


2019

# Attribution and Attribution Error in Relationship to False Confessions

Michael L. Johnson  
*Walden University*

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# Walden University

College of Social and Behavioral Sciences

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Michael L. Johnson

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Walden University  
2019

Abstract

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by

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MBA, Friends University 2008

MA, Wichita State University, 1999

BS, Wichita State University, 1993

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Law and Public Policy

Walden University

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## Abstract

False confessions are the most difficult type of confession to detect. Because the Reid interview and interrogation technique is the global gold standard for interviews, interrogations, and confessions, it is used to obtain confessions from suspects. However, the Reid method has been untested in regard to if it can detect false confessions to potentially eliminate wrongful convictions. The purpose of this qualitative study was to perform a content analysis of videos of confessions using several models that make up the Reid interview and interrogation technique. Utilizing attribution theory as a framework, these models were qualitatively assessed for their ability to detect false confessions in comparison with the legal casebook analysis and linguistic analysis. The key research questions addressed how interviewers attribute identification of false confessions through the assessment of the various models and the complete Reid interview and interrogation technique. An additional research question concerned how interviewers identify attribution error in false confessions through the assessment of the various models and the complete Reid interview and interrogation technique. Data were collected from 6 videos and subjected to content analysis, triangulated with discourse analysis and conversation analysis. The results of this study showed that the models applied to the confessions could distinguish between true and false confessions. A social change could occur if some or all of these models are applied to all interrogations to detect false confessions, which would provide law enforcement and the intelligence professions the tools to assess confessions in order to potentially stop wrongful convictions and intelligence failures in interviews and interrogations.

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## Dedication

This Dissertation is dedicated in memory of Ron Evans Chief Public Defender of the Western Regional Public Defenders Office who gave me advice and time to complete this dissertation and debated the other side with me on issues of this dissertation. And in memory of Mickey Morrman Chief Public Defender of the Western Regional Public Defenders Office who trained me in the area of criminal defense and gave me the inspiration to continue my education. I also dedicate this dissertation in memory of my Uncle Bud Beckel Detective Wichita Police Department who taught me the Reid Technique starting at the age of ten. And finally to my committee Dr. Matthew Jones and Dr. Mark Stallo, without their guidance I would not have been able to complete this dissertation. And last but most of all, I dedicate this to my mother and father Dan A. Johnson and Pebble M. Johnson who always encouraged and supported me in my education and life.

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## Chapter 1: Introduction to the Study

### **Description of the Topic of the Study**

The issue of false confession has come to the forefront in recent years related to increased recognition of the prevalence of false confessions, thanks to advances in forensic science and DNA analysis. False confessions are the most difficult type of confession to detect due to the many indicators of verbal and nonverbal communication in assessing deception legal standard of voluntariness. In this study, I sought to determine if interrogators were detecting false confessions through the Reid technique in comparison with a developed legal analysis model and a linguistic model, and if interrogators were missing the indicators of false confessions, and what indicators were being missed.

This study tested the legal analysis of the attribution and attribution error analysis in the Reid interview and interrogation technique to detect false confessions. In order to accomplish the detection of false confessions, I conducted an evaluation of known true and false confessions to determine through a qualitative assessment between the Reid verbal analysis and the Reid legal analysis models to determine involuntariness. I evaluated the Reid false confession analysis separately and then assessed the confessions with the complete Reid technique to determine if each of the Reid models and the complete Reid technique could have determined if the false confessions could have been detected.

I conducted this study to fill the gap in the literature on the detection of false confessions using the parts of the Reid Technique, which is the most widely used method with interviews and interrogations to detect deception and obtain a confession. The parts of the Reid technique that I used for this study were the behavior analysis interview (BAI)

which includes the verbal, paralinguistic and nonverbal analysis in detecting deception. I also used the Reid legal analysis and the Reid false confession analysis. The findings of this study could support the field of criminal interrogations and confessions by possibly limiting the risk of obtaining false confessions.

The social change implications of this study are that it could possibly have an impact on the justice system through aiding detection of a false confession during an interrogation using the Reid verbal analysis and the Reid false confession analysis and the legal analysis models and then looking for similarities of detection of a false confession, preventing false confessions from being used as evidence at trial. Therefore this study could possibly prevent a wrongful conviction through the detection of a false confession, which could possibly prevent the wrongful loss of life and liberty.

The major sections of Chapter 1 provide an overview for the study and include the following: problem statement, nature of the study, research questions, hypotheses, theoretical and conceptual basis, the significance of the problem, and social change of the study. The terms defined are variables, operational terms, assumptions, limitations, and delimitations.

### **Background**

In the last 30 years, false confessions in the criminal justice setting have been researched in the psychological, criminal justice, communication, and legal disciplines. This research has focused mainly on the objective analysis of the physical and mental condition of the suspects (Kassin et al., 2010). Research has been conducted on the

contamination of facts during the interview and interrogation by the interrogator, and it was found that the contamination of facts did cause false confessions (Garrett, 2010).

Other research determined that the relationship between personality variables and the effects of interrogation techniques can cause false confessions (Klaver, Lee, Rose, 2008). The psychological community has investigated a series of causes, of false confessions in the investigation of the psychological processes at work in the interrogation (Kassin, 1997; Kassin, et al., 2010; Leo & Davis, 2010).

There has been to date no research relating to the interaction of the suspect and interrogator in the form of attribution and attribution error. This was important to study due to the presence of attribution and attribution error in verbal and nonverbal communication and the assessment of this in relation to the Reid technique. This technique includes the BAI, which consists of assessing verbal and nonverbal communication in the interaction between the suspect and interrogator during the interview and interrogation. The purpose of the complete Reid technique is to detect deception and distinguish between true and false confessions.

### **Attribution and Attribution Error**

Since 2001, there has been a gap in the research on the interactive processes of attribution and attribution error. The reason the literature is not current in specific terms is that the research went studying attribution to a concept of intentionality where the behavior is explained through reason and cause, positing that attribution does not adequately describe the explanation of behavior through reason and cause (Malle, 1999). However, this explanation of behavior does come from Heider's (1958) model of reasons → intention

→ intentional action. The criticism of Heider's model was that it was too strict in "ignoring the difference between people's reason explanations and causal explanations" (Malle, 1999, p. 23 ) of behavior, therefore, did not sufficiently account for how people explain behavior ((Buss, 1978; Locke & Pennington, 1982; Malle, 1999; Schneider, Hastorf & Ellsworth, 1982; White, 1991). However, the reason attribution and attribution error literature remained the focus of this study was because the cause-reason distinction has not been systematically studied (Malle, 1997, 2011). The lack of studies shows a gap in the literature that needs to be filled. Therefore, Heider's theory of attribution (1958) and Ross's theory of attribution error (1977) remained the basis of the conceptual framework and models for this study.

Little research has addressed the interaction process between the interrogator and the suspect, specifically the subjective analysis of the attribution process (Ross, 1977). The attribution process consists of attribution and attribution error on the part of the suspect and the interrogator in the form of verbal and nonverbal behavior. Attribution on the part of the suspect is trying to remember what happened, or whether to tell the truth or to tell a lie. The attribution error occurs when the suspect remembers incorrectly through false memory or some other psychological coercion or some physical impediment or a miscommunication or through some other objective condition such as contamination by the interrogator that makes the suspect confessed to the interrogator a crime the suspect did not commit, known as a source monitoring framework (Henkel, 2004; Ross, 1977).

During this cognitive process, the suspect begins to distrust their memory (Gudjonsson, 2014). This can produce attribution error (Ross, 1977) on the part of the

suspect. The interrogator commits attribution error when the interrogator misses signs of nonverbal and verbal behavior exhibited by the suspect that could establish doubt of the suspect's guilt, thereby accepting the suspect's false confessions at face value without corroboration (Inbau et al., 2013). Then the suspect articulates a false memory and makes a false confession (Gudjonsson, 2014). The false confessions occur not only from the objective conditions of the suspect or the interrogation process (Garrett, 2010), they also occur from the psychological interrogation techniques used by the interrogator (Kassin, 1997).

### **Legal Analysis**

The voluntary confession rule began in 1897 when the U.S. Supreme Court heard the case of *Bram v. U.S.* (1897) in which the court applied the common law rule of the voluntariness doctrine to the self-incrimination rule of the Fifth Amendment of the U.S. Constitution (1791). The false confession does not generally meet the legal requirements of a suppressible confession. In order for a confession to be admissible, it has to be determined to be voluntary. The false confession can be determined to be a legal voluntary confession (Inbau et al., 2013). In the *Spano v. New York* decision by the U.S. Supreme Court (1959), the court stated that an involuntary confession is one where the defendant's will was overborne and that each case would be evaluated on a case-by-case basis depending on the facts surrounding the case.

There are many reasons for false confessions that have been thoroughly researched in the literature of the legal community, based on contamination of the facts of the case

injected into the interrogation (Garrett, 2010), and the voluntariness of the confession from the interrogation (Godsey, 2005; Marcus, 2006; Thomas III, Leo 2012).

### **Reid Analysis**

The Reid technique relies heavily on the legal requirements in interrogation law and aspects of verbal and nonverbal behavior in the detection of deception (Inbau et al., 2013). Inbau et al. (2013) stated that a confession must be free of coercion and be voluntary, free of promises of leniency or threats, and the interrogation free of duress and contamination. If these elements of a confession are absent, then the analysis of the confession must be conducted to determine its trustworthiness, whether the confession is free of internalized coercion, deception, and psychological factors that could affect trustworthiness and also that the confession is corroborated. Under the Reid technique, if there is an absence of all these elements and the confession is corroborated, the confession should be admissible in a court of law (Inbau et al., 2013).

The Reid technique combats the false confession through caution factors in identifying false confessions and corroboration after the interrogation in which confession is obtained (Inbau et al., 2013). It also works to minimize false confessions through the aspects of verbal and nonverbal behavior in the detection of deception (Vrij, Edward, Roberts, Bull, 2000). If the interrogator determines that the subject is telling the truth through the BAI; the interrogator ceases the interrogation (Inbau et al., 2013).

This study fills the gap in the literature in determining which legal model, the Reid legal analysis model or a legal casebook analysis model, best detects the identification of all types of false confessions (see Inbau et al., 2013). This research supports the field of

criminal interrogations and confessions by limiting the risk factors of a false confession obtained in an interrogation.

### **Problem Statement**

Of the 1,728 conviction exonerations from 1989 to 2016, 221 are attributed to false confessions (National Registry of Exonerations, 2016). This provides evidence of the presence of false confessions. False confessions result in the wrongful conviction of innocent people and the nonconviction of guilty people, which presents a problem in the criminal justice system. The detection of false confessions at the investigatory stage is at the heart of the problem before a wrongful conviction occurs. A detective whose responsibility is to interrogate suspects must have the knowledge and ability to evaluate not only the interrogation process but also to do a postmortem of the confession. A detective must be knowledgeable in law, psychology, and linguistics. For the detective to recognize a false confession, the detective must evaluate every confession through the methods of these disciplines.

Previous research has recognized this issue and examined possible causal factors of false confessions such as the legal admissibility of the confession (Marcus, 2006). Also researched has been the interrogation methodology and conditions of the suspect, both mental and physical (Garrett, 2010). However, a gap in the literature exists in a qualitative assessment of the effectiveness of the Reid models and the complete Reid technique during interrogation versus the legal casebook analysis in regard to the suspect and interrogator's attribution and the attribution error during the interrogation in the detection of false confessions.

The Reid interrogation is the gold standard of interrogation in the industry, and it has been the most widely accepted and used method in the United States. However, the Reid method had not been tested separately to determine if the Reid BAI, the Reid legal analysis, and the Reid false confession analysis technique could detect false confessions. There has not been any research conducted on the legal elements of a voluntary confession to determine if a legal analysis alone could detect a false confession or certain aspects of the Reid technique listed above to look for similarities of the techniques in detecting false confessions.

It was important to determine if interrogators could have identified a false confession through the Reid models mentioned above or a legal casebook analysis model and the linguistic model. In framing the problem, critics have stated the Reid technique could cause or potentially cause false confessions (Hirsch, 2014; Perillo & Kassin, 2010) and therefore inhibit the detection of false confessions. The problem of not detecting false confessions also applies to the Legal Analysis of involuntariness in confessions, since false confessions can be deemed voluntary and admitted into evidence at trial (National Registry of Exonerations, 2016). In this study, I looked for similarities between the Reid models of detection of deception and false confession analysis, the legal analysis models of involuntariness, and the linguistic model in the detection of a false confession. I then looked for similarities between all the models to determine if the similarities of all the models could detect a false confession. The importance of this was to detect whether when the interrogator is using the Reid Technique they could have identified a false confession through all these models together or independently.



The importance of this study was to detect when an interrogator using any of the Reid models could have identified a false confession. It is important to determine if a legal analysis of the ongoing interrogation process could have detected false confessions. The reason for this study was to limit the risk of false confessions to limit the false confession used as evidence against the defendant in a criminal trial. In this study, I determined which model works the best in identifying a false confession, the Reid models, the legal casebook analysis model, the linguistic model, or all of them together.

The gap in the literature is due to the lack of research in detecting false confessions through the Reid models or the legal casebook analysis model and the linguistic model. The research supports the field of criminal interrogation and confessions by contributing to the development of a methodology in detecting false confessions through any of the models involved in this study.

### **Purpose**

The purpose of this qualitative case study was to perform a content analysis in the identification of a false confession during an interview and interrogation through video observations of the interrogations using the legal voluntariness models. To accomplish this, I used seven models to attempt to identify a false confession: a Reid legal analysis model, a legal casebook analysis model, and a Reid verbal analysis model of detection of deception, which included the Reid paralinguistic model, the Reid false confession analysis model, the complete Reid technique, and the linguistic model.

The purpose of the study was based upon the following seven factors: (a) to determine if there were similarities of illegal coercive tactics by the interrogator using the

Reid legal analysis and false confessions, (b) to see if the defendant was giving off linguistic signals through the Reid verbal analysis (including the Reid paralinguistic model) for detecting deception in a false confession and to determine whether the interrogator identified the linguistic and paralinguistic signals, (c) to determine whether the legal casebook analysis determined the linguistic phrases given to the interrogator to signal a false confession and involuntariness in conjunction with illegal coercive tactics established by case law, (d) to determine what linguistic phrases were given to the interrogator to signal a false confession that were similar to illegal coercive tactics established by the Reid legal analysis model, (e) to determine if the Reid false confession model was used in the interrogation to detect a false confession and if in fact the Reid false confession analysis could have detected a false confession, (f) to determine if the complete Reid technique could have detected a false confession, (g) and to find out if the linguistic model looking at linguistic phrases and word count of the basic parts of speech could have detected a false confession.

I conducted an evaluation of the legal casebook analysis for involuntariness in order to detect false confessions and determine if there were similarities between the detection of involuntariness and false confessions. I then studied the legal casebook analysis looking for similarities between each Reid model and the complete Reid technique.

I conducted an evaluation of the linguistic analysis model to determine if it could have been used to detect a false confession. I then determined if there were similarities with the Reid models and the legal casebook analysis model in detecting a false confession.

The qualitative case study consisted of obtaining videos of real interrogations between police officers and defendants featuring confessions and false confessions. I analyzed the videos through content analysis by coding the language to determine if there was a correlation between involuntariness and false confessions.

### **Research Questions**

RQ1: How do interviewers attribute identification of false confessions during criminal interrogations using the Reid legal analysis model of involuntariness?

SQ1: What linguistic indicators of a false confession are identified using the Reid legal analysis model of involuntariness?

RQ2: How do interviewers attribute identification of a false confession during criminal interrogations using the legal casebook analysis model of involuntariness?

SQ2: What linguistic indicators of a false confession are identified using the legal casebook analysis model of involuntariness?

RQ3: How do interviewers identify attribution error of a false confession using the Reid legal analysis model of involuntariness?

SQ3: Can attribution error occur in identifying linguistic indicators using the Reid legal analysis model?

RQ4: How do interviewers identify attribution error of a false confession using the legal casebook analysis model?

SQ4: How does attribution error occur in identifying linguistic indicators using the legal casebook analysis model?

RQ5: How do interviewers attribute identification of a false confession during criminal interrogations using the Reid BAI of detection of deception?

SQ5: What linguistic indicators attribute identification of a false confession during criminal interrogations using the Reid verbal analysis of detection of deception?

RQ6: How do interviewers attribute identification of a false confession during criminal interrogations using the Reid false confession analysis?

SQ6: What linguistic indicators attribute identification of a false confession during criminal interrogations using the Reid false confession analysis?

## **Conceptual Framework**

### **Attribution Processes**

Heider's (1958) attribution theory established a causal perception that occurs during attribution. The process starts with a distal stimulus that consists of external stimuli that are perceived by the person. This stimulus is then mediated through sight, hearing, and speech that stimulate the person's senses. Then the stimulus of the mediation comes into contact with the person. This is called proximal stimulus, which is where the person perceiving the information received from the other by their behavior or verbal language. The final phase is the constructive process, which is where the proximal stimulus is actively interpreted and the individual tries to explain the behavior and events. In attribution theory, the person searches for the basis of events through external attribution and internal attribution (Heider, 1958).

In 1977, Ross formulated the attribution error theory. This is a theory that is defined as the tendency for attributors to underestimate the impact of situational factors and to overestimate the role of dispositional factors in controlling behavior (Ross 1977).

Shaver (1985) identified the constructive process which persons asks themselves whether they are responsible. In this process they ask themselves: “A.) is the observed or apparent causal contribution to the outcome. B.) Knowledge of the consequences of the action taken. C.) Intention to produce the outcome. D.) Degree of volition versus coercion. E.) Appreciation of the moral wrongfulness of the action” (Shaver, 1992, p. 168).

According to Kelley and Michela (1980), the attribution structure starts with information. Next, the person searches to explain the perceived cause of events or attribution, and finally, the result is the consequence or the ensuing behavior. The information is the independent variable and the consequence is the dependent variable (Kelley & Michela, 1980).

The trigger of an attributional search does not occur all the time. It is only when there is a lack of knowledge of the subject matter that attribution search is triggered. It is during the attribution phase that person attempts to understand the events (Försterling, 2001).

There are several attribution processes that can occur in an interaction between two people. The first is the interpersonal casual attribution process. This process involves the situation the person is in, attribution, emotion, action result. This interpersonal casual attribution triggers interpersonal reactions that can be evaluated (Weiner, 1995).

The second process is the nonverbal behavior psychological process. This process involves the evaluation of nonverbal behaviors. In a study by Meyer (1984), a psychological process was developed involving an evaluation model of nonverbal behavior communication. "First; assessment of the actor's ability and effort. Second; evaluative reactions towards the actor's performance. Third; actors inference about the evaluator's assessments. Fourth; actor's self-perception of ability. Fifth; expectations, emotions, and behavior" (Försterling, 2001, p 190; Meyer, 1984). The emotions revealed in nonverbal behavior can trigger the evaluation of nonverbal communication (Försterling, 2001; Meyer, 1984).

The third and final process is the attribution of language and causal explanations. Grice (1975) "established that conversations need to follow four maxims of quality = truth, quantity = adequately informative, relevance = speaker relevant, and manner = comprehensive and orderly" (p. 45 - 46). It has been established that the use of interpersonal verbs can convey assumptions about who is responsible for the described event. Interpersonal verbs are verbs that describe interactions between individuals (Abelson & Kanouse, 1966; Garvey & Caramazza, 1974; Kanouse, 1972; McArthur, 1972). All of these attribution processes can occur at the same time during the interaction between two individuals. The advancement of attribution theoretical research and derivatives forms the basis of this study in identifying false confessions and errors in not identifying these type of confessions. This theory accomplishes this through the cognitive interaction process between the interrogator and the suspect in attributing the information

received and perceived. These theories and processes are explained further in the literature review.

### **Conceptual Framework Models**

The conceptual models that interact with the attribution process are the Reid technique, which includes all the Reid models developed for this study; the legal casebook analysis model; and the linguistic model. I discuss these conceptual models in detail as to the interaction and application with the attribution process in Chapter 2 of this study.

### **Application to Study**

The application of the attribution process to the Reid Technique of Interviews and Interrogations applies to this study through the common sense psychology in the evaluation of emotions and verbal, and non-verbal behavior resulting in a legal analysis during the interaction of the interrogator and suspect (Abelson & Kanouse, 1966; Försterling, 2001; Garvey & Caramazza, 1974; Grice, 1975; Heider, 1958; Inbau, Reid, Buckley & Jayne 2013; Kanouse, 1972; McArthur, 1972; Myer, 1984; Weiner, 1995).

During these evaluation processes of the attribution and the Reid Technique, the interrogator was trying to determine only three results of either deception or truth and legal admissibility (Inbau, Reid, Buckley & Jayne, 2013). However, the fourth result of false confessions has not been a primary concern during the evaluation process (Inbau, Reid, Buckley & Jayne 2004).

It has only been recently that false confessions have become a concern in the evaluation process (Inbau, Reid, Buckley & Jayne, 2013). Mainly due to the DNA exonerations in wrongful convictions revealing the presence of false confessions as the

partial cause of the wrongful convictions (National Registry of Exonerations 2016), and the absence of the subject matter addressing false confessions in an earlier edition of the Reid Technique textbook (Inbau, Reid, Buckley & Jayne 2004).

Therefore, Investigators were not being trained on the possibility of a false confession occurring. The application to the attribution process applies to all types of false confessions through the process of attribution where the suspect acquires the information from the interrogator, then conducts an attribution internally in deciding whether to make a true confession or make a deceptive statement or a false confession. All types of false confessions occur where the suspect comes to believe falsely (through a false memory) that he committed the crime and he articulates a false confession (Heider, 1958; Henkel & Coffman, 2004).

Therefore, the purpose was to evaluate the attribution process that is occurring during all areas of the interview and interrogation of the Reid technique; the legal casebook model and the linguistic model to determine if the all the models together and separately detected false confessions.

