

Evolution of Confession Law

Madison MacPherson

A Senior Thesis submitted in partial fulfillment
of the requirements for graduation
in the Honors Program
Liberty University
Fall 2020

Acceptance of Senior Honors Thesis

This Senior Honors Thesis is accepted in partial fulfillment of the requirements for graduation from the Honors Program of Liberty University.

Joel Cox, Ph.D.
Thesis Chair

Beth Sites, Ph.D.
Committee Member

James H. Nutter, D.A.
Honors Director

Date

Abstract

Many studies have been conducted to examine how false confessions occur, and what their impacts are. Throughout its history, America has instituted standards for interrogation procedures that are aligned with research findings and that build off constitutional principles. These are designed to protect individual rights while still accomplishing the goals of the judicial system. This paper discusses false confessions, interrogation laws, and how these impact a suspect, as well as the other influences acting upon suspects including plea bargaining and psychological processes. A compilation of research findings and case law culminates in the conclusion that changes must be made to the American criminal justice system in order to minimize the risk of false confessions and ensure that individual rights are protected.

Evolution of Confession Law

“There is no piece of erroneous evidence that if put before a jury is more likely to lead to a wrongful conviction than a false confession” (Leo & Davis, 2010, p. 50). In the small percentage of cases that travel all the way from initial arrest to trial, an even smaller percentage reach a conviction because of a confession. While in some cases, confessional evidence corroborates the defendant’s testimony of events, in others, a suspect’s confession does not match up with what truly happened. A variety of factors can cause this, such as suspect vulnerability and police pressure.

The difficult task of law enforcement requires a multifaceted candidate who demonstrates aptitude in many areas and passes a strict vetting process. However, even with extensive training and the best intentions, in rare instances officers can interrogate in such a way that induces a suspect’s false admission of guilt (DeClue, 2005). Only a small percentage of cases travel from a crime’s commission to a conviction; a mere 2.1% of cases ever make it to court, and in only 0.4% of cases will an offender receive a custodial sentence (Ratcliffe, 2012). False confessions do not always come as a result of officer actions; they can also be due to factors inherent in or imposed upon the suspect (Morehouse, 2019). Even when an officer has the intention of seeking the truth, there are inevitable psychological processes that occur in a suspect’s mind that can overpower an interrogator’s efforts to elicit a true, accurate account of events. These practical and psychological factors may induce an innocent individual to confess, and they have been studied to determine how risk factors can be minimized.

From its founding, America has sought to protect individual rights and liberties. This is especially true for criminal rights; the Constitution has provided a foundation for legal

precedents that continue to be shaped today (Grunewald, 2014). Its amendments continue to clarify the rights of the accused as interrogation law is changed to meet the legal requirements that the Constitution is interpreted to have. The current standards for a confession's admissibility are not unfounded, but have been built upon preceding case law and legal doctrines. These standards exist to protect the rights of both the innocent and the accused, as well as prevent wrongful convictions, particularly for those who are most vulnerable. This includes the conviction of an individual via plea bargaining, which is a popular method of justice used to reduce the overcrowded court system; in urban areas, plea bargaining accounts for 65% of case outcomes (Redlich et al., 2017).

As times and laws change, so do the standards for interrogation procedures and confession admissibility. In light of current research and case law developments, these changes must continue. All criminal justice actors can take part in the continued editing and transforming of confession law, as it adapts to continue to meet the justice system's goals of maintaining individual rights and liberties while enacting justice to protect the nation. Current research and existing case law must be utilized to make changes to interrogative procedure and the handling of confessions (DeClue, 2005; French, 2019; Griffin, 2016; Janzen, 2019; Kassin, 2015; Kukucka & Evelo, 2019; MacLean et al., 2015; Primus, 2015; Scherr et al., 2020). This will protect individual rights, elicit the most accurate confession possible, and reduce the instances of false confessions and wrongful convictions.

Literature Review

In order to accomplish the goal of justice in the criminal justice system, the correct perpetrator of a crime must be the one who is convicted (Grunewald, 2014). However, this does

not always occur due to various errors. As of 2019, of the 362 wrongful convictions uncovered by the Innocence Project, 100 were found to be a result of a false confession (French, 2019). Nearly 30% of DNA exonerations in the United States have occurred because the conviction was a result of a false confession (Scherr et al., 2020). Even factually innocent people can get caught up in a wrongful conviction; oftentimes, they are at risk as soon as they waive their rights because doing so accelerates the process towards a conviction (Scherr et al., 2020). Because approximately 95% of cases in the United States are resolved by plea bargaining, people are often in and out of the justice system quickly, and thus wrongfully convicted without going to trial (Scherr et al., 2020). While plea bargaining is a means of reducing the caseloads weighing down America's court system, it has become much more common and routine (Grunewald, 2014).

False confessions' links to psychology have been seen throughout history, such as in the widely publicized case of Kitty Genovese, which not only showed the powerful impact of the bystander effect, but also of false confessions and wrongful convictions (Kassin, 2017). Age and suggestibility are highly correlated with one's likelihood of giving a false confession (Gee, 2009), and coercive techniques are the most likely to elicit a false confession (Morehouse, 2019). The tests that evaluate the voluntariness and reliability of confessions are not adequate after a suspect has been threatened with the death penalty (Morehouse, 2019). Popular techniques in an interrogation include the interrogator making a determination of guilt or innocence before the main portion of the interrogation takes place; this stems from the widely used Reid technique (Inbau et al., 2013). This technique can be problematic because the average person is truly no better than chance at determining another's guilt or innocence, and the average interviewer is

only slightly better than the average person at determining these from the initial interview (Leo et al., 2013).

A confession tends to be the centerpiece of a prosecutor's case, so once it is elicited, it is hard to overcome; it is "uniquely prejudicial" (Leo et al., 2013, p. 774), unlike any other form of evidence (Kukucka & Evelo, 2019; Morehouse, 2019). Today, a wrongfully admitted false confession can remain part of a trial as long as the prosecution can prove that it was harmless to the outcome of the trial (Strang, 2020). While safeguards are in place to help prevent false confessions, more can be done (Leo et al., 2013), and this is important because those who falsely confess are more susceptible to being stigmatized because they are seen as more responsible for their own wrongful conviction (Kukucka & Evelo, 2019). Ultimately, more can and should be done by all criminal justice actors to minimize false confession risk and protect individual liberties.

False Confessions

When innocent people admit to a crime that they did not commit, or to a crime that is of a greater degree than the one that they committed, they are giving a false confession. In other words, a false confession is "an admission of guilt followed by a factual description of a crime that the individual confessing did not actually commit" (Janzen, 2019, p. 87). Typically, a false confession is expected to contain details that only the true perpetrator of a crime would know (Gould & Leo, 2010). Contrary to what is seen on television and in movies, an interrogator's intimidation tactics are typically not why a suspect ultimately confesses. In reality, false confessions tend to occur unintentionally on behalf of all involved parties. The occurrences of false confessions are fairly low; police-induced confessions were found to constitute 15 to 20%

of wrongful convictions that were uncovered using DNA evidence (Leo, 2009): “Among the first 1200 cases collected by the National Registry of Exonerations, approximately 13% involved a false confession” (Norris & Redlich, 2014, p. 1016). However, there remains more that can be done to ensure they are prevented.

