THE CONSEQUENCES OF FALSE CONFESSIONS: DEPRIVATIONS OF LIBERTY AND MISCARRIAGES OF JUSTICE IN THE AGE OF PSYCHOLOGICAL INTERROGATION*

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I. INTRODUCTION

A. DEFINING THE PROBLEM

Because a confession is universally treated as damning and compelling evidence of guilt, it is likely to dominate all other case evidence and lead a trier of fact to convict the defendant. A false confession is therefore an exceptionally dangerous piece of evidence to put before anyone adjudicating a case. In a criminal justice system whose formal rules are designed to minimize the frequency of unwarranted arrest, unjustified prosecution, and wrongful conviction, police-induced false confessions rank amongst the most fateful of all official errors.

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As many investigators have recognized, the problems caused by police-induced false confessions are significant, recurrent, and deeply troubling. Police elicit false confessions so frequently that social science researchers, legal scholars, and journalists have discovered and documented numerous case examples in this decade alone.
Yet no one knows precisely how often false confessions occur in the United States, how frequently false confessions lead to wrongful convictions, or how much personal and social harm false confessions cause. This is because: (1) no organization collects statistics on the annual number of interrogations and confessions or evaluates the reliability of confession statements; (2) most interrogations leading to disputed confessions are not recorded; and (3) the ground truth (what really happened) may remain in genuine dispute even after a defendant has pled
guilty or been convicted. These problems prevent researchers from defining a universe of confession cases, sampling a subset, and confidently determining the truth or falsity of each underlying confession.

Until these methodological obstacles are overcome, no one can authoritatively estimate the rate of police-induced false confessions or the annual number of wrongful convictions caused by false confessions. The lack of such information also prevents researchers from estimating the full magnitude of personal and social harm that police-induced false confessions cause: the days and months innocent persons spend in pre-trial incarceration; the resources, time, and dollars wasted prosecuting and defending them; the months and years defendants languish in prison after wrongful conviction; and the additional crimes carried out by the true perpetrators.

Although it is presently not possible to estimate the magnitude of harm caused by false confessions, this article sheds light on another dark corner of the problem by addressing the following questions: What is the impact of demonstrably unreliable confession evidence on criminal justice officials? What are the consequences of false confessions on defendants as they move through the criminal justice system? And how much influence does a false confession alone exert on the decision-making of jurors?

B. FALSE CONFESSIONS AND THE ADMINISTRATION OF JUSTICE

Following Edwin Borchard’s pioneering study of miscarriages of justice, a series of investigators have documented numerous cases of wrongful arrest and conviction of the innocent in the United States. The leading contemporary research in this tradition is Bedau and Radelet’s landmark study of miscarriages of justice. See Bedau & Radelet, supra note 3; see also Michael L. Radelet et al., In Spite of Innocence: Erroneous Convictions in Capital Cases (1992). In total, they identified 416 cases since 1900 in which innocent
search into errors in the criminal justice system by reporting a study of sixty cases of police-induced false confessions in the post-Miranda era,\textsuperscript{10} and by analyzing the consequences of these defendants were wrongfully convicted of capital or potentially capital crimes. \textit{Id.} at ix-x. Recognizing that miscarriages of justice are caused by a wide variety of factors, Bedau and Radelet identified the four main sources of wrongful conviction: (1) police error prior to trial; (2) prosecutorial error before or during trial; (3) witness error during depositions or testimony; and (4) miscellaneous types of system error. Though no one knows the magnitude of harm caused by wrongful convictions or the number of innocent individuals wrongfully executed in this century, Bedau and Radelet's research persuasively demonstrates that "our criminal justice system is fallible and the gravest possible errors in its administration can be documented." Bedau \textit{sc Radelet}, \textit{supra} note 3, at 46.


In 1966, in \textit{Miranda v. Arizona}, the Supreme Court directly addressed the policy problem of psychologically-based methods by mandating that police issue a set of code-like constitutional warnings and elicit a waiver from suspects prior to custodial questioning. 384 U.S. 436 (1966). The fourfold \textit{Miranda} warnings informed suspects of their constitutional right to refuse and/or terminate custodial questioning, and thereby avoid and/or escape the potentially coercive pressures the Warren Court believed to be present in modern methods of interrogation. \textit{Id.} at 467. Unable to observe directly what happened in interrogation rooms, the Court turned to police training manuals to assess methods of psychological interrogation and concluded that some of these methods were heavy-handed and oppressive. \textit{Id.} at 448-55. While the \textit{Miranda} Court acknowledged that no single tactic was likely to overbear a suspect's will, the Court recognized that these methods, if used together, could easily overcome
errors affecting defendants as they move through the criminal justice system.\(^\text{11}\)

We suggest that confessions are regarded as the most damning and persuasive evidence of guilt simply because most suspects who confess are guilty, and because most confessions are corroborated by additional evidence. Under these conditions, however, it is impossible to isolate the effect of the defendant's "I did it" admission\(^\text{12}\) on the decision-making of criminal justice officials and juries because the confession co-varies with inculpatory witness or physical evidence. The research reported here isolates the effect of a defendant's "I did it" statement on the decision-making of criminal justice officials and juries by studying only cases in which the defendant's confession is not supported by any physical or reliable inculpatory evidence. The research design thus allows measurement of the effect of an untrue admission when a detective, prosecutor, judge or jury is required to weigh the admission against evidence that would ordinarily establish the defendant's innocence.

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\(^\text{11}\) See Ofshe & Leo, Social Psychology, supra note 4, at 191-94.

\(^\text{12}\) For analytic purposes we distinguish between an admission ("I did it") and a confession. The post-admission narrative is the statement the suspect gives to police after making the "I did it" admission. A confession is a full description of a person's participation in a crime.
This article explores whether contemporary American psychological interrogation practices continue to induce false confessions like the *third degree* methods that preceded them. This article also analyzes how likely police-induced false confessions are to lead to the wrongful arrest, prosecution, conviction, and incarceration of the innocent. And this article examines with field data\(^{13}\) whether confession evidence substantially biases a trier of fact even when the defendant's statement was elicited by coercive methods.\(^{14}\) We explore this issue with cases in which the defendant's statement has not only been coerced but is also demonstrably unreliable, and in which other evidence proves or strongly supports the defendant's innocence.

Part II of this article discusses the selection and classification of the sixty disputed confession cases under study.\(^{15}\) Part III describes the findings of our research. Part IV analyzes the deprivations of liberty and miscarriages of justice associated with the sixty cases described in this article. Finally, Part V discusses the import of this research and offers some concluding remarks.

### II. METHOD

#### A. SELECTION AND CLASSIFICATION

Cases of disputed confessions were identified through multiple sources: electronic media database searches; directly from case files;\(^{16}\) and from secondary sources. The sixty cases dis-

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\(^{14}\) Kassin, *supra* note 4, at 221.

\(^{15}\) Due to the difficulty of directly obtaining case materials—especially in lesser known cases—all social science and legal research on miscarriage of justices relies on both primary and secondary source materials. See, e.g., *Yant*, *supra* note 3; *Huff et al.*, *supra* note 3; Bedau & Radelet, *supra* note 3. The research reported here is no different. By necessity, we rely on a variety of sources to document our assertions of fact. Where possible, we have tried to draw directly on interviews, police transcripts, and trial records, but in many instances we were only able to obtain newspaper and magazine accounts, appellate court opinions, academic journal articles, and/or books.

\(^{16}\) The authors obtained case file materials (either substantial or selected portions) directly from the attorney(s) representing the confessor in 17 cases (nos. 2, 3, 16, 17, 18, 21, 28, 34, 35, 40, 43, 45, 46, 47, 49, 50, 58). *See infra* Part II.D (describing and numbering the cases studied in this article). The *confessors'* attorneys typically requested consultation at a suppression hearing and/or criminal trial, during the post-conviction appeal, or in a civil proceeding following the termination of criminal charges. In one case, a governor requested consultation in connection with a pardon under consideration.
cussed below do not constitute a statistically adequate sample of false confession cases. Rather they were selected because they share a single characteristic: an individual was arrested primarily because police obtained an inculpatory statement that later turned out to be a proven, or highly likely, false confession.

Based on the information that we obtained and reviewed, all of the cases studied satisfy the following conditions: no physical or other significant and credible evidence indicated the suspect's guilt; the state's evidence consisted of little or nothing more than the suspect's statement "I did it;" and the suspect's factual innocence was supported by a variable amount of evidence—often substantial and compelling—including exculpatory evidence from the suspect's post-admission narrative. For every case included in this study, there was no credible evidence corroborating the defendant's "I did it" admission or supporting the conclusion that he was guilty. Based on the strength of the evidence indicating a defendant's probable innocence, each case was classified into one of three categories: proven false confession; highly probable false confession; or probable false confession.

For the thirty-four cases classified as proven false confessions, the confessor's innocence was established by at least one dispositive piece of independent evidence. For example, a defendant's confession was classified as proven false if the murder victim turned up alive, the true perpetrator was caught and

17 In many of the cases identified in this paper, the suspect supposedly also confessed to so-called "jailhouse snitches"—at the same time that he was busy recanting his uncorroborated confession to everyone else. Because jailhouse snitches stand to gain material concessions and sentence reductions, we do not regard their testimony as credible. See REPORT OF THE 1989-90 LOS ANGELES COUNTY GRAND JURY, INVESTIGATION OF THE INVOLVEMENT OF JAIL HOUSE INFORMANTS IN THE CRIMINAL JUSTICE SYSTEM IN LOS ANGELES COUNTY (June 26, 1990); Clifford Zimmerman, Toward A New Vision of Informants: A History of Abuses and Suggestions for Reform, 22 HASTINGS CONST. L.Q. 81, 93-97 (1994); Mark Curriden, No Honor Among Thieves, 75 A.B.A.J. 52, 54-56 (1989).

18 The defendant's post-admission narrative of the crime is the actual detailed confession statement that follows the "I did it" admission. See infra notes 26-29 and accompanying text. For a fuller discussion of the post-admission narrative, see Ofshe & Leo, The Decision to Confess Falsely, supra note 4, at 990-97.

19 The amount of information on these cases varies. The analysis of some cases was based on access to virtually the entire case file, while the analysis of other cases was limited to journalists' accounts or published appellate court opinions. Based on the available sources, no credible evidence supporting the confessor's guilt was discovered in any of the cases reported in this article. Some investigations, however, involved questionable evidence that later proved to be unreliable.

20 See infra text accompanying notes 34-88, 136-80.
proven guilty, or scientific evidence exonerated the defendant. Not only was the confessor definitively excluded by dispositive evidence, but the confession statement itself also lacked internal indicia of reliability. Any disputed confession case that fell short of this standard—no matter how questionable the confession and no matter how much direct or circumstantial evidence indicated the suspect was innocent—was excluded from this category.

For the eighteen cases classified as highly probable false confessions, the evidence overwhelmingly indicated that the defendant's confession statement was false. In these cases, no credible independent evidence supported the conclusion that the confession was true. Rather, the physical or other significant independent evidence very strongly supported the conclusion that the confession is false. In each of these cases, the confession lacked internal reliability. Thus, the defendant's statement is classified as a highly probable false confession because the evidence led to the conclusion that his innocence was established beyond a reasonable doubt.

For the eight cases classified as probable false confessions, no physical or other significant credible evidence supported the conclusion that the defendant was guilty. There was evidence supporting the conclusion that the confession was false, and the confession lacked internal indicia of reliability. Although the evidence of innocence in these cases was neither conclusive nor overwhelming, there were strong reasons—based on independent evidence—to believe that the confession was false. Cases are included in this category if the preponderance of the evidence indicated that the person who confessed was innocent.

We recognize that for any case that could not be classified as a proven false confession, there is a possibility that our classification of the case might be in error. Despite strong evidence supporting the conclusion that the confession is false, it remains theoretically possible that one or more of the defendants we classify as false confessors may have committed the crime. Nevertheless, we believe that the disputed confessions discussed in

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21 See infra text accompanying notes 89-122, 181-305.
this article would be judged false by an overwhelming majority of neutral observers with access to the evidence we reviewed.23

B. POST-ADMISSION NARRATIVE ANALYSIS

When evaluating the likelihood that a person committed a crime, investigators should first consider witness statements, biological evidence linking the suspect to the crime (fingerprint, DNA, hair, etc.), and alibi evidence. The identification by an eyewitness, the identification of the person as the donor of one or more type of biological material found at the crime scene, and the lack of an alibi all point to guilt. By contrast, an opposite pattern of evidence (e.g., no match with eyewitness descriptions, exculpating biological evidence, and the existence of an unimpeachable alibi) all support innocence.

In addition to these traditional sources of evidence, the defendant's post-admission narrative of the crime may provide helpful evidence of guilt or innocence, assuming contamination24 has been eliminated. If a suspect has made an "I did it" admission and given a post-admission narrative of a crime, the fit—or lack thereof—between the contents of the narrative and the crime scene facts provides evidence of guilt or innocence. Evaluation of the fit can reveal that a suspect possesses the sort of accurate, personal knowledge of the specifics of the crime that the perpetrator would be expected to have, or it can demonstrate the suspect's ignorance of the crime because his answers about the crime scene evidence are grossly incorrect.25

The fit between the specifics of a confession and the crime facts determines whether the "I did it" admission should be judged as reliable or unreliable evidence. There are at least three indicia of reliability that can be evaluated to reach a conclusion about the trustworthiness of a confession. Does the statement: (1) lead to the discovery of evidence unknown to the police? (e.g., location of a missing weapon that can be proven to have been used in the crime, location of missing loot that can

23 See also Bedau 8c Radelet, supra note 3, at 27-56, for a similar discussion of their method and classification of miscarriages of justice.

24 Contamination is the process whereby police suggest facts to the suspect that he did not already know, or the suspect learns facts about the crime from newsmedia or information leaked, rumored or disseminated in the community.

25 For an in-depth discussion of the fit between the post-admission narrative and the crime scene facts, see Ofshe & Leo, The Decision to Confess Falsely, supra note 4, at 990-97.
be proven to have been taken from the crime scene, etc.); (2) include identification of highly unusual elements of the crime that have not been made public? (e.g., an unlikely method of killing, mutilation of a certain type, use of a particular device to silence the victim, etc.); or (3) include an accurate description of the mundane details of the crime scene which are not easily guessed and have not been reported publicly? (e.g., how the victim was clothed, disarray of certain furniture pieces, presence or absence of particular objects at the crime scene, etc.).

If, for example, a suspect's post-admission narrative either leads the police to missing evidence, or reveals that the suspect knew precisely how the victim was bound and mutilated, or which window was jimmed open with what sort of unlikely tool, then the suspect possesses actual knowledge of the crime that would reasonably be expected of the perpetrator. Therefore, the suspect's confession should be deemed reliable. If, on the other hand, the suspect is unable to provide police with accurate information revealing evidence not already known to them (e.g., where to locate the murder weapon or the loot), is demonstrably wrong about the method of killing, or is demonstrably inaccurate about the specifics of the crime scene, then the statement should be judged unreliable and, if anything, treated as evidence of innocence. Therefore, the statement should be seen as lacking evidence of actual knowledge—something to be expected of a false confessor who has not been contaminated by the police or due to leakage of information into the community.

When the police elicit a post-admission narrative from a suspect, they typically seek only information about major crime elements (e.g., location of the missing weapon, type of mutilation, etc.). However, a suspect's report about the mundane (but unique or improbable) details of the crime and the crime scene is of great value in establishing a suspect's guilt or innocence. This is true, in part, because the suspect's knowledge of

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26 For example, the answer to a question about whether a body was face up or face down has little value since a guess will be correct half the time. Correctly describing how the victim was bound, however, has more value since there are a large number of possibilities. Finally, assuming there is no contamination, if a defendant's post-admission narrative correctly describes a bedroom crime scene in which the sheet—but not the mattress cover—was stripped off the bed, one panel of a window drape was torn down, and a table lamp was found on the floor in the northeast corner of the room, he has proven his actual knowledge of the crime by accurately describing unusually mundane details of the scene.
mundane details is less likely to be the result of contamination by the police. Mundane details are less likely to have been mentioned during off-tape conversations or during the pre-admission phase of an unrecorded interrogation.

A suspect's post-admission narrative need not demonstrate indicia of reliability in each category for it to reveal personal knowledge of the crime. It is generally accepted that one or more aspects of a crime may be so heinous that a guilty party may refuse to state them even while admitting to other major components of the crime. For example, Richard Allen Davis, who admitted to kidnapping and killing a child, was not willing to admit that he also raped her. Nevertheless, if a defendant has been properly and thoroughly debriefed, his personal knowledge of the crime should allow him to supply sufficiently detailed information to prove a confession's reliability by demonstrating his specific knowledge of what happened (e.g., the circumstances of the kidnapping, the child's clothing, the location of the killing ground, the description of the killing scene, etc.), even if he resists confessing to certain particularly heinous acts.

