures. Indeed they may impinge on him with greater force because their lack of clarity to him, like all unknowns, renders them more frightening. Some of the retarded are characterized by a desire to please authority: if a confession will please, it may be gladly given. 'Cheating to lose,' allowing others to place blame on him so that they will not be angry with him, is a common pattern among the submissive retarded. It is unlikely that a retarded person will see the implications or consequences of his statements in the way a person of normal intelligence will.

Because of the hypersensitivity of the mentally handicapped, police may easily and altogether unwittingly elicit stress-compliant unreliable confessions from them -- without resorting to any coercive tactics, but simply by applying the ordinary, baseline pressures of accusatory interrogation.

(3) Coerced-Compliant Confessions -- Reliable and Unreliable. A coerced-compliant confession is defined as a statement elicited by the use of classically coercive interrogation techniques, and is given knowingly by the suspect in order to receive leniency or escape the harshest possible punishment. Coerced-compliant confessions thus differ from stress-compliant confessions in two fundamental ways. First, they are caused by the presence in the interrogation

of classically coercive influence techniques (e.g., threats and promises). Second, they are the result of the suspect's **conscious** decision to gain a benefit or to avoid an anticipated harsh punishment. Coerced-compliant confessions differ from stress-compliant confessions not only in terms of the interrogation techniques by which they are elicited, their motivational antecedents, and the logic of the decision-making leading to confession, but also by their potential legal consequences. Since they are elicited by tactics acknowledged to overbear a person's will, if detected, they are more likely than stress-compliant confessions to be excluded from evidence in trial proceedings. Like stress-compliant confessions, however, coerced-compliant confessions may be either true or false.³⁵

More than any other category of police-induced statements, coerced-compliant confessions have been recognized in the law as overbearing a suspect's will. For example, in Lynumn v. Illinois (1963), Chicago police officers threatened to arrest Mrs. Lynumn -- which, they told her, would lead to a cut-off of her welfare payments, the loss of her children, and a prison term -- if she did not confess to selling Marijuana. Ms. Lynumn confessed and was subsequently sentenced to 10-11 years. The United States Supreme Court unanimously ruled that police coerced her confession and reversed her conviction. In Leyra v. Denno (1954), another well-known Supreme Court case, a police psychiatrist elicited a confession from Mr. Leyra after explicitly promising him that he would be let off easily if he admitted murdering his parents. As in Lynumn, the U.S. Supreme Court ruled that Leyra's confession was coerced and reversed his conviction.

³⁵Some interrogations will incorporate both excessive stress and classical coercion. The classification of a confession as principally caused by one of the other variable depends on the facts of the interrogation under study.

While the use of explicit threats and promises may no longer be as common as it was in the 1950s and 1960s, interrogators currently employ more subtle and camouflaged threats and promises to elicit confessions of guilt. The accident technique, for example, is nothing more than a device for delivering veiled threats and promises: it functions to communicate the expectation that the suspect will receive a lower level of punishment if he confesses (leniency), but that he will receive a significantly higher level of punishment if he does not confess (threat) (See Pp. 6-7 and 31-34).³⁶

(4) Non-Coerced-Persuaded Confessions. When a suspect confesses because he comes to believe that he is probably guilty of the offense, the necessary underlying social psychological process is persuasion. Interrogation generated persuaded belief change does not necessarily persist over time or across situations; rather, it is temporary, unstable, situationally adaptive and endures only as long as the suspect accepts the interrogator's definition of the situation. As soon as the suspect successfully challenges the interrogator's framing of reality and critically analyzes the facts on which his new position rests, the persuasive effects of interrogation are likely to disappear. There are two types of persuaded confessions: those produced solely through manipulation and those in which classical coercion plays a significant role as well. As the term is defined, a non-coerced-persuaded confession is elicited in response to the influence tactics and techniques of modern, psychologically sophisticated accusatorial interrogation, and given by a suspect who ~~has~~ temporarily come to believe that it is more likely than not that he committed the offense despite no memory of having done so.

³⁶See Ofshe and Leo (in preparation) for a full analysis of the inherently coercive nature of the accident scenario technique.

Some of the influence techniques that interrogators routinely employ can cause an innocent person to become confused, doubt his memory, be temporarily persuaded of his guilt and confess to a crime he did not commit. When the interrogation begins, an innocent suspect has no recollection of committing the crime; the only factual details he knows are those that are either public knowledge or that police have supplied. Believing or pretending to believe that the suspect is guilty, the interrogator repeatedly accuses him of having committed the crime, asserts the futility of denial, and presses for an admission to details to the offense. At this stage, the innocent suspect will likely steadfastly deny any involvement in the crime and remain firmly committed to the knowledge that he is innocent.

The factor distinguishing a persuaded confession is that, at some point, the issue of the accuracy of the suspect's memory becomes central. Persuaded confessions depend upon a successful attack on a suspect's confidence in his memory -- specifically his lack of memory of having committed the crime. The suspect's knowledge that "I know I did not do this" completely depends on his confidence in the workings of his memory.³⁷

Undermining a suspect's confidence happens after the interrogator has presented erroneous or fabricated evidence. If an innocent suspect does not know that police lie, he may become confused and upset because of the implications of the so-called evidence, and may desperately seek to convince the interrogator of his innocence. Failing to understand the strategic nature of the interrogator's repeated accusations and failing to reject the false evidence

³⁷Note that all beliefs that one did not do something are ultimately based on a person's inability to retrieve memory of the event at issue after making a genuine attempt to do so. The failure to retrieve the memory is often the only evidence available to anyone that they did not do some particular act.

ploys, the suspect will realize, at some point, that the foundation of his belief in his innocence is the absence of any memory of having committed the crime. If he protests that "I'm innocent - if I had done this I'd remember it," the trustworthiness of his memory becomes the focus of the interrogation.

The crucial factor for eliciting a persuaded confession is getting the suspect to accept a seemingly plausible explanation for his lack of memory of having committed the crime. Even as he follows the logic of the evidence, the innocent suspect will continue to assert that he has no memory of the crime. To the interrogator, this claim represents merely another disingenuous denial by a presumably guilty suspect. The interrogator will thus attempt to counter the suspect's denial of memory of the crime in any way possible. Interrogators use routine counters to this assertion to neutralize a suspect's presumed disingenuous denial and in hopes of permitting a guilty suspect to *de facto* acknowledge culpability. Sometimes they suggest that the suspect's lack of memory is explained by a drug or alcohol-induced blackout, a momentary lapse in consciousness, a repressed memory or even Multiple Personality Disorder. When the tactic of suggesting an explanation for the report of no memory is used against an innocent suspect, a protracted debate is likely to develop during the interrogation.

The final step in eliciting a persuaded confession is the formulation of a post-admission narrative. Even though a suspect may have acknowledged guilt abstractly by agreeing to a memory **blackout**, he does not know how or why he committed the offense.

The following analysis illustrates the importance of the post-admission narrative for evaluating the reliability of a persuaded confession. Gathering a post-admission narrative from an innocent suspect poses for both the interrogator and the suspect the problem of having to

collectively invent an account of a crime about which neither has actual knowledge. If carefully analyzed, the product of their collaboration will likely yield evidence that should be dispositive of the question of the suspect's guilt or innocence.³⁸

If a suspect lacks actual knowledge of the crime, the account that develops can only be built from accurate information known to the police and/or to the public, inaccurate distortions of fact, rumors and guesses the suspect makes during the interrogation. Typically, some elements of the suspect's account will be accurate because the interrogator has introduced some crime scene facts and cause-of-death information, because these facts are common knowledge in the community or because a guess was correct by chance (e.g., "Was the victim clutching a belt in her left or right hand?" has a 50-50 chance of being answered correctly, and so is not dispositive of whether a suspect possesses personal knowledge about the crime).

The information an innocent suspect uses to build the narrative must come from somewhere other than from his experience. A major contributor is likely to be the interrogator, especially if he has developed a theory of the crime (e.g., a story about what happened). Since the interrogator's theory determines the questions he asks and the specific accusations he makes, the theory is likely to have been revealed to some degree during the pre-admission portion of the interrogation. The interrogator is also likely to rely on his theory to guide and shape the narrative of the crime that he and an ignorant suspect jointly build.