Defining the Term “False Confession”

When a suspect chooses to give a factual description of an offense, it usually includes specific details about the crime that would only be known to its offender, as well as why the offender chose to commit it. Certain telltale signs can cause a court to determine that a confession is false. For example, when there is evidence that the crime did not actually occur, or the existing evidence shows that it would be impossible for the person who confessed to have committed the crime (Janzen, 2019). A confession can also be deemed false when the person who actually committed the crime comes forward, or evidence shows that the person who confessed is actually innocent (Janzen, 2019). There are reasons why someone would confess to a crime they did not commit, which will be further discussed later.

Confessions are inextricably linked with voluntariness. If a confession is found to have been given involuntarily, it will be deemed false. So, what exactly makes a confession voluntary? Appelbaum (2009) states that, “A defendant’s behavior will be presumed to be voluntary in the absence of some external, intentional, and illegitimate action on the part of the official” (p. 423). Key factors to consider are where an official’s actions can be proven to be coercive or unethical in some way. For example, an official cannot issue a threat while the suspect is undergoing “substantial” mental or physical duress (Appelbaum, 2009, p. 424). This, of course, raises the question of what constitutes substantial duress, a definition that has been

shaped over time by case law. Even deception by an interrogator does not invalidate a confession unless it interferes with the suspect's exercise of his or her rights (Appelbaum, 2009). In fact, interrogators are taught to engage in lengthy interrogations that can: infer promises or threats, occur in an uncomfortable environment, use deceptive techniques such as lying, and lie about eyewitnesses or codefendants implicating the suspect (Gee, 2009). Standards for voluntariness vary and ultimately depend on the circumstances of each case, the characteristics of the defendant, and the jurisdiction (Lloyd, 2018).

The tenacity displayed by police in doing their duty of apprehending criminals is seldom overridden by their desire to convict someone; they do not set out to obtain a false confession or wrongful conviction, as this would be a great injustice to those they have sworn to serve. Rather, police seek to elicit truthful, accurate confessions in order "to reduce their caseload and to increase their statistics of closed cases" (Gee, 2009, p. 52), as well as to uphold their duty as law enforcement. The instances of false confessions are relatively low, but must be addressed nonetheless in order to protect innocent citizens from being wrongfully convicted. Throughout America's history, rights that were set in stone by the Constitution have been adapted to meet the needs of an evolving and growing country.

Constitutional Rights

In a discussion of the history of interrogation law, the three main rights that have prevailed since the signing of the Constitution cannot be ignored. The 5th Amendment right to remain silent, the 6th Amendment right to counsel, and the 5th and 14th Amendment rights to due process and voluntariness have been engrained in the justice system and affected by new case law to reflect the changing attitude of the justice system over time. Thus, they have had an

integral role since the founding of the United States, as they compose the foundation that the rest of confession laws build upon.

5th Amendment

The 5th Amendment right to remain silent has a huge influence over the verdict of case whether or not a suspect asserts it. *Salinas v. Texas* (2013) determined that silence constitutes an admission of guilt if maintained in a noncustodial setting because explicit verbal invocation of one's 5th Amendment rights is required. Thus, this decision supports the use of silence as a confession, which can be used by the prosecution to strengthen their case. When a suspect asserts their right to silence, this can be helpful in allowing them to build their strategy with their legal counsel and avoid incriminating themselves. If they fail to verbally assert their right to silence, a suspect risks allowing law enforcement to insert material into their confession, which also introduces errors into the process (Griffin, 2016). In court, the prosecution can use silence as evidence of guilt when it is not specifically asserted as a right by a suspect. Then, it can be used against a suspect at trial to "impeach [their] excuse, explanation, or alibi" (Griffin, 2016, p. 708). Further, silence in response to a statement can "qualify as a defendant's adoption of that statement for purposes of the exemption of a party's own admissions from the hearsay prohibition" (Griffin, 2016, p. 708). So, while suspects do in fact have a right to remain silent, they must assert this right, and then follow up by remaining fully silent until they can consult with legal counsel. This will minimize false confession risk.

6th Amendment

A suspect's right to counsel is outlined in the 6th Amendment, which grants this right to all suspects before they are interrogated. The opportunity to discuss with counsel not only helps

to preserve a suspect's rights, but also allows the team to discuss potential strategies that they can implement beginning in the interrogation and throughout the following judicial processes, if needed. Strategizing early on can help defendants maintain a consistent strategy throughout their time in the judicial system, including maintaining their innocence or otherwise adopting the best method of defense. It can also prevent false confessions because the attorney can help the defendant prepare and know what to expect in questioning.

5th and 14th Amendment: Due Process and Voluntariness

The 5th Amendment's protection against self-incrimination also entails the protection of maintaining voluntariness, which was determined in *Bram v. U.S.* (1897; Morehouse, 2019). However, voluntariness is a tricky, multifaceted subject. Even the presence of counsel does not ensure a defendant's voluntariness, especially if the two have not had time to fully discuss the case yet (Inbau et al., 2013).

The right to voluntariness was called into question in *People v. Guilford* (1984), which determined that even though the defendant received an eight-hour break in the interrogation process, this break "was insufficient to remove the influence of his wrongful interrogation from his mind" (Iemma, 2014, p. 17). In other words, Guilford's confession was deemed involuntary because of the length of the preceding interrogation. Thus, regardless of Guilford and his interrogator's intentions, the legality of his circumstances was determined by an objective measure: time. Objective standards such as this have been further modified in court decisions ruling on the 5th and 14th Amendments' right to voluntariness.

Today, police can lie about anything in an interrogation as long as it does not violate the 14th Amendment (Janzen, 2019), which guarantees the right, to life, liberty, and property with

due process of law (Lloyd, 2018). In *Brown v. Mississippi* (1936), the Supreme Court first ruled that “statements coerced by law officers were inadmissible in state courts under the 14th Amendment’s due process clause” (Strang, 2020, p. 77). The Supreme Court has interpreted this to mean that although an involuntary confession cannot be admitted as evidence (Kassin, 2015), coercive conduct can still occur to some degree in order to elicit a confession. However, opportunities for coercion are limited because the interrogation tactics that are coercive in nature cannot be considered to elicit a voluntary confession in any circumstance (Kassin, 2015). The 14th Amendment essentially requires that as long as a judge does not determine that police pressure overrode a defendant’s voluntary action, a confession is voluntary; judges do so using a totality of circumstances test (Leo et al., 2013). This necessitates that they evaluate the interrogation methods, police conduct, resulting statement, and whether there was a causal relationship between police conduct and the statement (Leo et al., 2013).

The typical test for due process and voluntariness, the totality of the circumstances test, is frequently cited as being too vague and indeterminate, too subject to opinion (Leo et al., 2013). This test calls for judges to assess the totality of the circumstances of a case to decide whether police conduct overrode a suspect’s free will, and if this action led to the issuance of a false confession. Again, there must have been a causal element between the police’s conduct and the resulting statement (Leo et al., 2013). The 5th and 14th Amendment rights to due process and voluntariness are perhaps the most difficult constitutional rights to apply to interrogations and confessions because of the inconsistency and subjectivity in their application.

History

The legal determination of what makes a confession voluntary has evolved over time. Since the writing of the Constitution, case law has adapted along with the justice system to address changing perspectives regarding what constitutes voluntariness. Traditionally, the courts have “granted considerable scope to deceive suspects, such as the time-honored approach of telling a suspect that a confederate had already confessed to a crime” (Appelbaum, 2009, p. 423). The American judicial system must continue to the process of editing and reforming standards for confessions and interrogations in order to pursue an accurate confession.

