

Los Angeles Mission College

Innocent Until Interrogated  
False Confessions: Causes and Consequences

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*“If we measure the justice system only by the number of guilty people who are convicted, then we must consider the Salem witch trials a resounding success, since 100 percent of the witches in Salem were convicted. Rather, I suggest that the founders of our nation wisely added safeguards to decrease that other measure of the justice system — the number of innocents convicted.”* – Greg Hampikan, Professor of Criminal Justice and Director of the Idaho Innocence Project <sup>i</sup>

## **Introduction**

Every year, innocent people sit in prison cells, some of them even on death row. Police-induced false confessions are among the leading causes of wrongful convictions. <sup>ii</sup> Confessions are more persuasive than any other form of evidence in a courtroom, according to psychologist Saul Kassin. <sup>iii</sup> That makes them highly sought after by police interrogators, and it also makes them difficult to reverse, even when they are fallacious.

Documented cases of false confessions in the United States date back to at least the Salem witch trials of 1692, when 47 people falsely confessed to witchcraft. In an unprecedented legal procedure all those who confessed were spared whereas those who maintained their innocence were executed. <sup>iv</sup>

An involuntary or false confession is one “extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of any improper influence.” <sup>v</sup> A confession is involuntary if it is not “the product of a rational intellect and a free will.” <sup>vi</sup>

Considering the devastating consequences of even one of these injustices, it is clear that all reasonable steps to prevent wrongful convictions must be pursued. The injustice endured by an innocent person whose most basic liberty is denied cannot be overstated.

## **THE FACES OF THE WRONGLY CONVICTED**

Statistical patterns individually do not capture the agonizing stories of innocent defendants sent to prison and death row. The following case studies are two examples of young men who were wrongly convicted and languished in prison and one on death row for years due to false confessions.

THE PEOPLE OF THE STATE OF NEW YORK, v. KHAREY WISE, KEVIN RICHARDSON, ANTRON McCRAY, YUSEF SALAAM and RAYMOND SANTANA ((2002) 752 N.Y.S.2d 837

One of the most famous examples of the role of false confessions in producing a guilty verdict is the Central Park Jogger rape case. A white woman jogger was raped viciously beaten, and left for dead. Five black teenagers, ages 14-16, were arrested and interrogated for this crime, and false confessions or incriminating statements were elicited from all five of them. They were coerced and psychologically abused. They were questioned multiple times for extended periods of times, each lasting several hours. The boys received no food, sleep, or bathroom breaks. Some were even told that if they confessed they could go home.

Despite the fact that all of the teenagers later retracted their mutually conflicting confessions and no physical evidence conclusively linked them to the crime, they were convicted and subsequently served up to 12 years in prison in 1989.

Years later, Matias Reyes, a convicted serial rapist and murderer confessed that he was the sole perpetrator of the attack. DNA tests of semen found at the scene of the crime confirmed that Reyes was guilty. However, he was never prosecuted for raping the jogger due to the statute of limitations passing on the case. That same year, the men's convictions were vacated and all charges were withdrawn. The Central Park Five went on to sue the city of New York for \$41 million in 2014. If Reyes had never confessed, all five men might still be incarcerated.

Misskelley v. State, 915 S.W.2d 702, 712 (Ark. 1996)

On a warm sunny spring day, three eight-year-old boys Steven Branch, Christopher Byers and Michael Moore set off on a bike ride around their hometown of West Memphis, Arkansas. The next day, authorities discovered their battered bodies, hog-tied and naked in a shallow creek enclosed by woods just a few blocks away from the boys' homes. The crime scene presented little in the way of clues. The banks along the creek were free of all drops of blood or traces of footprints.

Furthermore, the boys' bodies, bikes, and clothing had been discarded in the creek, deteriorating any physical evidence. Within a month, three teenagers were the prime and only suspects, constructed on little more than their status as outcasts and fans of wearing black clothing.

Dubbed the “West Memphis Three,” Damien Echols, Jason Baldwin and Jessie Misskelley, were arrested, tried, and convicted of the brutal murders in 1994. A month after the murders, police spent more than seven hours interrogating seventeen-year-old Jessie Misskelley, Jr., who had an IQ of seventy-two. As a result, Jessie Misskelley Jr., implicated Damien Echols and Jason Baldwin in the crime.

During his trial, an interviewing officer admitted to showing Mr. Misskelley photographs of the dead second-graders immediately prior to his confession. When asked about this tactic, the officer said it was because Mr. Misskelley was not talking, so “those techniques [were] used to invoke a response.”<sup>vii</sup> The use of this tactic on a borderline retarded juvenile, after several hours of repeated, suggestive questioning at the police station, makes it clear that Mr. Misskelley’s confession was not voluntary in the legal sense of the word. In a 1997 interview with the “Paradise Lost” filmmakers, Mr. Misskelley stated that he was merely repeating statements made by the police so that they would stop questioning him and he could go home. Little did he know that these answers would keep him from home for more than 18 years.