³⁸Disputes often arise as to who introduced crime scene information into the pre-admission phase of the interrogation and what the suspect independently knew. For a variety of reasons, all testimony about fine details of a complicated, lengthy, sometimes heated and often subtle interrogation is compromised if the session is not recorded. Problems of selective perception, lack of notes, memory decay, leading questions, guesses based on pragmatic implication and lying all contribute to the difficulties inherent in being sure that the pedigree of a fact discussed in the post-admission phase is uncompromised.

If the interrogator's theory goes beyond the facts available to him (i.e., is based in part on anticipated autopsy results, laboratory findings, etc.) and the theory is grossly wrong, the errors will likely be adopted by the innocent suspect and thereby are incorporated into the developing narrative. For example, in the interrogation of Edgar Garrett (Garrett Transcript, 1995), detectives theorized that Mr. Garrett killed his daughter, Michelle, by smashing her skull with a club -- despite the fact that they had not yet found her body. Mr. Garrett's post-admission narrative of the crime incorporated this cause-of-death theory, including his guess that he used an axe handle he knew to be in his apartment. However, when Michelle Garrett's body was found weeks later, it had 34 stab wounds and no significant trauma to the head (See Pp. 75-80).

In another example, the detectives who interrogated Tom Sawyer (Sawyer Transcript, 1986) believed that Janet Staschak had been raped as well as murdered. At the autopsy, a detective observed what he thought to be a semen stain on the victim's lower body. As a result of direct suggestion during the construction of the post-admission narrative, Mr. Sawyer's confabulated account came to include both vaginal and anal penetration culminating in repeated ejaculations. The medical examiner, however, found no semen in any body cavity nor any semen stain on the victim's skin (See Pp. 81-86).

During the post-admission phase, an interrogator will typically elicit from the suspect information ~~discussed~~ during the pre-admission phase -- which therefore has little or no value as proof of the suspect's actual knowledge of the crime. The interrogator will seek corroboration of the suspect's guilt by attempting to obtain detailed information about the crime scene that was not previously discussed, elicit information deliberately withheld from the suspect

and, most importantly, attempt to obtain information about physical evidence unknown to the police (e.g., location of the weapon, loot, etc.). What happens during this portion of the interrogation is crucial for objectively evaluating the reliability of the suspect's statement.

To understand how interrogation proceeds during the post-admission phase, the perspectives of both the interrogator and the suspect should be respected and their interaction viewed through the eyes of each. By the time he turns to the collection of the narrative of the crime, the interrogator has persuaded the suspect that he is guilty -- despite having no conscious awareness of the crime. The interrogator has told the suspect that his memory impairment is interfering with his normal ability to recollect events. The interrogator, however, believes that the suspect is fully knowledgeable of his actions and is merely feigning ignorance. He understands the suspect's tenacious claim to amnesia as an odd personality quirk.

Unable to elicit evidence of awareness of having committed the crime, the interrogator cannot accomplish corroboration of the "I did it" admission. Given this impasse, the interrogator is likely to use a tactic to facilitate obtaining corroborating information that will allow the suspect to continue to "pretend" ignorance. For example, the interrogator might, at this point, suggest that the suspect respond to the interrogator's questions by providing his best guess about what happened. He might assure the suspect that his unconscious, actual knowledge will guide his answers, and that he will come up with correct facts. Another tactic for facilitating ~~getting~~ a narrative of the crime is to suggest that the suspect visualize the scene as if it were a movie frame, roll the film forward and report what he observes happening. From the interrogator's perspective, all these techniques are simply ways to allow the suspect to confess and still maintain the facade of having no conscious awareness of guilt.

For the innocent suspect, the post-admission narrative phase of interrogation looks entirely different. Persuaded that he suffers a memory impairment that has rendered him ignorant of all the details concerning the commission of a complicated crime, the innocent suspect may find plausible the suggestion that he rely on the mind's unconscious operations to recover what he has concluded he must know but can't remember. The interrogator's use of this tactic effectively puts the suspect in a position to confabulate wildly (i.e., to make good faith guesses about something that he has in principle accepted as real, but about which he has no memory). The contents of the suspect's confabulations are constrained only by his understanding of what the interrogator will find acceptable (i.e., the agreed upon crime facts and the interrogator's theory), by having to conform the account to the agreed upon history of the suspect's activities before and after the crime, and by what is physically possible.

An innocent suspect's responses to the interrogator's search for corroboration yield two sorts of information consistent with factual innocence. First, recordings of suspects giving persuaded confessions reveal a strong tendency to select a grammar appropriate for his zero-level of actual knowledge. Since the appropriate grammatical form for such expressions is the past conditional and/or subjunctive, the suspect's language during the narrative portion of the interrogation will likely demonstrate a significant reliance on phrases such as: "I would have done...", "I probably did...", "I could have...", etc. (Ofshe and Bjorkenwall, in preparation; Ofshe, 1989). Kassin and Keichel (1996) have demonstrated -- in a laboratory study of interrogation -- the phenomenon of heightened usage of the conditional/subjunctive when actual knowledge is lacking.

If a suspect is innocent, the new information he contributes during the post-admission

narrative is no more likely to be accurate than would be expected by chance. Since the investigator's goal is to link the suspect to the crime in a way that can never be successfully repudiated, he will seek information that can be objectively evaluated. Taking into account how this information is elicited, an analysis can be conducted that leads to an objective evaluation of the quality of the fit between a suspect's narrative of the crime and the facts of the crime. If the fit is good, it is reasonable to infer that the suspect possesses personal knowledge of the crime; conversely, if the fit is poor, the requisite inference is that the suspect is ignorant of the crime facts.

When the interrogator and the suspect complete the confabulated narrative of the crime, the interrogation ends and the pressures and controls that were in play up to this point are withdrawn. The suspect is left with the logical conclusion that he probably committed the crime, the rationalization that the memory impairment suggested by the interrogator explains his amnesia and a constructed story of the crime that the suspect realizes (even as it is being offered) is rank speculation.

Not surprisingly, the minimal level of certainty the suspect attained during interrogation declines rapidly once he is free to reconsider the facts and fully consider alternative explanations. The end of the interrogation relieves the time pressure constraints attendant to real-time interaction. Under real-time conditions, it is not possible for the suspect to fully consider alternative explanations for the fact pattern the interrogator alleges. Clear thinking is even more difficult because the investigator's strategic moves are designed to cut off the suspect's ability to analyze evidence, and to reason that he can not be guilty of the crime.

(5) Coerced-Persuaded Confessions. Coerced-persuaded confessions follow the same

structure, sequence and logic as non-coerced-persuaded confessions. The only difference is that whereas the latter are elicited solely in response to the influence tactics of accusatorial interrogation, an interrogation that produces a coerced-persuaded false confession also incorporates threat, promise or other classically coercive interrogation techniques. In some interrogations, the impact of the interrogator's persuasive techniques is sufficient to undermine the suspect's confidence in his innocence and convince him that the proffered evidence establishes his guilt, but the suspect continues to resist the interrogator's demands that he make an unconditional statement.

The suspect's inability to retrieve any memory of the crime may inhibit him from reaching the level of subjective certainty that justifies making a statement in declarative grammar. He may be willing to agree that he "probably" committed the crime or "would have" acted in a certain manner, but is unwilling to convert his tentative, speculative expressions into the straightforward statements desired by the interrogator (e.g., "First I did X, then I did Y"). Under these circumstances an interrogator may resort to the introduction of classical coercion in order to overcome the suspect's continuing resistance to stating the persuaded confession in the grammar preferred by the interrogator.

V. Illustrating False Confessions

The following illustrates the classification scheme either by summarizing the characteristics of interrogations that produce reliable confessions or by presenting excerpts from interrogation transcripts that illustrate unreliable confessions.