Perhaps the earliest case which addressed confessions was *Rex v. Warickshall* (1783), which determined that no confession should come from hope or fear; a confession that comes as a result of these emotions should not be credible. While this is a great ideal, this was impractical for everyday life because many suspects desired to rid themselves of the risks and costs associated with going to trial. This issue was highlighted when the Civil War ended. It became popular for attorneys to stand out in the street in front of a courthouse, offering defendants a flat rate for a predetermined sentence length. This was a quick fix solution that did not take into account a defendant’s actual guilt or innocence; defendants were willing to accept a definitive punishment for a small fee, rather than an uncertain punishment in a trial and high court costs pay (Dervan & Edkins, 2013).

The history of false confessions in America begins in 1819, which marked the first known case in which a false confession led to a wrongful conviction; in Vermont, Stephen and Jesse Boorn were wrongfully convicted of murder based on their confessions (Janzen, 2019; Norris & Redlich, 2014). It was not until 1897 that *Bram v. United States* determined that under

the 5th Amendment, in federal cases only, a confession is invalid if it is extracted by violence or a threat of violence, false promises, or exertion of improper influence.

In 1931, the Wickersham Commission Report was issued to address public concern over increases in crime (Theoharis, 2013). It attempted to change administrative procedures and address areas where law enforcement was ineffective, including abuses of power (Theoharis, 2013). The report showed an early concern for policing tactics, and how this concern was addressed legally. Soon after, *Brown v. Mississippi* (1936) further restricted police tactics by determining that there can be no physical abuse in the interrogation process. In 1954, *Leyra v. Denno* established more restrictions on what constituted due process. In this notable case, a psychiatrist impersonated a doctor in order to get a suspect to admit guilt. The psychiatrist was able to use skillful questioning to obtain a confession under his premise as a medical professional. Although this initially did not matter to the court, the impersonation was eventually determined to not be an upholding of due process, especially because the defendant did not have counsel present with him at the time of his confession.

The 1900s were a period of greater clarification as to the elements of a voluntary confession. In 1960, *Blackburn v. Alabama* built upon earlier cases which had found that confessions should not be extracted under harsh circumstances. This case determined that not only must a confession not result from violence or threats, but it must also be “the product of a rational intellect and a free will” (Appelbaum, 2009, p. 423). This was an important clarification, as it further defined the requirements for voluntariness under the 5th and 14th Amendments. In 1964, two major cases impacted voluntariness. The voluntariness clause of the 14th Amendment was extended to cover not only federal cases, but also state cases in *Malloy v. Hogan* (1964).

This means that from *Bram v. US* (1897) through 1964, defendants in state trials could not invoke their 5th Amendment right to exclude a coerced confession from being admitted to trial (Janzen, 2019). The second major constitutional right, the 6th Amendment right to counsel, was applied to police interrogations in *Escobedo v. Illinois* (1964). In *Moran v. Burbine* (1986), the Supreme Court further clarified that a voluntary confession is also one that is “the product of a free and deliberate choice, rather than intimidation, coercion, or deception” (Rogers et al., 2010, p. 67). One element necessary in any interrogation is the Miranda warning, established by *Miranda v. Arizona* (1966), which built upon the third constitutional right, the 5th Amendment right to remain silent. This necessitates that at the time of arrests, a suspect is advised of their rights and law enforcement must also obtain a waiver from them for these rights. The Miranda rights are: the right to remain silent; if the suspect chooses to speak, what they say can be used against them in court; the suspect has the right to consult with a lawyer and have them present during questioning; if the suspect cannot afford a lawyer, one will be appointed if requested by the suspect (*Miranda v. Arizona*, 1966). In *Florida v. Powell* (2010), the Supreme Court determined that these rights must not be stated word-for-word; only the fully effective equivalent of the Miranda warning is necessary as a prerequisite to a statement’s admissibility. In other words, this case further defined *Miranda* by requiring that an individual be clearly informed of his constitutional rights prior to questioning, particularly the right to counsel.

Colorado v. Connelly (1986) clarified what behavior was considered coercive on the part of interrogators, by stating that a confession is presumed to be voluntary in the absence of coercive behaviors by interrogators. In other words, “some level of external coercion would be required before the effects of the suspect’s mental condition could be considered” (Rogers et al.,

2010, p. 67). Thus, in a case where a defendant claims that his confession was false, he must prove that there was coercion by law enforcement. Even after he is able to prove that coercion occurred, the defendant's mental state at the time of the confession must also be evaluated to determine the extent that coercion occurred (Appelbaum, 2009). Mental health professionals often become involved in determining a defendant's mental state at the time of their confession.

Before *Arizona v. Fulminante* (1991), the finding that a confession was involuntary automatically reversed the outcome of a case. However, *Arizona v. Fulminate* (1991) required that an appellate court consider a confession's admittance to see if it significantly impacted the case. If the appellate court determined that the confession did not significantly affect the outcome of a case, the court's decision did not require a reversal. A false confession was no longer enough to reverse a conviction, and this became dangerous for defendants who are more vulnerable to issuing a false confession.

In 1992, the Innocence Project was founded, which marked the beginning of an era of exoneration. This continues today as wrongfully convicted individuals continue to be exonerated using DNA evidence. As of 2015, over 300 DNA exonerations had occurred, and this number has since continued to rise (Mickes et al., 2015). Another more recent development that combats wrongful conviction is The Citizens Protection Act of 1998, which was enacted in order to protect against prosecutorial misconduct by requiring that federal prosecutors follow the same laws and rules that apply to attorneys in their jurisdiction (MacLean et al., 2015). This ensures that standards for state and federal prosecution were assimilated, similar to how *Malloy v. Hogan* (1964) extended the 14th Amendment to cover both state and federal cases.

Dickerson v. United States (2000) changed how a confession's reliability is examined. It instituted a deferential voluntariness test, which looks at the totality of the circumstances of a confession, the characteristics of the accused, and the details of an interrogation. While this seems like a useful method in determining voluntariness, it nearly always finds a confession to be voluntary (Janzen, 2019). *U.S. v. Boskic* (2008) highlighted issues around voluntariness that remain in question. In this case, Boskic met with government agents for an alleged discussion that who deceived him regarding their meeting's purpose, telling him it was about immigration document. During the interview, after initial denials, Boskic eventually confessed to involvement in the 1995 Srebrenica massacre, and provided verbal and written accounts of this (Appelbaum, 2009). At his resulting trial, Boskic claimed that his statements were a result of coercion because the true purpose of the interview had not been disclosed to him. However, while the government's tactics were undoubtedly misleading, they did not meet the definition of coercion at the time because Boskic had not been threatened; thus, his 5th Amendment right was not violated (Appelbaum, 2009). In 2011, *Bobby v. Dixon* made it legal for police to misrepresent the strength of their case against a suspect to the suspect. This gives the opportunity to extend what happened in *Boskic* (2008) by not only making it legal to misrepresent the purpose of an interrogation, but also the seriousness of it. This is why it is so important that a suspect be given access to counsel, and that they use that right, before they are interrogated. Speaking with counsel can change the outcome of a case and make suspects more aware of their rights.

From the early 2000s to the modern day, reform has been prevalent in the system in the areas of confessions as evidence, expert testimonials, and confession reliability, in order to prevent situations such as that of Boskic from happening. Recall *People v. Guilford* (1984), in

which the standards for a confession's voluntariness after a lengthy interrogation were considered. In 2009, *People v. Alexander* stood in contrast to *Guilford* (1984) when "the court found that eleven hours was a sufficient amount of time to purge the effects of the wrongful interrogation from the mind of the defendant" (Jemma, 2014, p. 1172). This contradicted the court's earlier finding in *Guilford* that eight hours was not sufficient to render the suspect's subsequent confession voluntary. This shows how attitudes towards interrogation length have changed and continue to do so.