The conceptual framework was grounded in the area of criminal procedure specifically confession law dealing with the voluntariness of a confession. The second area was in the area of criminal justice specifically dealing with interviews and interrogation utilizing the Reid technique. The third area was in the area of psychology specifically attribution and attribution error. The fourth area was in the area of linguistics. These four areas combined developed the conceptual framework for this experimental study and were for the specific purpose of identifying false confessions.



## **Nature of Study**

The research design that was utilized for this study was a qualitative case study with a content analysis of the data. The purpose of this was to establish a qualitative basis in the identification of attribution and attribution error in identifying false confessions with the Reid models and the complete Reid technique compared with the legal casebook analysis model and the linguistic model. This study tested if false confessions could have been identified from a sample of true and false confessions. These confessions were a sample taken from publicized confessions in a video recorded format. These confessions have already been shown in court and publicized on youtube or other public/social media. This study also determined which model (already listed) best detected false confessions. Similarities were compared with each other and separately to known true and false confessions and the results were analyzed to determine which model was more effective in identifying false confessions.

## **Key Elements**

The key elements were defined as the Reid legal analysis model and the legal casebook analysis model, the Reid verbal/paralinguistic analysis model. Reid false confession model, the complete Reid technique (which includes all the Reid models listed above and including the Reid nonverbal model) and the linguistic analysis model in detecting false confessions. In the legal models, there are elements of the legal model and the attribution and attribution error in the assessment of coercion and voluntariness. This determined if there are similarities between the models with the identification of false confessions.

## Definitions

This was a qualitative assessment of the Reid legal analysis model and the legal casebook analysis model, and the Reid verbal analysis model, the Reid false confession model and the linguistic analysis model for false confessions and the complete Reid technique through video observation and therefore looked to see if the models could have detected false confessions independently and altogether. The following definitions apply to the research questions and models.

*Attribution theory:* This is defined as a “theoretical proposition about the processes by which people ascribe motives to their own and others behavior, and particularly whether these motives are internal and personal (dispositional attribution) or external and circumstantial (situational attribution)” (VanDenBos ed. 2015, p. 89-90).

*Dispositional attribution:* “The ascription of one’s own or another’s actions, an event, or an outcome to internal or psychological causes specific to the person concerned such as traits, moods, attitudes, decisions, and judgment’s, abilities, or effort. This term is also called internal attribution and personal attribution” (VandenBos ed. 2015, p. 324).

*Situational attribution:* “The ascription of one’s own or another’s behavior, an event, or an outcome to causes outside the person concerned, such as luck, pressure from other people, or external circumstances this term is also called environmental attribution or external attribution” (VandenBos ed. 2015, p. 984).

*Attribution:* This term is defined as “an inference regarding the cause of a person’s behavior or an interpersonal event. The attributional style that was of concern was the

dimension of internal and external dimension (whether they tend to attribute events to the self or to other factors” (VandenBos ed. 2015, p. 89).

*Attributional analysis of persuasion:* “An approach to understanding persuasion in terms of the reasons given by people for why communicators of persuasion messages adopt particular attitudes” (VandenBos ed. 2015, p. 89).

*Attribution error:* “An error or bias in ascribing motives to behaviors or causes to outcomes” (VandenBos ed. 2015, p. 89).

*Attribution of the suspect:* This was an operational definition that was defined as a combined definition of the terms as dispositional attribution and situational attribution; to define the suspects half of the psychological interaction process of the interrogator.

*Attribution of interrogator:* This was an operational definition that was defined as a combined definition of the terms as dispositional attribution and situational attribution to define the interrogators half of the psychological interaction process of the interrogation.

*Attribution error of suspect:* This was an operational definition as the misinterpretation of his attribution based on certain physical or psychological, or external impediments in the interrogation process (this is based on the official definition of attribution error).

*Attribution error of interrogator:* This was an operational definition as the misinterpretation of the information received from the suspect during the interrogation through verbal and non-verbal behaviors.

*Voluntary false confession:* This was where an individual who had nothing whatsoever to do with the crime comes forward and confesses. The reasons are varied,

such as, suffering from a mental disorder; to obtain police detention for a deliberate conceived objective; to be incarcerated for a brief or long period of time to evade police detection as a suspect for a more serious crime; protect a loved one; and finally, the confessor seeks to achieve publicity and esteem (Inbau et al., 2013).

*Coerced-compliant confession:* This type of confession was defined as “when the suspect claims that he confessed to achieve an instrumental gain. Such gains include being allowed to go home, bringing lengthy interrogation to an end, or avoiding physical injury” (Inbau et al., 2013, p. 340).

*True confession:* “This term was defined as factual criminal involvement, and articulates a specific reasonable motive, that led them to come forward and told a family member, friends or clergyman, and provides independent corroboration evidence” (Inbau et al., 2013, p. 349).

*Coerced-internalized false confessions:* “Defined as when the investigator successfully convinces an innocent suspect that he was guilty of a crime he does not remember committing and confesses to the crime” (Inbau et al., 2013, p. 341).

*Reid interrogation method:* This was defined as a method of “interrogating suspects whose guilt seems definite or reasonably certain. This method consisted of nine steps which were: Direct Positive Confrontation; Theme Development; Handling Denials; Overcoming Objections; Procurement and Retention of the Suspects Attention; Handling the Suspects Passive Mood; Presenting an Alternative Question; Having the Suspect Relate the Details of the Offense; Converting an Oral Confession into a Written Confession” (Inbau et al., 2013, p. 188-189).

*Voluntary*: The legal definition is “unconstrained by interference; compelled by another’s influence; spontaneous; acting of oneself. Done by design or intention; proceeding from the free and unrestrained will of the person; produced in or by an act of choice” (Black, 1990, p. 1575).

*Voluntariness*: This definition was also the opposite of coercion, and is a legal definition as well as an interrogation. Both definitions were used. This definition, however, was the interrogation definition which was also the same as the legal definition. Voluntariness “is defined as a legal concept that a confession is voluntary as long as the suspect’s free will is not overborne. The point an interrogator’s words, demeanor or actions are so intense or powerful as to overcome the suspects will depend on factors as his previous experience with police; his intelligence; mental stability; and age” (Inbau et al., 2013, p. 343).

*Voluntariness test*: This definition was an operational definition that was derived from case law and law review articles addressing the current law and variables of the voluntary test. This definition was in line with the current legal analysis of the voluntary test. The voluntary test was an objective analysis in determining the improper police conduct would be the central issue in determining the voluntariness of confessions (479 U.S. 157, 1986).

The objective factors could have been but not limited to: “Location of questioning, if Miranda warnings were given, age, drug problems, experience with the criminal justice system, torture” (Kozinski, 2015, p. 39), “falsify physical evidence, deception about legal process, threats: physical harm against defendant or family, potential prosecution or arrest

of friends and family, maximization of penalty, lack of protection against others who threaten suspect or family, use or refusal to authorize use of medical treatment, loss of employment or education and forfeiture of driver's license, promises not to charge or lesser counts if a statement is made, duration of interrogation, serious mental illness and IQ" (Marcus, 2006, p. 611-634).

*Coercion:* The legal definition was "compulsion; constraint; compelling by force or arms or threat. It may have been actual, direct, or positive, as where physical force was used to compel act against one's will or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse. The coercion that vitiates confession could have been mental, as well as physical and question, was whether accused was deprived of his free choice to admit deny or refuse to answer" (Black, 1990, p. 258).

*Contamination:* Contamination was defined where an interrogator discloses facts of the case to the suspect and the suspect parrots those facts back to the interrogator in a confession (Garrett 2010).

*Verbal behavior:* This was defined where a person was evaluated from his verbal behavior which consists of truthful responses or deceptive responses based on certain criteria (Inbau et al., 2013).

*Nonverbal behavior:* This term was defined where a person was evaluated from his nonverbal behavior which consisted of truthful and/or deception physical movements of the whole body including facial expressions (Inbau et al., 2013).

*Paralinguistic behavior:* This was defined as speech characteristics that could have altered the meaning of words in detecting deception (Inbau et al., 2013).

*Voluntary confession:* This legal definition was defined as “one made spontaneously by a person accused of a crime, free from the influence of any extraneous disturbing cause, and in particular, not influenced, or extorted by violence, threats or promises. It is the product of an essentially free and unconstrained choice by its maker and is made with full knowledge of nature and consequences of the confession” (Black, 1990, p. 297).

*Involuntary confession:* This legal definition “is one induced by hope; promise; fear; violence; torture; or threat” (Black, 1990, p. 297). “A confession is involuntary if it is not the product of an essentially free and unrestrained choice of its maker or where maker’s will is overborne at the time of the confession” (Black, 1990, p. 827).

*Naked confession:* This legal definition “is an admission of the guilt of the party, but which is not supported by any evidence of the commission of the crime” (Black, 6<sup>th</sup> ed. 1990, p. 297).

*Memory distrust syndrome:* “Is defined as a condition where people develop a profound distrust of their memory recollections as a result of which they are particularly susceptible to relying on cues and suggestions” (Gudjonsson 2003, p. 196).

*Corroboration analysis:* This was defined as utilizing the different types of corroboration in corroborating a confession such as; “Dependent Corroboration; Independent Corroboration; and Rational Corroboration”; which are defined in the Reid Technique (Inbau et al., 2013, p. 354-355).

*Assumptions:* The aspects of the study that were believed but could not be proven to be true were if false confessions could have been identified in criminal interrogations utilizing the Reid legal analysis model while utilizing the elements of attribution and attribution error. These assumptions are necessary for the context of this study because they are at the heart of the study in detecting false confessions.

### **Scope and Delimitations**

The boundaries of the study were samples that were randomly selected videos of interviews and interrogations that resulted in either a confession or not, conducted by police officers and detectives. The populations that were excluded were all other criminal justice professionals, due to the fact that patrol officers and investigators are the front lines in conducting criminal interrogations. Only police personnel population involved in front line criminal interrogations where false confessions primarily occur were studied. There are other areas that false confessions could have occurred, however, police officers and investigators are primarily the individuals conducting interviews and interrogations.

The literature excluded in this study were in the areas' outside the legal analysis of the voluntariness of a confession, and outside the area of the Reid technique and outside the area of the basis of attribution and attribution error and outside the area of linguistic analysis of false confessions. The reason for this is, that these areas isolate the problem of the non-identification of false confessions. In adding in the other areas of confession law and other theories that form the basis of the Reid technique was not only too cumbersome but would have confused other issues with this study.



The area of confirmation bias as it relates to the identification of a false confession were not included in this study. The reason for this is that it was a study that needed to be conducted on its own. Confirmation bias was not an objective analysis of the identification of a coerced-internalized false confession. It could have been causation for misidentification of a coerced-internalized false confession. This subjective analysis would have interfered with the objective elements of identification that the Reid technique set out in identifying a coerced-internalized false confession (Inbau et al., 2013).

The area of corroboration that is an element in differentiating between a true and false confession (Inbau et al., 2013), was not studied due to the impossibility of the participant in conducting corroboration of the confession video.

In addressing generalizability, it was hoped that the elements of attribution and attribution error of the legal analysis models during the Reid interview and interrogation process would have been identified so that a methodology could have been developed. There was a potential that the coder could identify the elements of attribution and attribution error in a false confession in this study, based on the coder's treatment received in education in the attribution and attribution error of the legal elements of an involuntary confession in false confessions and legal training.

### **Limitations**

The limitations that could have affected the study are in the following areas and reasons; in the area of internal validity, attribution and attribution error elements may not have been identifiable, therefore causing false confessions not to be identified. In the area of external validity that may have affected the study, was in the area of not enough videos

were found for the study and the lack of training of the population in attribution and attribution error elements competency could not be obtained. The confounding variable is where variables that are being identified could be put into two different categories such as the identification of false confessions where the confession was an under involvement or an over-involvement false confessions they both could have gone into the false confession category.

The biases that could have influenced the study could have come from the biases of the population is not only the beliefs that false confessions do not occur but in not wanting to recognize false confessions due to the facts of the case. This is counterproductive to their training in the Reid interrogation technique. Recently, Reid has implemented training in recognizing false confessions. To overcome these biases, training was given to the samples of the study on current training of the Reid technique in the area of false confessions.

The key to address the limitations is training in false confessions, and attribution and attribution elements of legal analysis and teaching them how to apply them in the interrogation process. The other key would be to compensate them by offering continuing education credits for their mandatory training.

### **Significance**

This study hopes to fill the gap in the literature in detecting the identification of false confessions utilizing an effective methodology in identifying attribution, attribution error, within the legal casebook analysis model and all the Reid models and the linguistic model. This research supports the field of criminal interrogations and confessions by

ensuring the confession that is obtained is not false. Therefore, the false confession will not lead to a wrongful conviction.

The social change implications of this study could possibly have an impact on the justice system through determining if the detection of a false confession can be identified during an interrogation. This could possibly prevent a wrongful conviction. The basis of this analysis is that a false confession can lead to a wrongful conviction which can cause the justice system to allow the real criminal to be free and probably committing other crimes. Therefore, if a false confession can be detected before the subject is charged then it could prevent a wrongful conviction and make the investigators search for the true suspect.

In a false confession that leads to a wrongful conviction, the public can lose faith in the system of justice in protecting them from criminal activity, as well in protecting the individual from false confessions that lead to a wrongful conviction. The detection of false confessions could restore faith in law enforcement that they are looking for the true perpetrators of the crime and show to the public the affirmation of protecting society.

Finally, economically due to the fact when the person is exonerated from a false confession he or she could sue under violation of civil rights or some other tort action, and the amount awarded could be in the millions. Our country and states cannot afford these types of suits right now. Therefore, the money paid out in lawsuits could go towards other programs within the government.

This study could validate the identification process of a false confession established in the Reid technique. So, to implement the identification process of a false confession in the investigatory phase will give the defense to law enforcement and the prosecution due

diligence from being negligent at least in the area of confessions, and possibly ensure the protection of the public from false confessions that result in wrongful convictions.

### **Summary**

This chapter has set forth the problem of false confessions that established the research questions and hypotheses. The theoretical basis of the psychological interaction that is a continuum during the interrogation of attribution and attribution error has been identified. The conceptual framework has been constructed setting out the elements of attribution and attribution error and established measures to address the identification of coerced internalized false confessions.

The literature in the disciplines of law, psychology, criminal justice, and communications dealing with coerced internalized false confessions and attribution and attribution error and conceptual elements dealing with the analysis will be researched and reviewed in the literature review. Chapter 3 formulates the methodology of how the study will be carried out.

## Chapter 2: Literature Review

### **Introduction**

The National Registry of Exonerations (2016) has established through DNA exonerations the occurrence of false confessions. False confessions result in the wrongful conviction of innocent people and the non-conviction of guilty people, which presents a problem in the criminal justice system. The detection of false confessions at the investigatory stage is critical for preventing a wrongful conviction from occurring.

Previous research has recognized the issue of false confessions and examined possible implications of false confessions such as the legal admissibility of the confession (Marcus, 2006). There also has been research in the interrogation methodology and conditions of the suspect being interrogated, both mental and physical (Garrett, 2010). However, the literature has not examined the theoretical basis of the psychological interaction during interrogation between the suspect and interrogator's attribution and the attribution error during the interrogation through an analysis of the Reid legal analysis model, a legal casebook analysis model, a Reid verbal analysis model, and the Reid false confession analysis model. The question is whether any or all of the models could detect a false confession during the interrogation process or post interrogation.

The gap in the literature is due to the lack of research in detecting false confessions through any of the four models listed above. The research supports the field of criminal interrogation and confessions by contributing to the development of a methodology for detecting false confessions through the analysis of the four models in this study. The purpose of this qualitative case study was to conduct a content analysis with respect to the

identification of a false confession during an interview or interrogation through video observations using the four models to determine if there were similarities of detection elements between them. Review of the following literature pertains to the elements of the four models that were the basis of this study.

### **Synopsis of the Current Literature That Establishes the Relevance of the Problem**

The synopsis of the current literature revolved around several disciplines that were relevant to this study. The disciplines were the fields of psychology, law, criminal justice, and communication. These disciplines apply to the area in criminal justice of interrogation and confessions and specifically to the Reid interrogation technique process. This includes the studies by Chapman (2013), Gudjonsson (1989), Henkel (2004), Kassin and Wrightsman (1985), and Kassin (2014), Leo (2009), and Moore and Fitzsimmons (2011). These studies describe the problem of false confessions in the criminal justice system.

### **National Registry of Exonerations**

The National Registry of Exonerations is a project at the University of Michigan Law School, Michigan State University Law School, and the University of California, Irvine, at the Newkirk Center for Science and Society. The registry compiles statistics on exonerations of defendants who have been wrongfully convicted. Within these statistics are data on false confessions

To determine the frequency of false confessions, the National Registry of Exonerations tabulated that as of Feb. 11, 2017, of 1,982 total exonerations, 236 exonerations (12%) were from false confessions (National Registry of Exonerations, 2017). The types of false confessions were not broken down according to the three classification

types of false confessions defined by Kassin, which were the voluntary false confession, the coerced-compliant false confession, and the coerced-internalized false confession, the three types of false confessions that were the subject of this study (see Kassin & Wrightsman, 1985). A spreadsheet from the National Registry of Exonerations (2017) failed to show any conditions of the defendants such as mental illness. The registry has not collected any other common denominators' contributing to false confessions as a group or for each false confession

The coerced-internalized false confession is “when the suspect, through the fatigue, pressures, and suggestiveness of the interrogation process actually comes to believe that he or she committed the offense” (Kassin & Wrightsman, 1985, p.78). To account for this psychological process, it has been theorized that “truth and falsehood become intertwined in the suspect’s mind, then with a loss of initiative, and a heightened capacity for fantasies, confabulation and an acceptance of falsified memories, and suggestibility, draws a concern for the danger of a coerced-internalized false confession” (Kassin & Wrightsman, 1985, p. 78 - 79). Gudjonsson (1989) argued that an internalized false confession depended on the psychological vulnerabilities of the suspect such as confusion, lack of confidence in memory of events, or being susceptible to suggestions.

The next factor in false confessions pertained to the circumstances of the police interview. This factor may result in the suspect accepting the police officers’ account of events without even remembering them. Kassin (1997) also stated that the internalization process depends upon psychological characteristics of the suspect and the interrogation tactics. An objective analysis of an interrogation may reveal the presence of coercion,

involuntariness (Inbau et al., 2013), contamination (Garett, 2010), or deception of a suspect (Kassin et al., 2010). These objective factors have been proven in actual cases and research to cause internalized false confessions (Leo, 2009). The psychological coercion of the interrogation elements sets off the psychological process of internalization.

Gudjonsson and Sigurdsson (1994) conducted a study among prison inmates to determine how frequently false confessions occur. The empirical study established that 7% of the cases were classified as being coerced internalized false confessions. This psychological process is difficult to detect. One key aspect of the problem is the interrogation tactics utilized.

There is a dispute in the literature as to whether the Reid technique causes coerced internalized false confessions. Inbau et al (2013) stated that if a subject verbalizes “I must have done it if you say so” after continued denials, the interrogator then is to view statements afterward with extreme caution and to corroborate any confession that follows. Inbau et al (2013) stated if the Reid technique is applied properly, it does not cause false confessions. However other literature disputes the claim that the Reid technique does not cause false confessions, a claim arising from a critique of the Reid method (Hirsch, 2014), then from a legal analysis (Gallini, 2010) and from a psychological analysis (Gudjonsson, 2003; Gudjonsson & Lebegue, 1989; Kassin, 1997). This conflict in the literature can cause confusion among members of the criminal justice system. The only way this could be resolved would be to see if interrogators could have identified all types of false confessions using the Reid legal analysis model.



## **Preview of Major Sections of Chapter 2**

The literature search strategy involved the use of library databases and search engines for locating the literature. I used key search terms and combination of search terms. In this chapter, I describe the scope of the literature in terms of years searched as well as types of literature and sources searched. I articulate the theoretical foundation by providing the origin and source of the theory. I give a rationale for the choice of this theory. I describe how and why the selected theory related to the present study and how the research questions relate to challenging or building upon existing theory.

I conducted an exhaustive review of the literature related to key variables and concepts, describing studies related to the constructs of interest and chosen methodology and methods that are consistent with the scope of the study. I give a description of the ways other researchers have approached the problem, and the strengths and weaknesses inherent in their approaches and justification from the literature of the rationale for the selection of the variables. A review and synthesis of the studies related to the key elements produce a description and explanation of what is known about the variables, what is controversial, and what remains to be studied. I conducted a review and synthesis of studies related to the research questions following this description:

The literature starts off with the history of interviews and interrogations, and confessions and the law governing the confessions, and the evolution of the Reid Technique to the present, then it addresses the attribution theory and its application to the suspect and the interrogator, involving the assessment of behavior during the interview of verbal and non-verbal behavior and assessment of truth or deception. During the

attribution phase, elemental analysis of a true or false confession by the interrogator was addressed. Next, the attribution error by both the defendant and interrogator was addressed, this included the interrogator missing the signals of a false confession of the defendant and as a result, the defendant's memory was distorted and became a false memory followed by the defendant articulating a false confession. The memory process as it relates to false confessions was addressed. The caution signals of all types of false confession were addressed, such as contamination, suggestibility, and coercion, lack of corroboration and attribution error of the interrogator. The literature addressed the types of false confessions, and the Reid Interview and Interrogation procedure and primarily the Reid legal analysis model and the legal casebook analysis model. Finally, the law of interrogations and confessions was addressed as it applied to coercion and voluntariness.

### **Literature Search Strategy**

The literature searched pertaining to this study involved the key variables and sub-variables relating to this study of qualitative case study analysis of identifying attribution and attribution error in relation to all types of false confessions through content analysis. There is very little literature that has been written specifically on the topic. However, literature was found involving the key variables and sub-variables which dealt specifically with this study.