C. POLICE-INDUCED FALSE CONFESSION

Police-induced false confessions arise when a suspect's resistance to confession is broken down as a result of poor police practice, overzealousness, criminal misconduct and/or misdirected training. Interrogators sometimes become so committed to closing a case that they improperly use psychological interrogation techniques to coerce or persuade a suspect into giving a statement that allows the interrogator to make an arrest. Sometimes police become so certain of the suspect's guilt that they refuse to even-handedly evaluate new evidence or to consider the possibility that a suspect may be innocent, even when all the case evidence has been gathered and overwhelmingly demonstrates that the confession is false. Once a confession is obtained, investigation often ceases, and convicting the

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28 See Ofshe & Leo, The Decision to Confess Falsely, supra note 4, at 986-88, 1088-106, 1114-22; Ofshe & Leo, Social Psychology, supra note 4, at 191-93, 206-07; GUDJONSSON, supra note 3, at 47-49, 232-33; Kassin & Wrightsman, Confession Evidence, supra note 1, at 72-76.
defendant becomes the only goal of both investigators and prosecutors. As the investigative process progresses, some interrogators, who overstepped procedural boundaries to obtain a false confession, engage in criminal conduct to cover up their procedural violations (e.g., coerce false witness statements, suborn perjured testimony from snitches, or perjure themselves at suppression hearings or at trial). Furthermore, some prosecutors who are determined to convict obstruct justice by withholding exculpatory evidence from the defense.  

For example, an Illinois special prosecutor recently indicted four DuPage County deputy sheriffs and three former DuPage County prosecutors for conspiracy, perjury and obstruction of justice in the wrongful capital convictions of Rolando Cruz and Alejandro Hernandez. See Don Terry, Ex-Prosecutors and Deputies in Death Row Case are Charged with Framing Defendant, N.Y. TIMES, Dec. 13, 1996, at A18. In 1983, DuPage County sheriffs allegedly elicited inculminating statements from Alejandro Hernandez and a "dream-vision" confession from Rolando Cruz to the residential burglary, kidnap, rape and murder of 10-year-old Jeanine Nicarico. See People v. Cruz, 643 N.E.2d 636, 641 (Ill. 1994). Prosecutors charged Hernandez, Cruz and Stephen Buckley (who had been implicated by Hernandez's statements) with the capital crime. See Buckley v. Fitzsimmons, 919 F.2d 1230 (7th Cir. 1990); People v. Cruz, 521 N.E.2d 18 (Ill. 1988); People v. Hernandez, 521 N.E.2d 25 (Ill. 1988). Sheriffs recovered several forms of evidence from the scene of the crime and the victim's body (e.g., blood, handprints, shoeprints, seminal fluid), but could not link any physical evidence to these three suspects. See Cruz, 643 N.E.2d at 643-44; see also American Justice, Presumed Guilty (A&E Television Broadcast, Apr. 16, 1997) [hereinafter A&E, Presumed Guilty]; After 2 Death Sentences, Man Acquitted in 3rd Trial; Courts: Defendant Had Been Imprisoned for 11 Years After Illinois Girl's Murder; No Physical Evidence of Eyewitnesses Linked Him to the Killing, L.A. TIMES, Nov. 4, 1995, at A27. At the same time, prosecutors failed to provide defense counsel with exculpatory evidence. A&E, Presumed Guilty, supra.  

For example, one month prior to trial, Buckley's attorney fortuitously discovered that the County Crime Lab had ruled out Buckley's boots—the primary and only evidence against him—as a match with the boots that had kicked in the Nicarico's door. A&E, Presumed Guilty, supra. Yet the sheriffs had retrieved Buckley’s boots from the lab and instructed the laboratory technician not to file a report, causing the County Crime Laboratory Director to resign. Eventually, the FBI conclusively demonstrated that the killer's bootprint left on the Nicarico door did not come from Buckley. Id. Sheriffs Detective John Sam also resigned in protest because of his belief that all three defendants were innocent. See Allan Gray & Courtney Edelhart, Judge Rules Cruz Innocent; Finally “The Whole Case Just Fell Apart,” Cm. TRIB., Nov. 4, 1995, at i; Editorial, Injustice in Illinois, CHRISTIAN SCI. MONITOR, Oct. 26, 1995, at 20.  

With no evidence against Cruz, Hernandez or Buckley, prosecutors relied on a parade of witnesses to whom they had given reward money or reduced sentences for perjured testimony that Cruz had made self-incriminating statements. See Hernandez, 521 N.E.2d at 30-31; Gera-Lind Kolarik, DNA, Changed Testimony Gain Acquittal; Special Prosecutor, FBI Investigation Controversial Illinois Murder Prosecution, 82 A.B.A. J. 34 (1996). In addition, in 1985, only four days before the trial, prosecutors announced for the first time that sheriffs detectives Dennis Kurzawa and Thomas Vosburgh had elicited a "dream-vision" statement from Hernandez a year and a half earlier in May, 1983, in which Cruz had reported details only known by the police and the true perpetrator. See Cruz, 521 N.E.2d at 19; Kolarik, supra. Police and prosecutors claimed the "dream-vision" statement was tantamount to a confession. A&E, Presumed Guilty, supra. Yet sheriffs detectives Kurzawa and Vosburgh had not tape-recorded Cruz’s alleged "dream-vision" statement, they had not written a report about it at the time it
had allegedly been given, and, perhaps most curiously, they had not followed-up on this key piece of evidence the next day in a recorded interview with Cruz. Id. In addition, Deputy John Sam, who had worked alongside Kurzawa and Vosburgh on the Nicarico investigation before resigning in protest, had never heard any mention of Cruz's "dream-vision" statement during that time. See Cruz, 643 N.E.2d at 641; Gray & Edelhart, supra, at 1.

Nevertheless, Kurzawa and Vosburgh testified that they told their boss, Lieutenant James Montesano, about the "dream-vision" statement as proof that it had occurred, and Montesano corroborated their testimony in Court. See Cruz, 643 N.E.2d at 641-42; Jeffrey Bils, Cops Unshaken On Cruz Vision, Chi. Trib., Oct 28, 1995, at 1. Kurzawa and Vosburgh also testified that former Assistant State's Attorney Thomas Knight had told them not to document the dream-vision statement because he would use it in his summary before the grand jury, though, curiously, Knight had not questioned Cruz about the "dream-vision" statement in grand jury proceedings. See Cruz, 643 N.E.2d at 642; Bils, supra, at 1. The jury convicted Cruz and Hernandez of the capital crimes, and the judge sentenced both men to die by lethal injection. Cruz, 521 N.E.2d at 18-19; Hernandez, 521 N.E.2d at 26; A&E, Presumed Guilty, supra. The jury could not reach a decision on the charges against Buckley, and eventually prosecutors dismissed charges against him. See Cruz, 521 N.E.2d at 19; Terry, supra, at A18; A&E, Presumed Guilty, supra.

Shortly after Cruz's and Hernandez's capital convictions in 1985, Brian Dugan, a convicted child-rapist and murder, confessed that he alone had raped and killed Jeanine Nicarico. Terry, supra. There was considerable evidence implicating Dugan. See Cruz, 643 N.E.2d at 644-52; James Touhy, The DuPage Cover-Up: The Authorities Know That Brian Dugan Killed Jeanine Nicarico; They Know They've Put the Wrong Men on Death Row: They Don't Care, Chi. Lawyer, May 1996, at 9; A&E, Presumed Guilty, supra. First, Dugan had also raped and killed seven-year-old Melissa Ackerman and 27-year-old Donna Schnor, both with the same modus operandi as the perpetrator of the Nicarico crime—abducting the victim, taking her to a remote nature cite, raping and sodomizing her, and then killing her. See Cruz, 643 N.E.2d at 644-52; Touhy, supra; A&E, Presumed Guilty, supra. Second, eyewitnesses placed Dugan in the Nicarico neighborhood on the day of the abduction. See Cruz, 643 N.E.2d at 648; Touhy, supra; A&E, Presumed Guilty, supra. Third, Dugan knew many of the crime details that had not been made public. See Cruz, 643 N.E.2d at 647; Touhy, supra; A&E, Presumed Guilty, supra. Nevertheless, both police and prosecutors refused to accept the validity of Dugan's confession, insisting that Cruz and Hernandez were guilty. See Cruz, 643 N.E.2d at 644-52; Touhy, supra; A&E, Presumed Guilty, supra. Skeptical observers at the time insisted that prosecutors knew that Dugan had committed the crime but ignored his confession because they could not admit that they had sent two innocent men to death row. See Touhy, supra.

In 1988, the Illinois Supreme Court reversed the convictions against Cruz and Hernandez because the prosecution had deliberately misused both Hernandez's and Cruz's statements against one another. See Cruz, 521 N.E.2d at 23-24; Hernandez, 521 N.E.2d at 33-35. Based on his alleged "dream-vision" statement and the perjured testimony of numerous questionable witnesses, Cruz was convicted again at his second trial in 1990 of abducting, raping and murdering Nicarico, and resentenced to die by lethal injection. Cruz, 643 N.E.2d at 639; A&E, Presumed Guilty, supra. Hernandez's second trial ended in a hung jury, but at his third trial in 1991 he was convicted and sentenced to 80 years in prison. Jeffrey Bils & Maurice Possley, Judge Rules Cruz Innocent; Nicarico Case Still Open After 12 Years, Chi. Trib., Nov. 4, 1995, at 1; A&E, Presumed Guilty, supra. Illinois State's Attorney Mary Kenney, who had been assigned to defeat Cruz's death row appeal, concluded that both Cruz and Hernandez were innocent and pleaded with then-Illinois State Attorney Roland Burris to dismiss charges against both of them. Radelet et al., supra note 4, at 934; A&E, Presumed Guilty, supra. When Burris pressed forward, Kenney resigned in disgust See Radelet et al., supra note 4, at 934; Terry, supra; A&E, Presumed Guilty, supra. Though the Illinois Supreme Court
American police are poorly trained about the dangers of interrogation and false confession. Rarely are police officers instructed in how to avoid eliciting confessions, how to understand what causes false confessions, or how to recognize the forms false confessions take or their distinguishing characteristics. Instead, some interrogation manual writers and trainers persist in the unfounded belief that contemporary psychological methods will not cause the innocent to confess—a fiction so thoroughly contradicted by all of the research on police interrogation training courses and seminars (including the introductory and advanced courses put on by the Chicago-based firm Reid & Associates) rarely, if ever, even mention the subject of false confessions. Leo, Police Interrogation in America, supra note 10, at 67-127. American police interrogation training manuals also fail to advise police of the social psychology of false confessions or instruct them how to recognize when their tactics are leading an innocent suspect to falsely confess. In short, police text writers and interrogation trainers demonstrate a studied indifference to the extensive psychological literature on false confession. See, e.g., DAVID ZULAWSKI & DOUGLAS WICKLANDER, PRACTICAL ASPECTS OF INTERVIEW AND INTERROGATION (1993); FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS (1986); Brian Jayne & Joseph Buckley, Criminal Interrogation Techniques on Trial, 64 SEC. MGT. (1992); John E. Reid & Assocs, The Reid Technique: Interviewing and Interrogation (1991) (unpublished course booklet, on file with authors) [hereinafter The Reid Technique]; John E. Reid & Assocs., The Reid Technique of Specialized Interrogation Strategies (1991) (unpublished course booklet, on file with authors) [hereinafter Reid Specialized Interrogation].

51 See, e.g., INBAU ET AL., supra note 30, at 147; Jayne & Buckley, supra note 30, at 66.
lice interrogation\textsuperscript{32} that it can be labeled a potentially deadly
myth. This fiction perpetuates the commonly held belief that
only torture can cause an innocent suspect to confess, and it al­


\textsuperscript{33} allows some police to rationalize accepting coerced and demon­
strably unreliable confession statements as true.

\section{D. FALSE CONFESSION CASES}

The identification of the sixty cases examined and their
classification into three categories of disputed confession cases
(Proven, Highly Probable and Probable False Confessions) is
reported below:

\begin{table}
\caption{A1}
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Case ID \# & Confessor & Year & Source(s) \\
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1 & Anthony Atkinson & 1990 & Colwell;\textsuperscript{34} Demoretchky\textsuperscript{35} \\
2 & Richard Bingham & 1996 & Associated Press\textsuperscript{34} \\
3 & Leo Bruce & 1991 & Kimball & Greenberg;\textsuperscript{37} Parloff\textsuperscript{38} \\
4 & Lavale Burt & 1985 & Radelet \textit{et al.};\textsuperscript{39} Warden\textsuperscript{40} \\
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\textsuperscript{32} See, e.g., \textit{Gudjonsson}, supra note 3; \textit{Ofshe & Leo, Social Psychology}, supra note 4; Kassin, supra note 4.

\textsuperscript{33} For example, Puidand police detective Kent Perry, who elicited proven false
murder confessions from both Rick Nieskens and Christopher Cole, stated that,
"[s]hort of physical torture, there isn't anything that's going to get you to say that you
did something like that when you didn't." See \textit{Smith}, supra note 4, at D6. Comment­
ing on Gary Gauger's presumed false murder confession, Debra Glaser, a psychologist
with the Los Angeles Police Department and supposed interrogation expert, stated
that "no amount of badgering [would prompt the average, sober person to] admit to
something that awful—or to admit to any crime." Robert Becker & Andrew
Martin, \textit{Vicious Killer or Gentle Farmer?; Two Portraits Emerge of Gary Ganger}, Cm. \textit{TRIB.},
Apr. 18, 1995, at 1. Missouri Sheriff Doug Seneker, who elicited Johnny Lee Wilson's
proven false confession, echoes this sentiment: "There is a principle in interrogation.
A person will not admit to something they haven't done, short of torture or extreme
duress. No matter how long you're grilled, no matter how much you're yelled at,
you're not going to admit to something you haven't done." \textit{Perske}, supra note 3, at 50.

\textsuperscript{34} See \textit{Colwell}, supra note 4, at 23.

\textsuperscript{35} Tom Demoretchky, \textit{Detectives in Murder Transferred; Three Confessions to Crime},

\textsuperscript{36} \textit{Lack of Evidence}, supra note 4, at B4. See also \textit{Sitka Murder Suspect Sought Help, Police

\textsuperscript{37} Russ Kimball & Laura Greenberg, \textit{Trials and Tribulations, PHOENIX MAG.}, Dec.
Greenberg, \textit{Revelations}].

\textsuperscript{38} Parloff, \textit{False Confessions}, supra note 4, at 58.
<table>
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<th>Names</th>
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<tr>
<td>5</td>
<td>Christopher Cole</td>
<td>1995</td>
<td>Smith[^41]</td>
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<td>6</td>
<td>Bradley Cox</td>
<td>1980</td>
<td>Huff et al.[^42]</td>
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<td>7</td>
<td>Billy Gene Davis</td>
<td>1990</td>
<td>Phillips[^43]</td>
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<td>8</td>
<td>Pedro Delvillar</td>
<td>1987</td>
<td>Feldman;[^44] Pristin[^45]</td>
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<td>9</td>
<td>Ralph Jacobs</td>
<td>1991</td>
<td>Booher[^46]</td>
</tr>
<tr>
<td>10</td>
<td>William Kelley</td>
<td>1990</td>
<td>Shellem[^47]</td>
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<td>11</td>
<td>Guy Lewis</td>
<td>1994</td>
<td>Perrusquia[^48]</td>
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<td>12</td>
<td>Steven Linscott</td>
<td>1980</td>
<td>Connors et al.;[^49] Linscott[^50]</td>
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<td>13</td>
<td>Jose Martinez</td>
<td>1993</td>
<td>Granberry[^51]</td>
</tr>
<tr>
<td>14</td>
<td>Christina Mason</td>
<td>1993</td>
<td>Rossmiller;[^52] Rossmiller &amp; Creno[^53]</td>
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<td>15</td>
<td>Robert Moore</td>
<td>1996</td>
<td>Herbert;[^54] Dwyer[^55]</td>
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<td>16</td>
<td>Rick Nieskins</td>
<td>1995</td>
<td>Smith[^56]</td>
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<td>Mark Nunez</td>
<td>1991</td>
<td>Kimball &amp; Greenberg;[^57] Parloff[^58]</td>
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<td>1991</td>
<td>Ofshe &amp; Leo;[^59] Kimball &amp; Greenberg[^60]</td>
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<td>1991</td>
<td>McMahon;[^63] Kimball &amp; Greenberg[^64]</td>
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<td>21</td>
<td>George Peterson</td>
<td>1990</td>
<td>McMahon;[^63] Kimball &amp; Greenberg[^64]</td>
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[^39]: RADELET ET AL., supra note 9, at 292.
[^40]: Warden, supra note 4, at 34.
[^41]: Smith, supra note 4, at D1.
[^42]: HUFF ET AL., supra note 3, at 2. See also Cox v. State, 552 N.E.2d 970 (Ohio Cl. Ci. 1988).
[^43]: Phillips, supra note 4, at B3.
[^47]: Shellem, supra note 4, at A1.
[^48]: Perrusquia, supra note 4, at A1.
[^49]: CONNORS ET AL., supra note 4, at 65.
[^50]: LINSCHOTT, supra note 4, at 76, 129, 139.
[^51]: Granberry, supra note 4, at A1.
[^53]: Rossmiller & Creno, supra note 4, at B4.
[^54]: Herbert, supra note 4, at A5.
[^56]: Smith, supra note 4, at D1.
[^57]: Kimball & Greenberg, False Confessions, supra note 37, at 85.
[^58]: Parloff, False Confessions, supra note 4, at 58.
[^59]: Ofshe & Leo, Social Psychology, supra note 4, at 226-31.
[^60]: Kimball & Greenberg, False Confessions, supra note 37, at 85.
[^61]: See Bedau & Radelet, supra note 3, at 150-51.
[^63]: Siegel, A Question of Guilt, supra note 4, at 15.
[^64]: McMahon, supra note 4, at 5.
446 LEO & OFSHE