A. Voluntary and Reliable Confessions

Voluntary and factually reliable confessions are ideal. They are offered spontaneously or when an investigator questions an individual or suggests that the person has some involvement in a crime. The key distinguishing factor is that the confession is made prior to the suspect undergoing accusatory interrogation. For some individuals the compulsion to confess due to genuine remorse or guilt-stricken conscience will be sufficiently strong to provoke a voluntary reliable confession. As in all confession evaluations, the truth of the suspect's confession can only be estimated from the information gathered in the post-admission narrative. A voluntary and reliable confession can be distinguished from a voluntary and unreliable confession by the fit between the facts reported in the crime narrative and the objectively established crime facts.

B. Voluntary and Unreliable Confessions: The Case of Michael McGraw³⁹

Michael McGraw gave Arizona sheriff's officers a voluntary false confession to participating in a mass murder. On August 10, 1991 at the Wat Promkunaram Buddhist Temple west of Phoenix six Thai Buddhist monks, a novice, a temple-helper and an elderly nun were murdered by being shot in the head by a .22-caliber Marlin rifle. The "Temple Murders" were the worst mass murder in modern Arizona history. The Sheriff's Department formed the Maricopa County Major Crimes Task Force, which involved ten state and federal agencies (including the Federal Bureau of Investigation, the Immigration and Naturalization Service, the Drug Enforcement Agency, the State Department of Public Safety, the Air Force Office of Special Investigations, Scottsdale Police, Tucson Police, the Pima County Sheriff's Office),

³⁹Richard Ofshe served as a consultant to the defense of the Tucson Four (as McGraw and three other young men came to be known), and therefore had access to the entire case files about the Temple Murders.

fifty-six investigators, and a staff of 226 people working around the clock (Kimball and Greenberg, 1993a). The Task Force was so zealously committed to solving the Temple Murders that they eventually collected four false confessions -- Michael McGraw's voluntary unreliable confession as well as three coerced-compliant unreliable confessions -- to the same crime. For this reason it is perhaps the most troubling known false confession case in recent American history.

On September 10, 1991, Michael McGraw, an in-patient at the Tucson Psychiatric Institute, called police to pass along information about the Temple Murders. Identifying himself as John, he implicated a friend, Kelsey Lawrence. John and Kelsey Lawrence turned out to be pseudonyms McGraw used when referring to himself. McGraw told police that Kelsey Lawrence had driven to Phoenix to commit a violent robbery at a church. In a conversation with Officer Larry Troutt -- that was not tape-recorded and would later be disputed -- McGraw is alleged to have asked if the perpetrators had written the word BLOOD on a wall of the temple.⁴⁰ As a result, police believed that McGraw possessed "uncommon knowledge" that only the killer or an accomplice could know (Kimball and Greenberg, 1993b). McGraw was transported from the Psychiatric Institute in Tucson to Phoenix and questioned from 1:15 a.m. to 6 a.m.

A twenty-four year old hispanic with a history of psychiatric problems and a criminal

⁴⁰Since it was later established that McGraw had no involvement in the crime and the fact that the word "BLOOD" was found at the crime scene had been withheld from the public, McGraw probably learned this fact as a result of inept questioning by the detectives who interviewed him. This is far more likely than the alternative, that without leading, prompting, or giving hints, McGraw by chance answered that the particular word had been written on the wall in blood.

record for car theft, McGraw claimed to have committed himself to the mental hospital due to the guilt he experienced over killing the monks. During questioning McGraw was pressed to name his accomplices. His resistance was overcome when he was threatened with arrest if he did not give up the names of those who supposedly did the murders. McGraw was assured that his information would be checked out and if it proved worthless he would be returned to the hospital in Tucson. If he did not provide the names he would be arrested and charged with giving false information to a police officer. McGraw implicated among others nineteen year old Mark Nunez, twenty year old Dante Parker, twenty-eight year old Leo Bruce and Victor Zarate. According to McGraw, on August 9th he and the others had driven a stolen Ford Bronco and a Chevy Blazer from Tucson to Phoenix, where they were joined by four more individuals. McGraw claimed that he waited in the car while the others robbed the temple and returned with a black bag full of possessions. McGraw described his position as the lookout man, the guns his comrades used, and the physical appearance of the victims. Following the robbery, the killers supposedly drove to California before returning to Tucson (McGraw Transcript, 1991).

Though he would be charged with nine counts of first degree murder, McGraw's fanciful confession was entirely false, the product of his imagination and tendency to lie. If the investigators had evaluated the fit of McGraw's statement to the known facts of the crime as soon as they had his narrative, they would have realized that he did not have personal knowledge of the crime, and that the details he provided were demonstrably false.⁴¹ Months later, after

⁴¹For example, McGraw named Robert Torres, Tony Torres, and Victor Zarate as co-participants in the murder, but when the crime occurred Robert Torres was in prison, Tony Torres was in California, and Victor Zarate's image was being recorded on a timed videotape at the Tucson dog track where he worked. In addition, McGraw told investigators that he had seen several guns (including a 9mm Glock, a .380 caliber automatic, and a nine millimeter

the true killers were apprehended, McGraw was released from jail.

C. Stress-Compliant Reliable Confessions

The pre-admission elements of a stress-compliant reliable confession are illustrated in the description of the stress-compliant unreliable confession. The information reported in the post-admission narrative phase should distinguish between the two types of confessions.

D. Stress-Compliant Unreliable Confessions: The Case of Johnny Lee Wilson⁴²

On April 13, 1986, Pauline Martz, a 79 year old widow, was beaten, bound with duct tape, and left to die in her burning home in Aurora, Missouri. Five days later, police arrested Johnny Lee Wilson, a timid, retarded 20 year old janitor with no prior record of violence.⁴³ They focused on Wilson after Gary Wall, a special education classmate, told them that Wilson had made incriminating comments. Unbeknownst to the investigators, Wall had lied because he hoped to receive a reward from a state arson fund. In 1995 Wall recanted his original statement, claiming that he kept quiet for nine years because he feared that he might get in trouble for lying to police.

Wilson thought he was being asked to help solve the murder when police asked to talk

Beretta) used during the crime that the investigators knew had not been fired in the Temple. And McGraw told investigators that one of his accomplices killed a young girl, but the only female murder victim was a 71 year old nun.

⁴²Richard Ofshe served as a consultant to the Office of the Governor of Missouri in connection with the decision to pardon Johnny Lee Wilson.

⁴³Johnny Lee Wilson's IQ was estimated to be in the 60s or 70s, and psychologists described him as a slow-talking, slow-thinking individual who interacted with people like a 10 year old.

with him. After waiving his Miranda rights,⁴⁴ Wilson was interrogated for three and a half hours on the night of April 18th, and again on April 19, 1986. From the beginning, Detectives Steve Carr and Bill Merrit repeatedly accused Wilson of killing Martz. In response to Wilson's denials and claim to know nothing about the crime, the interrogators became relentlessly accusatorial. They repeatedly confronted Wilson with their single piece of evidence, Wall's witness statement. Carr and Merrit told Wilson that it was a sworn statement, that Wall had passed a polygraph test, and that the polygraph operator would testify that Wall was telling the truth. They also attempted to overcome Wilson's protestations of innocence by falsely telling him that eyewitnesses had seen him at the murder scene before the fire started; by insinuating that he would fail a lie detector test but would not test him (even though Wilson repeatedly asked to take a polygraph); and by accusing him of making inconsistent statements. (Wilson Transcript, 1986: Tape 2, Pages 8-9):

Interrogator: Now, we're not playing games. You can sit there and tell all the stories you want to your mother or something, or to whoever else you think will believe it, but we can't. We have evidence right here, have the evidence on tape. We have the eyewitness who put you at the scene. We have the lie detector test that says the man who was testifying about you was telling the truth. We have the signed statement. We have the fact that you're the one who started the story about the lady being tied up and in there and gagged before we even knew it. Before we'd even found the body! We didn't even know she was in there when you knew it.

Wilson: I didn't know it.

Interrogator: Oh yes you did! Yes you did! And we can prove it. Now what

⁴⁴Like most people with retardation, Wilson almost certainly did not understand the content or the significance of to rights to whose waiver he consented. Wilson later told his court-appointed psychologist that he understood rights to mean "right from wrong. I'd rather do right." (See Shapiro 1994).

are you going to do? When you stand up in front of that judge, you say, "Judge" after we present our case, and I think we have an adequate case, "Judge, I didn't do any of this. I don't know anything about it. Those guys are lying on me. But I sure hope you'll take it easy on me." Or are you going to tell the judge the truth at that time hoping he'll take it easy on you? You better start figuring out what's going to happen to John Wilson. That's what you'd better do.