### **Library Databases and Search Engines Used**

The databases that were searched used the terms of the variables and sub-variables within the context of this study. The databases that were used extensively are in the Walden Library. The databases are located in the topics of psychology, criminal justice,

and law. The databases within the topic of psychology are PsycINFO, PsycARTICLES, PsycCRITIQUES, PsycEXTRA, Sage Premier, ERIC, and Sage Research Methods Online. The databases within the topic of criminal justice consist of Pro Quest Criminal Justice, Oxford Criminology Bibliographies, Sage Premier, and Political Science Complete. The legal databases consist of Legal Trac and Lexus Nexis Academic. Other databases that were searched include, SocINDEX with full text, Academic Search Complete, Pro Quest Central, Google, and Google Scholar, Thoreau, SSRN, and Science Direct. Dissertations were searched for that applied to each independent variable.

Web pages of Professor Saul Kassin (Williams College, 2016), Professor Brandon Garrett (University of Virginia School of Law, 2016), and Reid Interview and Interrogation (John E. Reid & Associates. Inc., 2016) and other web pages that related to the elements and sub-elements of this study were researched. Other experts were researched in relation to the elements and sub-elements relating to this study. Textbooks and scholarly articles were searched for that involved the variables and sub-variables that relate to this study as well as statistical analysis techniques, methods, and processes related to this study. Scholarly articles that were discovered through the above methods were used to find more articles and from there other studies were searched for. A specific search of the text of the articles and bibliographies for other relevant studies and reports was conducted. In addition, textbooks and seminal literature relating to the elements and sub-elements were searched on Google, Google Books, and Amazon, to locate the availability of the books to purchase. A search of Walden Library was conducted for books and other dissertations, and textbooks for their availability in relation to the variables and sub-variables. Some of

the searches that were conducted contained no specified time frame, however, other searches were conducted to focus on literature that is focused within the last five years in order to develop a current understanding of the research. The types of literature that were searched include peer-reviewed journal articles, government reports, and scholarly books, as well as training seminar material relating to the elements and sub-elements.

The experts in false confessions were contacted for videos of false confessions, however, the videos could not be released due to attorney-client privilege. The same result occurred with the various innocence projects across the country. A search of the internet through the YouTube website resulted in finding all of the true confession, the false confessions were found through the YouTube website and then that led to the location of all the false confessions in this study at the Lincoln Journal Star newspaper website in Nebraska (Duggan, 2009). The problem with these videos they were not fully recorded, however, there was enough of the interrogation and confession that enabled an analysis of the interrogation and confession.

It was recognized that many of the theoretical articles in the literature review were dated. The reason is that the theory of attribution and attribution error has been widely accepted and has been thoroughly researched. These theories have been the basis of other studies such as source monitoring, and false memory, and video observation of confessions. These studies relate to interrogations and confessions. The video observation of confessions is the focused methodology for this study and is addressed later in this chapter.

In tracing confession law, it was found that confession law was vague and convoluted. For this reason, the case law was dated to show the evolution of legal analysis

of confession law as well as what was case precedent in analyzing the cases of the Reid Legal Analysis model and the Legal analysis model.

### **Elements and Subelements**

The search for research literature was related to elements and sub elements in this study. The elements are The Reid Interview and Interrogation technique from its origin to the present day. The next elements involved the psychological aspects of false confessions, specifically attribution theory, attribution process, and attribution of the defendant which consisted of sub-variables of coercion, internalization, memory distortion, false memory, the decision to confess falsely, and false confession.

The opposite element of the defendant in the interview and interrogation process was the attribution of the interrogator, which specifically involved elements and sub-elements. These elements and sub-elements consisted of the following: The element of the BAI, with sub-elements of verbal behaviors and non-verbal behaviors. The next variable of the attribution of the interrogator was the assessment of truth and deception with the correlation to false confession assessment. The other element was the identification of a true or false confession through elemental analysis. The next psychological process of the defendant and the interrogator involved the key element of attribution error. This process had sub-elements by the defendant such as the attribution process and internalization, source monitoring, memory distortion, false memory, and articulating any type of false confessions. The element of attribution error by the interrogator involved the sub-elements of the accuracy or inaccuracy of behavioral assessment and the accuracy or inaccuracy of false confession assessment.

The next section of the identification of false confessions involved the elements of the caution signals of a false confession with sub-elements of contamination, attribution error of interrogator, suggestibility, coercion, lack of corroboration, admission of crime with no memory of committing it (false memory). Other elements in this section are distinguishing between true and false confessions and the detection of all types of false confessions. The next element in this section was the classification of the types of false confessions. The sub-elements are coerced compliant confession, voluntary false confession, and coerced-internalized false confession. Under the section of the Reid interview and interrogation procedure, there were specific elements and sub-elements that together composed this technique in this study, they are the following: The first section of the procedure was preliminary considerations, with sub-elements of fact analysis of case facts and initial precautionary measures for the protection of the innocent. The next element in the procedure was interview techniques that consist of sub-elements of formulating interview questions; detection of deception through behavior symptom analysis; BAI; cognitive interview; and specialized questioning techniques. The next element in this technique was the interrogation techniques with the sub-elements of the nine steps of the Reid interrogation technique and distinguishing between true and false confessions.

The last element was the law on interrogations and confessions. The sub-elements were the legal reasoning, which was the cognitive process of the interrogator in applying legal reasoning within this element. The next sub-element was the legal analysis of the interrogator which applies the law to evaluate the presence of coercion, voluntariness or

involuntariness of a confession. It also gives guidance in determining a bright line rule in answering the question as to if psychological coercion makes a confession involuntary. In conclusion, the element of legal analysis was researched to determine if legal analysis can detect and therefore prevent a false confession. The literature search strategy that was employed was a broad search of the elements and sub-elements relating to this study. The search then became more focused as the research clarified the elements relating to this study. The hardest part of the literature search was finding each element included and addressed in research articles together. A correlation was made showing the relationship with research articles addressing each element and sub-element that was addressed in this study. These theories and processes are explained further in the literature review.

### **Conceptual Framework of the Seven Models**

The conceptual framework was grounded in the field of law in criminal procedure specifically confession law dealing with the voluntariness of a confession. The second field was in the area of criminal justice specifically dealing with Interviews and Interrogation utilizing the Reid technique specifically the Reid legal analysis. The third area was in the field of psychology specifically attribution and attribution error. The fourth area was in the field of linguistics and how it applied to the assessment areas of coercion, deception, and false confessions through the legal assessment guides. The purpose of these four areas combined developed the conceptual framework for this experimental study and was for the specific purpose of identifying false confessions.

The conceptual model of the Reid technique consisted of first, the interview and interrogation of the suspect which included the factual analysis of the case facts (Keppens

& Zeleznikow, 2003), then in the interview phase it consisted of a behavioral assessment of truth or deception. Then, the next step in the model was the attribution of the defendant and attribution of the interrogator, this was occurring at the same time (Heider, 1958; Henkel & Coffman, 2004), the attribution error by the defendant and the interrogator were occurring as well (Ross, 1977). Attribution error occurred after the attribution of the defendant and the interrogator (Henkel & Coffman, 2004; Ross, 1977). The process consisted of elements of attribution of the defendant of memory distortion, and eventually false memory (Gudjonsson, 2014; Henkel & Coffman, 2004). The elements of the attribution of the interrogator consisted of a verbal and non-verbal assessment of truth and deception, and false confession assessment (Inbau et al., 2013).

The attribution error of the defendant consisted of the actual articulating of a false confession (Gudjonsson, 2014; Ross, 1977). The attribution error by the interrogator consisted of misinterpreting or missing signs of the behavioral assessment or the false confession assessment (Inbau et al., 2013).

During this identification, there was a continuum of attribution of a suspect to the attribution of the interrogator. At the same time, there was attribution from the interrogator to the suspect. Also, there was a continuum of attribution error of the suspect to the attribution error of the interrogator, and from the interrogator to the suspect (Henkel & Coffman, 2004).

In determining the difference between true and false confessions we had to evaluate deception occurring in the interrogation process. In this evaluation process of determining the difference between true and false confessions, we had to look at a valid false confession



as well as the subtypes of a false confession. This involved an over-involvement false confession, an under involvement false confession, or a confession that was deception but was disinformation which was a confession which was meant to lead the investigators in another direction. These subtypes showed verbal and nonverbal signs of behavior during the interrogation. However, this analysis could be an attribution error, based on the subject articulating a false confession through a false memory. The evaluation of deception that was evaluated in this study was a subjective/objective analysis. The subjective analysis consisted of verbal behavior and nonverbal behavior. The objective analysis was corroboration that led the investigator to new evidence and/or that the suspect was able to describe something he did or that can be confirmed by forensics (Inbau et al., 2013). For the purposes of this study, the focus was on the Reid legal analysis model and the legal analysis model. However, the factual analysis was a critical component of both models.

The conceptual framework of the legal analysis model was for the purpose of utilizing the elements required for a voluntary confession and an involuntary confession, to determine if the legal analysis model could identify a false confession. The legal analysis model started off with the interrogation utilizing the Reid technique (Inbau et al., 2013).

During the interrogation process, a legal assessment was ongoing to determine the presence or non-presence of voluntariness and coercion. This was based on the current case law at the time of the interrogation. The current case law that governs the legal analysis of voluntariness of a confession had been established since 1959 in *Spano v. New York* (360 U.S. 315), then was refined in 1962 in *Townsend v. Sain, Sheriff, et al.* (372 U.S. 293), and refined again in 1963 in *Haynes v. Washington* (373 U.S. 503), in these cases the

constitutional voluntariness rule was established. These cases together formulated a rule that stated that the analysis was to be applied on a case by case basis with the details of the interrogation and the defendant's characteristics were to be evaluated within the framework of the totality of the circumstances to see if the defendants will be overborne (*Haynes v. Washington*, 1963). It established that the will was not overborne if the confession was the product of rational intellect and free will (*Townsend v. Sain*, 1962). However, in *Culombe v. Connecticut* (1961) the court ruled that the will was overborne if the confession was not the product of an essentially free and unconstrained choice by the defendant (*Culombe v. Connecticut*, 1961). The U.S. Supreme Court then established a court procedure in evaluating the voluntariness of a confession in *Jackson v. Denno* (1964). The current case law in determining voluntary confessions is *Colorado v. Connelly* (1986) this case scaled back the voluntariness standard by shifting the focus away from the defendant's voluntary state of mind and behavior to the government's improper action. The court determined that the subjective analysis in determining the voluntariness of the defendant would be impossible. However, it did determine that an objective analysis in determining the improper police conduct would be the central issue in determining the voluntariness of confessions (479 U.S. 157, 1986).

Over the past few decades the courts have ruled on the voluntariness of confessions using the totality of circumstances on a case by case basis utilizing the objective test of improper police action in the interrogation as well as the characteristics of the defendant, to determine if those factors overborne the will of the defendant (Kozinski, 2015; Marcus, 2006). The problem with these decisions was the number of factors and variations thereof

that could have led to confusion for the interrogator. The causal connection was that the objective factors in totality could lead to defendants will be overborne.

Then the next process in the model was determining after the confession is obtained whether the confession was voluntary or involuntary (Kozinski, 2015; Marcus, 2006). This was evaluated utilizing the totality of the circumstances through evaluating the conditions of the interrogation and the characteristics of the defendant (Kozinski, 2015; Marcus, 2006). Then an analysis was made as to whether the confession is a true confession (did it meet the Reid elements of a true confession) or a false confession (did it meet the Reid elements of a false confession specifically a coerced-internalized false confession) (Inbau et al., 2013).

The legal analysis depended upon the legal reasoning of the case law (was the confession admissible or inadmissible) as it pertained to voluntary and involuntary confessions, in determining whether a confession is coerced and involuntary, through applying the current case law in applying the voluntary confession rule. The legal reasoning that was applied started with the ultimate issue to be proved; was the confession voluntary or involuntary, then the legal rules governing voluntary and involuntary confessions were applied, then the interrogator assessed the evidence that would be applicable to the legal rules (Walker, 2007).

The best procedure for the legal framework was to look for any or combination thereof of the objective factors that have been ruled by the courts to have found that those factors lead to an involuntary confession such as the following:

- “Location of questioning, if Miranda warnings are given, age, drug problems, experience with the criminal justice system, torture” (Kozinski, 2015, p. 243-248);
- falsify physical evidence, deception about the legal process, threats: physical harm against defendant or family;
- potential prosecution or arrest of friends and family, maximization of penalty
- lack of protection against others who threaten suspect or family, use or refusal to authorize the use of medical treatment, loss of employment or education and forfeiture of driver’s license;
- promises not to charge or lesser counts if a statement is made, duration of interrogation, serious mental illness and IQ (Marcus, 2006, p. 614-631).

The fourth and final area was in linguistics, the purpose of this area was what was the language that was being spoken to the defendant and the language spoken back to the interrogator from the defendant. The key issue was the identification of linguistic phrases of coercion being spoken to the defendant and the key phrases that were being verbalized to the interrogator in response to the coercion all within a false confession.

The conceptual framework related to the study approach through recognizing the concepts and linguistic indicators needed in identifying attribution and attribution error of coercion, deception, and false confession on the part of the suspect and the interrogator in identifying a false confession. The concepts that were utilized are related to the research question and enabled the development of coding sheets in the form of evaluation questions and thus data analysis.

## **Studies Related to Constructs of Interest and Chosen Methodology and Methods Consistent with the Scope of the Study**

There were a plethora of studies that were individually related to the interests of this study. However, there is a gap in the research where all these interests were found in one study. The interests were in the subjects of false confessions, attribution, and attribution error, the Reid interview, and interrogation technique, video observation of confessions, identification of false confessions, distinguishing between true and false confessions, and the legal elements of the voluntariness of confessions in the law of confessions.

However, these individual interests contributed to a description of studies related to the scope of this topic. The elements and methodologies utilized in these studies did apply to this topic.

### **Attribution Process and Game Theory and Decision Theory**

In the subject of attribution, the seminal work of Fritz Heider in 1958 developed a theory to understand how people form ideas in social situations and how they interpret those events (Heider, 1958). The attribution theory was further developed by Jones and Davis, who developed the correspondent inference theory (Jones and Davis, 1965). In 1967 Harold Kelly furthered attribution theory by developing the co-variation model that consisted of a logical analysis of an event or behavior (Kelly, 1967).

In 1977 Ross formulated the attribution error theory, this theory defined that attribution error occurs when attributors underestimate or overestimate the impact of situational factors (Ross, 1977). Attribution and attribution error related to this study due to the reasoning that was being formulated by the defendant and the interrogator in

determining whether the illegal pressure being applied caused a false confession and whether the interrogator could have identified the false confession through the legal models of the voluntariness rule in the legal case book method (Kamisar, LaFave, Israel, King, Kerr, & Primus, 2012), or the legal analysis model of the Reid Interview and Interrogation Technique (Inbau et al., 2013).

The decision tree analysis of the choices of the suspect and the interrogator during interrogation were based on the decision after the interrogation either to confess or not to confess (Danielson, Ekenberg, & Larson, 2007; Kastlelec, 2010; Seidmann, & Stein, 2000). The process began with the interrogation which caused pressure on the suspect, then there was an attribution process that involved both the interrogator and suspect, both of which were trying to interpret the situation and analyzing the stimuli that were being received by both the interrogator and suspect (Heider, 1958).

### **Attribution**

During the attribution process, both the suspect and Interrogator could make an attribution error during this stage (Ross, 1977). The interrogator during the attribution process was trying to detect deception, extract a confession, evaluate the legal analysis of involuntariness, and distinguish between a true and false confession (Inbau et al., 2013).

At this time the conscience of the suspect could have been triggered of either feeling guilty or not guilty, based on the suspect's conscience, the suspect decided to either confess or not confess. The suspect knew about their guilt or innocence. Sometimes the suspect was unsure of their guilt or innocence. If the person was guilty and the suspect did not want to confess, the suspect had to deceive to avoid detection, and the innocent person

did not have to deceive (Danielson, Ekenberg, & Larson, 2007; Kastlelec, 2010; Seidmann, & Stein, 2000). In looking at the burden of proof tree, to show the levels of not guilty to reach the level of guilty of beyond a reasonable doubt, the interrogator is tried to eliminate all the levels of not guilty during the interrogation. The levels of not guilty are, starting at the bottom; believed not guilty, highly unlikely, less than unlikely, probably not, unlikely, possibly not, may not be, perhaps, suspected, possibly guilty, probably guilty, guilty likely (www.bhwlawfirm.com 2017). The interrogator also tried to eliminate any possible defenses such as self-defense, mental disease, and defect, factually innocent, and someone else committed the crime.

From the interrogator decision tree, the process was that there was a pre-interview phase where there was a fact analysis and evidence analysis that assisted in identifying suspects and evaluating their potential guilt. The interview phase consisted of detection of deception and determined who to interrogate, and then in the interrogation phase, there was a legal analysis, extracting a confession, and distinguishing between a true and false confession. Then, after the confession is obtained, the corroboration of the confession was conducted with the suspect. A determination of guilt was established during the interrogation by evaluating the confession with the burden of proof tree and the elimination of possible defenses in the interrogation (Inbau et al., 2013).

Attribution in conformity and dissent. Asch (1951) conducted conformity experiments where the goal of the demonstration was to demonstrate social conformity to the majority or minority. The training of an interrogator in an interrogation technique was to condition the interrogator to conform to the interrogation technique. The role of

conformity and dissent was that the conformity came in two particular strands. The first strand was the conformity of the technique and the second was the conformity of the legal basis of the interrogation technique.

The dissent of this technique had the possibility of several choices and that was the deviation from the technique itself, and then the possibility of the deviation from the legal basis of the technique and also the deviation could come from the perceptions of superiors and observers of the interrogation and thus presents a danger of an influx of their biases with the interrogator and therefore presents possible conformity to a potential majority of attribution error with the interrogator. This is also an example of obedience to authority that was established in Milgram's experiments in obedience (Milgram, 1963) if the interrogator is ordered or influenced to deviate from the interrogation analysis.

The other deviation was from the interrogators self-perception of the interrogation and by not relying on the judgment based on interrogation training. The next deviation came from confirmation bias in judging the suspect's confession in distinguishing a true and false confession. If the technique played down false confessions then the technique had a built-in confirmation bias (Ross, Bierbrauer, Hoffman, 1976). Confirmation bias is a problem in interrogations in that experimental studies have found that confirmation bias could have occurred in interrogations and could have affected the questioning style of the interrogator, therefore, guiding the interrogation towards his beliefs and analysis in the case (Hill, Memon & McGeorge, 2008). This confirmation bias could prevent the detection of false confessions through an attribution error in the factual analysis, the interview, and interrogation.



## **Decision Analysis**

During the attribution process, both the suspect and the interrogator were making a decision. The suspect was deciding as to whether to confess or not or deceive. The interrogator was making a decision in determining whether a suspect was being deceptive or not and determining whether it is a true or false confession. The interrogator then was deciding whether the confession was voluntary or involuntary. This process applied to a sub-theory of decision theory.

Decision theory involves the proper course of action to be taken by a decision maker who may gain or lose by taking action upon uncertain data that inconclusively support or discredit differing hypotheses about the state of real but nonetheless unknowable world (Biederman, Taroni, Aitken, 2014, p.185; Kaplan, 1968, p. 1065).

The three concepts that makeup decision theory are probability, expectation of value, and utility. For the interrogator, he was analyzing the probability on the basis of the fact analysis of the crime and the interview process to determine the probability of the guilt of the suspect. During the interrogation, the interrogator was assessing the probability as to whether the interrogation was meeting the legal elements of a voluntary confession and the probability in determining whether the confession was true or false (Kaplan, 1968).

The suspect was also evaluating the expected value in a confession when a person chose to confess his value was alleviating his guilt, or he just wanted the interrogation to end and falsely confesses, either way, the suspect was expecting a value from his decision (Kaplan, 1968). From this follows the expected utility, this occurs when the suspect confessed for whatever reason that he was actually getting the reward of confessing. The

Interrogator expected value in getting a confession was acquiring justice and the reward from his peers. The expected utility was actually getting the confession (Kaplan, 1968).

### **Game Analysis**

The question became, could the first move of the suspect should have been proven the guilt or innocence of a suspect? In an article by Seidmann & Stein (2000), argued that the right to silence helps triers of fact to distinguish between innocent and guilty suspects and defendants through a game theoretic analysis of the Fifth Amendment privilege. Their analysis was that the guilt signals invoke their right to silence or give false responses in the face of criminal accusations usually signals guilt. The exception was when the person distrusts the criminal justice system. Therefore, the decision analysis leaves the suspect to be silent or non-silent, the invocation of silence signifies either the subject was guilty or distrusts the system. If the subject chose to not invoke his right to silence this subject could have chosen to be deceptive, or make a true confession or make a false confession.

The reasons a person confesses, are that in a true confession, the subject is faced with insurmountable evidence, guilt, or pressure. The reason to falsely confess is either to exonerate the guilty party or pressure. The false confession can come from the result of contamination, coercion, and involuntary elements established in case law. The subject who falsely confesses usually had psychological vulnerabilities that made the subject susceptible to coercion, contamination, and the involuntary elements (Inbau et al., 2013).

The case law especially the current law governing voluntariness is that if a subject's free will has been overcome in preventing to make a choice of either to confess or not, his will has been overborne (*Colorado v. Connelly*, 1986). In this analysis, it was a subjective

test and an objective test in analyzing the elements of coercion, duress, and involuntary elements (*Colorado v. Connelly*, 1986). In the amicus brief to the U. S. Supreme Court in *Colorado v. Connelly* made by the American Psychological Association stated “If a person free to make a choice (any choice) he is still in possession of his will” (Ennis Jr., Bersoff, Malson, 1986, p. 8) (John E. Reid & Assoc., 2016, p. 417). Confessions are evaluated on involuntariness on a case by case basis on the totality of circumstances, and are judged by the preponderance of evidence in evaluating their admissibility with the caveat there had to be police coercion (*Colorado v. Connelly*, 1986).