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<th>No.</th>
<th>Name</th>
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<tr>
<td>22</td>
<td>John Purvis</td>
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<td>23</td>
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<td>24</td>
<td>Peter Reilly</td>
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<td>25</td>
<td>Ivan Reliford</td>
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<td>26</td>
<td>Melvin Reynolds</td>
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<td>27</td>
<td>James Reyos</td>
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<td>28</td>
<td>Martin Salazar</td>
<td>1996</td>
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<td>29</td>
<td>Donald Shoup</td>
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<td>30</td>
<td>Christopher Smith</td>
<td>1991</td>
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<td>31</td>
<td>Ruben Trujillo</td>
<td>1987</td>
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<td>32</td>
<td>David Vasquez</td>
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<td>33</td>
<td>Earl Washington</td>
<td>1983</td>
</tr>
<tr>
<td>34</td>
<td>Johnny Lee Wilson</td>
<td>1986</td>
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65 Kimball & Greenberg, False Confessions, supra note 37, at 85.
66 Davis, supra note 4, at 265.
67 YANT, supra note 3, at 90-91.
68 Paxton, supra note 4, at C26.
72 GANEY, supra note 5, at 201-03.
73 RADELET ET AL., supra note 4, at 11.
74 Carroll, supra note 4, at 41.
75 Howard Swindle, Shadows of a Doubt, Prosecutor, Bishop Believe Man Convicted in Priest's '81 Slaying is Not Guilty, DALLAS MORNING NEWS, July 4, 1993, at 1A.
76 Ofshe & Leo, Social Psychology, supra note 4, at 242 n.23.
77 Folks, supra note 4, at B1.
78 Holland, supra note 4, at 1A.
79 Mary Murphy, Donald Shoup: Killer or Victim?, ORLANDO SENTINEL, May 26, 1996, at A1.
80 Booher, supra note 4, at COL. See also Thompson v. State, 617 N.E.2d 1165 (Ind. 1996).
81 Feldman, supra note 44, at B1.
82 Pristin, supra note 45, at B1.
83 MONES, supra note 4, at 296.
84 JOHN DOUGLAS & MARK OLSHAKER, JOURNEY INTO DARKNESS 334-35 (1997).
85 White, supra note 3, at 121-25.
86 Hourihan, supra note 4, at 1471-72, 1494-501. See also Washington v. Murray, 4 F.3d 1285 (4th Cir. 1993).
87 Ofshe & Leo, Social Psychology, supra note 4, at 222-26.
88 Shapiro, supra note 4, at 36.
## Table A2
SECOND CATEGORY: HIGHLY PROBABLE FALSE CONFESSIONS (N = 18)

<table>
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<tr>
<th>Case Identification</th>
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<tr>
<td>36</td>
<td>Melvin Beamon</td>
<td>1988</td>
<td>Radelet et al., supra note 9, at 285.</td>
</tr>
<tr>
<td>37</td>
<td>William Boyd</td>
<td>1983</td>
<td>Drell, Trial to Focus on Police Hypnosis; Bible Student Sues for $10 Million, Cm. Sun Times, Jan. 18, 1988, at 11.</td>
</tr>
<tr>
<td>38</td>
<td>Betty Burns</td>
<td>1989</td>
<td>Siegel, A Peek at Back Alley Justice, supra note 4, at A1; See also Barry Siegel, Outraged Jury Puts Anger to Work in Stabbing Case Courts; Jurors Can't Believe Case Even Went to Trial; Their Stunning Protest Seems to Succeed for a While, LA Times, Aug. 17, 1990, at A1 [hereinafter Siegel, Outraged Jury].</td>
</tr>
<tr>
<td>39</td>
<td>Jack Carmen</td>
<td>1975</td>
<td>Radelet et al., supra note 9, at 174.</td>
</tr>
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<td>40</td>
<td>Edgar Garrett</td>
<td>1995</td>
<td>Ofshe &amp; Leo, supra note 4, at A15.</td>
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<td>42</td>
<td>Joseph Giarratano</td>
<td>1979</td>
<td>Held, supra note 4, at 1.</td>
</tr>
<tr>
<td>43</td>
<td>Paul Ingram</td>
<td>1988</td>
<td>Ray Quintanilla, State Court Won't Review Gauger Case; Murder Conviction to Remain Overtuned, CHI. TRIB., Apr. 25, 1996, at 1.</td>
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85 Cooper, supra note 4, at A1.
91 Radelet et al., supra note 9, at 285.
92 Adrienne Drell, Trial to Focus on Police Hypnosis; Bible Student Sues for $10 Million, Cm. Sun Times, Jan. 18, 1988, at 11.
93 Siegel, A Peek at Back Alley Justice, supra note 4, at A1; See also Barry Siegel, Outraged Jury Puts Anger to Work in Stabbing Case Courts; Jurors Can't Believe Case Even Went to Trial; Their Stunning Protest Seems to Succeed for a While, LA Times, Aug. 17, 1990, at A1 [hereinafter Siegel, Outraged Jury].
94 Radelet et al., supra note 9, at 174.
96 Ofshe & Leo, Social Psychology, supra note 4, at 231-34.
98 Held, supra note 4, at 1.
99 Ray Quintanilla, State Court Won't Review Gauger Case; Murder Conviction to Remain Overtuned, CHI. TRIB., Apr. 25, 1996, at 1.
100 Charles Mount, Doubt Told in Murder Conviction; Confession Coerced, Gauger Lawyer Says, CHI. TRIB., Feb. 7, 1996, at 1.
101 Arney, supra note 4, at A15.
103 Ofshe, Inadvertent Hypnosis, supra note 4, at 125.
105 Parloff, supra note 4, at 392-93.
106 Radelet et al., supra note 4, at 946-47.
107 Connery, supra note 4, at 1-6.
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<td>Jessie Miskelley</td>
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<td>Bradley Page</td>
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<td>Juan Rivera</td>
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<td>49</td>
<td>Tom Sawyer</td>
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<td>50</td>
<td>Martin Tankleff</td>
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<td>51</td>
<td>Douglas Warney</td>
<td>1996</td>
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<td>52</td>
<td>Dale Zamarrippa</td>
<td>1993</td>
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</tbody>
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Ofshe; Chased; Pratkanis & Aronson

**Notes:**


109. Richard Ofshe, *I'm Guilty if You Say So*, in BORCHARD, supra note 3, at 95, 187 [hereinafter Ofshe, *I'm Guilty if You Say So*].

109. Chase, supra note 4, at 1A.

111. Page, supra note 4, at 1.


119. Herbert, supra note 4, at A5.


121. Thomas, supra note 4, at 133.

### TABLE A3
THIRD CATEGORY: PROBABLE FALSE CONFESSIONS (N = 8)

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<th>Case Identification</th>
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<td>53</td>
<td>Luis Benavidez</td>
<td>1992</td>
<td>Lozano; Bidwell;</td>
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<tr>
<td>54</td>
<td>Jane Bolding</td>
<td>1985</td>
<td>Ginsburg; Patch;</td>
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<td>55</td>
<td>Barry Fairchild</td>
<td>1983</td>
<td>ABC News; Perske;</td>
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<td>56</td>
<td>Tammy Harrison</td>
<td>1979</td>
<td>Hart;</td>
</tr>
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<td>57</td>
<td>Charles Lawson</td>
<td>1991</td>
<td>Houtz;</td>
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<td>Linda Stangel</td>
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<td>Cyril Walton</td>
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<td>60</td>
<td>Delbert Ward</td>
<td>1990</td>
<td>Perske; CBS News; Wecth;</td>
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### III. FINDINGS

#### A. PROVEN FALSE CONFESSIONS

There are four sub-types of proven false confessions: the suspect confessed to a crime that did not happen; the evidence objectively demonstrates that the defendant could not possibly have committed the crime; the true perpetrator was identified and his guilt established; or the defendant was exonerated by scientific evidence.

1. **The Suspect Confessed to a Crime That Did Not Happen**

Police interrogators may extract a confession to a crime that did not, in fact, occur. In Austin, Texas in 1990, after twice fail-

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123 Lozano, supra note 4, at B1.
127 Confession at Gunpoint?, supra note 10.
128 PERSKE, supra note 3, at 102-03. See also Fairchild v. Lockhart, 744 F. Supp. 1429 (E.D. Ark. 1989), aff’d, 990 F.2d 1292 (8th Cir. 1990).
130 Houtz, supra note 4, at B1.
133 PERSKE, supra note 3, at 93.
134 Face to Face with Connie Chung (CBS News Television Broadcast, Feb. 11, 1991) [hereinafter CBS News, Face to Face].
ing a polygraph test, Billy Gene Davis confessed that he killed his ex-girlfriend; she subsequently turned up alive in Tucson, Arizona.\textsuperscript{136} Even if the underlying event did in fact occur, police may induce a confession to a non-existent crime. In 1993, Phoenix, Arizona police elicited a confession from Christina Mason to killing her three-month-old infant by letting another woman inject the child with heroin and cocaine to prevent it from crying.\textsuperscript{137} The autopsy, however, revealed no drugs other than Tylenol in the baby’s body, and the medical examiner concluded that the likely cause of death was pneumonia or a viral infection.\textsuperscript{138}

2. The Defendant Could Not Have Committed The Crime

Police may extract a confession from an individual who could not have committed the crime. In 1987, Los Angeles, California police interrogators elicited false confessions from two suspects—Ruben Trujillo and Pedro Delvillar—to the same double murder and robbery.\textsuperscript{139} Yet both men were in police custody (one in a county jail and the other at a California Youth Authority facility) for other crimes when the murders occurred.\textsuperscript{140} In another example of flawed interrogation, police in Laguna Beach, California obtained a confession to arson from Jose Soto Martinez in 1993, but prosecutors dismissed charges when they discovered that Martinez had been in a Mexican prison at the time of the arson.\textsuperscript{141} Similarly, in 1986 Montana police elicited a false confession to a sexually motivated killing from Ivan Reliford, but later discovered that Reliford was in custody when the crime was committed.\textsuperscript{142}

The cases in this study reveal many reasons why someone could not have committed the crime to which he confessed. In 1973, Connecticut State Police elicited a confession from Peter Reilly to killing and mutilating his mother.\textsuperscript{143} After a jury trial, conviction, and then reversal by an appellate court, the prosecu-

\begin{footnotes}
\item[136] Phillips, supra note 4, at B3.
\item[137] Rossmiller & Creno, supra note 4, at B4.
\item[138] Id.
\item[139] Feldman, supra note 44, at B1.
\item[140] Id
\item[141] Granberry, supra note 4, at A1.
\item[142] Man Lied About Sex Killing, supra note 71, at 40.
\item[143] See CONNERY, supra note 3, at 20; BARTHÉL, supra note 70; see also Reilly v. State, 355 A.2d 324, 328 (Conn. Super. Ct. 1976).
\end{footnotes}
tor handling the second trial discovered that the former prose­
cutor's files contained documents showing that Reilly arrived at
the scene of the murder only minutes before the police and
thus could not have committed the crime.144

In 1982, James Harry Reyos confessed in New Mexico that
he had killed a Catholic priest a year earlier.145 The victim died
between 7 p.m. and midnight in Odessa, Texas,146 but gas re­
cceipts and an eyewitness established that Reyos was in Roswell,
New Mexico (200 miles away) at 8 p.m. that evening,147 and a
speeding ticket proved that he was also in Roswell shortly after
midnight.148 To have committed the murder, Reyos would have
had to drive 200 miles to the murder site, kill the priest in no
more than one minute and speed 215 miles back to where he
received the speeding ticket—in four hours (averaging well over
100 miles an hour on narrow, country roads). Eventually the
state’s attorney handling Reyos’ appeal conceded that Reyos
could not have committed the crime.149

In 1995, in Portland, Oregon, police extracted false confes­
sions from Rick Nieskins and Christopher Cole to the 1991
murder of John Sewell.150 Both men were charged with homi­
cide, and both spent thirteen months in jail awaiting trial—even
though two other men had been convicted of Sewell’s murder
in 1991 and had always maintained that they acted alone.151
Prosecutors eventually dropped charges against Nieskins after
records showed that he could not have committed the crime
because he was at a homeless shelter in Seattle at the time of the
killing.152 Once they acknowledged Nieskins’ false confession,
prosecutors admitted that Cole also could not have been in­
volved in the crime and dropped charges against him.153

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144 Joseph O’Brien, Mother’s Killing Still Unresolved, But Peter Reilly Puts Past Behind; 20 Years After Trial, Reilly Puts Past Behind, HARTFORD COURANT, SepL 23, 1993, at AL
More than 20 years after Reilly’s innocence was conclusively established, some Connecticut Police continue to insist that he killed his mother. Id.
145 Carroll, supra note 4, at 41.
146 Id.
147 Id; see also Swindle, supra note 75, at 1A.
148 Swindle, supra note 75, at 1A.
149 Id.
150 Smith, supra note 4, at D1.
151 Id.
152 Id.
153 Id.
3. The True Perpetrator Was Identified and His Guilt Established

Police may elicit a confession that is proven false when the true perpetrator is identified. Sometimes this occurs fortuitously when police encounter the perpetrator in connection with another crime and obtain a demonstrably reliable confession. In 1979, after twenty-one hours of interrogation by West Virginia State Police, Paul Reggetz confessed to murdering his wife and two children. Reggetz spent eleven months in pre-trial incarceration before one of his neighbors confessed. In 1990, Suffolk County, New York police interrogated Anthony Atkinson for three-and-a-half hours before he confessed to murder and sodomy. Later, two other men confessed to the crime, and charges against Atkinson were dismissed. In 1994, Guy Lewis confessed to Memphis, Tennessee police to shooting and killing his girlfriend. The prosecutor was preparing to bring charges against him when Tony Hedges and Michael Maclin were arrested and each confessed to the murder. In 1996, Robert Moore confessed to the capital murder and robbery of a taxi driver after Nassau County, New York detectives interrogated him for twenty-five hours. Moore was released only because police happened to arrest one of the actual killers on unrelated charges, and he confessed and identified his two co-perpetrators. In 1996, in Daytona Beach, Florida, police extracted a confession to capital murder and robbery from Donald Shoup, a mentally handicapped teenager. While Shoup was awaiting trial, the true killer confessed.

In one of the century's most dramatic and disturbing false confession cases, prosecutors dismissed charges against three false confessors after routine detective work identified the true

154 See YANT, supra note 3, at 90-91; Paxton, supra note 4, at A2.
155 See YANT, supra note 3, at 90-91.
156 Colwell, supra note 4, at 23; Demoretchky, supra note 35, at 7.
157 Demoretchky, supra note 35, at 7.
158 Perrusquia, supra note 4, at A1.
159 Id.
160 Herbert, supranote 4, at A5; Dwyer, State's Unjust Blood Lust, supra note 55, at 6.
161 Herbert, supra note 4, at A5; Dwyer, State's Unjust Blood Lust, supra note 55, at 6.
162 Holland, supra note 4, at 1A. For a discussion of the characteristics of the mentally handicapped that make them especially vulnerable to police-induced false confession, see Ofshe & Leo, Social Psychology, supranote 4, at 211-14.
163 Holland, supra note 4, at 1A.
killers. In 1991, during interrogations that lasted up to twenty-one hours, Maricopa County Sheriffs in Phoenix, Arizona coaxed false confessions from Leo Bruce, Mark Nunez, and Dante Parker to the mass murder of nine persons at a Buddhist temple. While prosecutors were preparing capital cases against the defendants, a ballistics test was carried out on a rifle that was picked up for testing the same day that Bruce, Nunez, and Parker were interrogated. It proved to be the murder weapon. The rifle had been in the possession of Jonathan Doody and Alex Garcia the night of the murder. Searches led to the discovery of loot in the possession of both Doody and Garcia. Both adolescents confessed to the murders, and Garcia supplied the police with a detailed account of how he and Doody planned and carried out the killings.

Garcia not only confessed to the nine Temple murders, but also to murdering Alice Marie Cameron shortly before being arrested for the Temple murders. The police delayed doing the ballistics test on the rifle that led to Garcia's arrest because they were occupied first with coercing false confessions from Bruce, Nunez, and Parker and then with the media storm and public protests against the police that followed the disputed confessions.

To make matters even worse, Maricopa County Sheriffs had also extracted a confession to Cameron's murder from George Peterson, a mentally ill adult, during a sixteen hour interrogation. When Garcia admitted to the Cameron murder fourteen months later, Peterson was awaiting trial for capital murder for the same crime.

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164 See Kimball & Greenberg, False Confessions, supra note 37; see also Kimball & Greenberg, Revelations, supra note 37; Kimball & Greenberg, Trials and Tribulations, supra note 37; Parloff, False Confessions, supra note 4, at 58-62.
165 See Kimball & Greenberg, False Confessions, supra note 37.
166 Id.
167 Id.
168 Id.
169 Id. Had police done the ballistics test in a timely fashion, Garcia would have been arrested weeks before he killed Cameron.
170 Id. See also McMahon, supra note 4, at 5.
171 Kimball & Greenberg, False Confessions, supra note 37; see generally Parloff, supra note 4; McMahon, supra note 4.
4. The Defendant Was Exonerated By Scientific Evidence

Police may elicit a confession that is conclusively proven false by scientific evidence. In 1996, police in West Palm Beach, Florida elicited a confession to capital murder from Martin Salazar, but prosecutors dropped charges when the defense discovered that fingerprint evidence clearing Salazar had been withheld by the police and the prosecutor. During an interrogation in 1980, Chicago police reshaped a dream by Steven Linscott into a murder confession, but DNA testing established his innocence many years later. In 1983, Virginia police elicited several confessions from Earl Washington—including one to the rape and murder of Rebecca Williams. In 1993, DNA evidence established that Washington could not have been responsible for any of these crimes. In 1996, in Sitka, Alaska, Richard Bingham confessed to being the lone rapist and killer of seventeen-year-old Jessica Baggen. DNA testing excluded Bingham as the source of the semen found in the victim. The foreign hair found on the victim's body was not Bingham's nor was the fingerprint found on a cigarette pack at the crime scene. Bingham was also unable to describe the unusual properties of the physical scene where the body was found nor the unusual way in which the victim had been silenced. Bingham was acquitted at trial.