Wilson: Uh huh.

Interrogator: Because if you don't, we'll take care of it. You know what I mean? If you don't do anything, we'll just take care of it. We've had, we've got a big case here. We been here all week. We're tired. We've been working day and night. We have finally solved the case. We have a man who said you did it. We've got a signed statement. We've got the lie detector test. We've got the witnesses. We've got the circumstantial evidence of you knowing about it before anybody else. We've got a case made. Doesn't it look to you like someone would be convinced that you did it based on what I just told you? Doesn't it look pretty incriminating.

Wilson: Yeah.

At the same time, the detectives portrayed themselves as Wilson's allies, insisting that he needed their help and that they would gladly offer it to him to get him out of this situation.

(Wilson Transcript, 1986: Tape 1, Page 9):

Interrogator: He says, he says you told him that you did. He said you were there. He said you told him that you had tied her up and beaten her and burned her. He was given the polygraph test again John, and he passed it.

Wilson: I wouldn't do nothing to her. My mom knows that. I didn't, I was...

Interrogator: Alright no, John, now let's just...if this did occur, John...

Wilson: Uh Huh.

Interrogator: And you know, this isn't, isn't the end of the world for anybody. We want to know. And so, you got a problem. And you need

help. And we're the people that can get that done, John.

The purpose of Carr and Merrit's two prong approach -- coupling irrefutable assertions of guilt with vague offers of help -- was to convince Wilson that he would be convicted and to provide him with an incentive to confess. Wilson's continuing resistance led the detectives to shift to an incremental approach, seeking to elicit the admission in small steps -- starting with the possibility that he may have committed the crime. (Wilson Transcript, 1986: Tape 1, Page 32):

Interrogator: I think you're, I think you're telling us a lie, John, and it's time, you know, that we get down to the nitty gritty of this thing. One way or the other. Now we've been nice to you half the night here.

Wilson: Uh huh.

Interrogator: And we, we been at it now over an hour. And, but we need to get into the nitty gritty. You know, we're not going to waste our time all night here either. You know, and we, I believe, you're involved in this John.

I want to help you, John. But I can't if you're not going to tell me the truth and cooperate.

You think there's a possibility you might have [untranscribed] to Pauline's house and not remembered it?

Wilson: But I didn't.

Interrogator: Do you think there's that possibility?

Wilson: Yeah, that's a possibility, but...

Although Wilson had insisted on his innocence for nearly two hours, he began to give in once he granted that it was possible that he was present at the murder. Shortly before his

resistance collapsed, the detectives told Wilson (Wilson Transcript, 1986: Tape 2, Page 7):

Interrogator: You can swear to God or whoever you like, that ain't going to get you out of trouble.

Wilson: Uh huh.

Interrogator: For you are in serious trouble right now. Murder is what you're in. Murder! Premeditated, wilful, malicious, burning up an old lady in her house. That's what you're in on. Wilson. Ain't no sense kidding around about it.

Wilson: I wasn't near that house, though.

Interrogator: I think it's despicable.

Wilson: I was with mom all along. I was at Ramey's with her, and I was, I was...⁴⁵

Interrogator: Yeah, you may need a lot of statements from your mother and things like that, we got statements from other people here that say that you were there, and that you admitted doing it. We got a lot of people that saw you there that night, and they're going to put you right inside that house, torching that lady, robbing her, tying her up. No one else knew she was tied up. We didn't even know it!

Within a few minutes, Wilson started to comply and attempted to supply the answers the interrogators were seeking. Since the interrogation consisted almost entirely of grossly leading questions, Wilson either fed back the information that had been given to him or simply guessed at answers to questions such as how the victim was bound, the color of her blouse and where her body was found. Wilson's guesses were wrong, but the detectives either didn't notice or didn't care (Wilson Transcript, 1986: Tape 3, Pages 1-2):

⁴⁵Had Wilson's alibi been evaluated, the detectives would have discovered that Wilson and his mother had been seen shopping at Ramey's Market prior to and through the moment when smoke from the fire was first observed by customers and staff of the store.

Interrogator: OK. Whenever you looked in and you seen Mrs. March tied, gagged, laying on the floor, what was she wearing? What did you see?

Wilson: A blouse of some sort. I can't tell the color.

Interrogator: OK. How about bluish. I'll go for that.

Wilson: Yeah.

Interrogator: How about bluish-green maybe?

Wilson: Yeah.

Martz, it turned out, was not wearing a blouse at all. When Wilson was unable to guess correctly, the interrogators simply provided the answer and attributed it to him (Wilson Transcript, 1986: Tape 3, page 8):

Interrogator: OK. What besides a rag was on her mouth?

Wilson: I don't remember anything that was over her mouth.

Interrogator: What besides, what besides a rope was around her ankles. Something else. This is a test. I know. And you know. Just think. Come on, John.

Wilson: I'm thinking.

Interrogator: What are some things that could be used?

Wilson: Hand cuffs, I think?

Interrogator: No. No. Wrong guess. What are some things you could tie somebody up with?

Wilson: Rope is all that he had but...

Interrogator: That tells me something, John. That tells me something. That tells me something. I told you that it's important that you be straight with me. You took the tape up there.

The recordings reveal with dismaying clarity that Carr and Merit repeatedly told Wilson

the key details of the crime and that Wilson readily blended them into his responses. By the conclusion of the interrogation, Wilson had confessed to hiding stolen jewelry, arson, beating Pauline Martz and attempted rape. Initially he admitted he had two accomplices, but when the officers accused him of acting alone, Wilson shifted to their version of the crime.

Although Wilson's confessions contradicted each other, were all demonstrably false and wholly lacking in corroboration, both police and prosecutors steadfastly maintained their belief that Wilson was guilty. Johnny Lee Wilson eventually entered an "Alford Plea" -- an acknowledgement that the state had enough evidence to convince a jury that he was guilty even though he did not admit guilt -- to first degree murder charges in order to avoid the death penalty. When his plea was taken, Wilson did not seem to understand its meaning, telling the judge: "I'm guilty, I guess." Wilson was sentenced to life imprisonment without possibility of parole for 50 years. The Missouri Supreme Court rejected his appeal in 1991.

In 1988 Chris Brownfield, who was in prison for the beating, robbery and murder of an elderly woman shortly after the Martz murder, voluntarily confessed that he and another man had killed Pauline Martz. Brownfield supplied police with facts about the crime that had been deliberately withheld from the public. On September 30, 1995 -- 8 years and 5 months after Johnny Lee Wilson had been convicted -- Missouri's Governor pardoned him.

E. Coerced-Compliant Reliable Confessions

The pre-admission elements of a coerced-compliant reliable confession are illustrated in the description of the coerced-compliant unreliable confession. The information reported in the post-admission narrative phase of the interrogation should distinguish between the two types of confessions.

F. Coerced-Compliant Unreliable Confessions: The Case of Dante Parker⁴⁶

In his confession to the Phoenix Temple Murders, Michael McGraw named, among others, Leo Bruce, Mark Nunez, Victor Zarate, and Dante Parker as his collaborators in the Temple Murders. Maricopa County Sheriff's detectives took custody of all four individuals and subjected them to extensive and prolonged incommunicado interrogation. Three of the four -- Nunez, Bruce and Parker -- eventually succumbed to the pressure, prodding, bullying and death penalty threats used by their interrogators and gave false confessions (See McGraw, Nunez, Parker and Bruce Transcripts, 1991). As with McGraw's statement, the confessions from Nunez, Bruce, and Parker were riddled with inconsistencies and did not match the known facts of the case.⁴⁷

The interrogation of Dante Parker -- in which seven officers participated over the course of 15 hours -- vividly illustrates how some contemporary American interrogators seek to communicate a death penalty threat without saying the words "electric chair," "gas chamber," or "lethal injection." With Michael McGraw's confession in hand, Sheriff's Detectives Pat Riley and Wayne Scoville began a lengthy and intensely accusatorial interrogation of Parker from

⁴⁶Richard Ofshe served as a consultant to the defense in the State of Arizona v. Dante Parker (1991), and therefore had access to the entire case file.