### **The Fulcrum of the Voluntariness Rule**

In analyzing the involuntariness and the voluntariness rule was to use an equilibrium principle of involuntariness on one side and voluntariness on the other with the fulcrum as interrogation pressure. For further analysis of this analysis see Appendix A.

### **Framework for the Legal Test in Determining Voluntariness of Confessions**

The Illustrative framework for the legal test in determining the voluntariness of confessions started off with a scale which was at equilibrium. On one side of the scale was the voluntariness side and on the other side was the involuntariness side. In the middle was the fulcrum of the legal test. The legal test determined what elements are coercive and which are not coercive. For further analysis see Appendix B.

### **Reid Interview and Interrogation**

**History of the Reid interview and interrogation technique.** The Reid interview and interrogation technique were developed by Fred Inbau (1942) in *Lie Detection and Criminal Interrogation*, in this text is the basis on the development of the Reid interview

and interrogation technique. There were two other editions of *Lie Detection and Criminal Interrogation* by Inbau, published in (1948) and (1953). These editions advanced the psychological interrogation technique by qualitatively assessing the observations of detection of deception with interviews and the polygraph. In 1962 the first edition of the *Criminal Interview and Interrogation* manual was published. This manual did not have a two-phased process of the interview first to determine whether to interrogate or not. The process was to conduct a factual analysis of the crime, evidence the witnesses and suspect, and then determine from those results who to interrogate with the “tactics and techniques of suspects whose guilt is definite or reasonably certain” (Inbau & Reid, 1962, p, 21). It also had a section on “tactics and techniques for the interrogation of suspects whose guilt is doubtful or uncertain” (Inbau & Reid, 1962, p. 88). The second edition of *Criminal Interview and Interrogation* had the same format with no changes in the tactics and techniques sections (Inbau & Reid, 1967). The third edition of *Criminal Interview and Interrogation* is the format that the fourth and fifth editions are based on. The third edition developed the separation of the interview process first in evaluating behavior symptoms to establish deception and then went to the interrogation phase with the new nine steps of interrogation (Inbau, Reid, & Buckley, 1986). The fourth and fifth editions are in the similar format with changes in the law of interrogation and confessions, and additional research in the behavioral symptom analysis (Inbau, Reid, Buckley, & Jayne, 2004; Inbau et al., 2013).

**Reid interview and interrogation process.** The process of the Reid interview and interrogation technique first started with the crime committed. Then the next step was the

Investigation of the clinical fact analysis of the criminal act, the evidence, witnesses, and suspect(s). Next, a Behavior Symptom Analysis Interview was conducted to determine deception and if deception is indicated (See Appendix W for Behavioral Analysis Interview Questions and Behavior Profile Guidelines) (Reid & Assoc., 2008) (See Appendix Q for Subject Interview Sheet) (Reid & Assoc., 2005), then proceeded to the Interrogation with the Reid Nine Steps of Interrogation which are:

- Step One: Direct Positive Accusation
- Step Two: Theme Development
- Step Three: Handling Denials
- Step Four: Overcoming Objections
- Step Five: Attaining the Subject's Attention
- Step Six: Handling the Subject's Passive Mood
- Step Seven: Presenting the Alternative Question
- Step Eight: Obtaining the Verbal Confession
- Step Nine: Elements of the Written Confession (Reid & Associates, 2008, p. 7-14).

During the Interview and Interrogation, the Interrogator must follow the Reid Legal Guidelines for Miranda and the Voluntariness rule (Inbau et al., 2013). What this study concentrated on was to determine if the Reid Legal Analysis of Voluntariness could have detected a false confession.

## **Fact Analysis Before Interrogation**

**Introduction.** Before any interviewing or interrogation, there needed to be a factual analysis of the evidence that has been collected. There were two types of analysis, the first was the Reid fact analysis phase and then there was the legal analysis of facts. These types of analysis entail different reasoning processes such as deductive, inductive, and abductive reasoning processes.

**Types of reasoning processes.** These processes are defined as follows: deductive reasoning “yields valid conclusions, which must be true given that their premises are true” (Johnson-Laird, 1999, p. 110). Inductive reasoning involves using existing knowledge or observations that are specific to the situation and proceeds to a conclusion based on existing knowledge or observation (Hayes, Heit, & Swendsen, 2010). An abduction is a form of reasoning that first studies or observes facts and develops hypotheses and theories from the facts (Haig, 2005). For Peirce (1931–1958), “abduction consists of studying the facts and devising a theory to explain them” (Vol. 5, 1934, p. 90). This reasoning process depends on the knowledge of evidence at the time the facts are studied and a theory is developed. However, this knowledge of evidence can be incomplete.

These types of reasoning processes applied to this study by using the deductive reasoning processes as starting out with an established rule from case law and applied that rule to the facts to come to a legal analysis. The inductive reasoning process applied, based on evidence that was specific, and limited which then proceeded to a generalized conclusion of the evidence as it applied to case precedent. The abductive reasoning process applied to this study through an analysis of incomplete evidence and progressed to the

likeliest possible application to the established law and therefore reached a likely analysis based on incomplete evidence. The order that these types of reasoning processes were applied depended on the availability of the evidence at the time of the analysis. The key to all these reasoning processes was the availability of the evidence at hand before each type of reasoning processes were conducted. The reasoning processes applied as a conceptual framework for the factual analysis phase of the Reid technique and ultimately the Reid legal analysis.

**Investigators' decision-making process.** The nature of investigation consists of Information management, cognition and investigation, hypothesis generation and testing. These elements of the investigation process could have ensured an objective analysis if conducted without bias, emotion, time pressure, decision avoidance, media interference, or tunnel vision.

**Criminal fact investigation analysis.** In Myren and Garcia's (1989) text on *Investigation for Determination of Fact* developed a system for criminal fact investigation. The first step in the process was to recognize and define the problem. Then the current knowledge of the problem was assessed to develop a tentative theory of the causation of the problem. This process was a deductive method of reasoning which consisted of three parts. The first part was the "formulation of the hypotheses, the second part was the exploring its ramifications and testing whether its implied facts or events exist or occur. The third and final step; was the fact determination process in the collation of information" (Myren & Garcia, 1989, p. 8). It was then the responsibility of the investigator "to convince the decision maker that the facts lead to the accepted established truth" (Myren & Garcia,

1989, p. 9). Facts must be proven at two levels, the first level required “brute or indifferent facts” (Myren & Garcia, 1989, p. 9) that simply exist and stand on their own without reference to other supporting facts and no interpretation is needed of those facts. This level is known as “findings of fact” (Myren & Garcia, 1989, p. 10). The second level required the evidence to meet the standard of proof so that matters at issue could have been determined with one outcome. This type of fact is referred to as “determination of issues” (Myren & Garcia, 1989, p.10).

**The Reid factual analysis phase.** The factual analysis was an inductive approach where each individual suspect was equivalent with respect to specific observations of the crime. This factual analysis relied on crime scene analysis, forensics, legal analysis and information about each suspect as it applied to a method, motive and opportunity. It was an analysis that also established probable guilt or innocence through evaluating physical and circumstantial evidence (Inbau et al., 2013).

The factual analysis was an important initial phase in the interview process. This was based on when the suspect is eliminated through factual analysis and eliminated through the interview process based on their verbal and non-verbal behaviors, therefore the investigator had two sources that corroborated either innocence or guilt (Inbau et al., 2013). The danger that could have occurred in this phase was if the Reid factual analysis was a false positive analysis it could have created a confirmation bias that could cloud the judgment of the interview process and therefore the interrogator would have ended up interrogating an innocent person. Then if a confession was obtained from an innocent person a wrongful conviction would have resulted.



**The Reid legal analysis phase.** The Reid legal analysis phase was a deductive phase based on general rules of law and applied the rule of law to a specific analysis to the given situation in the interrogation (Inbau et al., 2013). The interpretation of facts was then applied to the law to determine admissibility.

**Legal preliminary fact investigation.** Professor Tillers and Professor Schum (1991) addressed the preliminary fact investigation process as a device for ordering thought in the preliminary investigative phase of litigation. They devised a network of twelve systems that marshaled evidence prior to trial, to determine their plan of litigation (Tillers & Schum, 1991). The device was a tool and was only as good as the person utilizing the device. It is an objective analysis based on the rules of evidence in assessing the burden of proof applicable in a civil or criminal trial.

The marshaling of evidence comprised of twelve systems. The first system consisted of a detailed analysis that included four systems. These four systems consist of “evidence from and about investigators, witnesses, real or tangible evidence, and assessing evidence concerning the competency and credibility of witnesses” (Tillers & Schum, 1991, p. 948).

The systems of five, six and seven consists of the combination of details. System five consists of forming of event chronologies, system six consists of marshalling thought and evidence about issues that arise during the investigation, and system seven consist of marshaling evidence in the order in which occurs an association of those events with the evidence supporting those events (Tillers & Schum, 1991, p. 948).

The eighth system marshaled evidence on the “basis of hypotheses, or possibilities, at various levels of refinement based on other possibilities or conjectures emerge during the investigation” (Tillers & Schum, 1991, p. 948). The ninth system “marshaled evidence to eliminate possibilities in a systematic way” (Tillers & Schum, 1991, p. 948). The tenth system “facilitates the construction of scenarios which suggest new evidence and new possibilities” (Tillers & Schum, 1991, p. 948). The eleventh and twelfth systems marshaled evidence based on legal doctrine. “In the eleventh system consists of a base of legal rules and principles” (Tillers & Schum, 1991, p. 948-949). The twelfth system facilitates marshaling evidence on the basis of the elements or points of the legal theories that apply” (Tillers & Schum, 1991, p. 949).

This marshaling system of evidence in a preliminary fact investigation was a synopsis of the conceptual framework in the preliminary investigative process. This system of analysis allowed for an orderly framework to analyze facts, evidence, and law into a cohesive analysis that led to an objective conclusion based on facts and the law that applies. This objective analysis was a detailed approach to factual analysis and could be utilized within the Reid Factual Analysis Phase.

The difference between the Reid factual analysis and the legal preliminary fact investigation was that they are analyzing facts that support their theory of the case whether it be innocence (reasonable doubt), or guilt (beyond a reasonable doubt).

**Evidence evaluation of police officers.** A police officer assesses evidence based on witness interviews and forensic analysis. In this analysis, it was important to discern the reliability and validity of the evidence. This analysis was best if based on an objective

analysis of the evidence. The interpretation of the evidence depended on the latitude that was associated with different types of evidence and the strength of the evidence to determine guilt or innocence.

The evidence evaluation of police officers has been a semi-expert analysis as opposed to jurors' analysis of evidence. However, police officers have needed to keep in mind the common juror's mindset when it comes to their evidence evaluation at trial. To accomplish this type of juror evaluation the police officer could have employed a juror's process of analysis through story construction, by incorporating admissible evidence into one or more plausible scenarios of the crime and the law. Then they could have also incorporated admissible evidence into various possible elements of charges (such as crime identity, mental state, circumstances, and actions). The officers then could have employed story classification which specifies the officer's judgment of classifying the best match of the evidence with the crime. (Pennington, & Hastie, 1986).

**Reid legal analysis.** The Reid interview and interrogation technique was developed by Fred Inbau in 1942 in *Lie Detection and Criminal Interrogation* in this text is the basis on the development of the Reid Interview and Interrogation Technique. The text included a chapter on the law concerning criminal confessions (Inbau, 1942). The second edition of *Lie Detection and Criminal Interrogation* included an updated version of the chapter on the law concerning criminal confessions (Inbau, 1948). The text stated that the law governing the admissibility of confessions depended on the voluntary-trustworthy test. The voluntary-trustworthy test was if a confession was extracted through force, threat, or promise it would render the confession involuntary as well as untrustworthy (Inbau, 1948).

It then went further and explained that physical force would negate a confession and then explained the parameters of threats and force that would negate the admissibility of a confession, based on U. S. Supreme Court cases and State cases as well.

The text was broken up into three sections; the first was the lie detection technique utilizing the polygraph; the second was the detection of deception and the psychological method of criminal interrogation; and finally, the law concerning criminal confessions. These editions formed the basis of the present-day Reid interview and interrogation technique (Inbau, 1948).

These editions remained in effect until 1962 when Fred Inbau teamed with John Reid and wrote the first manual of the Reid interview and interrogation technique (Inbau & Reid, 1962). This manual consisted of the psychological tactics and techniques of effective interrogation, and the law governing the admissibility of confessions. The law governing the admissibility of confessions was based on U. S. Supreme Court cases and state cases as well. Prior to 1943, the test of admissibility was the voluntary-trustworthy test. The Supreme Court, federal courts, and the state courts applied this test through answering these questions; was the confession forced out of him? Was it obtained in such a manner that it would render the confession untrustworthy? If the evidence clearly indicated force and untrustworthiness, the due process clause of either the Fifth Amendment (in federal cases) or the Fourteenth Amendment (in state cases) would be invoked and the case reversed, if the court decided there was no coercion or untrustworthiness, then the confession was admitted. The cases that applied was *Wilson v. U.S.* (1896), and *Brown v. Mississippi* (1936).

However, in the 1940's the Supreme Court took a stringent path in excluding confessions based on *McNabb v. U.S.* (1943), where the court held the confession must meet the voluntary-trustworthy test but also be the result of "civilized interrogation procedures" (Inbau & Reid, 1962, p. 142), (318 U.S. 332, 1943). The admissibility of confessions applied to the states was ruled in *Ashcraft v. Tennessee* (1944) applied a higher standard to the states in that not only it meets the voluntary-trustworthy test but meets the test of free of any "inherent coercion" (Inbau & Reid, 1962, p. 149), (322 U.S. 143, p. 154, 1944). In 1948 in *Haley v. Ohio* (1948) a confession was ruled that the confession obtained was inherently coercive, this was based on the age of the defendant and the tactic utilized and length of interrogation, no physical force was applied (322 U.S. 596, 1948).

In the 1950s the court ruled in *Gallegos v. Nebraska* (1951), and *Stroble v. California* (1952) which overruled the inherent coercive test back to voluntariness-trustworthy test. The court stated that the confession is to be analyzed by the facts in each particular case (342 U.S. 55, 1951), (343 U.S. 181, 1952). These cases departed from a psychological analysis of the facts and circumstances of the defendant.

In 1953 in *Stein v. New York* (1953) the court went even further and stated that a coerced confession could stand if supported by other evidence and could be admissible at trial. The court stated that the Fourteenth Amendment is not a rigid exclusionary rule of evidence but a guarantee against convictions based upon untrustworthy evidence (346 U.S. 156, 1953).

In 1957 in the case of *Fikes v. Alabama* (1957), In this case, the court excluded a confession, based on the defendants low IQ, lack of education, isolation from other

prisoners, lawyer, and parents. The court utilized the totality of circumstances test and stated that these elements went beyond the permissible limits of allowing a confession to stand (352 U.S. 191, 1957). The dissenters in this opinion felt that if there was no physical abuse or psychological coercion that the due process clause had not been violated (352 U.S. 191, 1957).

In 1958 in *Payne v. Arkansas* (1958) the court held that based on the totality of the circumstances of being held in isolation for three days and denied food for long periods of time, and was threatened that “a mob was outside the jail to get him” (Inbau & Reid, 1962, p. 154) and that there was no other evidence of guilt the confession was excluded (356 U.S. 560, 1958, p. 564), (Inbau & Reid, 1962, p. 154).

In 1959 in *Spano v. New York* (360 U.S. 315, 1959), the court again used the totality of circumstances test to determine admissibility. It based the test upon the facts that the defendant was in his mid-twenties, had a half year of high school education, was questioned by numerous people for eight hours, and denied an attorney. A friend of his who was a police officer lied to him during questioning about possibly losing his job and security for his family. It was at this time Spano confessed. The “court held that that the defendant’s will was overborne by official pressure, fatigue and sympathy falsely aroused” (360 U.S. 315, 1959, p. 323).

In 1961 in *Rogers v. Richmond* (365 U.S. 534, 1961), the court expressed a general test to wit a confession’s admissibility should turn on if the behavior of “law enforcement was such to overbear the defendant’s will to resist and bring about confessions not freely

determined” (365 U.S. 534, 1961, p. 545). The test was not to include the reliability of the confession as to the truth of the confession (365 U.S. 534, 1961).

Again in 1961 in *Culombe v. Connecticut* (1961), tried to establish a clear test as to what the criteria are in determining the voluntariness of a confession. Justice Frankfurter wrote the opinion for the court, he stated the following criteria, “Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not if his will has been overborne and his capacity for self-determination critically impaired, the use of the confession offends due process” (*Culombe v. Connecticut*, 1961, p. 602). Justice Frankfurter tried to clarify the test by stating, “The inquiry whether, in a particular case, a confession was voluntary or involuntary made involves at the least, a three-phased process. First, there is the business of finding the crude historical facts, the external, phenomenological occurrences and events surrounding the confession. Second, because the concept of voluntariness is one which concerns a mental state, there is the imaginative recreation, largely inferential of internal, psychological fact. Third, there is the application to this psychological fact of standards for judgment informed by the larger legal conceptions ordinarily characterized as rules of law but which, also, comprehend both induction from, and anticipation of factual circumstances.” (*Culombe v. Connecticut*, 367 U.S. 568, 1961, p. 603).

This decision left investigators on how to interpret it and how to apply it. Reid then formulated this test for interrogators to apply, “Is what I am about to do, or say, apt to make an innocent person confess? If the answer to the above question is yes, the interrogator should refrain from doing or saying what he had in mind” (Inbau & Reid, 1962, p. 157).

“If the answer to the above question was no they, the interrogator, should have gone ahead” (Inbau & Reid, 1962, p. 157) and done or said what he had in mind. Reid further qualified this with this addendum that the interrogator must have considered the age and maturity of the defendant and characteristics of the defendant and factors surrounding the interrogation when applying this test (Inbau & Reid, 1962).

The manual goes on and identified what types of interrogation practices constituted force or coercion. It first differentiated between direct and indirect force. Physical force was a direct force. The indirect force was when physical abuse was applied in the temporary denial of food or sleep or other physical comforts, and the same holds true for psychological abuse such as lengthy interrogations the admissibility is not so predictable as applied to the admissibility (Inbau & Reid, 1962).

Threats are defined as to whether the communication related to the defendant was led to believe his life was in danger or could cause serious harm to the defendant or fear of punishment, and threats to family, and caused the defendant to give a false confession (Inbau & Reid, 1962). Promises are defined as making statements as to the defendant being able to escape from punishment or the mitigation of punishment if he confesses (Inbau & Reid, 1962). Trickery and deceit are allowed to obtain a confession but must not induce a false confession (Inbau & Reid, 1962).

The second edition of the *Criminal Interrogation and Confessions* manual in 1967 (Inbau & Reid, 1967) updated the chapter of the governing confession admissibility with the Massiah, Escobedo, and Miranda decisions. However, for the voluntariness issue, there were three cases decided by the U.S. Supreme court based on this issue.



The first case was decided in 1962 in *Gallegos v. Colorado* (1962) where it excluded a confession based on the age of the juvenile and ruled that no interrogation outside the presence of counsel or a “friendly adult advisor” should take place (Inbau & Reid, 1962, p. 158), (*Gallegos v. Colorado*, 370 U.S. 49, 1962). The dissenters in this opinion found no basis to exclude the confession based on the totality of circumstances (*Gallegos v. Colorado*, 1962).

The second case was *Lynnum v. Illinois* (1963), the court excluded a confession based on a threat of losing financial aid and her children would be taken away. In the third case in *Haynes v. Washington* (1963), the court ruled that the confession he made should be suppressed based on the fact that the defendant was denied permission to call his wife and an attorney. The defendant was told he could call after a confession was obtained. In a 5-4 decision, the court ruled that the police coerced the confession.

The third edition of the *Criminal Interrogation and Confessions* published in 1986 (Inbau, Reid, & Buckley, 1986) was modified in the Interrogation tactics and techniques by adding also the nine steps of interrogation to be used on suspects whose guilt seems to be reasonably certain or definite. However, there were no new changes in the realm of voluntariness of confessions. The manual did relate that a comment was made in *Oregon v. Mathiason* (1977) that an interview by police would have coercive aspects of the process. Therefore, no legal test provided relief from freedom from a suspect’s perceived coercion during the interrogation process (424 U.S. 492, 1977).

The fourth edition of *Criminal Interrogation and Confessions* (Inbau, Reid, Buckley, & Jayne, 2001) did not have any major additions except one case and the

exclusion of another. The case that was excluded was *Colorado v. Connelly* (1986), in this case, the court overruled a decision by the Colorado Supreme Court where the confession had been suppressed. The U.S. Supreme Court ruled that the confession was voluntary even when the defendant had been found to be insane. The court stated that there has to be a police action that causes involuntariness. The Connelly court ruled that there was no police action in during the confession. The case that was added was *Arizona v. Fulminate* (1991), in this case, the U.S. Supreme Court found that a secondary confession was excluded from admission based on the fact that the paid informant was promised that he would be protected in exchange for the truth. Fulminate admitted he committed the crime and gave details. The Arizona Supreme Courts suppression of the confession was upheld.

The fifth and latest edition of *Criminal Interrogation and Confessions* (Inbau et al., 2013) in this edition there were no additions in the areas of voluntariness or changes in promises, threats, trickery or deceit.

**Current Reid legal analysis.** The Reid legal analysis consists of evaluation factors found in the fifth ed. (Inbau et al., 2013). The legal analysis included evaluating factors of coercion that consist of promises, threats (physical or verbal), or real physical harm. The factor of duress consisted of being deprived of physical needs. The involuntariness factors included IQ, age, mental stability, previous experience with law enforcement, contamination, trickery, and deceit coupled with threats and promises, length of interrogation and no corroboration of confession. The will overborne test which was subjective and an objective test including all the above factors on a totality of circumstances test on a case by case basis. The interrogator needed to ask the question;

was the interrogation meeting all the elements of coercion, duress, and involuntariness, if so is the confession true or false? If the answer to the question was yes, the confession should have been suppressed and if no the confession should have been admitted (Inbau et al, 2013).