In 2010, the Uniform Law Commission recommended that failure to record an interrogation should be considered by judges when adjudicating a motion to suppress a confession on other grounds (Leo et al., 2013). While this recognizes the unreliability of confession evidence as a basis for suppression, it lacks a discussion of how such a practice could be consistently and effectively implemented (Leo et al., 2013). In 2015, American Psychological Association submitted three amicus briefs stating that reform is needed in confession evidence because of its counter intuitiveness, difficulty of assessment, and that psychological experts are needed at trial (Kassin, 2015; *People v. Kowalski*, 2012; *Rivera v. Illinois*, 2009).

All interrogation techniques can be traced back to the *Reid Manual*, which was a pioneer model away from third degree, physically coercive interrogation models, which were originally used, towards an accusatory model (French, 2019). This was instituted in 1974 and has been widely implemented in both federal and state jurisdictions ever since (Inbau et al., 2013). This has been a dominant model and has essentially set the standard for interrogation practices (French, 2019). Reid was the first to move away from physically abusive methods of

interrogation towards methods that used a knowledge of psychology to identify suspect guilt followed by accusatory questioning to obtain a confession (French, 2019).

Current Admissibility Standards

These major cases and countless others have culminated in the current admissibility standards for interrogations and confessions. These are: an act is considered voluntary unless there is some external, intentional, illegitimate act by an official (Appelbaum, 2009); deception is allowed as long as a person is not deceived of their rights (Appelbaum, 2009); a continued presumption of the validity of confessions exists, absent of evidence otherwise (Leo & Davis, 2010); police cannot manufacture hard evidence in an attempt to cause a suspect to confess (Gee, 2009).

Despite these and other standards of admissibility and voluntariness, the full impact of threats and promises in an interrogation are still not being taken into adequate account (Morehouse, 2019). The current standards for voluntariness include that a confession is produced freely and voluntarily (Morehouse, 2019), “in the absence of some external, intentional, and illegitimate action on the part of the official” (Appelbaum, 2009, p. 423). However, Morehouse claims that this requirement does not fully incorporate the standards of voluntariness outlined in *Bram* (1897). Many factors are important and necessary to include in the determination of the voluntariness of a confession. Deception can rarely be used as reasoning for a false confession, because it has to involve information which is directly related to one’s exercise of rights; only behavior such as threatening or creating substantial duress are sufficient to deem a confession involuntary (Appelbaum, 2009). This means that in order to render a confession false, other factors such as mental and physical duress and the presence of threats should be accounted for by

the defense. These other factors do not include giving a defendant a false sense of security. When evaluating voluntariness, a mental health professional may think that their subject has made a decision under duress. However, their job is to determine that the confession was not coerced, even if the suspect made a decision in less than ideal conditions (Appelbaum, 2009).

Prosecutors are tasked with showing that police complied with Miranda warning and waiver requirements as well as elicited a voluntary confession under the 14th Amendment right to due process (Leo et al., 2013). This requirement builds upon the long-held presumption of innocence until proven guilty. Typically, a confession alone is not enough to render a suspect guilty; there must be other evidence to suggest this as well (Leo et al., 2013), which is also up to the prosecutors to find and present at trial.

Protecting Individual Rights

The techniques used in an interrogation room, while traditionally effective, affect the innocent as well as the guilty. Therefore, harsh techniques may unintentionally implicate an innocent person in a crime (Gee, 2009). Ensuring a voluntary confession is essential to preserve integrity and dignity (Strang, 2020). While police are trained to avoid mistakes that heighten the risk of eliciting a false confession such as contaminating an interrogation, they occur nonetheless (Leo et al., 2013).

While some interrogation procedures are effective at eliciting a confession from a guilty suspect, these same procedures can also contribute to false confessions (DeClue, 2005). Current standards of what is considered admissible in an interrogative setting come as a result of trying to prevent involuntary and forced confessions from occurring. While an involuntary confession may be factual, it can nonetheless be inadmissible in court because of how it was extracted.

While involuntary and forced confessions are not very common because police pursue justice and remain within the boundaries of the law, they persist nonetheless.

People v. Guilford (2013) helped to delineate the boundaries between voluntary and involuntary confessions and their admissibility. In this case, the defendant claimed that his admission of guilt to murder was made 10 hours after the conclusion of a 42 ½ hour interrogation. During his interrogation, the defendant was placed in a windowless room with nothing but a table and three chairs, was fed one sandwich, and was not allowed to sleep. In this case, the efforts to break Guilford's will in order to extract a confession were so overwhelming that they deprived him of his basic human needs. As a result, the court could not conclude that the defendant had recovered rapidly enough in the 10 hours after the interrogation to restore "his basic capacity to exercise independent judgement" (*People v. Guilford*, 2013, p. 212). As a result, Guilford was granted a new trial. This case determined several tenants which are necessary for a confession to be rendered voluntary: the basic human needs of food, water, and sleep; no considerable physical and mental duress; and no threats. However, just because all of these conditions are met, this does not guarantee that a confession will be admissible, because of the possible presence of other extenuating circumstances.

Today's laws require that in order for a confession to be rendered involuntary, some official coercion or overreaching is necessary (Strang, 2020). Even mental illness or other affect does not constitute reason to render a confession involuntary; rather, some state actor "must do something affirmative to exploit the person's vulnerability" (Strang, 2020, p. 82). This stems in part from *Rogers v. Richmond* (1961), which affirms that the accuracy or probable accuracy of a confession does not prove or disprove its voluntariness (Strang, 2020). This is an issue that

cannot be ignored. More attention must be given to the circumstances under which a suspect confessed, so that involuntary confessions can be brought to light.

Wrongful Convictions

Wrongfully convicted individuals spend an average of ten years in prison, and there were 1,702 exonerations of wrongfully convicted people between 1990 and 2015 (MacLean et al., 2015). A wrongful conviction does not just include when someone is convicted of a crime they are completely innocent of. It also includes those crimes in which the defendant's sentence does not accurately reflect his culpability in the crime (MacLean et al., 2015). As diligently as criminal justice actors work to avoid accusing an innocent person, innocent or partially innocent people can be convicted nonetheless. Several factors can increase the chance that an innocent person is convicted because these factors make individuals more vulnerable and impressionable. Because of the damning nature of a confession, the links between a confession and a conviction are very strong. Overall, there exists a lack of understanding regarding the issues of false confessions as they relate to wrongful convictions. While the risk of false confessions is known, it is still wrongly believed that they are rare, and this combined with a lack of understanding of the causes of false confessions present obstacles for exoneration and post-conviction relief (Leo & Davis, 2010).