⁴⁷McGraw, for example, identified two individuals whose solid alibis excluded them. In addition, McGraw and the other three false confessors implicated Victor Zarate, yet he had been captured on ~~timed~~ videotape at the Tucson dog track at 11 p.m. on August 9, 1991, making it impossible for him to have committed the murders. In addition, none of the suspects could identify the weapons or even the location of the Temple with any specificity. Ballistics tests showed that the rifle that Leo Bruce identified as the murder weapon had not, in fact, been used; McGraw identified weapons that the investigators knew had not been fired in the temple. Despite their intense efforts, the multi-agency task force could find no physical evidence corroborating any of the four confessions. Concomitantly, each of the confessions contained dozens of statements that contradicted the existing evidence.

whom they sought to elicit a confession that matched McGraw's statement.

After Parker waived his Miranda rights, Riley and Scoville accused him of being at the scene of the murder, and demanded that he acknowledge guilt and confirm McGraw's confession. Parker insisted that he was not at the murder scene, and did not know why they were accusing him, asked the interrogators to check out his alibi, and volunteered to take a polygraph test. The interrogators ignored Parker's denials and requests.

Riley and Scoville's interrogation of Parker followed the two prong approach. First, they reported incontrovertible evidence of Parker's guilt, so much so that there was no question that a judge and jury would find him guilty and sentence him harshly if he did not confess. They told Parker they could establish his involvement beyond any doubt; that his accomplices -- who had knowledge that only the killers could know -- had told them about Parker's role; that he had been identified in a photo line-up; that the victims' blood had been found on his clothes and shoes; and that his fingerprints would be in the getaway vehicle. According to the interrogators, no judge or jury would believe his denials. The detectives even accused Parker of personally executing several of the victims. Responding to Parker's frequent protestations of innocence, Riley and Scoville maintained that his guilt was established, and called him a liar (Parker Transcript, 1991: Tape 1, Page 8):

Scoville: Let me explain something to you, you're in an unfortunate situation okay, you're one of the last persons that we talk to right, we already know the majority of the story, okay. You're hooked up on the fact that hey I wasn't there or anything, we already know it's not true. Without a doubt, there's no, let me finish, there's no doubt in our mind that you were there okay, the only way that you can help yourself right now is to start telling the truth and the reason being if you want us to believe what happened inside there, you have to be honest with us as far as even being there. Okay? Other people are going to tell us that you did, it's already happened.

Parker: But that's the thing.

Scoville: That's not the thing.

Parker: That's the thing, you can -- I was with Renee. I didn't...I didn't do anything, I've never been to Phoenix since I've been in Tucson in March, never came to Phoenix, never.

Scoville: How come we have everybody telling us you were there?

Second, the detectives applied coercive pressure to Parker in several ways. They offered a strong incentive to confess by minimizing his participation and culpability. They suggested that the murders were accidental rather than planned; that Parker did not intend to hurt or kill anyone; that Parker was not a cold-blooded murderer -- as the judge and jury would believe if he did not confess -- but someone who just made a mistake; and that the only way he could help himself would be by admitting his involvement and supplying them with the details about what happened. Confessing now, they told Parker, would be his only opportunity to present his side of the story in a favorable light to the judge and jury (Parker Transcript, 1991: Tape 2, Pages 4-5):

Riley: Put yourself in a jury box Dante, you listen to the story, okay, you listening to the story about the people that got killed okay, you have to make a decision when all this is over and you have to say hey does this make sense, what about this person, is this person a real bad individual or is this person a person that has needs or some other motive did something and unfortunately some people got hurt...

Scoville: You've got the opportunity right now to make those people think that hey, Dante is a person who made a mistake instead of hey Dante's a cold-blooded killer and that's a big difference and I think you know that's a big difference. When they make the decision what's gonna happen to you, which do you want them to think? You...you need to think about that cause partner that's...that's the bottom line and that's gonna be your decision that you're gonna have to live with for a long time. How do those people that made a decision on what's can happen to you, think

about you? Cold-blooded killer or person who made a mistake?

Despite the detective's accusations and their endless demands that he confess, Parker was not immediately moved to comply. He denied the accusations more than one-hundred times throughout the 15 hour interrogation.

Failing to get Parker to confess by indirect suggestion, Riley and Scoville moved up the incentive scale and introduced direct threats and promises of prosecutorial leniency. They eventually threatened Parker with the death penalty several times (Parker Transcript, Tape 2, 1991: Pages 13-14):

Scoville: You've been sentenced before...you've been sentenced before for little things and you know that if that judge gets pissed off at you it's a lot different than if he's not. And you right now can make a decision to make a difference about how the judge feels about you and you need to take it.

Riley: What if he might send you to the gas chamber, and I don't say that to scare you Dante, but in this situation that's a real possibility and I'm not gonna sit here, Wayne's not gonna sit here and lie to you about these things cause that's not gonna serve us any purpose...

Scoville: So you're sitting here thinking it's us against you, that's not the case. We're here to help you out...

Scoville: You need to think ahead to that sentencing time and have you walk before that judge that's something to think about. Because you've been there before, think about how it was, think about how it's gonna be.

Even an **explicit death threat**, however, failed to cause Parker to confess. The detectives also promised leniency by suggesting that Parker could confess to a lesser version of the crime (Parker Transcript, 1991: Tape 3, Page 3):

Scoville: You've heard about premeditated murder?

Parker: No.

Riley: Have you heard about that?

Parker: No. What's that?

Riley: You know first degree murder, second degree murder?

Parker: Yeah.

Scoville: Premeditated murder is the worst kind, I planned it, I went in and killed 'em. You're the only one that can say that's not how it happened. You're the only one that can help yourself out and say no hey wait a minute, yeah I was there but hey it wasn't planned and that is (inaudible) truth from me was it planned or not, alright? You understand the difference, I know you do. Cause you're a smart person (inaudible) but we don't think it went down the way you planned it, that's the key for you. I don't want to see you because you know, you probably don't trust police, you know, you grew up on the streets, you've been in prison you probably don't trust us, okay, that's natural for you. But you've got to believe me when I'm tellin ya, the difference between premeditation...go in there to do this and go in there and it happens, are bigger then...I'm sure you understood. If you understood that you'd come clean you really would (inaudible) and you're gonna feel better once you do.

Parker: Oh I understand but there's nothing to come clean with.

Scoville: No doubt in my mind, no doubt in his mind and we have the exact same facts that the jury's gonna have. Okay? Exact same facts. They're gonna get everything we've got. And they're gonna know the answers just like we do. The only thing that they're not gonna know is did he plan it, did he plan to kill 'em or did it just happen. And...and we've been in enough juries to know they think the worst unless somebody says no that's not how it happened.

Despite Scoville and Riley's coercive methods, Parker's resistance did not collapse until a second set of detectives, Rick Sinsabaugh and Larry Troutt, relieved the first team. They too badgered Parker with accusations of guilt, false evidence ploys, and leading questions; and they continued to accuse him of lying and acting against his self-interest when he denied all

involvement. Sinsabaugh and Troutt added another coercive element to the interrogation: they threatened to arrest and humiliate Parker's brothers, Peter and T.C., if he did not confess (Parker Transcript, 1991: Tape 7, Pages 8-10).

Troutt: Dante if T.C.'s not involved in this man, give it up.

Sinsabaugh: Make some right out of it Dante.

Troutt: We need to get that stopped.

Sinsabaugh: Everyone's here Dante, the games up. All I need to know is Dante.

Parker: Leave T.C. out of it. T.C. don't have anything to do with this.

Sinsabaugh: Peter either.

Parker: Peter either.

Sinsabaugh: He's being brought in. What happened Dante, did you pull the trigger?

Parker: I didn't pull no trigger.

Sinsabaugh: But you were there. Dante, just get it out man, just get it out once and for all so we don't have to go over this again. Were you there? I know you were there my man.