### **Current Confession Admissibility Issues**

In light of the issue of false confessions being revealed, the courts have become more concerned with the admissibility of false confessions. “The courts are suggesting, if not requiring, interrogators to electronically record interviews and interrogations. The courts now are carefully examining the interrogator's behavior and assessing the impact of that behavior on the voluntariness of the confession” (John E. Reid & Assoc., 016, para. 1). Since the U. S. Supreme Court had decided the admissibility issues of Voluntariness of Confession, the source to turn to was the state appellate courts and state supreme courts and the federal district courts, to determine how they were interpreting the voluntariness standard. In analyzing the cases presented in the article, it appeared that the courts were not just looking at one violation of the involuntariness but violations that are coupled together, such as threats and promises (*People v. Fuentes*, 2006), or trickery and deceit with an implied promise (*Com. V. DiGambattista*, 2004).

Reid and Associates have found that there are four factors that appear regularly in false confession cases, they consist of Age (young or juvenile); suffers from some mental or psychological impairment; length of interrogation took place over an inordinate amount of time; interrogators engaged in illegal tactics and techniques” (John E. Reid & Assoc, 2016, para. 10).

Other issues are: impermissible threats and promises; theme development that turns into a promise; alternative questions should never threaten consequences or promise leniency (John E. Reid & Assoc., 2016). An important issue was in the area of confession corroboration, the warning was to not contaminate the interview and interrogation. This occurred when the interrogator revealed details of the crime. When the confession was made and the contaminated facts were parroted back to the interrogator, it became almost impossible to corroborate the confession. Therefore, the following factors expressed by Reid should have been carefully observed during interrogation, to guard against Involuntariness.

The factors are:

The suspect's condition at the time of the interrogation, such as physical condition (including drug and/or alcohol intoxication); mental capacity; psychological condition; suspects age; suspects prior experience with law enforcement; suspect's understanding of the language; length of the interrogation, degree of detail provided by the suspect in the confession; extent of corroboration between the confession and the crime; presence of witnesses to the interrogation and confession; the suspect's behavior during the interrogation; the effort to address the suspect's physical needs; and the presence of any improper interrogation techniques (John E. Reid & Assoc., 2016, para. 36).

The evolution of these manuals showed the evolution of the voluntariness standard through the case law of the U.S. Supreme court. The ambiguity of the voluntariness standard was hard for interrogators to apply. The current test today for interrogators was

the due process test of voluntariness of confessions if the defendants will be overborne based on the totality of circumstances on a case by case basis through either coercion consisting of promises of leniency, or threats of harm or actual harm. Inbau and Reid developed a test for interrogators to go by but that leaves the analysis up to the interrogator as to his conduct. This could have been affected by the confirmation bias of the interrogator. The legal analysis model of the voluntariness of confessions taken from these manuals and applied by interrogators, this method was used in evaluating videos of confessions and determines if they could have identified a false confession.

### **False Confessions**

There were a plethora of studies on false confessions by well-known experts in the field such as Kassin, Leo, Ofshe, Gudjonsson, just to name a few, these experts felt that the Reid interview and interrogation technique causes false confessions based on psychological and legal grounds. However, Reid and Associates argued differently. The literature showed the studies of false confessions as to the types, causation, and the conflict with the experts against the Reid technique and Reid validating their technique not only through psychology but through a legal basis also.

### **Varieties of False Confessions**

Kassin and Wrightsman (1985) defined three types of false confessions. The first type they identified is defined as Voluntary False Confession which means a false confession without any eliciting from the interrogator. “The second type they identified and defined was named a coerced-compliant false confession as occurring when “the suspect publicly professes guilt in response to extreme methods of interrogation, despite

knowing privately that he or she is truly innocent” (Kassin & Wrightsman, 1985, p. 77).

The third and final type was defined as a coerced-internalized false confession, where the suspect during the interrogation “actually comes to believe that he or she committed the offense” (Kassin & Wrightsman, 1985, p. 78). Kassin and Gudjonsson in (2004) renamed the last two as pressured compliant false confession and pressured internalized false confession with the same definitions (Kassin & Gudjonsson, 2004).

### **Causation of False Confessions**

There have been numerous studies on the causation of false confessions some have been objective studies that the fact of the causation was verifiable in transcripts and videos (Garrett, 2010). Other studies have been in the psychological field involving experiments by Saul Kassin (Kassin, 2006), (Kassin, 2014), and Richard Leo (Leo, 2009), and Gudjonsson (Gudjonsson, 2003). In these studies, they have found some commonality of involuntariness of the confession between the psychological field and the legal field.

Kassin in 2006 broke down the causal factors into two groups, one of the situational risk factors and then into dispositional vulnerabilities. Situational risk factors involve the tactic of presentation of false evidence and a second tactic is minimizing the crime by offering sympathy and moral justification (Kassin, 2006). The previous study that established the risk factors was confirmed in a lab experiment that found presenting false evidence nearly doubled the false confessions (Kassin & Kiechel, 1996). The second tactic, minimization, was confirmed in a study by Rusano, Meissner, Narchet & Kassin in (2005). They discovered that by utilizing explicit leniency almost doubled false confessions. Minimization did double the false confessions. Therefore, minimization and

presenting false evidence double false confessions (Russano, Meissner, Narchet, & Kassin, 2005).

Gudjonsson (2003) identified three strong sources of vulnerability which are: youth, intellectual disability, and psychological disorders (Gudjonsson, 2003). Kassin in (2014) identified two structural aspects of a typical police interrogation. Interrogation is based on the bias that the suspect is guilty. This was taught by Reid in the interrogation process. This could have caused cognitive and behavioral confirmation biases (Kassin, 2014). The second aspect was the Milgram (1963) process within the interrogation. The similarities were striking which in both the Milgram experiment and the Reid Interrogation, “full obedience is achieved through the gradually escalating acts of compliance” (Kassin, 2014, p. 115). Kassin identified two more situational factors in addition to Kassins (2006) study. The two factors are the length of interrogation and prolonged isolation (which includes sleep deprivation) (Kassin, 2014).

In an observational study, Drizen and Leo (2004) found that false confessions included an element of excessive lengths of interrogation. This was based on one hundred and twenty-five proved false confessions, where sixteen percent of interrogations lasted less than six hours, thirty-four percent lasted six to twelve hours, thirty-nine percent lasted twelve to twenty-four hours, and the average length of interrogations from all one hundred and twenty-five cases was sixteen hrs. (Drizin & Leo, 2004, p. 948). Based on these results sleep deprivation can occur.

It has been found in other studies that sleep deprivation can “lower people’s resistance to influence and impair sustained attention, the flexibility of thinking, and

suggestibility in response to leading questions and complex decision making” (Kassin, 2014, p. 115) (Balgrove, 1996). In 2014 a study found that sleep deprivation was linked to false and distorted memories (Frenda, Patihis, Loftus, Lewis, and Fenn, 2014).

Leo (2009) identified three errors police make that occur during police elicited false confessions. They are the misclassification error, the coercion error, and the contamination error. The misclassification error consisted of when the interrogator mistakenly classified an innocent person as guilty (Leo, 2009, p. 334-337).

The coercion error was when an interrogator applied psychological coercion techniques that have been determined to be coercive in psychology and law (Leo, 2009). When these coercive techniques are applied to individuals who have a low IQ, are highly suggestible, or developmentally disabled, or mentally ill, they were more likely to confess falsely (Leo, 2009). The last error was made when the interrogator inadvertently gave the suspect facts of the crime that only the person who committed it would have, or it is released to the media (Leo, 2009).

Gudjonsson (2003) identified the types of confessions and their causes. The first type was the voluntary false confession which was offered by individuals without any questioning from the police. The reasons why people gave these types of confessions were identified by Kassin & Wrightsman in (1985) which are “a morbid desire for notoriety; and unconscious need to expiate guilt over previous transgressions via self-punishment; inability to distinguish facts from fantasy; desire to aid and protect the real criminal; the hope for a recommendation of leniency” (Kassin & Wrightsman, 1985, p. 76-77).



The second type of confession was the coerced-compliant false confession “the coerced-compliant confession results from the pressures or coerciveness of the interrogation process. The suspect does not confess voluntarily, but comes to give in to the demands and pressures of the interrogators for some immediate instrumental gain” (Gudjonsson, 2003, p. 195-196). Gudjonsson (2003) stated the causes for this type of confession are: “being allowed to go home after confessing; bringing the interview to an end; a means of coping with the demands and high pressure of the situation; avoidance of being locked up in police custody” (Gudjonsson, 2003, p. 196).

The third type was the “coerced-internalized false confession. This occurred when suspects came to believe during police interviews that they have committed the crime they are accused of, even though they have no memory of committing the crime” (Gudjonsson, 2003, p. 196). The main cause of this was through the memory distrust syndrome, this occurred when the suspect developed a distrust of their memory relying on external cues and suggestions (Gudjonsson & MacKeith, 1982) the conditions that facilitate this memory distrust was through either amnesia or alcohol-induced memory problems (Gudjonsson, 2003). The second condition was caused by manipulative influences that they gradually began to distrust their recollections and beliefs (Gudjonsson, 2003). This showed that the conditions caused the memory distrust and therefore came to believe they committed the crime.

### **A Conceptual Framework for Identifying Various Types of Confessions**

This research focused on developing a decision tree model where various types of confessions are defined with a new definition of a subtype of false confession. McCann

(1998) developed a decision tree model, (which is provided in Appendix S). This model outlined the process that must have been made about a confession according to “five dimensions which are: retraction status, veracity, legal culpability, voluntariness, and the source of coercion” (McCann, 1998).

This model analyzed the four types of confessions three of which have already been defined in this study which are: voluntary false confession, coerced-compliant false confession, and coerced-internalized false confession. However, Mcann (1998) articulates a fourth type which was coerced-reactive false confession was defined as “when an individual confesses in order to avoid or escape some coercive action that arises out of a relationship with one or more individuals other than police” (McCann, 1998, p. 449-450).

### **Conflict Between the Experts and Reid and Associates**

The conflict between the experts and Reid and Associates was well documented within the literature of confession experts Leo, Ofshe, Kassin, and Gudjonsson to name a few and the Reid website. At the heart of the issue was that the experts believed that the Reid technique caused false confessions and that reform was needed in interviews and interrogations. The problem with the research of the experts according to Reid and Associates was that the studies were either observational data of confessions or lab experiments that did not simulate real-life settings in interrogations. Reid and Associates believed that their interview and interrogation technique was confirmed through the case law where their technique had been validated (Reid & Associates, 2016).

### **Legal Reasoning of the Voluntariness Standard**

**The legal reasoning of the interrogator.** During interrogation, the interrogator was determining the attribution of his actions towards the suspect to determine if there was any legal violation of coercion, voluntariness, or duress that was being employed during the interrogation. The interrogator analyzed this through the legal reasoning of interrogation methods being employed during the interrogation. An interrogator's legal reasoning skills depended on his legal training, department policy, and the interrogator's reasoning skills in interpreting the law, and department policy concerning the interrogation methods to employ, and applying the legal rules of coercion, voluntariness, or duress within the interrogation (Inbau, Reid, Buckley, & Jayne 2013). It was important that these legal rules be followed for the admissibility of the confession in court.

### **Legal Training of Interrogators Versus Lawyers and Judges**

Police officers upon their hiring had to attend a basic law enforcement academy despite having an Associates of Arts degree or a Bachelors or Masters in Criminal Justice, or even a Juris Doctorate degree. The academy covered a variety of topics applicable to what they encounter on the street (Reaves, 2009). The average length of the academies per 2006 was "761 hrs. or 19 weeks" (Reaves, 2009, p. 6). The legal training in basic training programs was a median of 36 hrs. of instruction in Criminal Law, and 12 hrs. of instruction in Constitutional Law (Reaves, 2009). In 2013 the average length of the basic law enforcement training program was "840 hrs. or 21 weeks" (Reaves, 2016, p. 4). In 2013 the average number of hours of instruction in Criminal/Constitutional Law was 53 hrs. It is unknown the amount of time was spent on each area in this study (Reaves, 2016). The

materials they are given is statutes and cases where the rules and elements have already been extracted and given to the police officer to apply (CC POST, 1990). Police officers who attended two and four-year colleges and universities could have taken law courses in evidence, criminal procedure, and criminal law, these courses were semester-long courses (WSU, 2017). These courses sometimes involved either experienced attorneys or law professors who required the use of legal case books and required the briefing of cases and summarizing law review articles for assignments and was just as tough on the students as law professors are on law students (WSU, 2017). Police officers who are promoted to detective are generally assigned to attend a course on the Reid Technique of Criminal Interrogations and Admissions which included a section on “Interrogation Law and Confessions” (Inbau, Reid, Buckley, & Jayne 2013), this chapter summarized all the law involved in the chapter, however, they did reference all the case law summarized for the officer to review. These cases did give confirmation to their technique (Inbau et al., 2013).

Lawyers are required to attend an ABA-approved law school and obtain a Juris Doctorate degree as well as pass the bar in the state they plan to practice in (ABA, 2016). Judges normally have to have a qualified amount of time practicing law before they are appointed on the bench (ABA, 2016). This shows the discrepancy in the amount of education and experience in evaluating the legal reasoning of voluntariness of confessions

Legal reasoning by lawyers. There was a plethora of material on legal reasoning for attorneys, how to think like a lawyer and legal analysis. The law reviews and textbooks are also available (Aldisert, Clowney, & Peterson, 2007; Alexander & Sherwin, 2006; Coughlin, Rocklin, Patrick, 2013; Endicott, 2011; Gionfriddo, 2007; Levi, 1949; Romantz

& Vinson, 2009; Saunders & Levine, 1994; Schauer, 2009; Simon, 2004; Spellman & Schauer, 2012; Teitelbaum, 2014; Vandevælde, 2011; Weinreb, 2005). The preceding material either described the makeup of the thinking process, or the actual procedure of legal reasoning, which involved the actual process of extraction of elements and rules for statutes and cases.

Legal reasoning began with a factual problem and through a process arrived at a conclusion about the problem facing the attorney. This process attempted to predict or influence the court (Vandevælde, 2011). Legal reasoning was a process for the attorney in constructing arguments on how case law and statutes should have been interpreted by the court to rule in favor of their argument (Vandevælde, 2011). The methodology that the attorney used for their reasoning was a five-step process:

1. Identify the applicable sources of law, usually statutes, and judicial decisions.
2. Analyze those sources of law to determine the applicable rules of law and the policies underlying those rules.
3. Synthesize the applicable rules of law into a coherent structure in which the more specific rules are grouped under the more general ones.
4. Research the available facts.
5. Apply the structure of rules to the facts to ascertain the rights or duties created by the facts, using the case rationale or legislative intent underlying the rules extracted from the statutes and judicial decisions to resolve the case”

(Vandevælde, 2011, p. 2).

This showed the complex analysis and argumentation an attorney goes through to resolve a case. This was separate from the analysis and application a police officer goes through in their legal reasoning of statutes and case law analysis and application of the law to their given situation they are confronted with at that time and must make their decision immediately. Whereas an attorney has substantial time in their analysis and argumentation.

### **Legal Reasoning by Police officers and Interrogators**

The legal reasoning of police officers and interrogators was not as complex but nonetheless just as difficult in making their decisions and applications for the legal problem they are confronted with. The police officer must have sometimes made this decision within seconds of the problem they were confronted with. The police officer must have depended on their training at the academy or education and academy training to make these split-second legal decisions. This involved their attribution of the circumstances of the problem they are confronted with their knowledge acquired in their education and/or training. This was based upon the rule method or case method that the officer had learned in the law concerning interrogation and confessions. The methodology an officer goes through in assessing the interrogation while it was ongoing was similar to the methodology utilized in problem-oriented policing which was scan, analyze, assess, and respond, this was based on the SARA model of problem-oriented policing developed by Eck and Spelman in 1987 (Eck & Spelman, 1987). The similarity occurs during the social interaction between the interrogator and the suspect during the interrogation on the part of the interrogator in determining from the interrogator's attribution if an involuntary

confession was occurring using the SARA model. The police officer applied the legal rules of involuntariness to the interrogation that was currently being conducted

### **Interrogation Assessment Model**

The interrogation assessment model took its acronym from the SARA model (Eck & Spelman, 1987), but applied different definitions to each element of the acronym. The methodology was first, scan the interrogation while ongoing to identify any element within the interrogation in an objective/subjective analysis that would cause an involuntary confession. Second, analyze the plans or ongoing social interaction during the interrogation, will or has caused an involuntary confession. Third, assess the social interaction responses from the interrogator's actions and questions has caused an involuntary confession. Finally, respond by either continuing or discontinuing using the current interrogation method.

### **Legal Assessment**

The police officer must have assessed the elements legally by identifying if the elements of involuntariness found during the interrogation had overborne the will of the suspect based on the totality of the circumstances, through the following factors that have been found by the courts to find the confessions were coerced and therefore involuntary. “Age, denied counsel, drugs used to assist confession, education, food, highly suggestible questioning, holding facility/solitary confinement, incompetent, interrogation setting, lack of control, length of confinement, length of interrogation, mental abuse, mental illness, moved to far away jail, multiple cops/interrogators, noticeable injury/sickness, no prior

trouble with law, physical abuse, relay questioning, rest/sleep, rights, social support, stranger to community, trickery, violate statute/lack of charges” (Kroll, 2008).

These reasoning processes have helped in preventing involuntary confessions in identifying the elements of involuntariness through a legal reasoning process.

### **Evolution of the Legal Test for Excluding Confessions**

The evolution of the legal test for excluding confessions has been evolving since the common law in England and brought to the United States. The first case of the voluntariness of confessions occurred in 1897 in *Bram v. U.S.* (168 U.S. 532). This was the first case that was decided based on the constitution.

### **Evolution of Legal Test for Voluntariness of Confessions**

The evolution of these tests had occurred since 1897. The Bram test was established in 1897, which was based on the due process clause of the Fifth Amendment. The rule established that no confession be extracted by any sorts of threat or violence or direct or implied promises however slight (*Bram v. U.S.* 168 U.S. 532, 1897). It was not until 1936 in *Brown v. Mississippi* (1936) that the due process clause of the 14<sup>th</sup> amendment of the constitution of the U.S. was applied to the states in relation to coerced confessions based on physical torture. That under the due process voluntariness test was the untrustworthiness rationale to protect the fact-finding process (*Brown v. Miss.*, 1936).

The rationale switched from the reliability of confession as guilt to the disapproval of police methods in extracting a confession in which the evolution had its origins in *Brown v. Mississippi* in 1936 (297 U.S. 278), and then established in *Ashcraft v. Tennessee* (1944), in using coercive methods to extract a confession.



The court in 1954 went back to the trustworthiness of the confession. The trustworthiness rule required the confession to be corroborated rather than the fact the crime occurred (corpus delicti rule). The cases involved were *Smith v. U.S.* (1954) and *Opper v. U.S.* (1954) established that “the government may not introduce a confession unless it provides substantial independent evidence which would establish the trustworthiness of the confession” (Kassin, Drizin, Grisso, Gudjonsson, Leo, and Redlich, 2010, p. 10). The Opper ruling was recently applied in a confession case in *State v. Mauchley* (2003). The trustworthiness test was used in the Reid Interview and Interrogation Technique as corroboration (Inbau et al., 2013).

The police methods test and trustworthiness test were applied to the voluntariness test in 1959. The cases that combined these two tests to evaluate the voluntariness of a confession was in *Spano v. New York* (1959) and *Blackburn v. Alabama* (1961) where the court excluded the confessions based on the combination of these two tests. Then in 1961 in *Rodgers v. Richmond* (365 U.S. 534), the trustworthiness rationale was taken out and replaced by coercive police methods test.

Then in 1973 in *Schneckloth v. Bustamonte* (412 U.S. 218) in a search and seizure case, an analysis of voluntariness was articulated into the totality of circumstances test in determining voluntariness. This test was then applied to the voluntariness of confessions, where all the circumstances surrounding the issue of voluntariness would be considered in determining if a confession was not voluntary.

### **Current Rule of Voluntariness**

The current rule of voluntariness was that the totality of circumstances of the coercive facts surrounding the confession would have been based on an objective and subjective basis of the elements of the suspect and police methods if the will of the suspects was overborne. This was to be applied on a case by case basis (*Colorado v. Connelly*, 1986).

### **Legal Case Book Method of Determining the Voluntariness of Confession**

#### **Admissibility**

The legal casebook method was taught to law students across the spectrum of law schools in this country. The casebook method was also taught at some four-year universities also. This method gave an in-depth analysis of the voluntariness of confessions as opposed to the rule method taught in two-year community colleges and in the law enforcement training academies. The casebook analysis started off with the history and development of the law on the voluntariness of confessions to the current law in effect for the voluntariness of confessions.

#### **What is an Involuntary Confession?**

An involuntary confession has been adjudicated over the past 200 years, in English Common Law and American Jurisprudence. Over the past century, the involuntary confession has been adjudicated for an attempt to establish a bright-line rule to guide law enforcement authorities. It has not accomplished this task. There are several reasons for this, but the main reason is the amount of legal and psychological variables that are involved in the interrogation and confession process. This brings us now to answer the

question of, what is an involuntary confession? We had to analyze this in two phases. The first phase was the analysis of involuntary confessions prior to the Miranda decision and the second phase was the analysis of involuntary confessions post-Miranda decision. But first, we looked at some definitions that pertain to involuntary confessions.