Notwithstanding the numerous examples of proven false confessions reported in this article, it is difficult to establish conclusively that a defendant's confession is false even when the evidence of innocence is compelling. Once a suspect has confessed, it is rare for the crime to evaporate, for the true perpe-

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172 See Ofshe & Leo, Social Psychology, supra note 4, at 242; Folks, supra note 4, at B1. After Salazar's case was dismissed, the state eventually located an expert who, contrary to the Florida Department of Law Enforcement, said that while Salazar was not a match, he could not be excluded. The state then re-indicted Salazar. See Grand Jury Indictment of Martin Salazar for First Degree (Palm Beach County Cl., Oct 7, 1997) (No. 97-11428CFA02).
173 See CONNORS ET AL., supra note 4, at 64-65; LINSOCOT, supra note 4, at 210.
174 During this interrogation, Washington confessed to three other rapes that police subsequently determined he could not have committed. See White, supra note 3, at 121-25; Hourihan, supranote 4, at 1491-501.
175 Id.
176 Sitka Murder, supra note 36.
177 Id.
178 Id.
179 Id.
180 Id.
translator to be apprehended, for police or prosecutors to discover that the defendant could not have committed the crime, or for scientific evidence to exonerate him. The standard for inclusion into the proven false category—established innocence—is a formidable barrier.

B. HIGHLY PROBABLY FALSE CONFESSIONS

While our research has unearthed numerous examples of highly probable false confessions, only a small number of these cases are reported here.

1. Bradley Page

In 1984, Oakland, California police persuaded Bradley Page that he killed his girlfriend, Bibi Lee.\textsuperscript{181} His vague, confused, and speculative confession occurred during a sixteen hour interrogation that was only partially recorded.\textsuperscript{182} Despite Page's confession, no evidence (physical or otherwise) corroborated his involvement in the crime.\textsuperscript{183} On the other hand, abundant evidence supported the conclusion that he was innocent.\textsuperscript{184}

Page's post-admission narrative did not fit the known crime facts. Page stated that Lee died after he slapped her with the back of his hand,\textsuperscript{185} causing her to fall and become unconscious as a trickle of blood came from her nose.\textsuperscript{186} It was not until days after the interrogation that the coroner determined that Lee had three large breaks at the base of the skull, causing considerable bleeding.\textsuperscript{187} At the time of Page's interrogation the police did not know the extent of Lee's skull fractures, nor

\textsuperscript{181} Interrogation Transcript of Bradley Page, Oakland, \textbf{Cal. Police Dep't} (Dec. 10, 1984) (on file with authors) [hereinafter Page, Interrogation Transcript].
\textsuperscript{182} Id.
\textsuperscript{183} See \textbf{Alix Christie}, \textit{The Strange Confession of Bradley Page: Bibi Lee's Lover Imagined a Crime But Did He Commit It?}, 27 \textbf{BERKELEY MONTHLY} 21, 46 (1986) (“\textit{w}hen the laboratory analyses came back from the F.B.I., it became obvious that his \textit{confession} was all that connected Brad page to the Crime”); \textit{see also} \textbf{MELANIE THERNSTROM, THE DEAD GIRL} 247 (1990) (“\textit{t}here was, after all, apart from the confession no evidence at all”).
\textsuperscript{184} \textit{See generally Page, supranote 4.}
\textsuperscript{185} Page, Interrogation Transcript, \textit{supra} note 181, at 3 (tape #2).
\textsuperscript{186} Id. at 4.
\textsuperscript{187} Page, \textit{supra} note 4, at 12. \textit{See also} \textbf{THERNSTROM, supra} note 183, at 179 (“\textit{Found in a hallow grave by search dogs . . . nose broken, eye orbit shattered, three separate blows to the head with some heavy sharp-edged instrument, assumed to be a rock . . . [was a] skull cracked open”).
apparently did Page.\textsuperscript{188} Page also stated that he made love to the dead body on a blanket taken from his vehicle;\textsuperscript{189} in fact, the blanket contained no evidence of sexual activity,\textsuperscript{190} no blood stains from Lee's massive head wounds,\textsuperscript{191} no signs of having been washed,\textsuperscript{192} and the hairs found on the blanket were not Lee's.\textsuperscript{193} Page guessed that he used a spare hubcap that was in his vehicle in an attempt to bury Lee,\textsuperscript{194} but the fibers and soil from the hubcap did not match either the fibers of Lee's clothing or the soil where her body was found.\textsuperscript{195} Page also stated that he dragged Lee's body more than 100 yards before burying it.\textsuperscript{196} Had this happened there would have been a trail of blood\textsuperscript{197} that surely would have been found by the various search and rescue and dog tracking teams that, beginning the day after her disappearance, spent hundreds of hours combing the area where Lee's body was eventually found.\textsuperscript{198}

In addition to the numerous discrepancies between Page's post-admission narrative and the facts of the crime, police ignored eyewitness evidence pointing to another suspect.\textsuperscript{199} In

\textsuperscript{188}Page, Interrogation Transcript, \textit{supra} note 181.
\textsuperscript{189}\textit{Id.} at 7 (tape #2).
\textsuperscript{190}Page, \textit{supra} note 4, at 12; \textit{see also} Christie, \textit{supra} note 183, at 46.
\textsuperscript{191}Page, \textit{supra} note 4, at 12.
\textsuperscript{192}\textit{Id.} It appeared that the blanket had not even been unfolded almost five years. \textit{See THERNSTROM, supra} note 183, at 237.
\textsuperscript{193}\textit{See} Page, \textit{supra} note 4, at 12; \textit{see also} THERNSTROM, \textit{supra} note 183, at 237 (eight hairs were found on the blanket, none of which matched Bibi Lee's); Christie, \textit{supra} note 183. Police interrogators at times seem to be obsessed with weird sex. One soft indicator of a false confession is that a suspect who has no known or discoverable history of aberrant sexual obsessions includes in his confession a report of a bizarre sexual act (such as necrophilia as in the Page confession, biting off the victim's nipple as in the Abney confession or anal rape as in the Sawyer case) which turns out not even to be a fact of the crime. If the confession itself is the result of the interrogator's influence over the suspect, then it is likely that reports of bizarre crime elements that did not happen are also traceable to influence from the interrogator.
\textsuperscript{194}Page, Interrogation Transcript, \textit{supra} note 181, at 8 (tape #2).
\textsuperscript{195}Page, \textit{supra} note 4, at 12. \textit{See also THERNSTROM, supra} note 183, at 237; Christie, \textit{supra} note 183, at 46.
\textsuperscript{196}Page, Interrogation Transcript, \textit{supra} note 181, at 7-8 (tape #2).
\textsuperscript{197}The pathologist at trial testified that the kind of head injury that the victim sustained would have produced a fair amount of blood. \textit{See THERNSTROM, supra} note 183, at 383.
\textsuperscript{198}\textit{See} Page, \textit{supra} note 4, at 12, 14-15; \textit{see also} THERNSTROM, \textit{supra} note 183, at 81. The massive hunt for the body of the victim, Bibi Lee, began the day after her disappearance, November 5, 1984.
\textsuperscript{199}Page, \textit{supra} note 4, at 14-15. \textit{See also} THERNSTROM, \textit{supra} note 183, at 197, 383; \textit{see also} Eye To Eye with Connie Chung, Confession (CBS News Television Broadcast, Jan. 13, 1994) [hereinafter CBS News, Confession].
1994 CBS News identified Michael Ihde—whose appearance was consistent with the reported eyewitness evidence and whose DNA and pattern of killing linked him to other local area murders—as Lee's murderer.\(^{200}\) Ihde was in prison in Washington State for two similar murders when he bragged that he killed three San Francisco Area women—one of whom was non-white (Lee was Asian American).\(^{201}\) Having convicted Page after two jury trials,\(^{202}\) Alameda Country prosecutors declined to charge Ihde with Lee's murder, but did charge him with a similar murder that happened within weeks of Lee's death.\(^{203}\)

2. Tom Sawyer

In 1986, Clearwater, Florida police coerced a confession from Tom Sawyer to the rape and murder of Janet Staschak after sixteen hours of interrogation that included numerous threats.\(^{204}\) There was no evidence linking Sawyer to the crime,\(^{205}\) and his post-admission narrative fit poorly with the facts of the case.\(^{206}\) For example, presuming that Staschak had been sexually assaulted, the interrogators led Sawyer to admit to both vaginal and anal rape during the creation of the post-admission narrative of the crime,\(^{207}\) but the medical examiner reported no evidence of sexual assault.\(^{208}\) Despite strenuous efforts by the interrogators, Sawyer was unable to corroborate the confession by supplying information about the victim's missing clothing, miss-

\(^{200}\) CBS News, Confession, supra note 199. See also Don Martinez, Killer Tied to E. Bay Slaying Authorities also Investigation Convict's Connection to 3 Killings from a Decade Ago, S.F. EXAMINER, Jan. 11, 1994, at A1.

\(^{201}\) Martinez, supra note 200, at A1.

\(^{202}\) The jury in the first trial acquitted Page of second degree murder but deadlocked 8-4 on the charge of voluntary manslaughter. The jury in the second trial found Page guilty of voluntary manslaughter after six days of deliberations, and he was sentenced to six years in prison. See Page, supra note 4, at 20-21; PRATKANIS & ARONSON, supra note 112, at 176-77.

\(^{203}\) Page was released after serving two years and eight months of his six year sentence. See Page Free After Doing 2 1/2 Years for 1984 Killing of His Girlfriend, S.F. EXAMINER, Feb. 11, 1995, at A5.

\(^{204}\) Interrogation Transcript of Tom Sawyer, Clearwater, Fla. Police Dep't (Nov. 6-7, 1986) (No. 86-28504) (on file with authors). See also State v. Sawyer, 561 So. 2d 278 (Fla. Dist. Ct. App. 1990); Ofshe & Leo, Social Psychology, supra note 4 at 234-38; Ofshe, Coerced Confessions, supra note 90, at 6-14.

\(^{205}\) Ofshe, Coerced Confessions, supranote 90, at 12.

\(^{206}\) Ofshe & Leo, Social Psychology, supra note 4, at 237.

\(^{207}\) Interrogation Transcript of Tom Sawyer, supra note 204, at 231.

\(^{208}\) Ofshe & Leo, Social Psychology, supra note 4, at 237.
ing keys, or the tape used to bind her. After the trial judge suppressed Sawyer’s confession, the state dismissed the charges, since no evidence of his guilt existed.

3. Martin Tankleff

After five-and-one-half hours of accusatory interrogation in 1988, Suffolk County, New York police obtained a confession from Martin Tankleff, then seventeen-years-old, to brutally stabbing and murdering his parents. No evidence linked Tankleff to the crime, and his post-admission narrative did not match the facts of the case. Instead, Tankleff’s narrative matched (indeed it was) the flawed theory of the crime that police detectives held at the time of Tankleff’s interrogation. Tankleff confessed to killing his parents with a dumbbell and a watermelon knife, yet both items tested negative for blood traces, hair and fibers. Medical testimony established that the head injuries to Martin’s father were caused by a hammer. Tankleff confessed to beating his mother with a dumbbell and then fighting with her, which would have been consistent with the defensive wounds on her arms, but Tankleff’s body was unscratched and the absence of any bruises suggested that he had not been in a life or death struggle with anyone. Tankleff confessed that he took a shower to wash away the substantial bloodstains the killings would have left on the perpetrator, but no blood residue or hairs from his parents were found in his shower. Tankleff had one bloodstain on his shoulder that could have been acquired when he discovered the bodies, but would have been washed away if he showered to remove the substantial bloodstains that likely marked the killer. Tankleff confessed to assaulting his parents between 5:35 a.m. and 6:10 a.m., but his mother’s time

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209 Id.
210 See Sawyer, 561 So. 2d at 297.
211 Ofshe & Leo, Social Psychology, supra note 4, at 238.
213 Id.
214 Id. at 94.
215 Id. at 95.
216 Id. at 94.
217 Id. at 95.
218 Id. at 94-95.
219 Id. at 94.
220 Id.
of death was established to be much earlier. Tankleff confessed to killing his mother and then walking through the house before attacking his father, but none of his mother’s blood was found along this pathway. The killer used gloves, but Tankleff’s confession made no reference to gloves. Tankleff confessed that after showering he removed his father from the chair and did not shower again, yet Tankleff’s clothes were not bloodstained. His confession was not corroborated by the physical evidence that should have linked him to the crime (if, in fact, he were guilty) and was merely a regurgitation of the factually erroneous theory the detectives admitted they had initially held. Nevertheless, a jury convicted Tankleff of two counts of second degree murder. Tankleff’s judge sentenced him to prison for fifty years to life.

4'. Richard Lapointe

In 1989, two years after the murder of Bernice Martin, Manchester, Connecticut Police interrogated Richard Lapointe, the husband of the victim’s granddaughter. During an unrecorded nine and one-half hour interrogation, Lapointe, a mentally handicapped adult, signed three contradictory confessions to raping, stabbing, and strangling the victim. No physical evidence either linked Lapointe to the crime or corroborated any of his incriminating statements. In fact, each of Lapointe’s three confessions was inconsistent with the others and contradicted the facts of the crime. In 1992, a jury convicted

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221 Id.
222 Id
223 Id
224 Id
225 See CONNERY, supra note 3, at 1-2.
226 Confession Statements of Richard Lapointe, Manchester, Conn. Police Dep’t (July 4, 1989) (in possession of authors). See also Donald S. Connery, Justice Unserved?: Connecticut is About to Witness the Appeal of Another Murder Conviction Based on a Questionable Confession, in BORCHARD, supra note 3, at 33.
227 See Tom Condon, Reasonable Doubt, in CONNERY, supranote 3, at 28 (‘The confession has so many inconsistencies that it is almost as if Lapointe confessed to the wrong crime’).
Lapointe of capital felony murder and eight related charges, and sentenced him to life in prison without the possibility of parole plus sixty years.\(^{230}\) Lapointe remains in prison today with little hope of ever being released.

An analysis of the fit between Lapointe's post-admission narrative and the facts of the crime reveals that it would have been virtually impossible for Lapointe to have committed the crime in the time available to him. In an interview with his wife immediately following Lapointe's arrest (an interview police chose to record),\(^{231}\) Mrs. Lapointe recounted her husband's activities on the day of her grandmother's death. Her account provided Lapointe with an alibi for all but thirty to forty-five minutes of the day.\(^{232}\) In that brief period Lapointe would have had to have walked ten minutes to Bernice Martin's apartment, have coffee with her, rape her, bind her, stab her, set fire to the apartment and walk back to his residence.\(^{233}\) Yet, when he returned after his walk Lapointe did not appear sweaty or disheveled.\(^{234}\) Lapointe confessed to killing the victim at the location in her apartment where the police believed she had been stabbed, on the couch.\(^{235}\) However, medical testimony established that she was not killed while on the couch.\(^{236}\) Lapointe admitted to an erroneous police theory of the victim's death, manual strangulation with both hands,\(^{237}\) but the medical examiner reported that the victim died from strangulation by compression (i.e., a blunt object had been pushed against the right side of her neck).\(^{238}\) Lapointe confessed to moving the victim's body (the police theory of the crime at the time of the interrogation), which weighed 160 pounds.\(^{239}\) However, Lapointe, suf-

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\(^{230}\) Connery, supra note 228, at 35.
\(^{231}\) Alex Wood, Does Police Lying Compromise Society's Search for Justice, J. INQUIRER, Jan. 9, 1995, at 4-5.
\(^{232}\) Condon, supra note 229, at 25.
\(^{233}\) Id.
\(^{234}\) Id.
\(^{235}\) Id.
\(^{237}\) Condon, supra note 229, at 29.
\(^{238}\) Id
fers from Dandy-Walker Syndrome and has shunts surgically inserted in his head that render him incapable of lifting more than fifty pounds. Lapointe confessed to the sexual assault theory of the crime held by the police—rape with his penis. In fact, the victim was raped with a blunt instrument. The killer's gloves were left behind at the crime scene, but they were too large to fit Lapointe's tiny hands. Eyewitnesses saw a large man who did not match Lapointe's description running away from the crime scene; they insisted that this man was not Lapointe.

5. Jessie Misskelley, Jr.

In 1993 West Memphis, Arkansas police coerced a confession from Jessie Lloyd Misskelley, Jr., a mentally handicapped seventeen-year-old. He confessed to participating as an accessory in the brutal murder of three eight-year-old boys. Misskelley's statement to police was inconsistent with the facts of the case, was not supported by any evidence, and demonstrated that he lacked personal knowledge of the crime. Misskelley confessed that he witnessed the murders taking place around noon when, in fact, the victims were all in school. They did not disappear until after approximately 5:30 p.m. Misskelley confessed that a brown rope had been used to bind the boys.

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240 Dandy Walker Syndrome is a congenital brain malformation in which cysts form on the brain from a buildup of fluid on the skull. As a result, Lapointe is missing connective tissue between the hemispheres in the cerebella area. See Perske, supra note 108, at 323; see also Stephen Greenspan, There is More to Intelligence than IQ, in CONNERY, supra note 3, at 136-51.