Consequences of Threats

Threatening to inflict harm, including the death penalty, upon a suspect or their family heightens the risk of false confession; Grunewald asserts that "It is a fact that innocent suspects confess and plead guilty to crimes they didn't commit, especially when they face the death penalty" (2014, p. 1162). One precursor to wrongful convictions is threats made by the

interrogator. Morehouse offers an explanation as to why threatening a suspect with the death penalty should render a confession involuntary. In the case of the “Norfolk Four,” a quad of Navy sailors falsely confessed to the rape and murder of a navy sailor’s wife. Each of the men tailored their confession to meet the standards that were given to them by police, despite their innocence, and spent over 20 years imprisoned (Morehouse, 2019). Because rape and murder are punishable by death under Virginia state law, the interrogator threatened the men with death, and “police told them that the only way to escape the death penalty was to confess” (Morehouse, 2019, p. 532). However, in a turn of events, when the true killer was found more than one year later, the police told the killer that the only way to avoid the death penalty was to implicate the Norfolk Four in his confession. This is just one example of how people may confess to more when they are faced with death than if they are threatened with a lesser penalty. By threatening a suspect, an interrogator undermines the reliability as well as the voluntariness of a confession (Morehouse, 2019).

Disadvantages Faced by the Wrongly Accused

Once someone is wrongly accused, he faces several disadvantages. These disadvantages can accumulative and lead to a wrongful conviction (Scherr et al, 2020). As soon as a suspect relents enough to provide a false confession, this can set in motion a presumption of guilt that is extremely difficult to extract themselves from (Leo et al., 2013). A suspect’s vulnerability coupled with an interrogator’s presumption of guilt can result in a false confession, and the following disadvantages can persist into an individual’s efforts to reintegrate into society upon their release (Scherr et al., 2020).

Most American interrogations today utilize the Reid technique. The first step, the pre-custodial interview, occurs as interrogators try to get a read on their suspect and determine their guilt or innocence (French, 2019). In this stage, an innocent suspect displays behavior associated with innocence, such as having an overall naïve mindset (French, 2019). In many cases, an innocent suspect will waive their Miranda rights to silence and an attorney, which sets them on a course for failure in maintaining their innocence. If an interrogator determines that a suspect is guilty based on his own personal evaluation of the suspect in the pre-custodial interview, he then sets out to prove this guilt (French, 2019). During the custodial interrogation, the interrogator often uses manipulative tactics on the presumed guilty suspect, such as presenting false evidence and minimizing leniency that are known to increase risks of false confession (Scherr et al., 2020). When an individual who is actually innocent confesses, his confession corrupts the ensuing interrogation by impacting the testimony of witnesses and forensic examiners. These testimonies are bent to fit into the suspect's narrative, and the investigative results seem to corroborate the false confession (French, 2019). This increases the chance that the suspect will be found guilty. The accumulation of disadvantages faced by innocent people astronomically increase the likelihood that they will plead guilty rather than face trial. Because a false confession seems so counterintuitive, trials of innocent people who have falsely confessed are often unsuccessful (Leo et al., 2013).

Contamination is another error that may cause an innocent suspect to plead guilty. This occurs when an interviewer introduces information into an interrogation which would only be known to the perpetrator of a crime or their accomplice (Alceste et al., 2020). Contamination contributes to a suspect narrative that notes important details of the case accurately, despite the

suspect's actual innocence. Police can worsen occurrences of this by providing privileged information that contaminates the narrative (Gould & Leo, 2010). Contamination is significantly correlated with false confessions because it introduces facts only known to the perpetrator and prolongs questioning (Primus, 2015). Without contamination, a false confession should be very clear because the suspect's narrative would be full of errors. However, contamination lives up to its name in that it muddies a case, such as that of *Godschalk* (*Commonwealth v. Godschalk*, 1987), who got all the facts of the case right not because he was guilty, but because his interrogation had been contaminated by those questioning him (Leo et al., 2013). An interrogator's unintentional contamination of a confession can come as a result of investigator bias or tunnel vision (Leo et al., 2013). This can make it difficult to detect because the investigator may not realize what they are doing, and if the process is not being recorded, there is no objective evidence of the timeline of events that occurred.

Individuals who have higher levels of suggestibility are at even more of a disadvantage. Research shows that high suggestibility is associated with diminished abilities to comprehend Miranda rights (Rogers et al., 2010). Thus, those who are at risk of failing to comprehend their rights also risk being more suggestible in an interrogative setting, which can be dangerous for contamination (Rogers et al., 2010).

The Reid technique, while technically legal, can elicit a false confession depending on how it is used. In the case of *Nga Truong*, a teen mom accused of killing her son, she confessed after interrogators implemented the Reid technique (*Commonwealth v. Truong*, 2011). This case involved no prior convictions, no material evidence, no DNA evidence, and no eyewitness testimony to suggest that *Truong* was her son's killer; the only evidence was her confession

(Janzen, 2019). Ultimately, Truong's statements were determined to be involuntary because of deceit, false statements, false promises, and trickery on the part of the interrogators (Commonwealth v. Truong, 2011; Janzen, 2019). Despite these findings, nearly each individual technique used by interrogators was determined to be legal (Janzen, 2019). This demonstrates some potentially problematic aspects of the Reid technique, namely that while each individual technique may be allowed, when combined they create a model that significantly heightens a suspect's false confession risk.

The risk of eliciting a false confession that leads to a wrongful conviction is amplified when police fail to record both the video and audio of an interrogation (Leo et al. 2014). Failure to record all parts of an interrogation is a risky practice because incidences of contamination are not put on record, and thus at trial is it an interviewer's word against a suspect's. This also makes it harder for a jury to understand how and why someone would issue a false confession, because they do not have primary evidence of it happening in the case they are judging. Contamination in an interrogation "substantially increases the risk that a factually false confession will appear true and persuasive, and that as a result it will lead to a wrongful conviction" (Leo et al., 2013, p. 766), and the court does the defendant a disservice by not providing the judge and jury with evidence of potential contamination. Even when an individual confesses and later recants his testimony, this is not always sufficient to reverse their previous statement; after all, those words can never be erased from the records and the minds of those involved. Jurors commonly find it hard to believe that someone who is innocent would confess, because they themselves feel they would not do so (Leo et al., 2013). Jurors are particularly susceptible to accepting a confession as truth, even if...they are told that the confession has been presumed involuntary and or retracted

(Leo et al., 2013). Thus, a lack of recording puts a suspect at greater risk for being found guilty by a judge or jury.

Relationship to False Confessions

If all criminal justice actors do their jobs with accuracy and attention to detail, it is likely that they will realize that a confession is false before the case gets to trial. Although a false confession can lead to a wrongful conviction, this is commonly due to errors along the path of the criminal justice system, not solely because of the confession itself. Nonetheless, false confessions have led to wrongful convictions in some cases. False confessions remain a contributing source, but not the exclusive cause of wrongful convictions (Gould & Leo, 2010).

Three common errors occur when a false confession leads to a wrongful conviction: “influence, persuasion, and compliance” (Gould & Leo, 2010, p. 844). First, an innocent person is classified as guilty. This mistake stems from investigators being taught that according to the Reid technique, they can accurately identify when someone is guilty. Next, an accusatorial interrogation occurs because investigators are certain they have a guilty suspect. Particularly when other sources of evidence are lacking, it is very important for investigators to be able to obtain a confession. Finally, the primary cause of police-induced false confessions occurs last, when interrogators use psychologically coercive interrogation methods (Gould & Leo, 2010). When a suspect is able to give a post-confession narrative, the case against them is strengthened. Keep in mind, however, that this narrative may come as a result of contamination by law enforcement. After all, the narrative should contain privileged information if the person recalling it is truly guilty.

Understandably, a false confession is only likely to lead to a wrongfully confession if it is entered into evidence at trial (Leo et al., 2013). Most false confession cases never actually result in a conviction (Leo et al., 2013) because criminal justice actors' diligence prevents this. However, it is extremely likely that once a false confession is admitted to trial, that the person will be wrongfully convicted (Leo et al., 2013).