### **Pre-Miranda**

In an article that Professor Yale Kamisar authored in (1963), titled what is an involuntary confession? Comments on Inbau and Reid's *Criminal Interrogation and Confessions* (Kamisar, 1963). This article analyzed the case law up to 1963, in answering the question of what is an involuntary confession. It also analyzed the *Criminal Interrogation and Confession* manual of Inbau and Reid (1962) in conjunction with the case law up to 1963. In Kamisar's analysis, he articulated that the Pre-Miranda cases hinged on *Rogers v. Richmond* (1961). And *Culombe v. Connecticut* (1961).

In the Rogers case, the reliability test was overturned in the analysis of the voluntariness of a confession. The reliability test was a test that was evaluated through characteristics of the defendant at the time of the interrogation to determine if the defendant's characteristics would have made the confession unreliable and therefore involuntary. The reasoning was that in assessing the circumstances including the defendant's background; experience and circumstances surrounding the defendant's confinement was subjective. The Reliability Test specifically was considering the personal characteristics of the defendant and his particular powers of resistance, did the police methods create too substantial a danger of falsity (365 U.S. 534, 1961)?

The court rejected the reliability test because it was articulated that the analysis could be deemed a reliable confession but still involuntary, so it then turned to an objective analysis of illegal police activity in the interrogation to determine the coerciveness of the interrogation. The Supreme Court in *Rogers* did not take into account whether the confession was true or not. However, the court ruled that the reliability test was not the correct test to use (365 U.S. 534, 1961).

However, in *Culombe v. Connecticut* (1961) The court went to a voluntariness formula constructed by Justice Frankfurter who articulated that the voluntary or involuntary analysis involved at the least a three-phased analysis where the first is the business of finding the crude historical facts, the external phenomenological occurrences and events surrounding the confession. Second, because the concept of voluntariness is one which concerns a mental state there is the imaginative recreation, largely inferential, of internal psychological fact. Third, there is the application of this psychological fact of standards for judgment informed by the larger legal conceptions ordinarily characterized as rules of law but which, also comprehend both inductions from, and anticipation of circumstances” (367 U.S. 568, 1961, p. 603).

The *Culombe* decision stated that the line of distinction was at the point where the governing self-direction was lost and compulsion of whatever nature or however infused, propels or helped to propel the confession (367 U.S. 568, 1961). Kamisar (1963) articulated that the *Culombe* decision did not establish a bright line rule for objective analysis. The language in *Culombe* was vague and confusing to establish a bright line objective test (Kamisar, 1963).

Kamisar (1963), stated that a confession was admissible if the forces of self-interest and self-protection prevented an unreliable confession. However, if coercion, compulsion or inducement was used to obtain the confession the forces of self-interest and self-protection would cease and allow an inadmissible confession (Kamisar, 1963). This reasoning process followed the *Spano v. New York* (1959) decision where the court articulated that if a person will be overborne then the confession was involuntary (360 U.S. 315). There were decisions in the pre-Miranda era that also used the totality circumstances test where the court looked at both the police interrogation methods and characteristics of the defendant along with all circumstances surrounding the interrogation. The lines of distinction between a voluntary and an involuntary confession are vague and hard to discern and inconsistent to apply the test during this era (White, 1997).

### **Post Miranda**

The post-Miranda era addressed voluntariness in numerous cases. In these cases, the voluntariness standard was applied to a particular fact analysis. In the cases of *Mincey v. Arizona* (1978), *Colorado v. Connelly* (1986), and *Arizona v. Fulminate* (1991). In *Mincey v. Arizona* and *Arizona v. Fulminate* involved the method analysis. The court ruled that the methods employed to obtain the confessions caused the confessions to be involuntary. In *Colorado v. Connelly*, the court utilized the totality of circumstances test to determine if any state action had caused an involuntary confession. The court ruled that the state had not caused the involuntary confession and there was no state action to initiate the confession process. Therefore, the confession was allowed. In the post-Miranda era, the only thing that was developed was different characteristics of the defendant that were found

to make a confession involuntary, and that the totality of circumstances test was solidified (White, 1997). Some of the elements in determining focus on deception by law enforcement; false physical evidence; deceptions about the legal process; threats; promises; duration of interrogation; characteristics of the defendant such as age, defendant's health, IQ. In applying the voluntariness principle which was the totality of circumstances of the case in determining whether the confession was voluntary, by asking if the suspect's will was overborne, and was the suspect's decision to confess of his own free will. This analysis was in fact specific to each case and must be applied on a case by case basis (Marcus, 2006). In the sections following the literature will show the evolution of case precedent and the current rule of voluntariness of confessions.

### **Voluntariness of Confessions**

**Historical background.** The legal history of the voluntariness standard governing confessions had its origins in England (Benner, 1989), then in the eighteenth and nineteenth centuries in the United States.

Interrogation and confession law has evolved in the United States since the inception of the Bill of Rights in the U.S. Constitution which was ratified in 1791. Specifically, the fifth and sixth amendment of the Bill of Rights of the Constitution of the United States controls the law in interrogations and confessions in the criminal law (U.S. Constitution, 1791). The Due Process Clause of the Fifth Amendment and the Fourteenth Amendment has been applied to the voluntariness analysis of interrogations and confessions (U.S. Constitution, 1791).

The historical background of the voluntariness of confessions also started with the abuses of the police utilizing the third degree and torture. This included prolonged incommunicado questioning, grilling suspects in relay questioning, and denial of sleep, and finally physical abuse and the threats of physical abuse. After the Wickersham Report (1931) came out and exposed the abuses of the third degree and torture at the hands of the police, a movement of police professionalism came in the form of police interrogation manuals that incorporated psychological interrogation techniques and denouncing the third-degree technique (Kamisar, LaFave, Israel, King, Kerr, Primus, 2012).

The manuals were authored by professor Inbau in 1942 and W.R. Kidd in 1940. These manuals divorced themselves of the third degree (Inbau, 1942; Kidd, 1940). These manuals served the purpose of training interrogators on the laws governing confessions (Kamisar, LaFave, Israel, King, Kerr, Primus, 2012).

**Confessions law to 1850.** The constitutionality of police questioning is grounded in ancient law from its roots in European cannon law, which then was established in Anglo American common law which became the foundation of the Fifth Amendment of the U.S. Constitution (Penny, 1998). The second source is the common law rule of evidence prohibiting the admission of involuntary confessions (Levy, 1968). However, it was not until the 19th century that the privilege insulated defendants from incriminating themselves. Prior to the 19<sup>th</sup> century, the privilege against self-incrimination only protected against religious and political persecution, and not applied in criminal procedure (Levy, 1968).

**Involuntary confession rule established.** In 1783 in the case of *R. Warickshall* (168 Eng. Rep. 234, 1783) established the involuntary confession rule which was based on the defendant receiving the promise of favor if she confessed. The judge stated that if a confession “is forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape that no credit ought to be given it; and therefore is rejected” (Thayer, 1900, p. 287), (168 Eng. Rep. 234, 1783).

**American involuntary confession rule established.** The first American case to exclude an involuntary confession was *Commonwealth v. Chabcock* (1804). This case excluded a confession based on a promise of favor. The excluded confessions cases from 1810-1850 were based on either a threat of violence, or promises of leniency, or some other benefit promised (Herman, 1992).

### **Confessions in the Era of Police Interrogation 1850–1963**

**Judicial responses 1850–1936.** With the modernization of the police forces in the U.S., came the modernization of criminal investigation which included the criminal interrogation of suspects to obtain confessions. In the late 19th century there were a series of cases that first addressed the self-incrimination clause and the voluntariness of confessions in criminal cases. The first case was *Hopt v. Territory of Utah* (1884), the issue was the voluntariness of the confession. The court ruled that in the absence of evidence of reward or fear and proclaimed that the voluntariness standard applied in *Warickshall* that relied explicitly on the reliability rationale: that one who is innocent will not imperil his safety or prejudice his interests by an untrue statement, ceases when the confession appears to have been made either in consequence of



inducements of a temporal nature or because of a threat or promise depriving him of that freedom of will or self-control essential to make his confession voluntary within the meaning of the law” (*Hopt v. Territory of Utah*, p. 585).

In *Sparf v. U.S.* (1895), the issue was a person’s confession voluntary despite being held in irons at the time of the confession? There was no evidence of any threats or promises. The court ruled based upon the precedent of *Hopt* that the reliability rationale applied in *Sparf* and therefore the confession was admitted in as evidence.

In *Wilson v. U.S.* (1896) again the issue was the voluntariness of the confession. Here the court did not deviate from the precedent of *Hopt v. Territory of Utah* (1884) and stated, “In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort” (*Wilson v. U.S.*, p. 623).

And finally, in *Bram v. U.S.* (1897) in the court's decision it based its decision on the voluntariness standard of the fifth amendment of the Constitution of the United States, that no person shall be compelled in any criminal case to be a witness against himself. This was the first time the U.S. Supreme Court connected the voluntariness of a confession to the Fifth Amendment of the constitution. However, the court cited the language in *Wilson* but then conceived it as a matter of individual freedom.

The leading case that established the voluntariness rule in the late 1800s was *Bram v. U.S.* which established a strict confession admissibility test. This test would not allow a confession to be admissible if the interrogation technique employed would cause hope or fear in the mind of the suspect, this would render the confession involuntary. This test did

not include any degree of pressure and whether that pressure overborne the will of the suspect the court found its basis in the fifth amendment (168 U.S. 532, 1897).

During the time when illegal police interrogation methods were being used, this applied only if the method affected the trustworthiness of the confession (Kamisar, et al, 2012). In other words, “the confession was admissible as long as it was free of influence which made it untrustworthy or probably untrue” (Kamisar et al., 2012, p. 547). The basis for excluding confessions came under the due process voluntariness test was the untrustworthiness rationale that was developed to protect the integrity of the fact investigation and subsequent truth of the confession (Kamisar et al., 2012).

In the 20th century, the case of *Brown v. Mississippi* in 1936 established the application of the due process clause of the 14th Amendment to hold a confession in a state case inadmissible, based on torture by hanging and whipping, which made the confession untrustworthy and was excluded (297 U.S. 278, 1936). The Brown decision held the state confession cases answerable to the Fifth Amendment through the due process clause of the fourteenth amendment. Then in *Ashcraft v. Tennessee* the confession was excluded based on the length of interrogation was coercive and thus involuntary and excluded (322 U.S. 143, 1944). For an analysis of cases decided by the U. S. Supreme Court from the 1940s to the 1990s see Appendix E.

The factors found to be coercive were lack of education or low intelligence, mental abuse, mental illness, police trickery. In the totality of the circumstances test which was applied on a case by case basis, not one of these elements alone would have caused a false confession or a legal exclusion of the confession unless the element was so egregious that it

shocked the conscience of the court and brought into question the reliability of the confession.

### **Due Process Voluntariness Test**

The current test for the due process voluntariness test was the totality of circumstances test (Kamisar, et al, 2012). Marcus (2006), stated that the due process voluntariness test using the totality of circumstances on a case by case basis offered no guidance for lawyers, judges, and therefore police officers (Marcus, 2006). The test was important, but its application was poorly administered, this could have been due to the different philosophies and the application of the law as it was applied by the judges (Marcus, 2006).

### **Determining Voluntariness in the Appellate Courts and Habeas Corpus Proceedings**

The controlling case to guide the appellate courts is *Miller v. Fenton* (1984), the third circuit deferred to the state's court finding on the voluntariness of the confession (741 F2d 1456, 3d Cir). However, the U.S. Supreme Court remanded the case back to the third circuit based on the fact that the third circuit was not to defer to the state's court ruling and that the third circuit was to conduct an independent federal review of the case to determine the voluntariness of the case under the correct standard (474 U.S. 104, 1985). This ruling provided independent protection to constitutional rights. The analysis of the voluntariness turns on findings of fact which are the facts of the confession itself which entailed the analysis of psychological facts of the individual and the factual circumstance surrounding the defendant's voluntariness of the confession (Dolliver, 1990).

The framework for the analysis lay in the distinction between facts and law. Once the material facts were known and the legal rule identified the judge or Atty., or police officer made his decision. However, sometimes both facts and law are mixed, this occurred when facts satisfied the rule of law or the rule of law applied to the facts is violated (*Pullman-Standard v. Swint*, 456 U.S. 273, 1982). The solution was to separate the facts from the law so that an analysis of voluntariness could have been made by a police officer. In conducting this analysis standards had to be developed to classify fact and law (Rutledge, 1996).

### **Totality of Circumstances Test for Voluntariness**

The totality of circumstances test for voluntariness originated in the 1930s in a bankruptcy case (*First National Bank & Trust Co. of Bridgeport, Conn. V. Beach*, 1937). It has been adopted in criminal law especially in assessing voluntariness in search and seizure cases and in voluntariness in confession cases (*Schneckloth v. Bustamonte*. 1973). The court articulated the totality of circumstances test as analyzing all the circumstances surrounding the voluntariness of the consent (*Schneckloth v. Bustamonte*. 1973). This was the first case that gave a name to the analysis of the evolution of involuntary cases.

### **Current Test for Involuntary Confessions**

There are two strands of the test for involuntariness of confessions, the first one was the offensive police methods form, this was where the police methods to obtain the confession were offensive, the second was the effect on the suspect form of involuntariness (Primus, 2015). Within the second strand, there were two categories', the first one was that there are police tactics that increased the potential for a false confession. The second

category was the tactics used on a person whose characteristics and vulnerabilities could have increased the potential for a false confession (Primus, 2015).

The current law to determine the voluntariness of a confession was in the 1986 decision of *Colorado v. Connelly* (1986). This decision required in the offensive police methods involuntariness strand for there to be police action to induce a confession. The next strand of effect on the suspect form of involuntariness strand, it was not enough for the confession to be unreliable, but that police action must have triggered that unreliable confession (Primus, 2015).

### **Colorado v. Connelly Three Prong Test**

In *Colorado v. Connelly* (1986) the court ruled that for a confession to be involuntary three prongs had to have been met. First; there had to have been official government conduct that was conducted causally related to the confession and that this conduct must have been coercive (*Colorado v. Connelly*, 1986), (Milhizer, 2008). Second “a confession’s voluntariness should be evaluated solely by an objective assessment of the actual coercive effect of the official conduct and not on the basis of the suspect’s subjective perception of reality” (*Colorado v. Connelly*, 1986), (Milhizer, 2008, p. 30). The third and final prong was that the “voluntariness determination is largely a factual determination that is capable of being empirically assessed, what is objectively too much official coercion for any resulting statement to be considered voluntary” (*Colorado v. Connelly*, 1986; Milhizer, 2008, p. 30-31).

In *Connelly*, it was ruled that the reliability of the confession was not governed by the Due Process Clause to exclude false evidence. The Due Process Clause only applied to

prevent the fundamental unfairness in the use of evidence whether true or false. However, the court ruled that it was the duty of the evidentiary laws of the originating court to determine reliability (*Colorado v. Connelly*, 1986), (Milhizer, 2008). After *Connelly*, the due process reliability test was not applicable in evaluating voluntariness on a constitutional basis.

### **Admissibility of Confessions Federal and State Law**

18 USCS 3501. After the ruling in *Miranda v. Arizona* (384 U.S. 436, 1966) in 1966, in 1968 the Congress attempted to overturn *Miranda* through legislation in the Omnibus Crime Control and Safe Streets Act of 1968 (42 USCS 3711, 1968). The specific statute that was part of this Act was the statute codified as 18 USCS 3501 (1968) titled as Admissibility of Confessions. This statute attempted to reinstate the voluntariness principle that had governed the constitutionality of custodial interrogations prior to *Miranda*. However, through case law, the voluntariness rule had not been overturned by *Miranda*. The wording of the statute was proof that the statute was intended to overturn *Miranda*.

### ***Miranda v. Arizona***

In *Miranda v. Arizona* (1966), *Miranda* was arrested for kidnapping and rape. He was questioned without an attorney and subsequently confessed after two hours of interrogation. The issue was that *Miranda* had not been advised of his right to counsel and present during the interrogation. In a preceding case in *Escobedo v. Illinois* (1964) ruled that after a suspect has been arrested, the suspect was entitled to have an attorney present during questioning under the sixth amendment of the constitution (378 U.S. 478). The

difference between Escobedo and Miranda was that Escobedo was decided on the sixth amendment of the constitution, where Miranda was decided on the basis of the fifth amendment of the constitution. Miranda and Escobedo decided that a suspect in interrogation was entitled to an attorney based on both the fifth and sixth amendments to the constitution.

### **Omnibus Crime Control and Safe Streets Act of 1968**

After the Miranda decision, the Omnibus Crime Control and Safe Streets Act of 1968 was enacted to reverse the Miranda decision based upon complaints that the Miranda warnings were a hindrance to law enforcement (Kamisar, 2000). Within this act was the specific law that later became 18 USCS 3501 (1968). This statute combined provisions of the pre-Miranda voluntariness rule and the procedure of the Jackson v. Deno (1964) decision. This statute in subsection (a) and (b) applied to the overturning of Miranda. These sections stated the following:

§ 3501. Admissibility of confessions (a) in any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the

circumstances. (b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession. The presence or absence of any of the abovementioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession. (c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by



the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: Provided, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer. (d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention. (e) As used in this section, the term “confession” means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing. (Added Pub. L. 90–351, title II, §701(a), June 19, 1968, 82 Stat. 210; amended Pub. L. 90–578, title III, §301(a) (3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117, 18 USCS 3501, 2018).

The statute did not come before the Supreme Court until 2000 in *Dickerson v. U.S.* (530 U.S. 428, 2000). The facts in *Dickerson* were in dispute based on whether or not the defendant had been advised of his Miranda warnings prior to his confession, the district court ruled that he had not been advised of his Miranda warnings prior to his confession.

The Court of Appeals reversed the district court's ruling stating that under 3501 the confession was admissible even if no warnings were given and that the confession was voluntary under 3501. The U.S. Supreme Court granted cert. and ruled that if Miranda warnings were not given prior to the confession that the confession was not admissible, even though voluntary. This decision stated that Congress in 3501 cannot supersede through legislation in overturning the Miranda decision.

The court, however, did not overrule the voluntariness standard or the voluntariness procedure, just that a confession cannot be admitted just on voluntariness without a prior Miranda warning. Therefore, the admissibility of confessions depended on a two-step process based on the advisement of a Miranda warning and a subsequent voluntary waiver and that the confession was voluntary.

### **Federal Evidence Standard on Admissibility of Confessions**

**Preponderance of evidence.** The preponderance of evidence was the standard in determining the voluntariness of a confession (*Lego v. Twomey*, 1972).

**Totality of circumstances.** In applying the voluntariness rule, judges looked at the totality of circumstances to determine if a confession was made voluntary (*Fikes v. Alabama*, 1957); (*Haynes v. Washington*, 1963); (*Davis v. North Carolina*, 1966); (*Clewis v. Texas*, 1967).

**Voluntariness test.** The question was whether the police during the interrogation overborne a suspect will, through an objective analysis of the facts surrounding the interrogation (*Spano v. New York*, 1959). Therefore, the question that needed to be asked to determine voluntariness was whether the confessor made the confession based on the

defendant's free will. This involves an analysis of characteristics surrounding the interrogation to see if only a single factor or a combination of factors that could have led to a conclusion under the totality of circumstances that a suspect's will was overborne (*Spano v. New York*, 1959).

### **Kansas State Law**

**State evidence standard.** The state evidence standard in determining the voluntariness of a confession was determined by a preponderance of evidence by a totality of circumstances (*State v. Garcia*, 2013). The state standard of the voluntariness analysis was based on case law and statutory law.

**State case law.** The most recent case law that analyzed the voluntariness of confessions was in 2012, In *State v. Robinson* (2012). The court stated that the courts have developed a list of some of the factors that could have aided in the analysis which are:

- the accused's mental condition;
- the manner and duration of the interrogation;
- the ability of the accused to communicate on request with the outside world;
- the accused's age, intellect, and background;
- the fairness of the officers in conducting the interrogation; and
- the accused's fluency with the English language. (*State v. Robinson*, 2012, p. 1018).

The court has further ruled that these factors are not to be weighed against one another.

The court has stated that the voluntariness could turn on a single factor or a combination of factors that would have led to a conclusion that under a totality of circumstances a

suspect's will was overborne and the confession was not, therefore, a free and voluntary act (*State v. Sharp*, 2009) and (*Green v. Scully*, 1988).

### **K.S.A. 60-460 Hearsay Evidence Excluded and Exceptions**

The statutory authority that sets forth the elements of the admissibility of an accused's confession is guided by 60-460 Hearsay Evidence Excluded; Exceptions. Section F:

In a criminal proceeding as against the accused, a previous statement by the accused relative to the offense charged [is admissible], but only if the judge finds that the accused (1) when making the statement was conscious and was capable of understanding what the accused said and did and (2) was not induced to make the statement (A) under compulsion or by infliction or threats of infliction of suffering upon the accused or another, or by prolonged interrogation under such circumstances as to render the statement involuntary or (B) by threats or promises concerning action to be taken by a public official with reference to the crime, likely to cause the accused to make such a statement falsely, and made by a person whom the accused reasonably believed to have the power or authority to execute the same."(K.S.A. 2012 Supp. 60-460(f), 2018, para 6, p. 1).

### **K.S.A. 22-3215 Motion to Suppress Confession or Admission**

The vehicle that was utilized in contesting a confession was to file a motion to suppress a confession or admission under K.S.A. 22-3215. This set out the procedure in contesting the confession (K.S.A. 22-3215, 2018).

### **Harmless Error Doctrine as Applied to Confessions**

The harmless error doctrine was established by the U.S. Supreme Court in 1967 in *Chapman v. California* (1967), “the court ruled that some constitutional errors are subject to the harmless error doctrine” (Bauman, 1991, p. 109). However, the court ruled that this doctrine “should never be applied to constitutional rights that are fundamental to a fair trial” (Bauman, 1991, p. 109). These rights were identified as; “the right to counsel, the right to an impartial judge, and the right to have coerced confessions excluded from evidence” (Bauman, 1991, p. 109). The court stated that even if the confession was not necessary for a conviction, just the taint of the constitutional violation established a violation of due process and therefore was an automatic reversal for a new trial. The court's rationale was based on the fact that a defendant was “entitled to a new trial without the taint of a constitutional violation” (Bauman, 1991, p. 109). This was the rule of law up until *Arizona v. Fulminante* (1991).