241 Perske, supra note 108, at 323.

242 Id.


244 Id.

245 Id.

246 Ofshe, I'm Guilty if You Say So, supra note 109, at 101-02.

247 Interrogation Transcript Nos. 1 & 2 of Jessie Misskelley, Jr., West Memphis, Ark. Police Dep't (June 3, 1993) (No. 93-05-0666) (on file with authors).

248 Interrogation Transcript No. 1 of Jessie Misskelley, supra note 247, at 17.

249 See Bartholomew Sullivan & Marc Perrusquia, Relatives, Lawyers Dispute Account By Misskelley in Slayings of Boys, COM. APPEAL, June 8, 1993, at A1. The briefly recorded portion of Misskelley's interrogation revealed that the interrogator manipulated Misskelley to place the killings at the correct time by raising the issue eight times and producing a series of shifts in Misskelley's response. See Interrogation Transcript Nos. 1 & 2 of Jessie Misskelley, supra note 247.

250 Interrogation Transcript No. 2 of Jessie Misskelley, supra note 247, at 4.
when, in fact, shoelaces of various colors had been used.\textsuperscript{251} Numerous alibi witnesses testified that at the time the three children disappeared and for the next five hours (during which the murders probably occurred), Misskelley was at a wrestling competition in a town forty miles away from the crime scene.\textsuperscript{252} Despite the complete lack of any evidence of Misskelley's participation in the crime and despite his grossly incorrect confession, an Arkansas jury convicted Misskelley of one count of first degree murder and two counts of second degree murder.\textsuperscript{253} He is currently serving a life sentence.\textsuperscript{254}

6. Gary Gauger

In 1993, after eighteen hours of confrontational, intense and highly deceptive interrogation in McHenry County, Illinois, sheriff's detectives extracted from Gary Gauger a hypothetical, unsigned confession to the brutal murder of both his parents.\textsuperscript{255} According to police, Gauger said that he approached his parents from behind and slit their throats.\textsuperscript{256} However, his alleged confession was inconsistent with the facts of the crime.\textsuperscript{257} Even though police confiscated more than 160 items from the house where the double murders occurred,\textsuperscript{258} not a single piece of evidence linked Gauger to the crime.\textsuperscript{259} Police could not find any of Gauger's blood on knives or faucets, even though he allegedly washed his hands after the double murder.\textsuperscript{260} Gauger gave the police the wrong number of slash wounds to his


\textsuperscript{254} Id.


\textsuperscript{256} Id. at 17.

\textsuperscript{257} Id. at 30-43.

\textsuperscript{258} Id. at 23.

\textsuperscript{259} Id. at 30-43

\textsuperscript{260} Id. at 24.


\textsuperscript{262} Id.
mother's throat, and his confession did not make any mention of the additional bludgeon wounds that his father suffered. Gauger confessed to the police theory of the crime—slashing his parents' throats from behind while they were standing. If they had been killed as Gauger described, blood would have spurted from both parents' throats across the room and onto the walls. Though police found the victims lying in pools of blood, there was little or no blood on the walls and shelves surrounding them. Moreover, medical testimony established that the victims' throats were slit while they were on the ground, not while they were standing. An autopsy revealed that both victims had been beaten over the head, and that Gauger's father had been stabbed in the back—facts not contained in the confession. A jury convicted Gauger of first degree murder. The trial judge initially sentenced him to death, but subsequently re-sentenced Gauger to life imprisonment without eligibility of parole. Sixteen months later, an Illinois Appeals Court reversed his conviction and released him from prison because police had improperly obtained his confession. Since then, federal prosecutors have charged two men belonging to a Detroit-based motorcycle gang with the murders of Gauger's parents.

7. Edgar Garrett

In 1995, police in Goshen, Indiana persuaded Edgar Garrett that he killed his daughter, Michelle, who had mysteriously
disappeared. During fourteen hours of interrogation, Garrett gave an increasingly detailed confession describing how he murdered his daughter, whose body had not yet been found. No independent evidence linked Garrett to the crime or corroborated his confession, and his post-admission narrative contradicted all the major facts in the case. Garrett confessed to walking into a park with his daughter through new-fallen snow, bludgeoning her with an axe handle at a river's edge and dumping her body in the river. However, the police officer who arrived first at the crime scene did not see footprints in the snow-covered field at the entry to the park, but instead saw tire tracks entering the park, bloody drag marks leading from the tire tracks to the river's edge and a single set of footprints going to and returning from the river. Obviously, Michelle Garrett's body had been unloaded from a vehicle and dragged to the river, but Edgar Garrett did not own a car, and no evidence was ever uncovered that he had access to a car that day. Michelle's coat was recovered from the river separately from her body, suggesting Michelle had been killed indoors and transported to the river-bank.

Garrett's confession expressed the theory the police held at the time of the interrogation—that Michelle was clubbed to death. It was not until weeks later, when her body was recovered, that the police and Garrett learned that Michelle had been stabbed thirty-four times. Michelle's head showed no evidence of blunt force trauma, and, not surprisingly, the axe handle Garrett supposedly used to kill her carried no traces of

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*Psychology, supra note 4, at 231-34; BNA Crim. Prac. Man., Expose of False Confession, supra note 97, at 8.
275 Ofshe & Leo, *Social Psychology, supra note 4, at 231.
276 Interrogation Transcript of Edgar Garrett, *supranote* 274.
277 Ofshe & Leo, *Social Psychology, supra note 4, at 234.
278 *Id.* See also BNA Crim. Prac. Man., Expose of False *Confession, supra note 97, at 11-12.
279 Ofshe & Leo, *Social Psychology, supra note 4, at 234. See also BNA Crim. Prac. Man., Expose of False *Confession, supra note 97, at 11-12.
280 Ofshe *8c* Leo, *Social Psychology, supra note 4, at 234
281 *Id.*
282 *Id.*
283 *Id.*
284 *Id.*
285 *Id.*
286 *Id.*
At trial, the jury acquitted Garrett of capital murder.  

8. Douglas Warney

In 1996, Rochester, New York police elicited a confession from Douglas Warney to the brutal stabbing and murder of sixty-three-year-old William Beason. Warney, a mentally handicapped man who was suffering from AIDS-related dementia at the time of his interrogation, confessed to stabbing Beason fifteen or more times. The District Attorney initially charged Warney with capital murder, but reduced the charge to second degree murder after the New York media published several high profile stories criticizing his charging decision (even though the confession, if true, supported a capital charge). There was no physical evidence linking Warney to the brutal murder. Instead, virtually all of the physical evidence contradicted Warney's confession. Warney confessed that he stabbed Beason in the kitchen, but Beason was found stabbed in his bedroom. There was no blood in the kitchen. Warney confessed that he cut his finger during a struggle with Beason and wiped his hand in the bathroom. A medical examination shortly after Warney's arrest revealed no evidence of a cut, and laboratory tests showed that the blood in the bathroom did not come from Warney or Beason. The killer left a trail of blood at the scene, but none of the blood matched Warney's blood type. Warney confessed that he threw his bloody

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287 Id.
288 Id. The murder of Michelle Garrett remains unsolved largely because Goshen Indiana police would first have to admit that they caused an innocent man to confess to his daughter's murder. See generally id.
289 Dwyer, Slay Confession, supra note 55, at 8.
290 Id.
291 Dwyer, State's Unjust Blood Lust, supra note 55, at 6.
292 Dwyer, Slay Confession, supra note 55, at 8.
293 Telephone Interview with William Easton, Attorney, N.Y. Capital State Defender's Office (Apr. 21, 1997).
294 Dwyer, Slay Confession, supra note 55, at 8.
295 Id.
296 Dwyer, State's Unjust Blood Lust, supra note 55, at 6.
297 Herbert, supra note 4, at A5.
298 Dwyer, Slay Confession, supra note 55, at 8.
299 Herbert, supra note 4, at A5.
300 Dwyer, State's Unjust Blood Lust, supra note 55, at 6.
301 Dwyer, Slay Confession, supra note 55, at 8.
clothes into a garbage can outside his apartment, but the garbage contained no bloody clothing. Warney confessed that he drove his brother's brown Chevy to the murder, but his brother had not owned a Chevy for six years and did not own a car at the time of the killing. Nevertheless, a jury convicted Warney of second degree murder, and the judge sentenced Warney to twenty-five years to life.

C. PROBABLE FALSE CONFESSIONS

1. Tammy Lynn Harrison

In 1979, following several days of intensive interrogation by Duncanville, Texas police Lieutenant Robert Moore, Tammy Lynn Harrison, a seventeen-year-old, signed a confession to stabbing her mother to death. Moore coerced Harrison's confession by repeatedly telling her that she would die in the electric chair if she did not confess. There was no physical or other evidence connecting Harrison to the crime, and she steadfastly maintained her innocence, repudiating her post-admission narrative while making it. After the trial judge ruled Harrison's confession inadmissible, the prosecutor dismissed all charges for lack of evidence. Shortly after the confession was suppressed, the Duncanville Police Department fired Lieutenant Moore.

2. Barry Lee Fairchild

In 1983, Pulaski County, Arkansas sheriffs extracted a confession from Barry Lee Fairchild, a mentally handicapped Af-

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502 Id.
503 Id.
504 Interview with William Easton, supra note 293.
507 Id
510 Id at 13 ("As she confesses, the girl interjects, 'I am [telling it], but I'm not believing it,' and 'I don't remember it, really. I don't even know if that's right; it's what I think.'").
511 Id
512 Interview with Robert C. Hinton, Jr., supra note 308.
513 PERSKE, supra note 3, at 102.
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erican-American,\textsuperscript{314} to participating as an accessory in the abduction, rape and murder of Majorie Mason.\textsuperscript{315} There was no independent evidence connecting Fairchild to the crime;\textsuperscript{316} in fact, blood, hair and semen failed to positively link Fairchild to the crime.\textsuperscript{317} Fairchild maintained his innocence and insisted that he confessed only because Sheriff Tommy Robinson and Deputy Sheriff Larry Dill physically beat, assaulted, and threatened him.\textsuperscript{318} Fairchild's \textit{videotaped} confession statement shows him looking away from the camera and responding to the prompting of others in the room.\textsuperscript{319} In 1990—seven years after Fairchild's conviction on capital murder charges—thirteen African-American men publicly disclosed that, like Fairchild, they too had been detained for questioning about the Mason murder and were tortured.\textsuperscript{320} One of these men, Michael Johnson, reported that he heard sheriffs in the next room torture Fairchild.

\textsuperscript{314} Forensic Evaluation of Professor Ruth Luckasson and Denis W. Keyes at 3 (Feb. 28, 1989) (on file with authors) ("On the Wechsler Adult Intelligence Scale-Revised, Fairchild demonstrated a Full Scale IQ of 61. These scores place him within the lowest 1% of the population. Fairchild has mental retardation.").

\textsuperscript{315} \textit{Confession at Gunpoint?}, supra note 10.

\textsuperscript{316} Shortly after Fairchild's confession, police retrieved a watch similar to the one owned by the victim from Fairchild's sister. While the state offered this as corroboration of Fairchild's confession (which even the state acknowledged was, in part, not true), Fairchild testified at trial that he bought the watch from someone at a pool hall, sold it to his sister. \textit{See} Fairchild v. \textit{Norris}, 21 F.3d 799, 803 (8th Cir. 1994). In the end, the state conceded that without the confession the case against Fairchild simply would have fallen \textit{apart}. \textit{Confession at Gunpoint?}, supra note 10.

\textsuperscript{317} \textit{See} \textit{Confession at Gunpoint?}, supranote 10. In addition, Fairchild's post-admission narrative contained several glaring errors of fact For example, Fairchild told officers where he had thrown his gloves away, but they were unable to find them there. \textit{See} Fairchild v. Lockhart, \textbf{744} F. Supp. \textbf{1429}, \textbf{1521} (E.D. Ark. 1989). Fairchild also identified Harold Green as his accomplice, but Green was in Colorado when the crimes took place. \textit{See Norris}, 21 F.3d at 813.

\textsuperscript{318} \textit{Confession at Gunpoint?}, supranote 10.

\textsuperscript{319} \textit{Id. See also} \textit{Execution of Retarded Man is Fought}, \textit{N.Y. TIMES}, Aug. \textbf{31}, 1995, \textit{at B12}.

\textsuperscript{320} \textit{Confession at Gunpoint?}, supranote 10. Despite the absence of the physical evidence that should have linked Fairchild to the crime if he were guilty, despite the factual inaccuracies in Fairchild's confession statements, and despite the highly questionable circumstances under which they were extracted, the courts repeatedly declared that Fairchild's confession was voluntary and reliable. \textit{See}, e.g., Fairchild v. Norris, \textbf{869} F. Supp. \textbf{672}, \textbf{690} (E.D. Ark. 1993) ("Mr. Fairchild's confessions were given voluntarily and the truth of the essential facts stated in those confessions cannot be doubted by any fair and objective person"), \textit{rev'd}, 21 F.3d 799 (8th Cir. 1994). In fact, many people have doubted the validity of Fairchild's confession. \textit{See}, e.g., \textit{More Questions Than Facts}, \textit{ARK. DEMOCRAT-GAZETTE}, Sept. \textbf{8}, 1995, at B9; John Brummet, \textit{The Fairchild Issues Won't Die}, \textit{ARK. DEMOCRAT-GAZETTE}, Aug. \textbf{29}, 1995, at B7; "Dear Colleague" Letter from Congressmen John Conyers, Jr. & Don Edwards, \textit{Urgent!! Stop The Execution of an Innocent Man} (Sept. 21, 1993) (proclaiming Fairchild's innocence) (on file with authors); \textit{Confession at Gunpoint?}, supranote 10; \textit{PERSKE}, supranote 3, at 102-03.
into confessions. Two former Pulaski County Sheriff Deputies, Frank Gibson and Calvin Rollins, have admitted that physical assault and abuse were common interrogation tactics at the time of Fairchild's arrest. Nevertheless, all of Fairchild's legal appeals failed, and he was executed on August 31, 1995.

3. Jane Bolding

In 1985, after twenty-three hours of continuous interrogation, Virginia police extracted a confession from nurse Jane Bolding to injecting two patients with fatal doses of potassium. The prosecution charged her with three counts of first degree murder and seven counts of assault with intent to murder. No credible evidence linked Bolding to the crimes. The medical examiners had initially classified Bolding's patients as dying from natural causes. The trial judge suppressed Bolding's confession and then acquitted her of all charges. He wrote that, "the state at most has placed the defendant at the scene... The state's reach exceeded its grasp. The evidence failed to supply the missing link that would tie the defendant to the criminal act."

4. Delbert Ward

In 1990, New York State Police interrogated Delbert Ward, a fifty-nine-year-old illiterate and mentally handicapped farmer. Ward eventually signed a confession admitting that he had murdered his brother, William, by putting his hand over William's nose and mouth. Ward reported that he had been in-

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521 Confession at Gunpoint?, supra note 10.
522 Id. These admissions, in effect, corroborate the testimony of the 13 other African-American men who, like Fairchild, were tortured by Pulaski County Sheriffs in the Mason murder investigation—allegations that the courts had largely dismissed in finding that Fairchild's confessions were voluntary and reliable. See, e.g., Fairchild v. Lockhart, 979 F.2d 636 (8th Cir. 1992).
525 Id.
526 Ginsburg, supra note 125.
527 Patch, supra note 126.
528 Ginsburg, supra note 125.
529 Id.
530 See PERSKE, supra note 3, at 88-94; see also WECHT, supra note 135, at 238-62. Delbert Ward has an IQ of 69. See WECHT, supra note 135, at 255.
timidated into confessing, and thereafter steadfastly maintained his innocence. When the Assistant Medical Examiner of Onondaga County, Dr. Humphrey Germaniuk, filled out William Ward's death certificate and turned the body over to the funeral home, he did not believe that a homicide had occurred. However, immediately after learning of Delbert Ward's confession, Dr. Germaniuk re-classified William Ward's death as a homicide.

There was no credible evidence linking Delbert Ward to his brother's death. Instead, the evidence supported the conclusion that William Ward died of natural causes, not of asphyxiation. Four common and telltale signs that should have been present if William Ward had died of asphyxia were not there: (1) William Ward's nose and mouth were free of trauma or blood; (2) there was no evidence of regurgitation; (3) there was no thinning of the blood; and (4) there was not a bluish or purple appearance to the skin. At the same time, William Ward's enlarged heart, clogged coronary and pulmonary arteries, and his fluid-filled lungs supplied clear evidence that he had died of natural disease. Nevertheless, at trial, Dr. Germaniuk testified for the prosecution that William Ward died of asphyxiation, while the forensic pathologist Dr. Cyril Wecht testified for the defense that William Ward died of natural causes. After al-

531 PERSKE, supra note 3, at 90. See also Face to Face with Connie Chung, supra note 134. When asked at trial why he confessed, Ward responded: "They said if I cooperated it would go easier... so I said yes. It wasn't true. I was nervous and shook up. I hadn't eaten all day. I was tired. My brother had just passed away... I thought if I said yes, they would let me go home." WECHT, supra note 135, at 255.
532 See generally PERSKE, supra note 3; WECHT, supra note 135.
533 WECHT, supra note 135, at 223.
534 Id.
535 Id. at 245-48.
536 As Dr. Cyril Wecht reports:

for one thing, the right lung weighed almost twice as much as the left, while the lower part of the left lung was covered with scar tissue that held it to the chest cavity. Most importantly, both lungs showed 'prominent arteriosclerotic plaques' of the pulmonary arteries—another sign of cardiopulmonary disease. Considered with the enlarged liver and spleen, this was clear evidence of congestion due to an inadequately functioning heart.