Troutt: We're gonna...

Sinsabaugh: Right?

Troutt: We're gonna be in Tucson Dante...

Sinsabaugh: This is not a game my man, this is your one chance, I mean that, like Larry told you I just want to know if you're a killer Dante.

Troutt: They're gonna hit that house big time, T.C.'s gonna go down right in front of his kids.

Sinsabaugh: And...and it's...it's not a game Dante, I'm talking to you as a man, that's all I can do, I'm showing you the respect I can cause I'm...I'm praying that you're not a you know, a cold blooded killer and...and I'm asking for your help to sort this fucking thing out. If you got messed up with some

punks I want to hear about it. What happened Dante?

This additional threat precipitated Parker's false confession, and he began the process of inventing answers to the interrogators' questions. For several hours, seven interrogators pressed Parker for information about the crime and a confession to planning and participating in the murders, sometimes relying on the same kinds of threats and promises that provoked Parker's first false admission. The interrogators tried to shape Parker's confession to fit the facts as they knew or believed them to be, and Parker either fed back what they had given him or made up answers. By the end of the interrogation, Parker confessed only to being a minor accomplice who knew little about and did not participate in the planning or the commission of the Temple Murders.

Although the fit of Parker's confession to the facts of the case was poor -- full of inconsistencies, obvious guesses, implausible conjectures and demonstrably false statements -- he was charged with multiple counts of murder and, like the other Tucson defendants, was incarcerated for 70 days until the real murderers were caught by straightforward, basic police work.⁴⁸

Even after the real killers were caught, the Maricopa County Sheriff, Tom Agnos, and the County Prosecutor, Rick Romley, refused to admit that their subordinates had forced false

⁴⁸The real Temple murderers, teenagers Alessandro Garcia and Jonathan Doody, were identified after Air Force investigators discovered a report about a Marlin Rifle that a security officer had seen on the backseat of a car entering the air force base that adjoined the Temple. A task force member had taken the rifle for ballistics testing on the day Michael McGraw called from Tucson. In the excitement that followed, the rifle was left behind an office door for approximately a month before being sent to the Lab. Testing proved the gun to be the murder weapon. Eventually Garcia confessed to the crime and pleaded guilty to first degree murder, and a jury convicted Jonathan Doody of Felony Murder.

confessions to mass murder from three people. In reaction to public protests and intense media pressure, Romley dropped all charges, admitted that the Tucson Four were innocent, and blamed the Sheriff's Department for having made all the mistakes in the case.

The Parker, Nunez and Bruce coerced-compliant unreliable confessions contained many differences and contradictions but were, at a certain gross level of description, consistent with each other's accounts. Since these men had nothing to do with the murders, the only explanation for the similarities is that poor police training and improper use of interrogation methods combined to create a potentially deadly collective reality that bore no resemblance to what had actually happened at the Wat Promkunaram Temple.

G. Non-Coerced-Persuaded Confessions: The Case of Edgar Garrett⁴⁹

The police in Goshen Indiana believed Edgar Garrett killed his 16 year old daughter Michelle Nicole Garrett, who had mysteriously disappeared one Sunday morning. Mr. Garrett's interrogation illustrates how contemporary interrogation techniques can cause an innocent person to become so persuaded of his guilt that -- without the use of coercion -- he confesses to a crime about which he has no knowledge.

Garrett's interrogators used the basic twofold strategy of confronting the him with supposedly incontrovertible and damning evidence of his guilt while stressing an incentive for confessing. Police told Garrett that multiple witnesses had seen him with his daughter shortly before she disappeared; that they had provided statements against him; and that they were willing to testify. The interrogators accused Garrett of giving them inconsistent statements, and claimed

⁴⁹Richard Ofshe served as a consultant to the defense in the State of Indiana v. Edgar Garrett, and therefore had access to the entire case file.

that his suspicious behavior following his daughter's disappearance (i.e., searching for her) also suggested his guilt. And they informed Garrett that he had failed a polygraph test -- a machine that they insisted did not make mistakes. According to his interrogators, the weight of evidence against him was so overwhelming that no reasonable jury could reach any conclusion other than that Edgar Garrett murdered his daughter.

The interrogators offered Garrett psychologically compelling incentives to confess. They told him that they could only help him if he first confessed, and they pleaded with him to confess for his family's sake, his daughter's sake and his own sake. Though he was confused, Garrett resisted the accusations until detective Converse suggested that Garrett, an occasional drunk, may have had a blackout on the morning of his daughter's disappearance (Garrett Transcript, 1995: Pages 319-320):

Converse: Let me talk about something else here. Now, we know you were far enough -- now you might have had a blackout, right? It's possible.

Garrett: Possible.

Converse: Possible that you were down -- well, we know that, you were down at the river bank, down at the river bank.

Garrett: Looking for my daughter.

Converse: Right, okay. The only question is what day were you down at the river bank? Well, maybe you were in a blackout. Maybe you were down there with your daughter at the river bank because you're in a blackout. I don't know. But before I leave this room today there's one thing that you and I are going to know, I'm going to help you remember this shit so we can be done.

Trading on Garrett's guilt about having once hit his daughter during an alcoholic episode, Converse was able to make progress in his attack on Garrett's confidence in his memory. Garrett began to shift away from absolute certainty that he had not seen his daughter the

morning she disappeared to expressing doubts about his memory of his whereabouts immediately before Michelle's disappearance (Garrett Transcript, 1995: Pages 322-323):

Garrett: But I just don't remember if I went out -- if I did talk to Michelle Sunday morning or not.

Converse: You did. And you're starting to remember. It's written all over you.

Garrett: I just don't -- don't remember.

From this point on, the Converse sought to move Garrett from the position that he did not remember whether he was with his daughter shortly before her disappearance to that of accepting responsibility for her death. While confronting Garrett with fabricated incriminating evidence, the interrogator suggested the broad outline of the confession he was seeking from Garrett (Garrett Transcript, 1995: Page 327):

Garrett: I can't remember fighting with Michelle on Sunday.

Converse: You did. Not only did you fight but you thumped here. You didn't mean to hurt her.

Garrett: What did I thump her with?

Converse: I don't know.

Garrett: I don't know either.

Converse: But you thumped her.

Garrett: Well, I killed my own daughter?

Converse: Yeah.

Despite pressure and suggestions about the crime scenario, Garrett continued to insist that he lacked knowledge of the killing until the interrogator returned to the possibility of amnesia. Emphasizing the blackout hypothesis, Converse persuaded Garrett that he may have killed his

daughter (Garrett Transcript, 1995: Pages 332-333):

Converse: Tell me about hitting her. Now, you remember that part of it and I know that and you know that and you know that I know that.

Garrett: Maybe I did thump her on top of the head.

Converse: Okay. Where did this happen at?

Garrett: Oh, man, I don't know.

Converse: Yes, you do. Yes, you do. You know exactly where it happened at.

Garrett: Well, apparently this happened out at Studebaker Park.

Converse: Tell me exactly where it happened at. There's -- I know there's -- remember you're talking to a drunk. You're talking to a guy that's had blackouts himself. Okay. I know them damn things work. Because I am one. I'm just like you, and that's why you and I are connected. Don't you understand that?

Garrett: It must have been on that road there. I don't know where -- that's where most of the blood is, I guess.

Having no actual memory of the murder, Garrett answered Converse's questions either by confabulating answers about how he could have killed his daughter or by reasserting his lack of factual knowledge. To accommodate the contradictory cognitions that he committed the crime but could not remember any of the details, Garrett's confession was conditional, tentative, and conjectural. Lack of actual knowledge forced Garrett to offer a qualified story by parroting back information that Converse had introduced and inferring from Converse's leading questions what he expected to be told happened (Garrett Transcript, 1995: Pages 338-339):

Converse: How did you cross the river?

Garrett: I must have went all the way to that school lot over there...That must have been the only way I could have got around -- over there to get to the other side of the river.

Converse: Okay, then what happened next?

Garrett: I must have just left her there.

Converse: Okay.

Garrett: And I must have went home.

Converse: All right. What did you do with the stick.