Confessions and Plea Bargaining

The relationship between interrogations, confessions, and plea bargains is inseparable because of the frequent use of plea bargaining today. Plea bargaining, while an arguably necessary part of the justice system, contributes to the rate of false confessions. While plea bargaining is a helpful tool in clearing out some of caseloads that overwhelm the judicial system, it can also be an instrument to imprison and punish the innocent. The history of plea bargaining can be intertwined with that of confession law to show the relationship between the two and how plea bargaining plays a role in false confessions.

Recall that in 1819, the first instance of a false confession was recorded (Janzen, 2019). In an 1825 treatise, Jeremy Bentham asserted that only the guilty remain silent when being interrogated (Griffin, 2016). Of course, this is far from the truth, yet attitudes such as this are part of the reason why false confessions remain evidentiary at trial. Bentham's theory was the beginning of plea bargaining as a necessary function of the court; as prison and court overcrowding became more prominent issues, the justice system turned towards plea bargaining as a means to quickly clear out the mounting caseload. Between 1908 and 1916, federal convictions resulting from guilty pleas rose from 50% to 70%, and in 1925 it was up to almost 90% (Dervan & Edkins, 2013). Throughout this time, appellate courts were reluctant to approve

these deals, which contrasts the attitudes of these courts today-over 96% of convictions occur because of plea bargaining (Dervan & Edkins, 2013). Through the 1960s, the Supreme Court remained reluctant to accept plea bargains, mainly because of the risk of convicting an innocent defendant, who pled to avoid the risk of being wrongfully convicted by a judge or jury and risking a longer sentence (Dervan & Edkins, 2013). However, the Court's attitude shifted focus towards being more concerned with getting rid of the huge number of cases in the system.

In 1967, even the American Bar Association, who had been opposed to plea bargaining, began to warm up to the idea as "a necessary tool in an overburdened system" (Dervan & Edkins, 2013, p. 12). This was corroborated by the ruling in *Brady v. United States* (1970), in which the Supreme Court's earlier fears came true: the defendant, Brady, pled guilty to avoid being tried for the death penalty. This landmark case made plea bargaining not only permissible, but able to emerge into the mainstream American criminal justice system in order to address overcrowding and rising court costs (Dervan & Edkins, 2013). *North Carolina v. Alford* (1970) established the use of the Alford plea, which allows a defendant to plead guilty while maintaining innocence. An Alford plea can be utilized in false confession cases when a defendant has given a false confession but anticipates a hard fight at trial to prove themselves innocent. Thus, while an Alford plea can be helpful for someone who is guilty and wishes to get off relatively easily, if the person is actually innocent, of course this plea would be less than ideal. When a deal is appealing enough, it may make sense for a defendant to avoid trying to prove their innocence and the risk of a longer sentence. Grunewald argues that if truth was truly the ultimate goal of criminal proceedings, outcomes such as an Alford plea would not be allowed (2014). After all, and Alford plea is the only way that a suspect could maintain their innocence

while accepting a conviction and the consequences that come along with that. Thus, Alford pleas are a contributing factor to false confessions because even when a suspect has issued a false confession, they can still maintain innocence yet be convicted under *Alford*.

When a defendant pleads guilty, whether via plea bargain or at trial, this act essentially negates the possibility of overturning his conviction in the future. This is because they are considered to have given up their opportunity to utilize postconviction appeals (Scherr et al., 2020). Further, innocent defendants are unlikely to be aware of the evidence that the prosecution may have that is in fact in their favor. In essence, the fate of someone who pleads guilty is virtually sealed, regardless of his guilt, or lack thereof. Miranda alone is not sufficient to prevent an innocent person from confessing (Janzen, 2019) Thus, while criminal justice actors can and will do everything in their power to avoid convicting an innocent person, plea bargaining remains an attractive option for some. This inevitably leads to convictions of innocent people, especially when the plea bargain results from the prosecution possessing a false confession as evidence.

Confessions and Psychology

Confessions are of interest to the mental health profession because of these professionals' role in evaluating their voluntariness (Appelbaum, 2009). Psychologists and psychiatrists utilize their skills frequently in cases where coercion or contamination of a confession may have occurred. While their perspectives are very valuable and backed by their knowledge and education, the ability to assess coercion remains limited by a lack of objective measures (Rogers et al., 2010).

Mental health professionals are qualified to make a determination regarding the voluntariness of a defendant in a confession. Expert psychological or psychiatric testimony can assist in the determination of whether “there was a knowing, intelligent, and voluntary Miranda waiver; whether the confession was coerced (involuntary); and whether the confession is unreliable” (DeClue, 2005, p. 313). While a professional may be able to testify to the extent to which they believe the defendant was coerced, it remains that the mere existence of coercion is not enough to render a confession false or involuntary.

Psychological research shows that the traditional Reid interrogation method is likely to elicit false confessions from vulnerable individuals because of the risk of psychological coercion and manipulation (French, 2019). Reid tends to assume guilt and ignore denials, use minimization tactics to ease a suspect into confessing, and it can use deceit and fabricated evidence (French, 2019). When a suspect’s denials are repeatedly ignored, this may cause them to feel defeated, as if they would rather admit guilt than keep trying to prove their innocence. Also, using minimization tactics can make a suspect feel that even if they were wrongfully convicted, their crime was not that bad anyways. This is relevant in cases where a suspect is guilty of some but not all elements of a crime. Finally, by using deceit and fabricated evidence, an exhausted and drained suspect can come to be convinced that maybe they actually did commit the crime (French, 2019). Each of these risk factors increases significantly when coupled with one or more of the others, and even more if the defendant possesses any of the earlier characteristics that increase vulnerability (French, 2019).

Why an Innocent Person Would Confess

It may seem counterintuitive that an innocent person would ever confess to a crime that he did not commit. However, there are psychological processes that can be used to explain this phenomenon. DeClue (2005) explains the three scenarios where a confession is given. First, self-initiated confessions occur when an individual initiates contact with law enforcement in order to turn themselves in for a crime; in this scenario, there is no pressure from law enforcement. Next, one may confess in response to police questioning. Finally, police induced confessions occur when a suspect initially claims they are not guilty, but later confesses (DeClue, 2005). False confessions typically occur in the third scenario. An innocent person may decide to confess because he decides that the benefits of confession ultimately outweigh the costs of resisting and denying the accusations against him (Morehouse, 2019). For example, in a long, exhausting interrogation, a suspect becomes increasingly worn down and vulnerable, and thus more susceptible to relenting to the pressure being imposed upon him.

Innocent people are particularly susceptible to accepting a plea bargain. Despite claims made by the court such as that in *Bordenkircher v. Hayes* (1978), which “stated that as long as the defendant is free to accept or reject a plea bargain, it is unlikely an innocent defendant will be ‘driven to false self-condemnation’” (Dervan & Edkins, 2013, p. 19), this is not realistic. Studies show that using false incriminating evidence has caused experiment subjects to give a false confession, believe that they actually committed the crime, and make up details consistent with these beliefs (DeClue, 2005). This goes hand in hand with findings that pressure increases vulnerability.