Id. at 247.
537 Id. at 252-54.
538 Id. at 256-60. Dr. Wecht argues that Dr. Germaniuk botched the initial autopsy; that he changed his initial report and the cause of death listed on the death certificate only after he learned that criminal charges would be brought against Delbert Ward (but before receiving results from William Ward's toxicology and microscopic examinations); that during his trial testimony Dr. Germaniuk misrepresented the meaning and significance of certain findings; that he provided factually incorrect tes-
most nine hours of deliberation, the jury acquitted Ward of murdering his brother.\footnote{PERSKE, supra note 3, at 93; WECHT, supra note 135, at 260-62.} Two days after the trial, the investigator who had elicited Ward's false confession "was reprimanded and ended up taking an early retirement in Florida."\footnote{WECHT, supra note 135, at 262.}

5. Luis Roberto Benavidez

In 1992, in Simi Valley, California, Luis Roberto Benavidez confessed to the slaying of Marcos Anthony Scott more than two years earlier.\footnote{Lozano, supra note 4, at B5.} Benavidez claimed that he confessed only because his interrogators threatened to send his girlfriend to prison for the murder and place their two-year-old daughter in a foster home if he did not confess.\footnote{Id.} The police denied that they coerced Benavidez's confession,\footnote{Carol Bidwell, Murder Suspect's Bail Upheld; Defense Lawyer Says Confession is False, L A DAILY NEWS, Apr. 11, 1992, at SV1.} and the judge ruled that the confession was admissible.\footnote{Carol Bidwell, Judge Rules Man's Murder Confession Can Be Used In Trial, L.A. DAILY NEWS, June 25, 1992, at SV5.} There was no credible evidence linking Benavidez to the crime, and the jury acquitted Benavidez of the murder charge.\footnote{Id.} The jury forewoman stated that "the prosecution did not prove that Roberto was the killer. We had to find corroborating evidence besides his confession that pointed to his guilt. . . . there was no separate evidence to substantiate the murder charge."\footnote{Id.}

6. Linda Stangel

In 1995, Oregon State Police coerced Linda Stangel into confessing to shoving her boyfriend, David Wahl, off a trail 320 feet above the Oregon Coast.\footnote{Suppression Hearing Testimony of Richard J. Ofshe, State v. Stangel, Nov. 12 &c Dec. 9, 1996 (No. 96151205) (Clatsop County Cir. Ct., Astoria, Or.) (on file with authors).} After Wahl's death, Oregon State Police lured Stangel from her home state, Minnesota, back to Portland by secretly funding her trip (via Wahl's family) to at-
tend Wahl's memorial service. Knowing that Stangel was terrified of heights, two detectives obliged her to walk up the narrow, steadily rising bluff trail from which they presumed her boyfriend had fallen. Stangel broke down in apparent fear of the cliff edge as they climbed the trail. Despite considerable pressure from the police, Stangel maintained her innocence prior to being manipulated up the trail, and consistently told police that she had last seen Wahl when he went off to take a walk along the coast. To escape the immediate stress of the narrow and terrifying heights, Stangel confessed to accidentally pushing her boyfriend off the cliff.

The police elicited Stangel's confession not only by playing on her fear of heights, but also by using the *admission scenario* technique to create the impression that her admission—to pushing Wahl off the cliff in a panic after he gave her a "joking, fake push"—carried no punishment.

Yet there was no evidence linking Stangel to the crime. Stangel's several different accounts of her panic response were inconsistent with one another and all failed to describe physical circumstances that would have caused Wahl to fall from the cliff—even if Stangel had panicked and pushed him. Moreover, the state never produced any evidence that a crime occurred, since Wahl's body did not wash up for weeks, and thus no

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548 Court TV to Air Live Coverage of Oregon v. Linda Jean Stangel, Bus. WIRE (Jan. 7, 1997).
549 Report of Detective Hampton of Or. State Police, June 24, 1996, 6-10 (No. 96151205) (on file with authors) [hereinafter Report of Detective Hampton].
550 Id. at 12. See also Kate Freedlander, Stangel Says Confessions Coerced, OREGONIAN, Jan. 15, 1997, at B01.
552 Id. at 12.
553 Freedlander, supra note 350, at B01.
555 The *admission scenario* technique relies on communicating a promise of leniency for its efficacy and has been demonstrated to elicit false confessions. See Ofshe & Leo, Social Psychology, supra note 4, at 191-93; Saul Kassin & Karyln McNall, Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication, 15 LAW & HUM. BEHAV. 233, 247-50 (1991).
556 Freedlander, supra note 350, at B01.
557 Kate Freedlander, Defendant Found Boyfriend's Scream Annoying, OREGONIAN, Jan. 11, 1997, at B05.
cause of death could be determined.\textsuperscript{358} Based solely on the contents of her coerced and unreliable confession,\textsuperscript{359} a jury convicted Stangel of second degree manslaughter,\textsuperscript{360} and she was sentenced to more than six years in prison.\textsuperscript{361}

IV. FALSE CONFESSIONS AND CASE OUTCOMES

A. DEPRIVATIONS OF LIBERTY AND MISCARRIAGES OF JUSTICE

Cases involving suspected or established false confessions typically result in some deprivation of the false confessor's liberty. The amount of deprivation may vary from a brief wrongful arrest and detention to lifelong incarceration or execution. The harms of false confessions can be measured by the amount of liberty deprived in each case. Table B1 summarizes the deprivations of liberty and miscarriages of justice associated with the sixty cases involved in this study. Each case outcome is classified into one of four categories (wrongful arrest/detention, wrongful prosecution, wrongful incarceration and wrongful execution) corresponding to the amount of harm done.

\textbf{TABLE B1}

\textbf{MAGNITUDE OF HARM RESULTING FROM FALSE CONFESSION}

<table>
<thead>
<tr>
<th>Degree of Deprivation of Liberty</th>
<th>Total</th>
<th>Percentage of Total Cases (60)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest and Detention</td>
<td>5\textsuperscript{362}</td>
<td>8%</td>
</tr>
<tr>
<td>Prosecutions</td>
<td>26</td>
<td>43%</td>
</tr>
<tr>
<td>Dismissed Prior to suppression hearing</td>
<td>8\textsuperscript{363}</td>
<td>13%</td>
</tr>
<tr>
<td>Dismissed Post suppression/prior to trial</td>
<td>10\textsuperscript{364}</td>
<td>17%</td>
</tr>
</tbody>
</table>

\textsuperscript{358} The Deputy State Medical Examiner found that the victim's injuries could have been caused either by a vehicle accident or by falling from a high place. \textit{See} Kate Freedlander, \textit{Mother Tells of Loud Arguments Between Son}, \textit{Girlfriend}, \textit{OREGONIAN}, Jan. 10, 1997, at D06.

\textsuperscript{359} At the prosecutor's request, Stangel took a polygraph examination administered by a police agency in Minnesota. Although Stangel passed the examination, the judge refused to allow the polygraph result to be used at the suppression hearing. The police officers who elicited Stangel's confession did not take a polygraph examination. \textit{See} Letter from David E. Knefelkamp, Bureau of Crim. Apprehension, St Paul, Minn., to Dean Schroeder, Deputy Sheriff, Clatsop County Sheriffs Office, Astoria, Or. (Dec. 13, 1995) (on file with authors).

\textsuperscript{360} Freedlander, \textit{Stangel}, supra note 131, at A01.


\textsuperscript{362} ID Nos.: 7, 8, 11, 15, 31.

\textsuperscript{363} ID Nos.: 3, 13, 14, 17, 18, 25, 57, 59.

\textsuperscript{364} ID Nos.: 1, 5, 16, 21, 23, 28, 29, 37, 49, 56.
B. Classifying Case Outcomes

In general, false confession cases can be usefully divided into two categories: those that result in pre-trial deprivations of liberty (Type I cases); and those that result in miscarriages of justice and wrongful deprivation of many years of liberty and/or of life (Type II cases). Type I cases occur when police, prosecutors, trial judges or juries correct the initial error of relying on a questionable confession. There are multiple points in the trial process at which the criminal justice system has the potential to be self-correcting. Indeed, the rules of American criminal procedure are structured to allocate the risk of error so as to minimize the possibility of convicting the innocent.

1. Type I Cases: False Confessions That Do Not Lead to Conviction (52 %)

a. General

Sometimes police extract a confession from an innocent suspect that they initially believe to be true, but either they or the prosecutors realize is false before the filing of charges. In other instances, police and prosecutors realize that an innocent suspect has confessed because it is physically impossible for the suspect to have committed the crime. Sometimes officials do not come to the realization that the confession is false until after another suspect has confessed to the crime. And sometimes po-

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565 ID Nos: 2, 35, 38, 40, 52, 53, 54, 60.
566 ID No.: 4.
567 In the few cases involving an indeterminate sentence, the upper limit of the sentence was chosen.
568 ID Nos: 9, 47, 58.
569 ID Nos: 10, 12, 19, 24, 27, 30, 32, 36, 43, 51.
570 ID Nos: 6, 20, 22, 26, 34, 39, 41, 45, 46, 48, 50.
571 ID Nos: 33, 42, 44.
572 ID No.: 55.
lice and prosecutors never come to this realization even though the confession is demonstrably not true (i.e., contradicts the known facts of the crime).

The Type I false confession cases described above include: Billy Gene Davis' confession that he killed his ex-girlfriend (who turned up alive); Ruben Trujillo's, Pedro Delvillar's, Jose Soto Martinez's and Ivan Reliford's confessions to crimes which were committed when all were in custody; Christina Mason's confession to killing her child, who died of natural causes; and Martin Salazar's confession to a crime that scientific evidence proved he did not commit.

b. Confessions From The True Perpetrator

Often police or prosecutors only discover and acknowledge their error in eliciting a false confession or charging an innocent defendant prior to conviction because they have accidentally or unintentionally obtained a reliable confession from the true perpetrator(s) of the crime. Several such cases described above include: Paul Reggetz, who was cleared of murdering his wife when a neighbor confessed to the crime; Anthony Atkinson, who confessed to murder and sodomy but was released when two other men confessed to the crime; Guy Lewis, who confessed to killing his girlfriend, but was released when the real killers confessed; Robert Moore, whose confession to capital murder and robbery was disregarded when the true killer confessed and identified his two co-perpetrators; and Donald Shoup, whose capital murder charges were dropped after the true killer confessed.

575 Phillips, supra note 4, at B3.
574 See Feldman, supra note 44, at B1.
575 See id.
576 See Granberry, supra note 4, at A1.
577 See Nathan, supra note 62, at 1.
578 See Rossmiller & Creno, supra note 4, at B4.
579 Ofshe & Leo, Social Psychology, supra note 3.
581 See generally YANT, supra note 4.
582 See Colwell, supra note 4, at 23.
583 Perrusquia, supra note 4, at A1.
584 Herbert, supra note 4, at A5.
585 Holland, supra note 4, at 1A.
c. Prosecutorial Intervention

Though it appears to happen relatively infrequently, prosecutors sometimes drop charges against a defendant who has confessed because the confession does not match the facts of the crime and the prosecutor thus recognizes that it is of no evidentiary value. In 1991, Snohomish County, Washington prosecutors dropped charges against Charles Lawson when they realized that Lawson had wrongly reported many of the crucial facts in his confessions to two separate murders.\(^{386}\) Similarly, in 1994 prosecutors in Louisiana dismissed second degree murder charges against Cyril Walton after realizing that many of the details in his confession simply did not fit the facts of the crime.\(^{387}\)

d. Judicial Suppression

Sometimes prosecutors are forced to drop charges after a judge suppresses a confession because there is no physical or even uncompromised testimonial evidence to implicate the defendant. In 1983, using a guided visualization and relaxation based hypnotic induction, Wheeling, Illinois police elicited from fourteen-year-old William Boyd a confession to murdering a schoolmate.\(^{388}\) Although bite marks on the victim's body did not match Boyd's teeth, prosecutors charged him with murder.\(^{389}\) After a Cook County Circuit Court judge suppressed Boyd's confession, prosecutors dismissed charges.\(^{390}\) Similarly, in the Sawyer case,\(^{391}\) Florida prosecutors dismissed charges after the trial judge suppressed Tom Sawyer's grossly inaccurate confession.\(^{392}\)

Though judges can prevent Type I cases from developing into Type II cases if they suppress the confession prior to trial,\(^{393}\) they may also vacate a conviction both prior to and after sentencing. This happened to the charges against Lavale Burt in

\(^{386}\) Houtz, supra note 4, at B1.
\(^{387}\) Darby, supra note 4, at B2.
\(^{388}\) Drell, supra note 92, at 11.
\(^{389}\) Id.
\(^{390}\) Id.
\(^{391}\) See supra notes 204-11 and accompanying text
\(^{393}\) In all sixty cases documented in this article judicial suppression of the confession would almost certainly have caused the prosecutor to dismiss all charges against the defendant because in each of these cases no credible evidence linked the suspect to the crime and varying amounts of evidence indicated that the suspect was factually innocent.
1985. Chicago, Illinois police extracted a confession from Burt after slapping him around, threatening him with the death penalty, and fabricating evidence of his guilt. A jury subsequently convicted Burt. Between his conviction and sentencing, however, the grandmother of the murder victim contacted the judge and provided new evidence showing that Burt was not the killer, causing the trial judge to vacate his conviction. Similarly, a judge in Montgomery, Alabama vacated Melvin Beamon's 1989 murder conviction (and twenty-five-year prison sentence) after an eyewitness to the crime came forward and exonerated him. Beamon had confessed after seventeen hours of interrogation, during which Montgomery, Alabama police beat and threatened to shoot him.

e. Jury Acquittals

If police fail to detect that a confession is unreliable, prosecutors fail to dismiss charges and the judge fails to suppress the confession, the defendant may still be able to persuade a jury of his innocence. Though juries tend to regard confessions as the most probative and damning evidence of guilt possible, they sometimes acquit defendants who have confessed falsely. For example, in 1986 after almost ten hours of interrogation, police in Flagstaff, Arizona extracted a highly probable false confession to a Navajo ritual slaying from George Abney in a recorded interrogation. At trial, the defense presented Abney's unimpeachable alibi, identified the likely killer and analyzed the

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394 Warden, supra note 4, at 42-46. See also Radelet Et Al., supra note 9, at 292.
395 Warden, supra note 4, at 42-46; Radelet Et Al., supra note 9, at 292.
396 Radelet Et Al., supra note 9, at 292.
397 Id
398 In some cases a judge may not be provided with sufficient evidence to warrant suppressing the confession. For example, if the interrogation is not recorded, a defendant may not be able to overcome a police officer's perjured testimony denying the use of coercive interrogation techniques and strategies. See Stephan v. State, 711 P.2d 1156 (Alaska 1985).
400 This appears to be especially true if juries are educated about the social psychology of American interrogation practices and are shown precisely how a particular interrogation affected the defendant's decision to confess. See United States v. Hall, 93 F. 3d 1337, 1343-44 (7th Cir. 1996) (reversing district court exclusion of expert testimony by Richard Ofshe on the phenomenon of false confessions).
402 Ofshe, Coerced Confessions, supra note 90, at 6.
interrogation for the jury—who acquitted Abney. In 1993, Mesa, Arizona police interrogators elicited a highly probable false confession to sexual assault of a minor from Dale Zamarrippa. Zamarrippa was also eventually acquitted by a jury. In 1997, a jury in Juneau, Alaska acquitted Richard Bingham of first degree murder and sexual assault. Not only did Bingham's confession contradict the facts of the crime, but a spot of blood found on one of Bingham's sneakers was not the victim's and the semen found on the victim's body was not Bingham's. In 1989, a Minneapolis, Minnesota jury did not merely acquit Betty Burns of the attempted murder to which she had confessed, but took the additional unusual step of publishing a thirteen page letter denouncing the interrogation of Burns, expressing alarm that the true perpetrator remained at large, calling for reforms both in the police and prosecutors' offices, and requesting that Burns' record be expunged and she be compensated for her ordeal.

2. Type II Cases: False Confessions That Lead to Wrongful Conviction and Imprisonment (48 %)

a. General

Type II cases are those in which miscarriages have occurred and the justice system has clearly failed: not only have innocent individuals been made to confess to crimes they did not commit, but they have also been wrongly prosecuted, convicted, and imprisoned. False confessions may lead to wrongful conviction either when a suspect pleads guilty to avoid an anticipated harsher punishment or when a judge or jury convicts at trial. The frequency of miscarriages among the sixty false confession cases studied is reported in Table B2. Following Type II errors, some suspects are eventually released and exonerated; some are released after serving a prison term but are never exonerated; and some false confessors are sentenced to life terms and remain incarcerated to this day. Several false confessors in this

\[403\] Id.

\[404\] See Thomas, supra note 4, at 133.

\[405\] Lack of Evidence, supra note 4, at B4.

\[406\] Id.

\[407\] The victim of this brutal stabbing, as well as three eyewitnesses, testified that Burns did not commit the crime. See Siegel, Outraged Jury, supra note 93, at A1; Siegel, A Peek at Back Alley Justice, supra note 4, at A1.
study were sentenced to death, and in one case the defendant was executed.

Confession evidence is sufficient to produce wrongful arrests, convictions and incarceration. In practice, criminal justice officials and lay jurors often treat confession evidence as dispositive, so much so that they often allow it to outweigh even strong evidence of a suspect's factual innocence. All of the police-induced false confessions documented here resulted in some deprivation of liberty. Fifty-two percent of the false confessors' wrongful deprivation of liberty ended before conviction, while 48% of the defendants suffered miscarriages of justice.