Garrett: It's in the house. I must have took it back to the house.

Pressing Garrett to confess the details of his daughter's murder, Converse countered resistance and attempts to recant earlier admissions by restating the evidence against Garrett and emphasizing the emotional and self-image benefits of confessing. When Garrett's confabulations fit the few facts known about Michelle's disappearance or the officers' speculative theory of her murder, Converse reinforced Garrett's answers. When Garrett struggled with the crime details, the detective facilitated his confession by asking leading questions or by explicitly telling him facts of the crime, as the detective thought them to be (Garrett Transcript, 1985: Pages 344-345):

Converse: I'm going to give you another hint. Detectives don't ask questions unless they have pretty good reasons for asking that. You thought about blood being on your clothes, right? Right?

Garrett: Yeah.

Converse: Okay. Where was the blood on your clothes?

Garrett: Probably on my jeans somewhere.

Although persuaded that he murdered his daughter and trying to comply with the interrogator's demands, Garrett nevertheless periodically questioned whether he was admitting to a crime he did not commit. Confusion and distress explains why Garrett denied that he had

anything to do with his daughter's murder at one moment, and at the next tried to supply Converse with the details he was seeking. Garrett repeatedly told the interrogators that he did not know or was not certain of his answers, that he was exhausted (Garrett Transcript, 1995: Page 357), frightened (Garrett Transcript, 1995: Page 377), and had felt railroaded (Garrett Transcript, 1995: Page 377). By the end of the fourteen hour interrogation Edgar Garrett had signed four increasingly detailed statements describing how he murdered his daughter. Garrett recanted his confession shortly after the interrogation ended.

Multiple discrepancies between Garrett's statements and the physical evidence demonstrate that his confession was unreliable: (1) He confessed to bludgeoning his daughter following a walk through new-fallen snow in a park, and then dumping her body in a river. However, Michelle's coat was not found with her body, and it lacked stab marks (suggesting she had been killed indoors and then transported to the river bank). (2) The police officer who first arrived at the crime scene saw tire tracks and bloody drag marks from the point where the car stopped and Michelle's body was unloaded, yet Edgar Garrett had no car. (3) The officer did not see any footprints in the snow-covered field leading to the river's edge. (4) The only footprints and drag marks in the snow led from the tire tracks to the river's edge. The footprints showed that the killer returned to the car after dumping Michelle's body in the river. (5) Michelle Garrett was stabbed to death. When her body was found weeks after Edgar Garrett confessed, it had 34 wounds. Garrett confessed to clubbing Michelle to death -- which the police admitted was their theory of what happened. (6) The axe handle with which Garrett allegedly hit his daughter did not carry any traces of her hair or blood. (7) Michelle Garrett's head showed no evidence of blunt force trauma.

On November 7, 1995, a jury acquitted Edgar Garrett of capital murder. It was the prosecutor's first loss of a homicide case in thirty-one years. Following the verdict, police in Goshen, Indiana reversed their policy and stopped tape-recording interrogations.

H. Coerced-Persuaded Confessions: The Case of Tom Sawyer⁵⁰

On November 3, 1986 Police in Clearwater, Florida discovered the nude body of Janet Staschak, who had been tortured and brutally murdered in her apartment. During a routine neighborhood canvass, a detective interviewed her next door neighbor, Tom Sawyer, and decided he was their prime suspect. This decision was reached solely because Sawyer's face flushed and he appeared embarrassed by their questions. The Clearwater police did not know that Tom Sawyer was a recovering alcoholic who suffered a severe anxiety affliction and personality disorder that started when he was a teenager. The disorder caused him to sweat profusely and blush a deep red in the course of ordinary social interaction, especially when he felt himself being observed by others. Sawyer's personality disorder contributed to his suggestibility and made him desire to please others, especially authority figures.

The police lured Sawyer to the station for an interview the following day; thinking that they needed his help, he eagerly agreed. Sawyer had only slept three and one-half hours the night before, and had gone to the police station immediately after eight hours of physical labor.

Clearwater police detectives Peter Fire and John Dean interrogated Tom Sawyer from 4 p.m. on November 6, 1986 until 8:00 a.m. on November 7, 1986 -- 16 hours. The detectives initially questioned Sawyer about his family life, personal history and relationship with the

⁵⁰Richard Ofshe served as a consultant to the defense in State v. Sawyer, and therefore had access to the entire case file.

victim. Straining to be cooperative, Sawyer hoped that his answers would help solve the murder. He never imagined that he might be a suspect. During this part of the interrogation, Sawyer revealed his background as an acute alcoholic, his blackout experiences, and the long-standing anxiety he experienced in social settings.

Flattering Sawyer, the detectives insisted that they needed his help to solve the murder. They wanted him to help create a "scenario" in which the crime could have taken place. They plied him with leading questions in order to supposedly work out the scenario. The purpose of Fire and Dean's scenario technique was to get Sawyer to reveal independent knowledge of the crime facts so that they could confront him and thus commence an accusatory interrogation. As the procedure played out, all that happened was that Sawyer repeated facts introduced by the interrogators. Nevertheless, the detectives accused him of committing the crime, and claimed he had provided details only the murderer could have known.⁵¹

The interrogation continued for another twelve hours; during which Sawyer repeatedly denied his guilt until he was persuaded that he could have committed the crime and not remembered it. The detectives claimed that the evidence established Sawyer's guilt beyond any reasonable doubt. After all, his scenario was identical to how the crime actually happened, and thus Sawyer possessed the uncommon knowledge that only the killer could know; later they told Sawyer that scientific evidence confirmed his guilt. They also repeatedly suggested that Sawyer did not intend to harm Janet Staschak, but accidentally killed her because she sexually aroused

⁵¹Since Sawyer's interrogation was tape recorded it was possible to establish that each of the nine facts Sawyer was accused of knowing was introduced by the interrogators. Nevertheless, Detective Dean's written account of the investigation reported Sawyer to have introduced each fact. Apparently Dean's perceptions were shaped by his position bias.

him and then refused him. "It was an accident...You're not a murderer. Not a murderer" (Sawyer Transcript, 1986: Page 135).

Believing the result would clear him, Sawyer agreed to take a lie detector test. Prior to the polygraph, Detective Fire angrily told Sawyer that he was guilty of the murder and should just get on with the confession, a strategy that surely primed Sawyer to fail the test. Yelling, Fire claimed that they had fingerprint and hair evidence that would work against him, and that they believed that Sawyer had intentionally killed Staschak. Visibly shaking, nervous and sweating, Sawyer took the test, in violation of a well-known industry standard that the reactions of an aggressively interrogated suspect are meaningless. Tom Sawyer's polygraph had been improperly administered and the results were, in fact, uninterpretable. Detective Dean, however, immediately pronounced Sawyer guilty, declaring that the test proved him "a fucking liar" (Sawyer Transcript, 1986: Page 167) and that his "heart pumped the needles right off the screen" (Sawyer Transcript, 1986: Page 167).

The false polygraph results shattered Tom Sawyer's confidence in his innocence and thus diminished his ability to resist the detectives' demands that he confess. Following the test, the detectives no longer offered Sawyer the escape that he must have killed Staschak accidentally, but instead emphasized that only by "cooperating" and "telling the truth" could he avoid a charge of first degree murder. They emphasized the scientific basis of the polygraph examination and added that the fingerprint and hair samples would also conclusively demonstrate Sawyer's guilt. Though Sawyer maintained that he had no memory of having committed the crime, the detectives responded by suggesting that he was blocking out his memory of killing Staschak.

The contrived explanation for his memory gap was that Sawyer denied the truth of his

guilt just as he had for years denied his alcoholism, that the polygraph results showed his unconscious mind expressing guilt, and that he must have had a "dry blackout" during the murder. Sawyer had not had a drink in over thirteen months, and had never heard of a dry blackout -- a phenomenon that does not exist. Shaken by the polygraph result and exhausted from his lack of sleep, Sawyer entertained the possibility that a blackout explained his lack of memory. "You got me almost convinced I did, but...I don't know," replied Sawyer (Sawyer Transcript, 1986: Page 182). When Dean next told Sawyer that his hair samples matched hairs found on Staschak's body -- a complete lie -- Sawyer's confidence in his innocence collapsed altogether. "I still can't believe I did it. I guess all the proof's in" (Sawyer Transcript, 1986: Page 204). Sawyer thus accepted the hypothesis that he inexplicably "blacked out" during the killing.