Multiple studies confirm that certain characteristics make someone more susceptible to give a false confession when they are actually innocent (DeClue, 2005). Even when law enforcement officers do everything they can to avoid eliciting a false confession, some suspects are simply more vulnerable to this risk (DeClue, 2005). A vulnerable individual can present as a guilty person because of his emotional and mental state, and this can cause interrogators to attribute guilt to him, particularly when they are using the Reid technique (Weiss, 2012). For example, one study corroborated earlier findings that “giving false confessions during interrogations is significantly related to antisocial personality characteristics and criminal lifestyle” (Gudjonsson et al., 2004, p. 133). Thus, not only do outside influences impact one’s suggestibility, but so do predispositions. These findings also support the view that some false confessions are aimed at protecting someone else, and young people are particularly susceptible to this (Gudjonsson et al., 2004).

Reduced Punishment

A 2013 study was conducted in which college students believed they would be taking a test with real-life significance (Dervan & Edkins). After taking the test, participants were accused of cheating on the exam, and false evidence was presented to corroborate this accusation. Researchers found that unsurprisingly, guilty participants were more likely to plead guilty than innocent participants (Dervan & Edkins, 2013). The secondary finding of the study was that well over half of the innocent participants, regardless of which sentencing condition was employed (harsh or lenient), were willing to offer a false confession in return for a reduced punishment (Dervan & Edkins, 2013). This revealed that the participants were willing to avoid the prolonged process of facing an academic dishonesty charge, in order to move straight to

punishment (Dervan & Edkins, 2013). Students believed they would have to take a remedial class rather than being tried for academic dishonesty and risking a larger punishment. In other words, “the students appear to have been selecting ‘probation’ and immediate release rather than risking further ‘incarceration’ through forced participation in a trial and, if found guilty, ‘confinement’ in an ethics course or seminar” (Dervan & Edkins, 2013, p. 38). This study created conditions similar to those that defendants face when they must choose to accept a plea bargain or risk going to trial. However, the difficulty of such decisions is compounded by other factors, particularly when the defendant has already falsely confessed to a crime.

Seven Psychological Processes

Leo and Davis (2010) determined that there are seven psychological processes that can potentially lead to a false confession. These are important to be aware of for prosecutors and mental health professionals because this can help them know what to look out for and avoid in an interrogation. The first is the role of misleading specialized knowledge during the confession process (Leo & Davis, 2010). Misleading specialized knowledge (MSK) is essentially the same as privileged or contaminated information: information that would only be known to the true perpetrator of a crime (Leo & Davis, 2010). When MSK is divulged to a suspect, whether accidentally or purposefully, it biases decision making by setting the presumption of guilt in motion (Leo & Davis, 2010). This also worsens when an interrogation goes unrecorded. When an innocent person claims to have specialized knowledge of a crime, this increases his guilt in the eyes of the officials and jury, causing these parties to rationalize other facts of the case that do not match up with the case itself (Leo & Davis, 2010).

Secondly, when an innocent individual is misclassified as guilty, the focus of the investigation shifts to them, which creates a tunnel vision effect. This can occur as early as the beginning of an interview (Leo & Davis, 2010). Misclassification can be impacted by one's motivational biases (Leo & Davis, 2010). Thus, an officer's goal should always be accuracy: accusing guilty people and releasing the innocent once he realizes his misidentification. Misclassification involves the risk that law enforcement becomes convinced that a suspect is actually guilty (Leo & Davis, 2010), and this can ultimately result in a wrongful conviction.

Another process which occurs is involving one's emotion in cases. The overwhelming emotions that come with being suspected of a crime will inevitably blur a suspect's thinking and make them more susceptible to outside influences. The risk of heightened emotions extends to other parties in a case as well. For example, an investigator's excitement about apprehending a suspect may override his lingering feelings of unease or hesitancy (Leo & Davis, 2010). This interacts with the influences exerted by institutions as well: there are financial incentives for judges, counsel, and other criminal justice actors to achieve certain goals, such as maintaining a high rate of convictions (Leo & Davis, 2010). Of course these material goals should never outweigh the pursuit of justice.

Finally, Leo and Davis (2010) discuss the inadequate context for the evaluation of evidence in some cases. By prematurely determining a suspect to be guilty, important evidence may be ignored that would otherwise help officers secure a conviction of the correct individual. Investigators may have bias once they have narrowed in on a suspect that prevents them from considering the possibility of other individuals being responsible.

Future Suggestions

As evidenced by the long, ever-changing history of confession law, it is a multifaceted subject that multiple fields seek to address in the most effective way possible while also preserving individual rights. Despite these efforts, there remains several areas where improvements can be made. Such improvements can better the opportunity to obstruct a false confession before it reaches a conviction or even a courtroom. This is important for preserving individual rights.

Suspects

A defendant should be advised of the importance of asserting his constitutional rights, especially the right to remain silent. After all, prosecutors cannot mention silence maintained at trial as a reason for guilt, under the 5th Amendment (*Griffin v. California*, 1965). However, they can discuss silence maintained by a suspect in an interrogation. Research shows that over 80% of suspects waive their right to silence; innocent people waive this right because they believe they have nothing to hide (*Griffin*, 2016). There are many understandable reasons why an innocent person would stay silent, such as to help his case later at trial by not disrupting the strategy chosen by his attorney (*Griffin*, 2016). Defendants should be cognizant of their right to silence and assert this right even when they are innocent to reduce their risk of falsely confessing.

Interrogators

Ultimately, law enforcement is not legally required to act in a way that would allow a suspect to make the most ideal choice for himself (*Appelbaum*, 2009). However, informing suspects of their constitutional rights in greater detail than is currently required would help suspects to understand their rights and know how to exercise them (*Griffin*, 2016), especially

considering their vulnerable state as a suspect. This is socially and legally acceptable because of law enforcement's duty to extract a confession from those who are truly guilty, and uncover the truth. Keeping this in mind, interrogators should remember that people will be wrongfully suspected of committing a crime, no matter how diligently law enforcement works; there will be some innocent suspects who are accused (Gudjonsson et al., 2004).

Interrogators must avoid threats and substantial mental and physical duress (Appelbaum, 2009). State and federal guidelines should outline what exactly this entails. For example, interrogators should limit the length of interrogations to a reasonable time based on scientific findings on what an individual can handle psychologically and physically (Griffin, 2016). Further, interrogators should not offer any implicit promises of leniency, as these may convince a suspect to confess to reduce the stress they are experiencing (French, 2019). Increased evaluation should be done on techniques which are, while legally permissible, psychologically coercive. While there are advocates for a more non-accusatory, information-gathering approach rather than the traditional Reid technique (French, 2019), perhaps a hybrid or altered model could be used so as to not completely disrupt the interrogative processes the country has been practicing for the past 50 years.

Law enforcement should always refrain from informing eyewitnesses and lab examiners of the presence or absence of a confession, because this can increase the chances that these experts' testimony and the results can change (Kassin, 2015). After all, a forensic expert should contextualize defendant behavior and motivations while still being objective (Weiss, 2012).

Prosecutors

Prosecutors are often not the cause of wrongful convictions, but it is important that like other criminal justice actors, they are a part of the solution (MacLean et al., 2015). This entails holding themselves to a high ethical standard in order to ensure that the criminal justice system brings about results that are just (MacLean et al., 2015). Because prosecutors have access to both the incriminating and exculpatory evidence, they should consider whether a confession matches up with these.

Judges

Judges should give less weight to confessions that were a part of interrogations which went unrecorded. Recording increases the ability for a judge to assess the voluntariness and credibility of a confession. Research shows that the average person does not understand the risk of false confessions, thus it would be helpful for a judge to inform the jury of such a risk, and keep this in mind themselves (Kassin, 2015). Similarly, judges should consider: if a confession contains information that would only be known to the perpetrator or their accomplice; if the confession led police to new evidence; and whether the suspect's narrative in their confession fits the crime and its evidence (Primus, 2015). This is another safeguard against letting a false confession slip through the judicial system's cracks.