This brings us to the court’s decision in *Arizona v. Fulminante* (1991). In this decision, the issue was to determine if a confession was coerced and if so, was it a harmless error, and in the current case was the coerced confession harmless error. The court decided this case with various justices forming different majorities.

The court held that *Fulminante’s* confession was coerced based on the mere credible threat of physical violence will be deemed involuntary. It then held that *Fulminante’s* confession was not harmless error, however, it did rule that harmless error could apply to the erroneous admission of coerced confessions. The harmless error analysis depends upon two factors; first was the admission a mere trial error, and second,

that a trial error does not transcend the criminal process. These factors must be held to beyond a reasonable doubt standard. In other words that the coerced confession must have been proven that the coerced confession did not contribute to the conviction (499 U.S. 279, 1991).

In *Fulminante's* case, the state had failed to prove that the defendant's confession was harmless error beyond a reasonable doubt. The state would have had to have proven that without the confession's that the defendant would have been able to be prosecuted for the crime. Therefore, the evidence obtained from the fruit of the confessions was excluded. During the sentencing phase, if there was any reliance on the coerced confessions that caused prejudice upon the determination of sentence will be vacated, and a new trial ordered. Therefore, the harmless error analysis was a quantified approach of the evidence and that if the evidence independent of the confession renders the admission of the coerced confession harmless beyond a reasonable doubt the confession was determined to be harmless error and could have been admitted (Bauman, 1991).

This means that the evidence must stand separate from the coerced confession, and not a fruit of the coerced confession in the harmless error analysis. The court offered no further guidance then this formula. This decision was a danger to false confession analysis due to the fact there was no safety net to determine if the coerced confession was false.

### **Distinguishing Between True and False Confessions by the Reid Technique**

To distinguish between true and false confessions we have had to identify the fields that contain potential causation elements. The fields that contain these elements are the psychological field; the law; and the criminal justice field. The causation elements that

have been documented in the area of psychology include, memory distortion; false memories; source monitoring; emotions; extreme stress; physical impediments; health problems; drug and alcohol problems; and sleep deprivation; mental impediment; low IQ; hopelessness, false guilt; depression; guessing and confabulation (Gudjonsson, 2003).

The criminal justice field which included interviews and interrogation elements that could cause a false confession is: Suggestibility; contamination of facts, repeated questioning and cuing; causing extreme mental stress such as hopelessness; extreme anxiety; false guilt; low IQ; undergoing mental and health problems; drug and alcohol problems; sleep deprivation (Garrett, 2010; Henkel & Coffman, 2004; Leo & Ofshe, 1997).

The legal elements are based on the coercive elements that have evolved from case law over the years which include the following: In the 20<sup>th</sup> century the case of *Brown v. Mississippi* in 1936 established the application of the due process clause of the 14<sup>th</sup> Amendment to hold a confession in a state case inadmissible, based on torture by hanging and whipping, which made the confession untrustworthy, and was excluded (297 U.S. 278, 1936). The Brown decision held the state confession cases answerable to the Fifth Amendment through the due process clause of the fourteenth amendment. Then in *Ashcraft v. Tennessee* the confession was excluded based on the length of interrogation was coercive and thus involuntary and excluded (322 U.S. 143, 1944).

For further analysis of cases decided by the U.S. Supreme Court that decided the voluntariness of confessions based on coercive elements employed and ruled on from the 1940s to 1990 (see Appendix E).

The factors found to be coercive were lack of education or low intelligence, mental abuse, mental illness, police trickery. In the totality of the circumstances test which was applied on a case by case basis, not one of these elements alone would have caused a false confession or a legal exclusion of the confession unless the element was so egregious that it shocked the conscience of the court and brought into question the reliability of the confession.

### **Failure to Prevent and Detect False Confessions**

Davis and Leo (2014) stated the failure to prevent and detect false confessions comes from within the methods of interrogation utilized which includes misclassification of detection of deception at the interview stage. The misclassification of an innocent person as guilty puts an innocent person at risk of being interrogated. This produces an assumption of guilt at the interrogation phase on an innocent person. This leads an innocent person at the will of an interrogator and potentially utilizing a coercive method of interrogation whether intentionally or accidentally which could lead to a false confession and a possible wrongful conviction (Davis & Leo, 2014). The assumption of guilt after the interview phase created a confirmation bias on the part of the interrogator and therefore could lead to contaminating the interrogation with case facts and therefore could have caused the subject to feedback the facts and produce a false confession. Therefore, Davis and Leo (2014), believed it was the interrogation methodology that was the source of failure in the prevention and detection of false confessions (Davis & Leo, 2014).



### **Flow Chart of a False Confession**

From the literature reviewed, a combination of elements identified a flow chart of the interrogation process of a false confession which evolved from a theoretical basis of attribution. First, in the interrogation process was the criminal interrogation of the suspect, this involves suggestibility; contamination; repeated questioning and cuing; causing extreme mental stress, anxiety, hopefulness. Second the attribution of the suspect which involved the perception of the suspect on what was being communicated during the interaction during the interrogation. Third, the attribution of the interrogator was to what was being related to the interrogator. This involved the detection of deception; and verbal and non-verbal cues to deception. Fourth is the attribution error of suspect which involved confessing falsely. Finally, the attribution error of the interrogator involved the interrogator not recognizing the signs of a false confession and therefore results in a false confession.

### **Correlation between Involuntary Confessions and False Confessions**

It should be noted that Leo and Inbau agreed that legal involuntary confessions could either cause or run a high risk of causing a false confession. (Leo, 2009), (Inbau et al. 2013). Where they separated in their analysis was at the legal psychological interrogation method causing a false confession.

Leo (2009) stated that within the coercion error there was a combination of factors that could cause a police-induced false confession which was through psychological coercive methods (Leo, 2009). Leo stated that the first psychological method of coercion was governed by law. By law and Leo's definition, this includes deprivation of food, sleep,

water or biological needs, incommunicado interrogation and inducement of extreme exhaustion and fatigue (Leo, 2009). All of these factors mentioned above have been ruled as coercive through the U. S. Supreme Court case law (see Appendix E). The Reid Method also condemned these methods (Inbau et al. 2013).

Leo (2009) goes on to say that today interrogators utilize promises of leniency and threats of harsher treatment either through implied or expressed with no ambiguity which was considered illegal by the U.S. Supreme Court (see Appendix E). The Reid method also condemned this practice (Inbau et al. 2013).

Leo (2009) then states the second form of psychological coercion was caused by a cumulative effect of the interrogation methods where the subject feels hopelessness and that there was no way out and confessed, this was caused by the subject being worn down and fatigued and led to believe that was the only way to avoid a fearful outcome of punishment. By the definition of free will where the subject perceives he has no choice but to confess this could be claimed as coercion and could be ruled involuntary (Leo, 2009). This wearing down of a subject and perceiving no choice to confess can depend on the suspects characteristics such as highly suggestible, poor memory, high levels of anxiety, low self-esteem, and low assertiveness, developmentally disabled, youth, mental illness, lack of experience with the police, could have led to factors of being susceptible to psychological coercion and causing a fake confession (Leo, 2009). However, the Reid Method taught to look out for these characteristics and if a confession was obtained, be sure to corroborate the confession (Inbau et al. 2013).

### **Decision Model to Confess Falsely**

In 1997, Leo and Ofshe articulated descriptive research of a decision model that originates from the interrogation process. The model they articulated involved two parts of an interrogation. In the first part, the attitude of the suspect had to be shifted from confident to helpless. This involved the accusation, overcoming objections, evidence ploys (this was done by describing the strength of the evidence the police have). In step two, the admission was elicited through a moral and self-image benefit, indirect threats and promises, advancing to more or less explicit threats and promises, then graduating to high-end threats and promises, and then finally presenting the accident scenario technique. The first part was connected to the Reid technique the second part was condemned by the Reid technique. The problem was not the Reid technique but how it was wrongly and inconsistently applied to the interrogation (Leo & Ofshe, 1997).

### **Reid Method in Distinguishing Between True and False Confessions**

First, before distinguishing between true and false confessions the identification of three types of false confessions had to be identified. The first type of false confession was a coerced compliant confession. This type of confession was defined as “when the suspect claims that he confessed to achieve an instrumental gain. Such gains included being allowed to go home, bringing a lengthy interrogation to an end, or avoiding physical injury” (Inbau et al., 2013, p. 340). The question to answer was what motivated the suspect to confess?

The second type of false confession was a voluntary false confession. This was where an individual who had nothing whatsoever to do with the crime came forward and

confessed. The reasons were varied, such as, suffering from a mental disorder; to obtain police detention for a deliberate conceived objective; to be incarcerated for a brief or long period of time to evade police detection as a suspect for a more serious crime; protect a loved one; and finally, the confessor sought to achieve publicity and esteem (Inbau et al., 2013).

The third type of false confession was a coerced-internalized false confession. This occurs when the investigator successfully convinces an innocent suspect that he was guilty of a crime the suspect does not remember committing. The three different types of suspects who may claim this type of confession are 1.) The guilty suspect who tried to discredit the validity of his confession; 2.) The suspect who was guilty of the crime but legitimately did not remember committing it. Even though the suspect accepted responsibility for the crime, the confession must be considered untrustworthy because it was not derived from factual recollections; 3.) The innocent suspect who had no recollection of committing the crime but was convinced through the interrogation process that the suspect believed he was guilty and therefore accepts responsibility for committing the crime through a confession (Inbau et al., 2013, p. 341).

There was another type of confession and this was called a nonexistent confession. This was where a suspect made a statement where there was “no acceptance of responsibility for committing the offense. The statement may have contained incriminating evidence, there was no statement, involuntary or otherwise, where the suspect confessed to committing the crime” (Inbau et al., 2013, p. 341).

**Confession Voluntariness**

This was based on overbearing the suspect's free will. The question that needed to be answered by the interrogator was at what point does an investigator's words, demeanor or actions become so intense or powerful as to overcome the suspect's will? The above question could not be applied to a bright line rule. Each suspect had to be considered individually and consideration must be given with respect to objective factors such as IQ, mental stability, age, and previous experience with the police (Inbau et al., 2013).

**Coercion**

Coercion as defined by Reid is the real or threatened physical activities by harming the suspect or threatening to harm. Or through promises of leniency, threats or promises that address real consequence that affect the suspect's physical or emotional health, personal freedom, or financial status. These could cause an innocent person to confess (Inbau et al., 2013).

**Permissible Incentives for a Confession**

The interrogator was allowed to convince the suspect to believe that the suspect will benefit in telling the truth. These are not promises. The distinction between statements that outright promise or threaten was that the permissible statements are ambiguous in nature (Inbau et al., 2013).

The opposing research that was against these ambiguous statements was that these were promises and threats by pragmatic implication (Kassin & McNall, 1991). The question to ask was, would an innocent suspect through implication construe these statements as a promise or threat?

**Duress**

Duress is defined in Black's Law Dictionary, as "a threat of harm made to compel a person to do something against a persons will or judgment" (Garner, 2009, p. 579). It also states that duress of a person is a "compulsion of a person by imprisonment, by threat, or by a show of force that cannot be resisted" (Garner, 2009, p. 579).

The Reid manual defines duress as the following:

Evaluating the probable effect of interrogation on the voluntariness of a suspect's confession required the assumption that the suspect was functioning in a normal psychological and physiological manner. When fatigue, withdrawal, hunger, thirst or a craving for other biological needs served as the primary incentive for a confession, duress could be claimed. When considering duress, the severity of physical discomfort had to be taken into consideration" (Inbau et al., 2013, p. 347).

The most common claim of duress was the length of interrogation. "The test was the totality of circumstances on a case by case basis" (Inbau et al., 2013, p. 347).

The guidelines to test duress are, did the interrogators intentionally prolong interrogation and kept suspect isolated as an interrogation tactic to break the suspects will?

**Guidelines to Evaluate Duress**

The guidelines to evaluate duress are the following:

- 1.) Could the excessive length of interrogation have been explained by a suspect's behavior?
- 2.) Did the suspect physically or verbally attempt to seek fulfillment of biological needs?
- 3.) Were there any threats made with respect to denying the suspect basic biological needs unless he confessed (Inbau et al., 2013, p. 347-348)?

Confessions must be the product of free will. “How incentives to confess are communicated during an interrogation forms the basis as to the perceptual choices available to interpret that message” (Inbau et al., 2013, p. 348).

### **Confession Trustworthiness**

The Reid manual sets out the requirement for a confession to be trustworthy, which states that: “For a confession to be trustworthy the admission of criminal involvement must be factual” (Inbau et al., 2013, p. 348).

The elements of trustworthiness of a confession are:

Is that the confession must be voluntary. A voluntary confession independent of any questioning should be viewed with skepticism. A true voluntary confession is that the suspect will appear broken in health and spirit as a result of a troubled conscience. The false confessor lacks the emotional turmoil and expressions of remorse. The suspect will appear untroubled in appearance and conduct. The suspect will acknowledge all elements of the crime and fully accepts the pending consequences for the crime (Inbau, Reid, Buckley, & Jayne, 2013, p. 349).

The verification method “is to introduce some fictitious aspects of the crime and test whether the suspect will accept as actual facts relating to the occurrence” (Inbau, Reid, Buckley, & Jayne, 2013, p. 349). This verification method worked only if the interrogation had not been contaminated through the interrogator or through the media (Inbau, Reid, Buckley, & Jayne, 2013).

### **Guidelines in Assessing Whether a Voluntary Confession is Trustworthy**

The Reid manual sets out the following guidelines in assessing whether a voluntary confession is trustworthy, which states:

Evaluate the suspects stated motives for confessing. True confession – the suspect will be able to articulate a specific and reasonable motive that led them to come forward. False Confession– The motive will be vague.

The confessor told a loved one before confessing to the police. True confession -

The suspect telling a loved one of his involvement is typical of a true confession.

False confession – The confessor told only the interrogator after he had a chance to tell a loved one. Independent corroboration. True confession – Suspect can provide independent corroboration. False confession – unable to provide any corroboration beyond the statement that the suspect did it (Inbau et al., 2013, p. 349).

### **Coerced Internalized False Confessions**

The elements of a coerced-internalized false confession began when the suspect had to believe at some level that it was possible for him to have committed the crime and believed he was capable of committing the act. Next, the suspect had to account for his memory loss from any physical or psychological disorder or addiction to drugs or alcohol. Then, the Interrogator laid the foundation by suggesting to the suspect that he/she was responsible for the commission of the crime but had no recollection of committing the crime. The interrogator should never attempt to persuade a suspect of their guilt of a crime if the suspect does not remember committing the crime (Inbau et al., 2013).



### **Trickery and Deceit**

Reid defines trickery and deceit as follows:

To persuade a guilty suspect to offer an admission against self-interest, the investigator may have falsely exaggerated his confidence in the suspect's guilt, sympathized with the suspect's situation, and displayed feelings toward the suspect or his crime that are far from genuine. He may have suggested a face-saving motive which he knew was is not true, Investigator may have falsely implied, or outright state, the evidence exists that links suspect to the crime (Inbau et al., 2013, p. 351).

Reid states the reaction of an innocent person would be:

“An innocent person would have been outraged and indignant” (Inbau et al., 2013, p. 352). Reid states if trickery and deceit are used with a threat or promise, it is an “improper interrogation technique” (Inbau et al., 2013, p. 352).

Reid states the following warning about the use of trickery and deceit:

However, if trickery and deceit were coupled with a threat and/or a promise an innocent person may have falsely confessed, especially if they are a juvenile or an adult suspect that is not mentally emotionally or intellectually impaired. If it is used then a false confession needs to be assessed (Inbau et al., 2013, p.352).

### **Guidelines for Introducing Fictitious Evidence**

Reid states the following guidelines for using fictitious evidence:

Introducing fictitious evidence during an interrogation presents a risk that the guilty suspect may detect the investigator's bluff. This needs to be used only as a last

resort. This tactic should not be used for the suspect who acknowledges that he may have committed the crime even though he has no specific recollections of doing so. This technique should be avoided when interrogating a youthful suspect with low social maturity or diminished capacity (Inbau et al., 2013, p. 352).

### **Psychological Factors on Confession Trustworthiness**

The following psychological factors could interfere with confession trustworthiness:

While underlying psychopathology, in some cases, may contribute to a false confession, something else within the interrogation process must have occurred to stimulate the false confession. However, mentally handicapped suspects lack assertiveness and experiences diminished self-confidence. They will have a heightened respect for authority and experience inappropriate self-doubt. If each of these traits is present makes the suspect more susceptible to offering a false admission when exposed to active persuasion. Caution is advised in using accusatory interrogation with this type of suspect (Inbau et al., 2013, p. 353-354).

Therefore, corroboration of the confession needs to be conducted to verify the trustworthiness of the confession (Inbau et al., 2013).

### **Confession Corroboration**

After the confession, the interrogator should not stop the investigation. They should look for corroboration evidence between the confession and the evidence and look for new evidence that was articulated in the confession.

The interrogator should pursue some mundane aspect of the crime that lends credibility to its trustworthiness. The interrogator should include legal elements but also human elements as well. Such as something unique or memorable about the crime (Inbau et al., 2013, p. 356).

“To determine the accuracy of the corroboration, the admission needs to be factual and that the suspect will lie about the motive” (Inbau et al., 2013, p. 356).

### **Guidelines to Assist in Identifying Possible True or False Confessions**

Guidelines to identify between true and false confessions are:

“A confession that was not retracted until days or weeks after it was made is probably truthful” (except in the case of the coerced-internalized false confession) (Inbau et al., 2013, p. 357).

“The suspect's explanation for offering a false confession should be carefully scrutinized (what happened during interrogation to cause an innocent suspect to confess). The suspect should be able to articulate a specific cause of false confession” (Inbau et al., 2013, p. 357-358).

“The absence of any specific corroboration within the confession should be viewed suspiciously. A confession that merely acknowledges involvement in a crime but contains no details should be viewed suspiciously” (Inbau et al., 2013, p. 358).

### **Three Issues to Consider if There is an Absence of Specific Corroboration**

The issues to consider if there is an absence of specific corroboration are:

“Did the investigator fail to elicit such information? Was the suspect unable to provide the information? Did the subject refuse to provide the information” (Inbau et al., 2013, p. 358)?

“It is not unusual for a true confessor to accept full responsibility for committing the crime but omit specific emotional details, especially when blamed on memory failure” (Inbau et al., 2013, p. 358). The confession should contain enough corroborative information to confirm trustworthiness. “Faulty corroboration within a confession needs to be evaluated with respect to reasonable motivations or why did this happen. If there are no reasonable motivations then the interrogator has to question if the confession is false” (Inbau et al., 2013, p. 359).

The guideline if there are inconsistencies in the confession is the following:

“[The] “inconsistencies between the confessor’s statement and those of the victim are commonplace in true confessions” (Inbau et al., 2013, p. 360).

What had to be evaluated are the inconsistencies of gaps in memory, or facts that are completely wrong. If the facts were wrong, then you had to look at the confession to determine if it was true or false (Inbau et al., 2013).

At Reid’s website (Reid and Associates, 2016) false and coerced confessions that occurred within the last ten years, thirty-six false confession cases were documented by the media. The causes of the false confessions among the adults were: mental impairment, illegal police practices, and excessive long interrogations (reid.com, 2016).

## **The Reid Process of Distinguishing Between True and False Confessions for This Study**

The process that Reid used to distinguish between a true and false confession was a mixture of law, psychology, and the criminal investigation technique of criminal fact analysis and corroboration with those facts and evidence collected.

### **True Confession Element Analysis**

This elemental analysis consisted of voluntary confession with no coercion and no duress. The trustworthiness of a true confession was voluntary, gives a specific reasonable motive, told to a loved one before being interrogated by the police. The suspect gave independent corroboration. No contamination of facts was given by the interrogator, this assured the validity of the corroboration process. No trickery and deceit coupled with a threat or a promise. The true confession was assessed for dependent corroboration and/or independent corroboration. The admission needed to be factual and fit with the evidence facts and crime scene analysis. A confession not retracted until days or weeks after probably was a true confession. The exception was with a coerced-internalized false confession, then the suspect may never retract. This is not unusual for a true confessor who omitted emotional details but accepted full responsibility for committing the crime. Inconsistencies between victims and suspects could have occurred. However, with evidence, it should not occur (Inbau et al., 2013).

### **False Confession Element Analysis**

Involuntary elements included in the area of the law are IQ, mental stability, age, previous experience with police, and length of interrogation. The coercive elements

included promises of leniency, threat or real physical harm. Finally, the duress elements included any physical needs deprived (Inbau et al., 2013).

### **Untrustworthy (False Confession)**

Involuntary, duress, coercive elements, motive vague, told only the interrogator, unable to provide any corroboration. Contamination of facts by the interrogator either to the suspect or the media. Trickery or deceit coupled with threats and promises. Rational corroboration, which is the weakest type of corroboration. Absence of specific corroboration within the confession. A suspect who gives a coerced-internalized false confession may never retract due to the belief in committing the crime (Inbau et al., 2013).

The ultimate test for the analysis of the false confession is was there anything that the interrogator said or did apt to make an innocent person confess (Inbau et al., 2013)?

### **The Reid Model and Coercive Strategies**

In a 1996 study by Leo, an analysis of confessions in a study that analyzed coercive strategies while using the Reid model. The results were that out of 182 confessions only 4 confessions matched the coercion standards established by coercive conditions set out by case law in a legal casebook that is taught at some of the nation's law schools (Kamisar, et al, 1994).