Misskelley and Baldwin were sentenced to life in prison while Echols was sent to death row. For the next 17 years, they maintained their innocence. DNA failed to reveal any physical evidence connecting the three men to the crime scene. A hair “not inconsistent with” Stevie Branch’s stepfather, Terry Hobbs, was found tied into the knots used to bind one of the victims. He was never questioned regarding the murders.

In July 2008, it was revealed that Kent Arnold, the jury foreman on the Echols-Baldwin trial, had discussed the case with an attorney prior to the beginning of deliberations. Arnold introduced Misskelley’s false confession into jury deliberations even though it was constitutionally barred from consideration.<sup>viii</sup>

In August 2011, the three men were released from prison on a controversial Alford plea where they plead guilty but maintained their innocence. This legal mechanism allowed the defendants to maintain their innocence while entering a guilty plea. The plea gave the men their immediate freedom and shielded the state from lawsuits and millions of dollars in damages.

### **Why Would an Innocent Person Confess?**

*“It’s like having an 18- wheeler driving on your chest and you believe that the only way to get that weight off your chest is to tell the police whatever they*

*want to hear ... even admitting to a murder."* - Marty Tankleff, reflecting on his interrogation upon his release from prison after being wrongly convicted of murdering his parents.

Despite their historic symbolic value and infamy, these two cases are not unique. They share one common theme: both feature young defendants who were charged with murder and falsely confessed. When someone confesses to committing a crime, it only stands to reason that they are guilty. Why would anyone confess to a horrendous crime if they didn't commit it? Even among legal professionals, as demonstrated by law professor John Henry Wigmore's 1923 Evidence Treatise, false confessions have been deemed so rare as to be "scarcely conceivable."<sup>ix</sup> This overpowers doubt even when there is exonerating evidence or indications of police coercions.

As in most of the cases of wrongful convictions, a single cause of injustice stands out but it is not the only cause. In general, false confessions arise from specific police interrogation techniques. Eliciting false confessions usually involves a process of influence, persuasion, compliance, and psychological coercion. Additionally, individuals with certain personality traits and dispositions are more susceptible to these interrogation techniques resulting in a false confession. Therefore, false confessions to criminal offenses involve diverse contextual and motivational factors.

Dr. Robert Galatzer-Levy, a psychiatrist on the faculty of the University of Chicago and the Chicago Institute for Psychoanalysis, said interrogations are designed "not simply to get information," as the police often portray them. Instead, he said, interrogations are "well-thought-through psychological manipulations to get a confession."<sup>x</sup>

Despite the United States Supreme Court's Miranda decision in 1966<sup>xi</sup> requiring that the police read suspects their rights; psychologically coercive methods, under current rules, do not automatically count as coercion. Instead psychological tactics must be proven to be coercive under a "totality of circumstances" test<sup>xii</sup>

Once a suspect voluntarily enters the interrogation room, the courts permit interrogators to utilize tricks, deceptions and lies to extract confessions. Most people are not aware that police are permitted to present false information to extract a confession. Another tactic often used is presenting the suspect with leading questions that provide multiple options for why a suspect committed the crime, all of which may elicit an admission of guilt. The result is the vast majority of suspects who are vigorously interrogated, particularly those who are young, developmentally

disabled or mentally ill will waive their rights and confess.

### *Misclassification error*

*"Unfortunately, in almost every wrongful conviction case, law enforcement officers blinded by tunnel vision, remained fixated on preserving a conviction, even in the face of compelling contrary evidence. That's the saddest thing in these cases."* <sup>xiii</sup> - Steven A. Drizin, legal director of the Center on Wrongful Convictions at Northwestern University

Tunnel vision refers to a normal psychological tendency to seek information that fits a theory or belief and causes one to discount or ignore information that does not fit within that theory or belief. Too often investigators and prosecutors commit to a theory that is premature in the investigative process and important leads or information are discarded or ignored.

From the outset of his interrogation, Marty Tankleff told police that his father's business partner Steuerman had threatened his parents with violence and was the last person to leave the home the night before the murders. The partners were feuding over Seymour Tankleff's demands that Mr. Steuerman repay him \$500,000 in loans. But the police ruled Jerard Steuerman out as a suspect and quickly charged Marty Tankleff. <sup>xiv</sup>

## **PSYCHOLOGICAL INTEROGATION METHODS**

### *Maximization/ Minimization of the Crime*

*"They told me 'You just go ahead and cooperate, and we'll let you go home.' I thought I was going home, but it turns out I was--I've been here ever since then."* <sup>xv</sup> - Calvin Ollins, wrongfully convicted of the rape and murder of medical student Lori Roscetti in Chicago

Both maximization and minimization appear to be common and both appear to be related to false confessions. <sup>xvi</sup> Maximization involves a presentation of the strongest interpretation of the evidence including dire consequences, "scare tactics," and eyewitness identifications premeditated to intimate suspects into confessing. This approach may also include presenting fabricated evidence to support the accusation of guilt.