**Table B2**

**The Risk of Miscarriage Attributable to False Confession**

<table>
<thead>
<tr>
<th>Outcome of Confessor's Decision to go to Trial</th>
<th>Number of Cases</th>
<th>Risk of a Miscarriage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Released prior to decision point</td>
<td>23</td>
<td>-</td>
</tr>
<tr>
<td>Pled Guilty</td>
<td>7</td>
<td>12%</td>
</tr>
<tr>
<td>Acquitted at Trial</td>
<td>8</td>
<td>-</td>
</tr>
<tr>
<td>Convicted at Trial</td>
<td>22</td>
<td>36%</td>
</tr>
</tbody>
</table>

b. Plea Bargains

If it seems counter-intuitive that an innocent person would confess falsely, the specter of an innocent false confessor pleading guilty seems fantastic. Yet this is not uncommon. As Table B2 indicates, in 12% (7) of the cases reported here, the false

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403 These data do not represent a statistically meaningful sample of false confessions since they were not randomly selected from a definable universe of cases. It is likely that these cases overrepresent certain categories: (1) famous cases; (2) recent cases; and (3) cases in which one or both of the authors have consulted.

409 ID Nos.: 9, 10, 30, 32, 34, 39, 43.

410 ID Nos.: 2, 35, 38, 40, 52, 53, 54, 60.

411 ID Nos.: 4, 6, 12, 19, 20, 22, 24, 26, 27, 33, 36, 41, 42, 44, 45, 46, 47, 48, 50, 51, 55, 58.

412 Radelet, Bedau and Putnam document nearly 20 cases in which individuals entered guilty pleas to capital (or potentially capital) crimes of which they were entirely innocent. RADELET ET AL., supra note 9. See also Hugo Adam Bedau & Constance Putnam, *False Confessions and Other Follies*, in CONNERY, supra note 3, at 69.
confessor chose to plead guilty to avoid an anticipated harsher punishment—typically the death penalty.

i. Jack Carmen

In 1975 Jack Carmen, a mentally retarded twenty-six-year-old, confessed to the kidnapping, rape and murder of a fourteen-year-old girl in Columbus, Ohio. Though there was no evidence against Carmen and three eyewitnesses placed him elsewhere at the time of murder, Carmen pled guilty to the crime to avoid the death penalty. Instead he was sentenced to life in prison. Two years later, an appellate court judge nullified Carmen's conviction, and he was subsequently acquitted in a jury trial.

ii. David Vasquez

In 1984, David Vasquez, who is also mentally retarded, confessed three times and subsequently pled guilty to the murder of Carolyn Hamm, for which he was sentenced to thirty-five years in prison. In Vasquez's case, the police also subsequently identified the true murderer, a serial killer, and Vasquez was released from prison after serving almost five years of his sentence.

iii. Johnny Lee Wilson

Vasquez was fortunate compared to Johnny Lee Wilson, another mentally retarded adult. In 1986, Aurora, Missouri police induced Wilson to confess to murder and arson. Wilson pled guilty to first degree murder to avoid the death penalty and instead was sentenced to life in prison without the possibility of
parole for fifty years. Although in 1988 the true killer confessed and provided officials with details of the crime that only the perpetrator would know, Wilson was not released from prison until 1995—more than eight years after his conviction, when the Governor of Missouri pardoned him.

In 1988, police in Olympia, Washington extracted from Paul Ingram a highly probable false confession to numerous fictitious crimes—including sexually molesting his two daughters, supervising the gang rape and bondage of his daughters and wife on numerous occasions, and being a demon-possessed member of a satanic cult that allegedly committed murders, performed coathanger abortions, signed loyalty oaths in blood, engaged in bestiality, and dismembered, sacrificed and cannibalized small children. The prosecution was able to save face by getting Ingram to enter a guilty plea to six counts of third degree rape. Though the sensational and bizarre circumstances of Paul Ingram's case remain unique in the annals of American interrogation history, the outcome of his case is not. Despite compelling evidence that his guilty plea was predicated upon a false confession, Ingram remains incarcerated.

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[424] Id. at 225-26.
[425] Id. at 226.
[426] Id. at 226.
[428] Interrogation Transcript of Paul Ingram, Thurston County Wash. Sheriffs Office at 2-12 (Nov. 28, 1988) (on file with authors). See also Ofshe, Inadvertent Hypnosis, supra note 4 at 139-49.
[429] Interrogation Transcript of Paul Ingram, supra note 427, at 8-81
[430] Ofshe, Inadvertent Hypnosis, supra note 4, at 139-49.
[431] Id. at 137-38.
[432] Id. at 136.
[434] Id. at 116-17.
[435] Ofshe, Inadvertent Hypnosis, supra note 4, at 136, 138; see also WRIGHT, supra note 432, at 110-11.
[436] WRIGHT, supra note 432, at 184.
v. William Kelley

In 1990 William Kelley, a mentally handicapped adult, confessed and then pled guilty to the murder of a twenty-five-year-old woman whose body was found in a landfill. He was sentenced to ten to twenty years in prison but was released two years later when the police in Dauphin County, Pennsylvania stumbled upon the true perpetrator, a serial killer, who confessed to the crime.

vi. Christopher Smith and Ralph Jacobs

In 1991 Christopher Smith and Ralph Jacobs, also mentally handicapped adults, both falsely confessed, and pled guilty to, the murder of a New Castle, Indiana drug dealer. Smith was sentenced to thirty-eight years and Jacobs to eight. Both had served eighteen months in prison when police arrested the true killer, who was linked to the crime by physical evidence (unlike Smith and Jacobs) and eventually convicted.

c. Jury Convictions

i. General

The history of criminal justice in America prior to the Miranda decision is replete with instances of juries convicting innocent defendants who were linked to the crime only by a false confession. Despite additional safeguards, police continue to elicit false confessions in the post-Miranda era, and juries continue to convict false confessors at an alarmingly high rate. Tables B3 and B4 report the defendant's risk of conviction at trial when police have elicited a false confession. Even an unsupported and disconfirmed confession is often sufficient to lead a trier of fact to judge the defendant guilty beyond a reasonable doubt. As Table B3 indicates, the thirty false confessors

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438 Shellem, Jailed Man Set Free, supra note 4, at A1.
439 Id.
440 Id.
441 Pete Shellem, Miller Pleads Guilty in Rape of City Woman; Attack Led to his Capture, HARRISBURG PATRIOT, Mar. 10, 1993, at B1.
443 Booher, supra note 4, at Cl.
444 Id
445 Id.
446 See BORCHARD, supra note 3, at 367-78; FRANK & FRANK, supra note 3, at 199-249; RADIN, supra note 3, at 239-56; RADELET ET AL., supra note 9, at 282-356.
whose cases proceeded to trial had a 73% chance of being convicted. Despite the absence of any physical or other significant credible evidence corroborating a confession, a false confessor was approximately three times more likely to be found guilty at trial than to be acquitted (73% vs. 27%). These data demonstrate that a false confession is an exceptionally dangerous piece of evidence to put before a jury even when the other case evidence weighs heavily in favor of the defendant's innocence.

Tables B4 and B5 reveal the fate of those identified as false confessors while controlling for the basis on which the identification was made. Defendants were identified as false confessors based either on evidence that objectively proved their innocence or supported the inference that they were innocent. While the information reported in Table B4 indicates moderate percentage differences between outcomes for persons proven or classified (i.e., highly probable and probable) as false confessors, the differences are minor in light of the relatively small number of cases presently available for comparison. The false confession cases documented here produce a generally consistent outcome, whether the false confessor's innocence is proven or classified as highly probable or probable.

Not surprisingly, the false confessors who are ever going to be proven innocent are likely to have this proof come to light shortly after their confession. Slightly over half (53%) of the proven false confessors have charges dismissed prior to trial, while 47% of proven false confessors must make a decision about pleading to an offer of lesser punishment or undergoing trial. The high percentage of pre-trial dismissals is likely due to proof of a confessor's innocence coming to light early in the pre-trial discovery process (e.g., when scientific test results become available) or when the defense establishes the defendant's alibi (e.g., the alibi the police ignored when the defendant offered it during interrogation) or for other strong reasons (e.g., the victim turns up alive).

Absent the discovery of evidence dispositively proving the defendant's innocence, only 19% of defendants classified as highly probable or probable false confessors are spared having to choose to undergo trial or to plead guilty. The vast majority (81%) of these false confessors find themselves having to choose either to plead guilty to a crime they did not commit or go to trial and risk the harshest possible punishment.
TABLE B3

THE RISK OF MISCARRIAGE OF JUSTICE AT TRIAL
GIVEN A FALSE CONFESSION

<table>
<thead>
<tr>
<th>Outcome of Confessor's Decision to go to Trial</th>
<th>Number</th>
<th>Verdict of Guilt</th>
<th>Verdict of Innocent</th>
</tr>
</thead>
<tbody>
<tr>
<td>All False Confessors</td>
<td>30</td>
<td>73%</td>
<td>27%</td>
</tr>
</tbody>
</table>

TABLE B4

THE RISK OF MISCARRIAGE OF JUSTICE
GIVEN A PROVEN FALSE CONFESSION

<table>
<thead>
<tr>
<th>Proven False Confessors (N=34)</th>
<th>Number (%)</th>
<th>Likelihood of Miscarriage</th>
<th>Risk of a Guilty Verdict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Released Prior to Decision Point</td>
<td>18 (53%)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Pled Guilty</td>
<td>5 (15%)</td>
<td>15%</td>
<td>-</td>
</tr>
<tr>
<td>Acquitted at Trial</td>
<td>1 (3%)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Convicted at Trial</td>
<td>10 (29%)</td>
<td>29%</td>
<td>90%</td>
</tr>
<tr>
<td>Totals</td>
<td>34 (100%)</td>
<td>44%</td>
<td></td>
</tr>
</tbody>
</table>

It seems likely that in more recent cases, a defendant has a better chance of pre-trial dismissal of charges or acquittal at trial because of advances in scientific technology, the increasing use of audio and video recording during interrogation, and the increasing ability of defense attorneys to explain false confessions at trial.

ID Nos. 4, 6, 12, 19, 20, 22, 24, 26, 27, 33, 36, 41, 42, 44, 45, 46, 47, 48, 50, 51, 55, 58.
ID Nos. 2, 35, 38, 40, 52, 53, 54, 60.
ID Nos. 1, 3, 5, 7, 8, 11, 13, 14, 15, 16, 17, 18, 21, 23, 25, 28, 29, 31.
ID Nos. 9, 10, 30, 32, 34.
ID No. 2.
ID Nos. 4, 6, 12, 19, 20, 22, 24, 26, 27, 33.
TABLE B5
THE RISK OF MISCARRIAGE OF JUSTICE
GIVEN LIKELY FALSE CONFESSION

<table>
<thead>
<tr>
<th>Proven False Confessors (N=34)</th>
<th>Number (%)</th>
<th>Likelihood of Miscarriage</th>
<th>Risk of a Guilty Verdict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Released Prior to Decision Point</td>
<td>5(^{454}) (19%)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Pled Guilty</td>
<td>2(^{455}) (8%)</td>
<td>8%</td>
<td>-</td>
</tr>
<tr>
<td>Acquitted at Trial</td>
<td>7(^{456}) (27%)</td>
<td>-</td>
<td>37%</td>
</tr>
<tr>
<td>Convicted at Trial</td>
<td>12(^{457}) (46%)</td>
<td>46%</td>
<td>63%</td>
</tr>
<tr>
<td>Totals</td>
<td>26 (100%)</td>
<td>54%</td>
<td></td>
</tr>
</tbody>
</table>

As reported in Table B3, there is a strong likelihood that a miscarriage of justice will occur if a false confessor undergoes a trial. It is alarming that about three-quarters (73%) of all false confessors who went to trial were convicted. Table 4 reports that when proven and classified confession cases (i.e., highly probable + probable) are separated there is a 27% higher level of risk of conviction at trial for those whose innocence will be proven much later. Further, while 63% of the classified false confessors are convicted at their trials, 90% of the defendants who would someday be proven innocent are convicted when their false confessions are brought into court.

If tried, 37% of those classified as false confessors are acquitted, while only 10% of those belatedly proven innocent are acquitted. It appears that at the time of trial the exculpatory evidence favoring those who were destined to someday be proven innocent was weaker than the exculpatory evidence supporting those who even today can only be classified as false confessors. Some of those who were later proven to be false confessors were only saved from their sentences of execution or life imprison-

\(^{454}\) ID Nos. 37, 49, 56, 57, 59.
\(^{455}\) ID Nos. 39, 43.
\(^{456}\) ID Nos. 35, 38, 40, 52, 53, 54, 60.
\(^{457}\) ID Nos. 36, 41, 42, 44, 45, 46, 47, 48, 50, 51, 55, 58.
ment by new scientific developments such as DNA analysis or a true perpetrator's long-delayed decision to confess.\footnote{See CONNORS ET AL., supra note 4, at 34-76.}

\textit{ii. Case Illustrations}

\textit{a. Officially Exonerated After Conviction}

The list of false confessors wrongfully convicted by juries is long. After Bradley Cox confessed to two rapes, he was convicted by a jury in 1980 and sentenced to fifty to 200 years in prison based on a now-proven false confession.\footnote{HUFF ET AL., supra note 3, at 123, 127, 136-37.} He served nearly two years before the true perpetrator confessed.\footnote{\textit{Id} at 137.} The so-called "dream confession" Chicago, Illinois police obtained from Steven Linscott\footnote{Interrogation Transcript of Steve Linscott, Oak Park, Ill. Police Dep't (Oct 8, 1980).} was later proven false.\footnote{CONNORS ET AL., supra note 4, at 64-65.} Based on this so-called confession, a jury convicted Linscott of murder, and a judge sentenced him to forty years in prison.\footnote{\textit{Id} at 60.} In 1983, Fort Lauderdale, Florida police extracted a false confession to double murder from John Purvis,\footnote{\textit{Id} at 161.} a mentally handicapped adult.\footnote{\textit{Id} at 164.} A jury convicted Purvis,\footnote{\textit{Id} at 161.} and the judge sentenced him to life in prison plus two twenty-year terms.\footnote{\textit{Id} at 69-70.} When the actual killers were caught, Purvis was released after nine years of incarceration.

In 1979 in Saint Joseph, Missouri, Melvin Lee Reynolds, another mentally handicapped adult,\footnote{\textit{Man Imprisoned 9 Years in Killing is Freed as 2 Suspects are Found}, N.Y. TIMES, Jan. 17, 1993, at 26.} falsely confessed to the abduction and murder of a \textbf{four-year-old} boy\footnote{GANEY, supra note 5, at 34.} after nearly thirteen hours of interrogation.\footnote{\textit{Id} at 39-44.} A jury convicted Reynolds of second degree murder and sentenced him to life in prison.\footnote{\textit{Id} at 43.}
Reynolds was released from prison four years later when the true perpetrator, a serial murderer who had killed several more victims after Reynolds' erroneous conviction, contacted

Reynolds's interrogation and prosecution illustrates the potentially tragic consequences of police and prosecutorial negligence in false confession cases. Under considerable pressure to solve the murder of four-year-old Eric Christgen, St Joseph police relied on a FBI profile of the killer to round up 150 suspects. Id at 26. One of the suspects they interrogated was Harry Fox, a likeable 64-year-old janitor with no prior record. Id at 26-27. Thirty minutes into his accusatorial interrogation, Fox experienced convulsions, fell over in his chair, turned colors, collapsed onto the floor and died of a heart attack—killed by interrogation. Id at 28. There was never any evidence against Fox, and his innocence would later be conclusively established.

St. Joseph police then decided to interrogate Reynolds, even though Reynolds did not match the description eyewitnesses provided of the killer and an alibi witness had seen and spoken to Reynolds at his home at the time of the murder. Undeterred by evidence of Reynolds' innocence and an absence of any basis for suspicion, police interrogated Reynolds nine times between June 2, 1978 and February 14, 1979 (once after hypnotizing him and another time after injecting him with a truth serum). Id at 37-38. Reynolds finally confessed to accidentally killing Christgen and provided a written statement that parroted back many of the words, terms and phrases that his interrogators had used in their questioning. Id. at 39-41. Not surprisingly, Reynolds got several of the major case facts wrong (e.g., the timing of the child's disappearance, the spot where the body had been found). Id at 41-44.

Following his confession to the Christgen killing, Reynolds was made to confess to a similar child murder in Kansas City. Id. at 50-51. The Kansas Bureau of Investigation promptly discounted the confession as false because of the factual inconsistencies and errors in Reynolds's account of the crime. Id at 51. Shortly afterwards, Reynolds recanted his confession to the Christgen murder and declared that he confessed falsely because he was frightened by his interrogators and desperately sought to escape the intolerable pressure of the interrogation. Id. at 51-54. Throughout this entire ordeal, Reynolds maintained his innocence.

Despite the absence of any evidence confirming Reynolds's questionable confession and the presence of evidence discontinuing it (e.g., Reynolds did not match the description of eyewitnesses), prosecutors brought Reynolds to trial, the judge declared Reynolds's confession voluntary, the jury convicted him of second degree murder and sentenced him to life in prison. Id at 59-70. Shortly thereafter, Reynolds was repeatedly gang-raped and beaten by inmates in prison, where he feared for his life. Id at 71-75. During Reynolds's four years in prison, the real murderer of Eric Christgen, a psychotic serial killer named Charles Hatcher, attempted to abduct, assault, rape and kill on several occasions. Id at 235-36. Tragically, Hatcher stabbed 38-year-old James Churchill to death in 1981 and in 1982 abducted and killed 11-year-old Michelle Steele, who, like Christgen, lived in St Joseph. Id at 236.