Once Sawyer acceded to the interrogators' demands and conceded his guilt in the abstract, the focus of the interrogation shifted to eliciting details of the crime. Though he had become persuaded of his guilt, Sawyer was unable to provide any new information. The detectives suggested that he talk about mental pictures of the murder. They told him to trust the "pictures" even if they were not in the correct sequence and that they would check out the facts later (Sawyer Transcript, 1986: Page 211):

Dean: You want to make this story up. Let the pictures roll and let's hear the story. Let's hear the story. Let's hear the story and then we'll ask at the end is this something you remember.

Fire: One, two, three, go. Let's go Tom.

Dean: Make up a story. Let's hear the story.

The confabulations that Sawyer described were taken as the substance of his confession, despite his inability to actually remember anything about the crime and gross factual errors in his statement. Even after coming to accept as fact that he had killed Ms. Staschak and confabulating an account of the crime, Sawyer still resisted the interrogators' demands that he make an unconditional admission of guilt. "I think I just threw her on the floor in the bedroom" (Sawyer Transcript, 1996: Page 237); "Maybe I took the keys with me out of the car" (Sawyer Transcript, 1996: Page 243); "I would have cut [the tape], I guess" (Sawyer Transcript, 1996: Page 264).

More than fifty times, the detectives threatened Sawyer with the charge of first degree murder if he did not confess. They were attempting to get him to realize that he faced a possible death penalty that could be avoided only if he cooperated and confessed. Despite their repeated attempts to frame his choice as one between life and death, Sawyer gave no indication that he perceived or appreciated the choices. The tactic of communicating a death threat by implication had failed with Sawyer.

This failure denied the interrogators the motivator they needed to coerce a straightforward confession. Their problem was exacerbated by the fact that the interrogation was being tape-recorded. Far from constraining Sawyer's willingness to talk, the taping constrained the detectives from explicitly threatening Sawyer with the death penalty. They waited until Sawyer could be separated from the bugged interrogation room to make their next move. According to Sawyer, during a bathroom break Detectives Fire stopped him in the hallway and let him know, in no uncertain terms, that he would receive the death penalty if he did not cooperate. In the final period of the interrogation, the Fire overcame Sawyer's lingering resistance to giving an

unqualified confession and gained compliance by reminding Sawyer about the hallway conversation.⁵²

Tom Sawyer's confabulations were labeled as a confession to the murder and rape of Janet Staschak, despite the fact that his account was demonstrably false. For example, the detectives persuaded Sawyer to admit to both vaginal and anal intercourse, yet the medical examiner subsequently reported no evidence of sexual assault. Moreover, Sawyer was still unable to supply police with any information about the victim's missing clothing, missing keys, or the tape used to bind her. Nevertheless, prosecutors charged him with both the murder and sexual assault of Janet Staschak. Following a six-week-long suppression hearing in the Spring of 1988, Pinellas County Judge Gerard J. O'Brien Jr. (State v. Sawyer, 1990: Pages 290-291) ruled that the confession had been coerced as a result of:

[t]he cumulative weight of enforced sleeplessness, doubtful polygraph test results, the lengthy sixteen-hour serial interrogation with no meaningful breaks, the "scenario" of unabashedly leading questions, the denial of requests "to rest", the implied inducements to make a deal for favored consideration, the threat of a return to drinking, the use of Sawyer's known blackout history to undermine his reliance on his own memory, and the refusal to honor his Miranda rights...

With his improperly obtained confession excluded from evidence, Tom Sawyer was released from jail after more than fourteen months in pre-trial incarceration.

⁵²Detective Fire denies having issue a death threat in the hallway. The Detective's denial is inconsistent with the final recorded portion of the interrogation.

VI. Conclusion

Three procedural safeguards are necessary to protect innocent defendants against the admission of false confession evidence into trial proceedings and the subsequent likelihood of wrongful conviction. First, courts should adopt mandatory tape recording requirements in felony cases, as is already done in Alaska (Stephan v. State, 1985) and Minnesota (State v. Scales, 1994) and by many police agencies (See Geller, 1992).⁵³ Recording creates a complete record of the interrogation, and thereby permits police, prosecutors, judges, juries and experts to accurately assess the voluntariness and reliability of confession statements.

Perhaps most notably, taping would permit an objective adjudication of the "swearing contest" between interrogators and suspects about who said what during the interrogation. Each side would be protected against errors and false allegations made by the other. Finally, judges would be relieved of the embarrassment of having to rationalize their choice to believe one side or the other when a swearing contest erupts by relying on the fiction of making a "credibility judgment."

Equally important, taping would insure the legality and improve the quality of interrogation, as it has done in England (See Rose, 1996). Without the use of recording, numerous American false confession cases -- including several discussed in this paper -- probably would never have been acknowledged, and innocent citizens almost certainly would have been tried, convicted of murder, and imprisoned or executed.

⁵³For further analysis of the benefits of tape-recording, see White, 1996; Schulhofer, 1996; Cassell, 1996; Schulhofer, 1996; Leo, 1996b; Berger, 1993; Kane, 1993; Geller, 1992; Kamisar, 1980; and Williams, 1979.

In addition to mandatory taping, the admissibility of confession evidence should be allowed only when the accused's guilt is corroborated by independent evidence. Properly taken true confessions can provide information that confirms the confession's trustworthiness and leads to new corroborating evidence; false confessions will not. Research demonstrates police interrogators all too frequently come to believe that a suspect is providing them with key details of the crime that only the perpetrator could know when, in fact, an innocent suspect is merely regurgitating information that police fed to him in the first place, is inferring what the interrogators suggested through leading questions, or is making guesses that will later be proven wrong.

Police officers should be trained (1) to seek clear-cut corroboration for every confession; and (2) to recognize that a suspect's failure to satisfy this requirement is a red-flag that he may be innocent. Police will not be in a position to be self-monitoring and self-critical until they are given adequate training about how and why interrogation works. Only awareness that false confessions happen and reliance on objective standards for evaluating a confession statement will allow police to stop themselves from making the all too frequent mistake of arresting an innocent suspect.

Because confession is as damning and persuasive as any evidence that can be brought against a defendant, all confessions should meet a reasonable standard of reliability before being admitted. Because confession evidence is potentially dispositive, it can either badly mislead or greatly assist a jury. The decision to admit a confession should be based both on voluntariness and the fit between a defendant's post-admission narrative and the facts of the crime.

A confession that cannot withstand objective evaluation and reach a minimum standard

of accuracy should be excluded because its prejudicial impact greatly outweighs its probative value. Such grossly defective confessions should be absolutely barred because of the danger that they will confuse and mislead jurors and thereby contribute to convicting the innocent.

Psychological interrogation very often produces evidence that, in one way or another, bears on a defendant's guilt. Unfortunately this method, along with torture and the third degree can cause a defendant to say "I did it" even though he is innocent. The only trustworthy evidence of a defendant's guilt or innocence that comes from interrogation is his post-admission narrative of the crime. Because confession statements are sometimes evidence of guilt and sometimes evidence of innocence, jurors should be instructed to rely on the fit between the defendant's narrative and the facts of the crime when deciding how to classify and weigh confession evidence.

American society sometimes requires jurors to take up the heavy burden of determining whether a person will be freed, imprisoned or executed based entirely on the words he spoke while undergoing interrogation. Social science research has led us to an understanding of why confessions can be evidence of guilt or innocence and how to understand why people sometimes give false confessions. The jurors' sobering task can be made far less awesome by allowing them to know precisely what the damning words were and exactly what techniques elicited them. This can be accomplished by adopting a mandatory recording requirement and informing jurors about the range of influence responses that can be caused by interrogation tactics. Empowered by information and education, jurors can intelligently decide whether the defendant's words are evidence of guilt or evidence of innocence (Stephan v. State, 1985; United States v. Hall, 1996).

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