Once the suspect is under such an impression, the interrogator can offer mitigation of the worst-case scenario through implications and innuendo related to the impact of a confession, (e.g., “We can avoid a messy trial and the shame and ridicule if you confess”).<sup>xvii</sup>

STATE of Louisiana v. Damon THIBODEAUX. 455 U.S. 605 (1999)

Damon A. Thibodeaux was wrongly convicted of raping and killing his 14-year-old step-cousin in 1997. After an intense nine-hour interrogation by police, he broke down and confessed to perpetrating the crime. Although he refuted his confession later that day, it was too late. He was convicted and sentenced to death based primarily on his false confession. The irony is Damon had only confessed to the crime because police erroneously led him to believe he could escape death row by confessing.<sup>xviii</sup>

Conversely minimization encompasses downplaying the severity, impact, implications, and the perceived consequences of confession. Interrogators gain the suspect’s trust by offering sympathy and moral justification for committing the crime. Interrogators tell suspects that if they tell the “truth,” they can help them or that confessing will allow them to walk free. They will also downplay the legal aspects of the confession. For example, they recommend that interrogators refer to the crime in terms such as ““this situation,” or “what happened”.<sup>xix</sup>

*Coercion error*

Researchers believe coercion is the main cause for an individual to make a false confession. The purpose is to obtain incriminating statements, not inevitably the truth. The interrogator accuses the suspect of committing the crime and makes implied or direct threats to convince the suspect it is better to confess now. They often base their accusations on behavioral analysis not evidence. In the Lapointe case, investigators misidentified Lapointe’s “acting strange” as evidence of his guilt in the crime. However, it was consistent with how he always behaved. The scope of coercive motivators range from appeals to decency, religion, promises of leniency and avoidance of threats of harm as seen in the case of Richard Gater.

In 2002 in suburban Maryland, just outside of Washington, D.C., murder suspect Richard Gater was arrested and interrogated at the police station. The interviewing officer warned Gater “that if he did not tell police where to find the gun used in a killing several days earlier, heavily armed officers could raid the home of Gater's ailing mother and possibly slam her on the ground and handcuff her as they looked

for the weapon." Seen and heard on videotape, the officer's final comment was "You don't want to put your family through this." Gater confessed after stating "I am doing this for my mother." <sup>xx</sup>

Coercion is also employed when police officers deny the individual food or water or even subject them to extreme exhaustion to coerce them to confess. Of the cases in which length of interrogation could be determined, more than 80% of the false confessors had been grilled for more than six hours straight, half for more than twelve hours, and some almost nonstop for two days.

Pardue v. State, 695 So. 2d 199, 205 (Ala. Crim. App. 1996)

Michael Pardue's murder conviction was overturned in 1996, by the Alabama Supreme Court after the court ruled Baldwin investigators had delayed reading Pardue's rights to him until they were 30 hours into a 78-hour interrogation.<sup>xxi</sup>

After long hours of interrogation, wanting nothing more than to go home, the fatigued suspect accepts the explanation the interrogators offer as the solitary plausible explanation. Usually, the moment the pressure is over, he or she immediately repudiates the confession and it is too late.

### Contamination

*Interrogator's tactics are designed to get "specific answers" to questions – to get the suspect to agree to "the composition of a statement that was not even cast in his own words" - Culombe v. Connecticut, 367 U.S. 568 (1961)*

Contamination can also taint the post admission process of interrogation. The interrogator knowingly or unknowingly provides the suspect with key non-public details of the crime that the suspect then incorporates into a false confession. Without a videotape of the process, it is impossible to detect contamination. According to Garrett, sources of contamination include leading questions, showing crime scene photos, taking suspects to crime scenes, and facts released to media. <sup>xxii</sup>

When videotapes were examined of the confession of the Central Park Five, their statements turned out to be full of contradictions, factual errors, guesses, and information planted by the interrogator's biased question.

In the West Memphis Three case, the police initially approached Jesse Misskelley and offered him a \$35,000 reward for information about the murders. Not understanding that he could refuse, Mr. Misskelley agreed to accompany police to



the station for questioning without his father or a lawyer present. His interview began around 10:00 a.m. and continued until after 5:00 p.m. At the start of the interview, Mr. Misskelley told the officers that he knew nothing about the crime, and was in another part of the state for a wrestling match when the crime was committed.

Lawyers for the boys maintained that Misskelley's confession featured many characteristics that experts have identified as indicative of a false confession. The limited recordings of the interrogations exposed police employing leading questions. Salient elements of the crime didn't happen the way Misskelley confessed to them. For instance, Jesse claimed the murdered occurred at 9:00 a.m. With prodding from police officers who told him the boys had been in school that day, he changed the time to 12:00 p.m. and then to 5:00 or 6:00 p.m. when an officer informed him that the murders would have been committed later in the day. He also told police that the three teenagers used rope to hog-tie the boys; shoelaces were used. Shockingly, none of the inaccuracies seem to have given the police pause to doubt Mr. Misskelley's statements. Misskelley promptly recanted his confession but it was used to arrest and convict him.