Eventually Hatcher confessed to many of his crimes, including the abduction and murder of both Christgen and Steele. Id at 141-201. Though Hatcher's confession included details no one else knew and though Hatcher matched the description of the adult male seen with Christgen shortly before his abduction, Reynolds's prosecutors initially denied that Reynolds could be innocent Id at 167-83. Eventually they grudgingly conceded Reynolds's innocence and their wrongful prosecution. Id at 184. Yet the chief of the St. Joseph Police Department continued to insist that Reynolds killed Christgen. Id at 185, 207. Hatcher was convicted of Christgen's murder, and Reynolds was eventually declared innocent and released from prison. Id at 193-205.

If St. Joseph police had not extracted an obviously false confession from a vulnerable individual and if prosecutors had not prosecuted an innocent defendant based
authorities and confessed to the crime. George Parker falsely confessed to Howell Township, New Jersey police in 1980; a jury convicted him of aggravated manslaughter, and the judge sentenced him to twenty years in prison. He was released five years later after his girlfriend was found guilty of the murder. Laverne Pavlinac confessed falsely to capital murder to Oregon State Police in 1991, was convicted by a jury, and sentenced to life in prison; five years later Pavlinac was released from prison after the true killer came forward and confessed to the crime.

b. Convicted and Never Officially Exonerated

Some false confessors are not as fortunate as Cox, Linscott, Purvis, Parker, Reynolds, and Pavlinac—all of whom were eventually released and exonerated of their wrongful convictions. Some innocent individuals who confess falsely are convicted by juries and never released from prison. For example, Earl Washington, a mentally retarded adult who confessed to rape and capital murder, was convicted by a jury and sentenced to death. Washington spent ten years on Death Row before Virginia’s Governor commuted his sentence to life imprisonment. The governor refused to pardon Washington even though a DNA test cleared him of the crimes. Martin Tankleff, Richard Lapointe and Jessie Misskelley, Jr. were also convicted by juries and sentenced to life imprisonment solely on the basis of confessions that were badly flawed, failed to be cor-

474 Id. at 141-201.
476 Bedau & Radelet, supra note 3, at 150.
477 Nathan, supra note 62, at 1.
478 Id.
479 Seigel, A Question of Guilt, supra note 4, at 15.
480 White, supra note 3, at 121-22. See also Hourihan, supra note 4, at 1471.
481 White, supra note 3, at 122.
482 Id. Washington was barred by Virginia state law from attacking his conviction on the basis of the DNA evidence because it did not meet the strict requirements of after-discovered evidence. In Virginia a convicted criminal has only 21 days after the entry of a final order to move to set aside a verdict See id at 122 n.155 (citing VA. SUP. Ct. R. 3A:15(b)).
483 See supra text accompanying notes 212-26.
484 See supra text accompanying notes 227-45.
485 See supra text accompanying notes 246-54.
roborated and were surrounded by case evidence that weighed strongly in favor of their innocence.

Like LaPointe, Misskelley, Tankleff, and Washington, there are many individuals who were induced to confess falsely, and in the absence of any other evidence, are convicted by a jury and sentenced to long prison terms. Other false confessors, however, serve their sentences but are never exonerated. Bradley Page was convicted of involuntary manslaughter after two trials and sentenced to six years in state prison. Although new evidence identified an already convicted serial murderer as the true killer, the Alameda County, California District Attorney's Office refused to acknowledge that Page (whose record was spodess and whose life had been exemplary) was innocent and refused to reopen the case. James Harry Reyos confessed to a murder and was sentenced to thirty-eight years and served twelve years in prison, even though the appellate prosecutor conceded that it was physically impossible for Reyos to have committed the crime. Though he was released, Reyos was never exonerated.

In 1973, Phoenix, Arizona police extracted from John Knapp a confession to setting the fire to his home that killed his two small children. There was no inculpatory evidence supporting the confession and considerable exculpatory evidence supporting Knapp's innocence. The first jury hung, but a second jury convicted him of capital murder, and he was sentenced to death. Five times warrants were issued for his execution, and once he came within forty hours of being sent to the gas chamber. Years later an appellate judge vacated Knapp's capital conviction because the prosecutor had withheld exculpatory scientific evidence indicating that one of his children had set the fire. In Knapp's third trial, the jury hung again. Finally,
after Knapp spent more than twelve years on death row and fourteen and a half years in maximum security incarceration, the state offered to forego a fourth prosecution if Knapp pled no contest to second degree murder in exchange for time served, thereby allowing the state to score the Knapp prosecution as a conviction. Immediately after accepting the offer Knapp was released from prison.

In 1979, Norfolk, Virginia police extracted five contradictory confessions from Joseph Giarratano to the rape and murder of fifteen-year-old Michelle Kline and her forty-four-year-old mother, Toni Kline. Sperm, hair samples, and bloody shoeprints found at the crime scene did not link Giarratano to the crime. In addition, Giarratano's confessions were demonstrably inaccurate on significant points: One of the victims died from a severed artery and bled profusely, but police found no blood on Giarratano's clothing; the victims were strangled and stabbed by someone who is right-handed, but Giarratano is left-handed and has only limited use of his right hand due to neurological damage from childhood; Giarratano confessed to strangling one of his victims with his hands, but an independent pathologist testified that the hallmarks of manual strangulation

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496 Id. at 395.
497 Id. at 402.
498 Id.
499 Stephen Hooker, The Killing of Joe Giarratano: Death Row Inmate May Not Have Committed Murders He Confessed To, THE NATION, OcL 29, 1990, at 485 (The five confessions are confused and contradictory, both internally and with one another, and are wildly inconsistent in such fundamental matters as the motive and the date and order of killings.


503 In addition, 21 distinct fingerprints were found at the crime scene, but only one belonged to Giarratano, and it was found in an area that was unconnected to the crime. Arney, supranote 4, at A1.

504 Clardy, supra note 502, at A1. The arresting officer submitted a sworn affidavit stating that Giarratano had no blood, scratches or bruises on him. Hooker, supra note 499, at 485.

505 David Kaplan & Bob Cohn, Pardon Me, Governor Wilder, NEWSWEEK, Mar. 4, 1991, at 56.
were not present; Giarratano stated that he threw the knife he used into the Kline's backyard, but no weapon was ever found. Regardless, Giarratano was convicted of capital murder and sentenced to die. On death row for more than a decade, Giarratano has twice come within forty-eight hours of being executed. Granted conditional clemency in 1991, Giarratano is currently serving a life term.

In Waukegan, Illinois in 1993, Juan Rivera, a mentally handicapped twenty-year-old, underwent approximately thirty-three hours of unrecorded interrogation over four days, and signed two police-written confession statements admitting that he raped, stabbed and murdered eleven-year-old Holly Staker. The confessions contained the types of corrections of spelling and grammatical errors that interrogators are trained to work

506 Hooker, supra note 499, at 485.
508 Arney, supra note 4, at A1.
509 Harris, supra note 507, at A1. Giarratano was convicted of capital murder and sentenced to die in 1979; he was not released from death row until 1991. Arney, supra note 4, at A1.
511 Arney, supra note 4, at A1.
512 Andrew Martin, Staker Suspect: I Never Touched That Girl, Cm. TRIB., Apr. 9, 1993, at 1. See also Martin & Parsons, supra note 114, at 1.
514 Andrew Martin, Rivera Disoriented After Confession, Nurse Says, CHI. TRIB., Nov. 18, 1993, at 1; see also Zorn, supra note 513.
515 Zorn, supra note 513. During his four day interrogation but prior to signing two police-written confessions, Rivera began to hyperventilate and bang his head against the cell wall so violently that he was medicated and his arms and legs were shackled. See Andrew Martin, Interrogation of Coercion?: An Issue of Debate in Staker Slaying Case, CHI. TRIB., Mar. 26, 1993, at 2; Martin, supra note 512, at 1. Defense attorneys asserted that Rivera signed the confessions only after suffering an interrogation-induced mental breakdown: Rivera claimed that he lost consciousness during the interrogation ordeal and did not remember signing the confessions. See Martin, supra note 512, at 2; see also Robert Enstad, Rivera Testifies He Can't Recall His Confession, CHI. TRIB., Apr. 6, 1993, at 1; Andrew Martin & James Hill, New Man Linked to Staker Murder, CHI. TRIB., Feb. 25, 1993, at 1. At Rivera's trial, a former nurse at the Lake County Jail testified that Rivera was so "dazed and incoherent" an hour before he allegedly confessed that she recommended he be placed on suicide watch. Martin, supra note 514, at 1. The jail nurse's testimony contradicted police investigators' earlier and repeated testimony that Rivera was "alert, cooperative and friendly" while confessing to the brutal murder and signing both police-written statements. Id.
516 Martin & Parsons, supra note 114, at 1.
into written confessions to demonstrate that the suspect reviewed the statement before signing it. However, it would have been difficult, if not impossible, for Rivera to have actually detected these errors since he reads at a third grade level. The veracity of Rivera's confession was further undermined by the fact that he was wearing an electronic leg monitor that showed he was at home the night of the crime, and that none of the 350 pieces of physical evidence linked Rivera to the crime. DNA tests of more than a dozen items from the crime scene failed to match Rivera's blood, semen, fingerprints or hairs. Nevertheless, a jury convicted Rivera of first-degree murder, and a judge sentenced him to life in prison without the possibility of parole. In November, 1996, an Illinois Appellate Court reversed Rivera's conviction. However, Rivera remains incarcerated, and Lake County, Illinois prosecutors will likely seek the death penalty in his retrial.

V. CONCLUSION

This article has documented that American police continue to elicit false confessions even though the era of third degree interrogation has passed. This study has also demonstrated with field data what Kassin and Wrightsman have established in the laboratory: that confession evidence substantially biases the trier of fact's evaluation of the case in favor of prosecution and

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517 See Inbau et al., supra note 30, at 185.
518 Martin & Parsons, supra note 114, at 1.
520 See Martin & Parsons, supra note 114, at 1.
521 Brandon & Martin, supra note 113, at 1.
522 Id.
530 See Kassin & Wrightsman, Coerced Confessions, supra note 2, at 494-98; Kassin & Wrightsman, Prior Confessions, supra note 2, at 139-40.
conviction, even when the defendant's uncorroborated confession was elicited by coercive methods and the other case evidence strongly supports his innocence. With near certainty, false confessions lead to unjust deprivations of liberty. Often they also result in wrongful conviction and incarceration, sometimes even execution.

For those concerned with the proper administration of justice, the important issue is no longer whether contemporary interrogation methods cause innocent suspects to confess. Nor is it to speculate about the rate of police-induced false confession or the annual number of wrongful convictions they cause. Rather, the important question is: How can such errors be prevented? If police and prosecutors wish to prevent wrongful deprivations of liberty and miscarriages of justice, they must acknowledge the reality of false confessions, seek to understand their causes and consequences, and work to implement policies that will both reduce the likelihood of eliciting false confessions and increase the likelihood of detecting them.

The sixty false confessions described in this article dispel the myth promoted by interrogation manual authors and police trainers that the psychological interrogation methods they advocate do not cause suspects to confess to crimes they did not commit. In fact, the opposite is true. Our analysis almost always reveals evidence of shoddy police practice and/or police criminality. Shoddy police practice derives in large part from poor interrogation training. Influential manuals such as Criminal Interrogation and Confessions and Practical Aspects of Interview and Interrogation teach police to use tactics that have been shown to be coercive and to produce false confessions. Such

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531 For a review, see Kassin, supra note 4.
533 See, e.g., INbau ET AL., supra note 30, at 147; Jayne & Buckley, supra note 30, at 66; The Reid Technique, supra note 30; Reid Specialized Interrogation, supra note 30.
534 INbau ETAL., supra note 30, at 102-06.
535 Zulawski & Wicklander, supra note 30.
536 One outstanding example of poor police practice—which contributed to many of the false confessions discussed in this article—is the use of the accident scenario technique (also known as maximization/minimization). See Ofshe & Leo, The Decision to Confess Falsely, supra note 4, at 1088-106. Due to information presented in training manuals, some police interrogators believe that it is legally permissible to offer to accept a suspect's admission to a less serious or non-existent crime, such as an accident
texts also mislead interrogators into believing that a suspect's guilt can be inferred on the basis of pseudoscientific claims about the meaning of demeanor and behavior analysis, and they fail to educate police about the social psychology, variety and distinguishing characteristics of interrogation-induced false confessions.\footnote{Leo, Police Interrogation in America, supra note 10, at 67-127; see also supra note 30 and accompanying text}

Police criminality (e.g., coercing false witness statements, suborning perjured testimony from snitches, perjury at suppression hearings or at trial and/or obstruction of justice by withholding exculpatory evidence) often stems from ill-conceived efforts to save prosecutions that never should have commenced. The blood sport attitude that often develops in high profile criminal prosecutions—"get" the guilty party no matter what"—sometimes causes significant harm to innocent individuals who police and prosecutors have identified as guilty solely because they were coerced or persuaded to make a false confession. During the investigation and prosecution of every wrongful conviction documented in this article, police and prosecutors should have realized that the confession was almost certainly, if not demonstrably, false.

The American criminal justice system has not yet developed adequate safeguards to prevent police-induced false confessions from leading to the wrongful deprivation of liberty and conviction of the innocent. False confessions threaten the quality of criminal justice in America by inflicting significant and unnecessary harms on the innocent. In 52% of the cases reported here, the false confessor suffered, at a minimum, unjust and needless pre-trial deprivations of liberty.\footnote{See supra Part IV.B.1. In one false confession case not discussed in this paper, the defendant spent nearly four and one-half years in pre-trial incarceration before the confession was suppressed and he was released. See State v. Louis, No. 92-348-C, 92-303-C (Desoto County Ct. 1992).} For these defendants, the safeguards built into the criminal justice system limited the false confessor's harms to pre-trial incarceration, the cost of defending their innocence, and the damage to their careers and reputations. Forty-eight percent of the false confes-
In these prosecutions, the safeguards built into the criminal justice system failed to prevent lengthy incarceration, years of imprisonment on death row and in one case a wrongful execution.

False confessions are likely to lead to unjust deprivations of liberty and miscarriages of justice because criminal justice officials and lay jurors treat confession evidence with such deference that it outweighs strong evidence of a defendant's innocence. It bears emphasizing that in none of the disputed confessions documented in this article was there any reliable evidence corroborating the defendant's confession, and in most of these cases there was compelling, if not overwhelming, evidence establishing his innocence. Nevertheless, criminal justice officials treated these confession statements as the most probative evidence of the defendant's guilt and permitted the "I did it" statement to override evidence of his innocence. Absent the uncorroborated and unreliable statement, none of these individuals would likely have been arrested, charged, convicted, incarcerated, or executed.

The risk of harm caused by false confessions could be greatly reduced if police were required to video- or audio-record the entirety of their interrogations. Presently, only Alaska and Minnesota require recording custodial interrogations. The practice of recording creates an objective and exact record of the interrogation process that all parties—police, prosecutors, defense attorneys, judges, juries—can review at any time. The existence of an exact record of the interrogation is crucial for determining the voluntariness and reliability of any confession statement, especially if the confession is internally inconsistent, is contradicted by some of the case facts, or was elicited by coercive methods or from highly suggestible individuals.

Taping also allows third parties to resolve the courtroom "swearing contests" that arise when the suspect and the police
offer conflicting testimony about what occurred during interrogation. In disputed confession cases the discrepancies between police officers' and defendants' accounts clearly indicate that one of the parties is either lying or mistaken. Of course, interrogators are sometimes falsely accused of deviant conduct. In the usual case, however, the police officer's testimony is treated as far more credible than the citizen's, whose reputability is compromised by his status as a criminal defendant. In many of the cases documented in this article, however, the interrogator claimed that the confessor supplied information that only the perpetrator could have known—only to have the suspect subsequently proven innocent and his ignorance of the crime facts revealed. To more accurately resolve whether the interrogator used coercion, whether the suspect knew the facts of the crime, and/or whether he was made to confess falsely, one conclusion is inescapable: interrogations must be recorded in their entirety.

The cases discussed above also illustrate the compelling need for police, prosecutors, judges and juries to carefully scrutinize and evaluate a suspect's post-admission narrative against the known facts of the crime. Confessions should be evaluated on the basis of the quality of the post-admission narratives they produce, and police should be trained to recognize that it is this information—not the words "I did it"—that discriminates between the innocent and the guilty. In investigations in which hard evidence linking a person to a crime is missing, only the analysis of the suspect's post-admission narrative provides a basis for objectively assessing his personal knowledge of a crime (assuming contamination is eliminated). In each of the recorded false confessions studied here, the account the suspect offered after saying the words "I did it" was significantly at odds with the crime facts and indicated that the suspect was ignorant of information the true perpetrator would have known.

When police are trained to seek both independent evidence of a suspect's guilt and internal corroboration for every confession before making an arrest; when state's attorneys demand that "I did it" statements be corroborated by the details of a suspect's post-admission narrative before undertaking a prosecu-

543 See generally YALE KAMISAR, POLICE INTERROGATION AND CONFESSIONS: ESSAYS IN LAW AND POLICY (1980).
tion; when courts insist on a minimal indicia of reliability before admitting confession statements into evidence; and when legislators mandate the recording of interrogations in their entirety, the damage wrought and the lives ruined by the misuse of psychological interrogation methods will be significantly reduced. The sixty cases discussed in this article illustrate that when there is no independent evidence against a defendant and only a factually inaccurate confession, the risk of justice miscarrying is so great that the case should never be allowed to proceed to trial.