Reform has to start somewhere, and when it is prompted by the courts, judges have the opportunity to show prosecutors that they will not tolerate the risk of incriminating an innocent person (French, 2019). While this is already a goal of judges, they can further demonstrate their commitment to truth and justice by strictly evaluating evidence that is admitted into court, and blocking unjust evidence when possible.

Policy Makers

Policy makers have perhaps the most influential role in bringing about further change for confession laws. Recent findings must inform future policy. Policy makers have the power to essentially stop a false confession before it starts, by putting guidelines in place that can strategically mitigate the common factors that put a suspect at risk of giving a false confession.

First, suspects should not be required to self-invoke their interrogation rights (Scherr et al., 2020). Rather than the existing necessity for an individual to invoke their rights such as that of silence or legal counsel, these rights should be automatically enforced for every person at the start of their interrogation. This would significantly help innocent people, who often waive their rights because they are confident in their innocence and not worried about being convicted. A blanket invocation of rights during all interrogations would help preserve innocence and prevent people from making mistakes and confessing when they are actually innocent.

Another requirement that should be implemented is video and audio recording of all interrogations, including precustodial interviews, reading of Miranda rights, and custodial interrogations (French, 2019; Griffin, 2016; Janzen, 2019; Kassin, 2015; Primus, 2015). Presently, “half of all states, the District of Columbia, and federal agencies require the full recording of custodial interrogations; other states do not” (Scherr et al., 2020, p. 370). Data shows that the agencies which have done so favor the technique (Scherr et al., 2020). This is corroborated by research showing that police participants who knew they were being recorded were less likely to use high-pressure tactics on suspects. Further, their suspects perceived them as less pressuring, when compared to officers who did not know they were being recorded (Scherr et al., 2020). Recording interrogations helps with evidence preservation and clearly shows how

an interrogator led on a suspect and affected their narrative of events (Gould & Leo, 2010). It also causes an interrogator to be more self-aware of the tactics they choose to use; this inhibits the use of what can be error-ridden tactics (Kassin, 2015). Recording also allows jurors to compare oral testimony from the trial with primary evidence from the interrogation. At the very least, this requirement should extend to all felony cases (DeClue, 2005) because of their significant consequences.

Courts should also refuse to admit evidence that has been obtained as a result of feeding suspects false evidence. Not only do confession experts agree that misinformation about an event can alter a suspect's memory of said event, but also that presentations of false incriminating evidence increase the risk that an innocent suspect will confess (Kassin et al., 2018; Scherr et al., 2020); thus, no fabricated primary evidence should be introduced into the interrogation room (French, 2019). A confession should always be corroborated by independent evidence to be considered reliable (DeClue, 2005).

Threatening a suspect with the death penalty should render any subsequent confession involuntary (Morehouse, 2019). After a person has been threatened with death, his confession is inherently unreliable (Morehouse, 2019). This provision should be extended to include any threats of physical violence, either towards the suspect or their family (Primus, 2015). Simply put, the tactics that police use must be regulated more closely; this includes violence as well as coercion (Primus, 2015). Further, questioning cannot continue indefinitely or without breaks. A determination of specific guidelines should use scientific findings regarding humans' biological needs to make recommendations for deprivation limits (Primus, 2015), and policymakers should

list the tactics that are clearly impermissible (Primus, 2015). The use of scientific research will provide an objective basis for new policies.

Psychologists

Future research needs to focus on how to present information to jurors in ways that facilitate optimal decision making (Kukucka & Evelo, 2019), rather than the bare minimum of simply presenting them with their rights and assuming they are fully understood. Psychologists can play a significant contributing role in research in this area, and in other areas of confession law because of their understanding of the human mind and decision making.

Psychologists should be able to testify in court to support or oppose the admission of a confession to court (Kassin, 2015). Currently, psychologists may know that a defendant was coerced, but not to an extent that legally renders their confession involuntary. By giving medical professionals the opportunity to testify, jurors can better understand false confessions and their causes, “which may enable jurors to better identify coercive interrogation tactics and assess the veracity of a confession” (Kukucka & Evelo, 2019, p. 383). This will also help address the issue of jurors not understanding why or how an innocent person would confess.

Despite law enforcement’s best efforts to avoid eliciting a false confession, it may still occur because of a suspect’s personal characteristics. In such cases, psychologists should testify that law enforcement showed attentiveness toward suspect vulnerability and they took steps to document that the suspect understood their rights, the reason why they waived these rights, the reason why they confessed, and that they were able to provide details which could only have been provided by a perpetrator of a crime (DeClue, 2005). A psychologist’s testimony is relevant when it helps a judge to decide whether a person has made a knowing, intelligent, and voluntary

waiver of their Miranda rights (DeClue, 2005). DeClue recommends that in order to establish these things, these professionals: establish a suspect's narrative before, during, and after his waiver of Miranda; analyze this narrative; conduct a psychological evaluation of the suspect; and consider the interactions between the narrative and the evaluation in order to determine the suspect's mental state at the time of the waiver (2005).

Biblical Worldview

Strang (2020) asserts that "If there is more to criminal justice than truth-seeking alone, then to avoid defeat of the additional goals of dignity and integrity, we have to reject even the accurate confession if involuntarily obtained." (p. 76). As previously stated, the majority of law enforcement agents desire to uphold the ideals of the criminal justice system and desire to not let any false confessions fall through the cracks. However, despite their best intentions and efforts, they can nonetheless still occur. This ultimately all comes as a consequence of living in a fallen world; crime will run rampant until Christ returns and the world is truly whole and perfect again. However, it is the duty of Christians to uphold biblical values, including pursuing truth and justice to the best of their ability.

Justice and truth cannot be separated; they go hand in hand (Grunewald, 2014). These ideals can be further pursued by implementing the recommended changes. Although such changes will require significant efforts from many criminal justice actors, they will allow the system to align more closely with the ideals that it upholds.

Conclusion

The influential actors in the criminal justice system should be open to change and willing to consider and implement suggestions that have been proven to be effective (Gould & Leo,

2010). Because these suggestions have a scientific basis and have been proven to work in experimental settings, this bodes well for anticipating that they will be effective in the real world. These changes are necessary as interrogation procedures and confession admissibility standards adapt to suit the changing needs and attitudes of the justice system. Making such changes will not only elicit the most accurate confession possible, thus protecting individual rights, but in doing so they will also reduce the number of false confessions and resulting wrongful convictions.

While the instances of false confessions that lead to wrongful convictions are relatively low, each of these miscarriages of justice represents an innocent human being punished for a crime they are not guilty of. These are errors of the justice system that should not and cannot be ignored. From a Biblical perspective, allowing a false confession to play out and impact an innocent person's life is not carrying out justice, which is a value that God imposes throughout his Word (Isaiah 1:17, Isaiah 61:8, Zechariah 7:9).

The issue of false confessions is one that will continue to exist as long as humanity lives in a fallen world, because sin is present, including lying and deceit for one's own gain. However, this does not prevent criminal justice actors from doing everything in their power to reduce the number of innocent people who are impacted negatively by interrogation methods used, up to the point of being wrongfully convicted of a crime. This issue urgently needs to be addressed by policymakers so that impactful changes can flow down through the criminal justice system to eventually reach innocent defendants.

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