### **Dispositional Vulnerabilities of Wrongly Convicted**

*"Those most susceptible to police exploitation often are "throwaway people," referring to suspects who lack education, advocates, or resources to represent themselves. "* <sup>xxiii</sup> - Lawrence Marshall, co-founder of the Northwestern University's Center on Wrongful Convictions.

Saul Kassin, Professor of Psychology at John Jay College of Criminal Justice in New York, suggests certain populations suffer enhanced vulnerability meaning their personalities are more prone to compliance and agreement. <sup>xxiv</sup> They will go to great lengths to avoid confrontation, stress, or displeasing others. Developmentally disabled individuals are one of the most vulnerable groups of individuals subject to the criminal justice system. According to the State Bar of Michigan Disabilities Project, they are more prone to accommodate and agree with authority figures placing them at a disadvantage in interrogation settings. <sup>xxv</sup>

Law enforcement interrogators are not offered any special training on questioning suspects with mental disabilities. Additionally, it is sometimes difficult to identify someone with disabilities. Not all individuals manifest physical characteristics commonly associated with a developmental disability. The resulting consequence is that when officers are unable to identify developmentally disabled individuals, they

use the same interrogation tactics as they would on individuals of ordinary intelligence, which inevitably results in a high rate of involuntary waivers and false confessions due to a lack of comprehension as seen in the Lapointe case.

STATE OF CONNECTICUT v. RICHARD A. LAPOINTE. (14635). SUPREME COURT OF CONNECTICUT. 237 Conn. 694; 678 A.2d 942; 1996

Richard Lapointe was convicted of the 1987 rape and murder of his wife's eighty-eight-year-old grandmother, Bernice Martin. There was no physical evidence linking Lapointe to the crime and Lapointe had a solid alibi. He was attending a bible study at his sister's house at the time of the murder. The sole basis of his conviction was a confession, written by the police, that Lapointe signed in the early morning hours of July 5, 1989, after a nine-and-a-half-hour interrogation. Lapointe waived his Miranda rights, but it is doubtful he understood what this meant. Lapointe had Dandy-Walker syndrome – a rare congenital brain malformation that affected his ability to think abstractly, eyesight, hearing, and balance.

To obtain Lapointe's confession, police perpetrated what journalist Tom Condon, in an article for the Hartford Courant, calls "an elaborate ruse". On July 4, 1989, Lapointe was taken to the Manchester, Connecticut police station for "a chat".<sup>xxvi</sup> Before questioning Lapointe, detectives walked him past two rooms at police headquarters with a sign identifying it as offices of the "Bernice Martin Homicide Task Force". The rooms were swathed with props - pictures, charts, lists, and diagrams - that portrayed Lapointe as the killer. A chart stated his fingerprints were found on a knife used in the crime. Another linked him to the crime through DNA testing. "None of this was true.

Some people believe criminal suspects are given too many rights and safeguards. But Richard Lapointe, despite being developmentally disabled, didn't have a lawyer or an advocate, his statements weren't recorded, and his family wasn't allowed to call or visit during the interrogation. Most alarming, detectives tried to coax Lapointe's wife, Karen, into turning against her husband by threatening her with the loss of custody of her son. Over a nine-and-a-half hour interrogation, Lapointe confessed on three separate occasions to a crime he said he did not remember committing. A rational person cannot confess to a crime he doesn't recall. Furthermore, there were so many inconsistencies in his confession it was almost as if he was confessing to a different crime.

Despite recanting his confession, passing a polygraph, and no evidence linking him to the crime, Lapointe was convicted of the murder in 1992 and sentenced to life in

prison plus 60 years. The prosecutors were disappointed. They wanted a death sentence. Jurors stated they had convicted mainly on the basis of LaPointe's false confession. They didn't believe that someone would confess to a crime so police would allow him to go to the bathroom. But at crucial points in the trial, LaPointe's lawyer would be literally fighting for LaPointe's life, and he would ask his lawyer to go to the bathroom. Lapointe was finally exonerated in 2015. He exited the prison wearing new clothes, the first he had worn in decades. He wore a T- shirt over a dress shirt. On it was written, "I didn't do it." <sup>xxvii</sup>

State of Tennessee v. Robert Lee Miller, E2008-01945-CCA-R3-CD  
(Tenn. Crim. App. 2010)

A diminished mental state due to mental illness, drugs or alcohol may also elicit false admissions of guilt as witnessed in the egregious case of Robert Lee Miller, Jr. During a 12-hour interrogation in 1987, Robert Lee Miller Jr., a vagrant, told Oklahoma City detectives he had had a dream about the murders and rapes of two elderly women. He believed he was helping police solve the crime by telling them pertinent details and at no point realized that he could have implicated himself in the crime.

His statement had 112 inconsistencies. Miller told investigators that he was the Lone Ranger, an Indian warrior and he had visionary powers. According to a statement from the public defender, Miller "began talking about dreams, visions, spells and hair." He added that Robert was probably under the influence of marijuana cigarettes dipped in PCP at the time of the interview, as he was known to hang around a drug house as a "street watcher." <sup>xxviii</sup>

Miller was convicted and sentenced to death. In 1995, DNA testing excluded him and identified a convicted rapist, who was charged with the crimes. Mr. Miller was finally released from death row 10 years later. Despite the DNA evidence, Ray Elliott, the senior Oklahoma City prosecutor, insisted that Miller was still guilty and got away with it.

Those who are young will confess to police in situations that may provide a quick way out of a stressful situation because they cannot assess the long-term consequences. Additionally, research by psychologist Thomas Grisso found that those under 16 tend to not understand the actual vocabulary of the warnings. <sup>xxix</sup>

In Chicago in 1998, two young boys, Elijah Henderson and Romarr Gipson, ages 7 and 8, were charged with murdering an 11-year-old girl Ryan Harris by striking her

with a rock, sexually molesting her and suffocating her with her own underwear. Police believed their motive was to steal the bright blue bicycle she was riding. Detectives stated that during questioning at a police station the boys made incriminating admissions and gave details of the crime only the killers could have known.

But R. Eugene Pincham, a lawyer who represented the boys on the criminal charges, stated Romarr was not even capable of issuing the many-word confession that the police attributed to them. A psychiatrist diagnosed him with a severe cognitive disability that affected his speech pattern.

A month later, prosecutors dropped the murder case against the two boys, after an analysis of the 11-year-old victim's underwear revealed evidence of semen, which the boys were certainly too young to produce. Eventually, the stain was linked by DNA tests to Floyd Durr, a convicted felon who was serving a 125- year sentence for a series of sexual assaults. He escaped the death penalty because his IQ was too low.

In some cases even mentally capable adults succumb to similar pressures and give false confessions due to a variety of factors discussed like the length of interrogation, exhaustion or a belief that they can be released after confessing and prove their innocence later.

## **TYPES OF FALSE CONFESSIONS**

*"If the evidence shows that I was there, and that I killed her, then I killed her, but I don't remember being there."* <sup>xxx</sup> – Richard Lapointe

Saul Kassin, Professor of Psychology at John Jay College of Criminal Justice in New York describes three primary types of false confessions: <sup>xxxi</sup>

1. Voluntary confessions: The person confesses to a crime they did not commit without incitement from the police. This is a confession often made to protect someone else, made by someone who is delusional or made to attract attention to themselves.

Glenville Smith, 28, spent three days convincing homicide detectives that he had raped, murdered, and then buried the 13-year-old daughter of his landlord. He claimed he was a security guard and directed Queens officers to 13 locations where the body might be buried.

A couple of hours later, the missing girl was watching television in Brooklyn when she saw a video clip of Smith, her confessed killer, being walked out of a precinct in handcuffs. "But I ain't even dead," she protested. In this case, Smith falsely confessed because he was mentally unstable and enjoyed being in the spot light.

2. Internalized false confessions: The person confesses to a crime because they are highly vulnerable and are exposed to suggestive interrogation tactics. If the suspect is a juvenile, mentally handicapped, experiencing extreme grief, or sleep-deprived—under the pressure of the interrogation session, they can actually come to believe they committed the crime and thus confess. Detectives may even suggest that the suspect may have “blacked out”.

*People v Tankleff* 2007 NY Slip Op 10186 [49 AD3d 160]

Martin Tankleff was just 17, when he awoke to discover his mother bludgeoned to death and his father clinging to life. Within hours of surveying the scene, Detective McCready declared the case solved. He singled out the couple's son, Martin as the prime suspect. The police improperly isolated Martin from his family, never Mirandized him, questioned him in an increasingly accusatory manner over many hours, and created a ruse to extract inculpatory statements. Even though he maintained his innocence, police succeeded in convicting Marty that he must have killed his parents during a blackout. At one point, detective James McCready informed Marty Tankleff his father briefly awoke from his coma and named his son as his assailant. Marty stated that his father would never lie. Traumatized and faced with false claims of evidence against him, he confessed, trusting the detective's story that he had blacked out and committed the crimes. He quickly recanted and refused to sign the confession.

Although no forensic evidence linked Marty to the crime scene he was convicted and sentenced to fifty years in prison. After serving close to 18 years, his conviction was finally overturned in 2007. <sup>xxxii</sup>

3. Compliant false confessions: The largest category of false confessions. The person confesses to a crime through inducement or the process of the police interrogation.

The Central Park jogger case also involves a compliant false confession. Five teenagers ages 14-16 years old, were led to believe that they would get to go

home if he confessed. After 14-30 hours of interrogation under tremendous pressure they all confessed.

Interestingly none of them actually confessed to raping the jogger. Each one implicated the four others and each one stated that he himself played a minimal role. So collectively there were five confessions, but in fact each defendant pointed a finger at the others.

## **LAWS PROTECTING THE INNOCENT AGAINST FALSE CONFESSIONS**

*We don't want Miranda warnings to be given where they are unnecessary because they are only necessary to prevent coercion, and where there's no coercion, we want confessions, don't we?" xxxiii - Justice Antonin Scalia*

In Escobedo v. Illinois, 378 U.S. 478 (1964) police and prosecutors interrogated Danny Escobedo for fourteen and a half hours and repeatedly refused his request to speak with his attorney. While being interrogated, Escobedo gave incriminating evidence against himself. After his conviction for murder, Escobedo appealed on the basis of being denied the right to counsel and the United State Supreme Court case held that criminal suspects have a right to counsel during police interrogations under the Five Amendment.

Miranda v. Arizona: 384 U.S. 436 (1966) created a series of rules to protect a suspect's rights against self-incrimination. Suspects have their right to remain silent or stop talking at any time, and a right to a lawyer. But Miranda warnings are ineffectual in lowering the risk of false confessions. First, police officers continue to use coercive techniques and practices when questioning suspects. Second, because these rights only apply fully to a person in custody which is sometimes an elusive concept. Police can ask someone to come in voluntarily as with Richard Lapointe to ask questions about a crime and then allow him go home.

Determining whether a defendant's confession may be used as evidence against him at trial is dependent upon whether that confession was truly voluntary. There are two provisions in the Constitution that protect against involuntary confessions:

(1) the due process clause of the fourteenth amendment, which prohibits the states from depriving any person from life, liberty, or property without due process of the law; and (2) the fifth amendment, which protects people from the use of compelled confessions in trials against them.

In 1973, the U.S. Supreme Court held that the due process clause requires that a defendant's confession be truly voluntary. <sup>xxxiv</sup> Due process is offended if a court, after examining all the circumstances, finds that a confession was made when the "defendant's will was overborne." <sup>xxxv</sup> In making its determination, courts, will consider a variety of factors surrounding a confession, including the defendant's age, his education, his intelligence, the length of detention, and the repeated and prolonged nature of questioning. A confession that violates the due process clause can't be used as evidence in a trial.

### **Why is the Confession so Persuasive?**

*Studies have estimated that a false confessor faces a 78-85% risk of being wrongfully convicted if the case is not dismissed prior to trial.* <sup>xxxvi</sup>

About 80% of documented false confessions are found in murder cases. <sup>xxxvii</sup> The public pressure to solve a case and the organizational culture of a police or district attorney's office can increase the incidence of false confessions. While most errors are unintentional, researchers say there are far too many occurrences of unethical and unprofessional behavior.

Psychologists have demonstrated the persuasive power of confessions. In one study, researchers presented mock jurors with various types of evidence: circumstantial evidence, eyewitness testimony and testimony that the accused had confessed to the crime. The study found that jurors who heard the confession evidence were significantly more likely to find the defendant guilty than jurors who heard the other types of evidence. <sup>xxxviii</sup>

Furthermore, according to *McCormick on Evidence*, a defendant's confession is considered by judges and juries to be persuasive and unequivocal evidence as to make other aspects of the trial nonessential. <sup>xxxix</sup> As witnessed in the aforementioned cases, confession can even override strong physical evidence to the contrary. (75% of jurors convict even when the admission is repudiated by the defendant and contradicted by the physical evidence.) <sup>xl</sup>

Even after a judge vacated the convictions of the Central Park Five based on the DNA evidence, police commissioner Ray Kelly stood behind the police work that put five innocent young men in jail stating: "*The judge's ruling has neither exonerated the defendants nor found any collusion or coercion on the part of the police.*" <sup>xli</sup> Therefore, because confessions are so powerful in the minds of triers of fact the end result is

that false confessions remain today a very common cause of convicting innocent people.

## THE CONSEQUENCES OF FALSE CONFESSION AND POLICY RECOMMENDATIONS

*“Any wrongful conviction is a tragedy because it leaves the guilty unpunished and condemns the innocent to prison, or death.”<sup>xlii</sup> — Wallace B. Jefferson, Chief Justice of the Texas Supreme Court*

Considering the devastating consequences of even one of these injustices, it is clear that all reasonable steps to prevent wrongful convictions must be taken. We are cognizant that police are under immeasurable pressure to solve violent crimes. However, it does not advance justice or public safety for an innocent person to go to prison and a guilty party to go free. For this reason, it's critical that the American criminal justice system enhance how interrogations are conducted.

We must preclude long interrogations, deception, leading questions, promises of leniency, and we must record interrogations from beginning to end to prevent false confessions and end this tragic flaw in our criminal justice system. I recommend the following remedial steps to avoid their recurrence:

1. Custodial interviews of a suspect at a police facility in investigations involving offenses of significant personal violence should be video recorded. Although a 1969 Supreme Court ruling under Frazier v. Cupp :394 U.S. 731 (1969) makes it legal for police to lie to and mislead a suspect as part of an interrogation, it also set a subjective limit on what police can and cannot do. Legally, interrogations become coercive when they “shock the community” But the community cannot be shocked by what it doesn’t see. Video recording should not be confined to a final statement made by the suspect, but should include the entire interview.
2. A national study by Steven A. Drizin of the Center on Wrongful Convictions found that 84% of false confessions occurred after interrogations of six hours or longer and that the average duration was more than 16 hours. Drizin recommends that interrogations in excess of 12 hours should be categorically inadmissible in court and those of more than six hours should be admissible only if the prosecution can establish beyond a reasonable doubt that they were voluntary.<sup>xliii</sup>



3. Confessions by juveniles, the developmentally disabled, and the mentally ill to whom interrogators have lied should be suppressed.
4. Police investigators and prosecutors should receive training about the existence, causes, and psychology of police-induced confessions, including why some people confess to crimes they have not committed, identification of suspect vulnerabilities, and the proper techniques for interviewing suspects.
5. Judges should hold pretrial reliability hearings. Reliability hearings already are common regarding other kinds of evidence.

Exposing flaws in the interrogation process will result in reducing coercive methods, false confessions and ultimately the number of people who are wrongly convicted of crimes they didn't commit. The following two cases illustrate why it is so important to institute these policy reforms.

TIMOTHY BRIAN COLE v. THE STATE OF TEXAS, 85-403,151 (1987)

One of the most troubling examples of the threat posed to public safety from wrongful conviction is found in the case of Timothy Cole. He was convicted of one of a series of five rapes that occurred in 1985 near the Texas Tech Lubbock campus. Because of the similarities in the crimes, the police suspected that Cole was guilty of all of the rapes. Consequently, the investigation into the Texas Tech rapes ended once Cole was behind bars.

It took the jury six and one-half hours to convict Cole of aggravated sexual assault. Cole, who had been released on bond pending trial, was allowed to go home and spend the night with his family before sentencing the next day.

"He cried on the floor, and I rocked him in my arms," 72-year-old Ruby Session told the Austin American-Statesman. "He said, 'Momma, why did these people convict of a crime that I did not commit.'" <sup>xliv</sup>

After Cole was convicted, everyone thought the attacks on women would cease. But they didn't. The real rapist, Jerry Wayne Johnson abducted a man and woman after a party and raped the woman in a cotton field. While out on bond awaiting trial for that rape, Johnson raped a fifteen-year old girl at knifepoint and was subsequently sentenced to a 99- year sentence.

While in prison, Jerry Wayne Johnson wrote to police and prosecutors in Lubbock County stating he had committed the rape Cole was serving time for. Johnson's letters failed to elicit any response. Tragically, Timothy Cole died in prison in 1999 at the age of thirty nine prior to the discovery of exculpatory DNA testing proving his innocence and identifying Johnson as the real rapist. <sup>xlvi</sup>

People of the State of New York v Bryant 2013 NY Slip Op 23285

18-year-old David Bryant was arrested in 1975 after the body of 8-year-old Karen Smith was found. He was falsely accused of sexually assaulting and murdering the young girl, who was a family friend of Bryant's. He spent the next 38 years in prison, some of it on death row, during which time he was viciously attacked numerous times for his alleged crimes, once barely surviving a stab wound. After being told he was a free man, Bryant shouted out cries of joy and revealed how even his parents never believed in his innocence. Sadly, both of his parents died while he was in prison, and they never witnessed their only child's name cleared of this horrendous crime. <sup>xlvi</sup>

Beyond the millions of dollars expended reinvestigating cases and paying compensation, there is another immeasurable price we all pay—true perpetrators go free, placing the general public safety at risk.

The injustice endured by an innocent person whose most basic liberty is denied cannot be overstated. The nightmare of an unjust imprisonment ruins lives and destroys families. Prison is a terrifying ordeal few can even imagine. Being convicted of an unspeakable crime when one is actually innocent is dreadful enough in its own right. Having to spend years waiting for your impending execution as David Bryant did causes indescribable emotional trauma and anguish which completely destroys a human being.

## Endnotes

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- <sup>i</sup> Greg Hampikian, , Salem Witch Trials, Guantanamo Have a Lot in Common (Idaho Statesman Publications ,2008)
- <sup>ii</sup> *Facts and Figures*, FalseConfessions.org (2009), <http://falseconfessions.org/fact-a-figures> (last visited Nov. 11, 2012).
- <sup>iii</sup> Saul M. Kassin *Police-Induced Confessions: Risk Factors and Recommendations*, 34 Law. & Hum. Behav. 3, 5 (2010)
- <sup>iv</sup> Marilynne K. Roach, *The Salem Witch Trials: A Day-by-day Chronicle of a Community Under Siege* (Taylor Trade Publications, 2004)
- <sup>v</sup> Hutto v. Ross (1976) 429 U.S. 28, 30
- <sup>vi</sup> Mincey v. Arizona (1978) 437 U.S. 385, 398; see also Lynum v. Illinois (1963) 372 U.S. 528, 534 [test is whether defendant's "will was overborne at the time he confessed"].
- <sup>vii</sup> Misskelley v. State, 915 S.W.2d 702, 712 (Ark. 1996)
- <sup>viii</sup> In posttrial court filings, attorneys argue "that jurors relied on the statement Mr. Misskelley gave the police to convict Mr. Echols and Mr. Baldwin, even though it was deemed inadmissible except in Mr. Misskelley's trial. Several jurors have acknowledged that they knew about the confession before the trial, though they did not say so during jury selection." [Shaila Dewan, "Defense Offers new Evidence in a Murder Case That Shocked Arkansas," *New York Times*, Oct. 30, 2007, A16]
- <sup>ix</sup> John Henry Wigmore, *A Supplement to a Treatise on the System of Evidence* (Boston Publishing, 1923)
- <sup>x</sup> Richard A. Leo, *Police Interrogation and American Justice* (New Press, 2008)
- <sup>xi</sup> Chief Justice Earl Warren wrote about police interrogation techniques of such compelling power that they could produce untrustworthy confessions. To alert suspects that they had the right to stop the questioning, the Court created the famous warnings. See Miranda v. Arizona, 384 U.S. 436 (1966)

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xii HAYNES v. WASHINGTON 373 U.S. 503 (1963).

xiii Richard A. Leo, *Police Interrogation and American Justice* (New Press, 2008)

xiv *People v Tankleff* 2007 NY Slip Op 10186 [49 AD3d 160]

xv *People v. Ollins* (1992) 235 Ill. App. 3d 158, 165, 601 N.E.2d 922, 927, 176 Ill. Dec. 224

xvi Richard A. Leo, *Police Interrogation and American Justice* (New Press, 2008)

xvii Saul M. Kassin & Gisli H. Gudjonsson, The Psychology of Confessions: A Review of the Literature and Issues, 5 Psychol. Sci. Pub. Int. 33, 41 (2004).

xviii STATE of Louisiana v. Damon THIBODEAUX. 455 U.S. 605 (1999)

xix Richard P. Conti, The Psychology of False Confessions, Credibility Assessment & Witness Psychol. (1999).

xx John Schwartz, Confessing to Crime, but Innocent, N.Y. Times, Sept. 14, 2010

xxi *Pardue v. State*, 695 So. 2d 199, 205 (Ala. Crim. App. 1996) (addressing a series of interrogations that took place over a seventy-hour period); *Smith v. Duckworth*, 910 F.2d 1492, 1496 (7th Cir. 1990) (considering a situation where the total time of questioning was nine hours); *State v. Johnston*, 580 N.E.2d 1162, 1167 (Ohio Ct. App. 1990) (analyzing an interrogation that lasted eight and one-half hours).

xxii Laura H. Nirider, Joshua A. Tepfer & Steven A. Drizin, Combating Contamination in Confession Cases, 79 U. Chi. L. Rev. (2012)

xxiii Klaver, J., Rose, V.G., & Lee, Z. *Effect of different interrogation techniques and the role of plausibility in a false confession* (2008)

xxiv Richard A. Leo and Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. Crim. L. & Criminology (1997-98).

xxv Because developmentally disabled individuals are susceptible to non-physical forms of coercion more than a person of normal intelligence, they are less likely to be able to handle the psychological stress and fear that occur during a police

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interrogation. Gregory DeClue, *Interrogations and Dispute Confessions: A Manual for Forensic Psychological Practice* (Professional Resource Press, 2005)

xxvi Nathan Gordon & William L. Fleisher, *Effective Interviewing and Interrogation Techniques* (Academic Press, 2nd ed., 2006)

xxix "The Miranda rights are often words without meaning to juveniles," said Steven Drizin, legal director at Northwestern University's Center on Wrongful Conviction. "There are now years of studies that show that children 15 years of age and younger have great difficulty understanding the wording of Miranda and also the function of Miranda rights." Dufraimont, Lisa, "Regulating Unreliable Evidence: Can Evidence Rules Guide Juries and Prevent Wrongful Convictions?" (2008) 33 *Queen's Law Journal*

xxx STATE OF CONNECTICUT v. RICHARD A. LAPOINTE. (14635). SUPREME COURT OF CONNECTICUT. 237 Conn. 694; 678 A.2d 942; 1996

xxxi 63% of false confessors were under the age of 25, 32% were under 18; yet of all persons arrested for murder and rape, only 8% and 16%, respectively, are juveniles, 22% were developmentally disabled and 10% had a diagnosed mental illness. Saul M. Kassin et al., Police-Induced Confessions: Risk Factors and Recommendations, 34 *Law & Hum. Behav.* (2010)

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<sup>xli</sup> Sarah Burns, *The Central Park Five : the untold story behind one of New York city's most infamous crimes*, (Vintage Books, 2012)

<sup>xlii</sup> Brandon L. Garrett, *Convicting the Innocent Where Criminal Prosecutions Go Wrong* (New Press, 2011)

<sup>xliii</sup> Steven A. Drizin and Richard A. Leo, "The Problem of False Confessions in the Post-DNA World," *North Carolina Law Review* 82 (March 2004).

<sup>xliv</sup> Blackburn, Elliot, "*Hope Deferred: Search For a Lubbock Rapist Send Family on Nightmare Journey*," *Avalanche-Journal* (June 28, 2008)  
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