The coercive standards were:

failed to read Miranda warnings; suspect not allowed to invoke Miranda rights; interrogator touched suspect in an unfriendly manner; suspect was in obvious physical or psychological pain; detective threatened the suspect with physical or psychological harm; detective promised the suspect leniency in exchange for an admission of guilt; detective deprived the

suspect of an essential physical necessity; the detective's questioning manner was unrelenting, badgering or hostile; interrogation lasted more than six hours; the suspects will appeared to be overborne by some other factor or combination of factors' (Leo, 1996, p. 282). The interrogation tactics utilized and viewed were not per se the Reid method, but some of the tactics were very similar, however, it was not the pure Reid model (Leo, 1996).

However, in a 2009 study by King and Snook the coercive strategies were the same as utilized in Leo's study (Leo, 1996). The Reid model was used as the interrogation technique.

The results established that twenty-seven percent of the confessions were: coercive. The analysis of the twenty-seven percent showed that twenty- one percent were from the lack of officers not reading rights to silence and legal counsel. It is unknown if the rights were advised before the videotape. Five percent involved the interrogator threatening suspect with psychological pain. Six percent involved three separate coercive strategies which were questioning was unrelenting, badgering, hostile, and a promise of leniency in exchange for an admission of guilt; the interrogator touched suspect in an unfriendly manner (King & Snook, 2009, p. 689).

It is unknown why these coercive strategies were violated because these strategies are not authorized by the Reid method. The only analysis that can be made is the inconsistent application of the Reid method during the interrogation.

What would be interesting to know is at what point the coercive violations occurred during the interrogation. Within the coercive confessions, sixty-seven percent ended with a full or partial confession. This shows that the potential for a false confession rises when

the Reid model is not followed, not that the Reid model caused the false confession (King & Snook, 2009).

### **The Reid Method of Obtaining a Reliable Confession**

To establish this sufficient evidence was acquired to establish the foundation of the crime. The mere admission of guilt does not satisfy this requirement. An ancient principle of law known as the *corpus delicti* which means the body of a crime has been defined in Black's Law Dictionary (Garner, 2014) as "the substantial fact that a crime has been committed" (Garner, 2014, p. 344). applied today, *corpus delicti* is established through a comprehensive confession analysis to establish reliability. There are two types of evidence that assists in establishing the *corpus delicti*: 1.) Independent Evidence which is defined as "verifiable information known only by the perpetrator of a crime but not revealed until the confession" (Reid & Associates, 2017, para. 6). 2.) Dependent Evidence which is defined as "verifiable information known by both the investigators as well as the perpetrator that had been withheld from the public (Reid & Associates, 2017, para. 7).

After the admission, which is the "offender's initial acknowledgment of participation in a crime" (Reid & Associates, 2017, para. 8). The following questions were asked of the subject: "First; elicit a narrative account of the crime; second; make questions short and brief; third; phrase questions in such a way that will allow the suspect to initially give brief answers; finally; avoid legal or descriptive terminology" (Reid & Associates, 2017, para. 9). Remember, during this phase the subject had to do most of the talking.

### **Guidelines for Obtaining Corroboration Information**

The ten guidelines for obtaining corroboration information are the following:



First: Do not during the development of corroborating details, ask leading questions which by definition are questions that suggest the answers. Second: do not ask a question at the outset of the confession that is too general. Third: do not provide crucial dependent information to the subject. Fourth: do not challenge or berate a suspect who describes a memory gap during a critical timeline. (During this process of obtaining the details of the crime, if the suspect has a memory gap, ask the suspect what is the next thing you do remember?). Fifth: Do ask the suspect what he did and who he saw prior to and after the commission of the crime. Sixth: do ask the suspect where he obtained the tools, weapons, keys, security code, and etc. to commit the crime. Seventh: do ask the suspect to draw a sketch relating to the crime. Eighth: do ask the suspect who else he told about committing the crime. Ninth: do validate the offender's confession by asking the suspect at the conclusion; if you are asked these same questions at a later date, what will your answers be? Tenth: Do size up the suspect for intellectual capacity and emotional maturity as an appropriate guide for the investigator's approach during the interrogation as well as a key indicator to the validity and reliability of the information obtained during a questioning session (www.reid.com, 2017, para. 10-19).

This last guideline should be conducted at the interview stage, the interrogation stage, and the admission and confession stage.

### **Video Observation and Identifying a False Confession**

There have been numerous studies dealing with video observation in evaluating voluntariness of confessions, and in false confessions. These studies showed that there was a camera bias by the observer in assessing the voluntariness of a confession.

### **History of Videotaping of Confessions**

There was a movement in the 1990s to videotape confessions. The reasons that agencies adopted the practice:

Avoiding defense attorneys challenges of the accuracy of audiotapes and the completeness of written confessions; helping reduce doubts about the voluntary nature of confessions; jogging detective's memories when testifying; countering defense criticism of nice guy or softening up techniques for interrogating suspects." (Geller, 1993, p. 3).

In videotaping confessions at the time there was a difference of opinion as to record the entire interview as opposed to just recording a confession recap. A confession recap is a post-confession statement as opposed to recording the entire interview and interrogation. Defense attorneys wanted the entire interview and interrogation recorded and some of the police did not (Geller, 1993).

However, in the study, almost half of the departments stated, recording the entire interrogation helped a lot (Geller, 1993). The support of videotaping interrogation assisted in Better preparation for interviews; avoiding distractions within the interrogation; supervisors assessing investigators performance; training investigators; show an accomplice's taped statement to other suspects to stimulate a change (Geller, 1993). Prosecutors approved of videotaping because of the verbal and non-verbal cues can add to

the videotaped confession in court. On the defense side, some of the defense attorneys at the time had mixed viewpoints. Some of the defense attorneys wanted the full recording of the interview and interrogations and some did not, because they felt that it was easier to attack the confession (Geller, 1993). The recording of interrogations could turn in favor of defense attorneys in finding out the involuntariness of a confession or a false confession instead of relying on the officer's testimony.

In Geller's study (1993) the camera perspective of videotaping the interview and interrogation, some agencies the camera perspective was just on the officer or just the suspect. The attitude of the police on videotaping interrogations resulted in almost sixty percent strongly approved of videotaping (Geller, 1993).

### **Evaluating Videotaped Confessions**

An important study was conducted in 2002 to determine the effects of point of view bias in videotaped confessions, and its effect in determining the voluntariness of the confession and the perception of guilt. "The study determined that a suspect focused videotaped confession could cause trial fact finders to perceive the confession as more voluntary and increase their tendency to convict a defendant on the basis of the confession" (Lassiter, Beers, Geers, Handley, Munhall, & Weiland, 2002, p. 282).

They also determined that this bias is not easily eliminated (Lassiter, et al, 2002). The study recommended that the courts need to evaluate the bias in videotaped confessions before admissibility (Lassiter, et al, 2002). The impact of this study shows that based on the camera perspective a voluntary confession that is false could be admitted based on the camera perspective.

Most videotaped confessions are done with the camera perspective focused on the subject. This was likely to lead to an individual assessing the confession is voluntary and therefore guilty. Judges are required to determine if a confession was voluntary. The question became, could judges have been influenced by camera perspective? In a report of a 2007 study which showed that in a comparison of evaluations between judges and police officers of confession videos, were shown a camera perspective of just the suspect, and just the detective, and an equal focus of both the detectives and the suspect. The evaluations of the judges showed a camera perspective bias, eighty three percent of the judges determined the suspect focus confession videos were deemed voluntary as opposed to the equal focus sixty seven percent of the judges determined the confessions were voluntary when the equal focus camera perspective was shown, and finally forty-three percent of the judges deemed the confession voluntary when the detective focus camera perspective was shown (Lassiter, Diamond, Schmidt, and Eck, 2007).

In the evaluations by the police, showed that when the police were shown the suspect focus confession video's, one hundred percent of the officers determined the confessions were voluntary. Sixty-seven percent of the officers that were shown the equal focus determined the confession was voluntary, and forty-three percent of the officers when shown the detective focus determined the confession was voluntary (Lassiter, Diamond, Schmidt, and Eck, 2007).

The data showed that expertise showed no defense against the influence of the camera perspective. It also showed that the judges and police evaluated the same percentage of video confessions in the equal focus, and the detective focus in determining

the voluntariness of the confession (Lassiter, Diamond, Schmidt, and Eck, 2007). This demonstrated that police officers are just as capable as judges in determining the voluntariness of a video confession. The fault of this study was that there was no predetermination of the videos as to the involuntariness or voluntariness of the confession by police officers and judges. In this study, it determined that equal-focus videotaping is the standard indicated in order to obtain a non-biased assessment of the voluntariness of a confession. The judges have indicated that when equal focus videotaping of interrogations was used it improved procedures for both the defense and prosecution (Lassiter, Diamond, Schmidt, and Eck, 2007).

The above study was confirmed in a 2009 study that showed that equal focus camera perspective obtained a non-biased assessment of the voluntariness of a confession (Lassiter, Diamond, Schmidt, and Eck, 2007). In a study in 2009 conducted confirmed in a survey of the majority of confessions electronically recorded were not suppressed as evidence (Jayne, 2009).

### **Attributional Complexity and the Camera Perspective Bias**

In the assessment of the voluntariness of confessions the issue of attributional complexity had to be addressed. Attributional complexity by definition is a person who was either high or low in seven attributional constructs:

Level of interest; preference for complex rather than simple explanations; presence of metacognition concerning explanations (metacognition is the tendency to think about the underlying processes involved in causal attribution); awareness of the extent to which people's behavior is a function of the interaction with others; tendency to infer abstract or

causally complex internal attributions; tendency to infer abstract, contemporize, external causal attributions; tendency to infer external causes operating from the past (Fletcher & Reeder, 1986, p. 876-877).

In a 2005 study, people who had a high ACS (Attributional Complexity Scale) score, identified confessions voluntary at fifty-two percent, under the equal focus camera perspective and eighty-five percent when it was suspect focus camera perspective. People who had a low attribution ACS score identified thirty-five percent of the confessions voluntary when the video was equal focus camera perspective and forty-six percent when it was suspect focus camera perspective. This study showed a bias towards suspect only camera perspective (Lassiter, Munhall, & Berger, 2005).

In a 1990 study of attributional complexity, it was discovered that the higher score the participants had on the complexity scale the more perceptive they were. The study showed it had nothing to do with intelligence. Whether the scores are on the high end or low end of the complexity scale, the less time they had to review something, the participant's scores go down. However, the more time the participants had in their analysis, the participants scored higher, if they had a high score on the ACS score (Fletcher & Reeder, 1990).

### **Identifying a False Confession**

In identifying a false confession through video observation Kassin et al (2005), found that students were generally more accurate than police in identifying false confessions. The accuracy rates were higher among those presented with audiotapes than videotapes. There was an alarming result where police officers had a lower judgment

accuracy than students in identifying a false confession. What was more alarming was that the police officers scored significantly higher in false alarms where the officer incorrectly judged the false confession as true, in both the video and audio formats (Kassin, Meissner, & Norwick, 2005).

### **Video Observation and the Attribution Process**

In a study by Storms (1973), concentrated on the observers and actors point of view. The results discovered that the actors attributed more to the situation than the observers. Actors were actually involved in the social interaction where the observers only viewed the social interaction live in the room. When videos were observed, the actor attributed more to the situation than the observer (Storms, 1973).

### **How to Analyze Videotape Interrogations and Confessions**

In an article on how to analyze videotape interrogations and confessions, Cutler and Leo, (2016) presented a framework to analyze the reliability of confessions and frame work to analyze interrogations. In analyzing an interrogation by the defense was to look for deceit and trickery by the police; false evidence ploys; prevention of allowing the suspect to deny guilt; minimization and other tactics and inducements to motivate the suspect into confessing; and if the interrogation exceeded more than four hours; contamination of facts into the interrogation (Cutler & Leo, 2016).

The question for analysis here was to ask how the suspect came to know those details (Leo & Cutler, 2016). To further the analysis was to analyze the fit or lack of fit between the confession and the facts of the crime, and confirmed by the objective evidence. If the suspect was confessing to the crime the subject would have possessed non-public

knowledge of the crime facts. If the suspect was innocent, the suspect would not have had that knowledge of the facts, unless it was leaked during the interrogation. To verify that the facts were not leaked would have been to ask the subject where they obtained the facts (Leo & Cutler, 2016).

These risk factors had to be evaluated with the reliability analytical framework, in determining the reliability of the confession. The reliability analysis was conducted by evaluating the fit (or lack thereof) between the descriptions in the post-admission narrative (the account a suspect gives after saying the words, I did it) and the crime facts, the extent to which the suspect's post-admission narrative reveals the presence (or absence) of guilty knowledge, and the extent to which the suspect's account is corroborated (or disconfirmed) by objective evidence (Cutler & Leo, 2016, para. 19).

The facts of the confession should have been able to lead investigators to new or missing evidence, and the evidence would have been corroborated either by existing evidence or through forensic analysis. The innocent subject would not have been able to supply accurate crime facts and would not have been able to lead to new evidence or to missing evidence or be able to be corroborated (Leo & Cutler, 2016).

### **Voluntary Assessment**

Is a person ever really in control in a pressure situation? In other words, was the person's decision voluntary? There are always elements of involuntariness in a high-pressure situation, based on the person's perception of control of his situation. Was a person in control in a high-pressure situation? (Miller, Reynolds, Ittenbach, Luce, Beauchamp and Nelson, 2009) This correlates to the interrogation situation. From the



articles of voluntary assessment, we wanted to know at what point does an interview and interrogation become involuntary?

It was apparent that the interview started off with voluntariness, but after the assessment of the interview when the interviewee became the suspect, and the start of the interrogation this was when the suspect perceives he was not in control and it ceased to be voluntary. It was at this time the legal voluntariness analysis was triggered. Therefore, the continuum was ranged from voluntariness to involuntariness. A Likert scale could have been used from 1 to 10 in gaging the tendencies of each of the legal elements of involuntariness in a false confession.

At what point did a confession become involuntary, measure the legal elements of involuntariness in a false confession as tendencies and quantify them. Then used the opposite of Nash's theory of equilibrium the scale was tipped either on the voluntary side or the involuntary side depended on the quantifying of the tendencies on the voluntariness side or the involuntary side. Nash's theory of equilibrium was to reach equilibrium (Nash, 1950). Voluntariness was a perception of a person's control of his situation. Perception of voluntariness was not always accurate.

The U.S. Supreme Court case of the preponderance of evidence involving the burden of proof in assessing the voluntariness of confessions was addressed in three cases. The first case was *Jackson v. Denno* (1964) this case set up the hearing process in evaluating an involuntary confession, the rule that was established the constitutionally protected process of a hearing by the presiding judge in the case to determine the voluntariness of a confession within the context it was obtained. This hearing then ensured

that not only if the judge rules it was voluntary then a jury could then have determined its trustworthiness and voluntariness and credibility in reaching of a verdict.

The second case *Lego v. Twomey* (1972) and the third case is *Colorado v. Connelly* (1986). These cases upheld the preponderance of evidence standard in assessing the voluntariness of a confession. The preponderance of evidence has been defined in state supreme court cases dating back to the nineteen twenties, specifically in *Livanovitch v. Livanovitch* (1926) defined the term preponderance of evidence as “a preponderance of evidence requires at the very least that one of the scales pans makes down weight, though the scales drop but a feathers weight” (131 A. 799, VT., 1926). This case demonstrated how little weight of evidence it takes to tip the scale in the preponderance of the evidence. It was not fifty-one percent but the weight of a feather on the scale to determine the preponderance of the evidence. How the weight of the feather was determined that tipped the scale to meet the burden of proof of preponderance of evidence was the question the court had to decide, as to what weight the evidence was given that tipped the involuntariness scale. Evidence needed to be evaluated element by element and quantified and weighed on a case by case basis=Preponderance of evidence.

In the voluntary assessment of confessions, there are other disciplines that correlate besides the law. Two of these areas pertained to the consenting of medical treatment and consenting to participate in research. The area that most closely related to the legal assessment of voluntariness of confessions was the parental voluntariness in consenting to medical treatment for their child. This resembled the high pressure a person feels when he is being interrogated. What was found in the research is that in the first study of Miller,

Reynolds, Ittenbach, Luce, Beauchamp, and Nelson (2009) the purpose in this study was to address the construction of the definition of voluntariness as it related to measuring the perception of voluntariness in consenting to the medical treatment of their children. It was noted that this stressful decision must be made within a short time, as is in an interrogation of a criminal suspect. The final construction of the definition of voluntariness was defined as: “that perception of voluntariness is the degree of control the individual perceives he or she has over the specific decision about protocol-based treatment. Control is referred to as a continuum” (Miller et al, 2009, p. 6). This was a subjective assessment of the parent. This definition would not be able to be applied during the interrogation, but it could be applied after the interrogation to measure the suspect’s perception that he gave a voluntary confession. The question is does the measure of perception of voluntariness correlate to the identification of a false confession? As we have shown in other literature within this chapter that the correlation was that involuntariness raises the risk of a false confession.

In the following study of Miller, Ittenbach, Harris, Reynolds, Beauchamp, Luce, and Nelson, (2011), this study developed an instrument to measure the perception of voluntariness of parents making decisions for their seriously ill child to receive medical attention. The instrument that was chosen was the Decision-Making Control Instrument (DCMI) this instrument measured the perception of voluntariness for consent to treat the medically ill child. The questionnaire had three dimensions that consisted of self-control, absence of control, and others in control. The nine questions dealt with the above dimensions. The choices were on a continuum scale with the following choices: strongly disagree, disagree, somewhat disagree, somewhat agree, agree, and strongly agree. The

DCM instrument did not measure external situations surrounding the voluntariness of the decision. The DCMI instrument measured the parent's perception of voluntariness of the degree to which the decision was self-controlled or controlled by others or they had no control (Miller et al, 2011).

The results showed that the majority of parents felt that their perception of voluntariness that they had control of the decision ranged from seventy-eight percent to ninety-eight percent. Whereas the parents who did not feel they had control over the decision ranged from one percent to twenty-one percent. It was found that the DCMI instrument could identify perceived voluntariness as well as involuntariness (Miller et al, 2011).

The application to this study is that the DCMI could be used by police officers after an interrogation to identify an involuntary confession which is a high-risk confession that could be a false confession and signal that the confession is carefully corroborated. It could have also identified any potential legal problems of admissibility of the confession by analyzing the questionnaire to determine the subjective mindset of the suspect's perception of voluntariness of his confession.

### **Detection of Deception Detecting False Confessions**

**Behavior analysis interview, history.** The (BAI) was developed and has been utilized since 1948 and was based upon research with the polygraph. It was utilized in the pre-test interview of the polygraph (Reid & Associates, 2014). However, in 1988 a federal regulation was passed called the Employee Polygraph Protection Act (EPPA, 1988). In answer to this regulation, the BAI was developed and utilized as a pre-interrogation

assessment of guilt or innocence. The developer of the technique realized this was not one hundred percent accurate. In answer to this, the thought-provoking questions were developed to prevent false positives and false negatives.

**Previous research.** Previous research has been very critical of the BAI in detecting deception v. truthfulness, however the difference in the results in the Reid studies and the studies from the psychological venue of detection of deception varied in that the Reid studies stated that deception could have been detected with eighty percent accuracy (Horvath, Jayne, & Buckley, 1994) whereas the psychological studies showed only a better than chance of detecting deception (Vrij, Mann, Fisher, 2006). In the analysis of these studies, the variance that could have been determined is the amount of training, the assessing participants in the Reid studies (Horvath, et al, 1994) seemed to be better trained than in the other studies critical of the Reid BAI (Vrij, et al, 2006). This could make a difference in the accuracy rates. However, there was no research on the basis of the BAI that validates the technique. The Reid studies provided some validation of the technique and through corroboration of the confession if given.

Previous research conducted by Kassin, Meissner, & Norwick (2005) assessed that police officers who had been trained in the detection of deception and interviews and interrogation resulted in detecting true confessions correctly only sixty-three percent, and false confessions were only correctly identified fifty-six percent. The limitations of this research are that no particular training the officers received in interview and interrogation or detection of deception were identified. There also were no assessment criteria identified in detecting the difference of true or false confessions (i.e. the complete Reid Technique,

the Reid method of distinguishing between true and false confessions or any other assessment criteria).

**Relationship of BAI to false confessions.** The interrogator using the BAI had the potential to detect false confession through indicators that are similar to false confessions. The indicators are: age; mentally handicapped and false memory, these indicators are objective and subjective and could have been detected in the BAI as well as the application of the legal analysis of confessions. The interrogator utilizing the BAI could detect these risk factors if assessed through the objective factor of age and the subjective factors of false memory and mentally handicapped (Inbau, et al, 2011). These subjective indicators could have been detected through the Reid verbal analysis (Inbau, et al, 2011).

**Goal.** The goal of the BAI is to “conduct the interview to develop investigative and behavioral information that was to be used to further assess the subject’s probable guilt or innocence within the investigation” (www.reid.com, 2014, para. 8). The reason to conduct the BAI is threefold: (a) establish rapport; (b) identify profile information about the subject’s tendencies fears,- personality, and background information; and (c) identify the suspects intelligence; mental health; physical health; and ability to speak and understand the English language (Reid & Associates, 2014). This gave the interrogator the determination if the subject is suitable for interrogation and identify interrogation strategies that ensured the probability that the subject told the truth during the interrogation (Reid & Associates, 2014).

**Procedures.** The procedure of the BAI was always non-accusatory and elicited first background information of the subject. The interrogator should have taken copious notes

documenting questions and responses. Then investigative questions should have been asked, such as opportunity, motive, and propensity to commit the crime. These questions were questions that the interrogator knows the answer already (Reid & Associates, 2014). The final category of questions were: “behavior provoking questions which were specifically designed to be answered differently by innocent or guilty parties to the crime” (Reid & Associates, 2014, para. 14). The behavior provoking questions involved the designing of questions from the topics of the behavior provoking questions which were: “Purpose; history/you/guilt; knowledge; suspicion; vouch; credibility; opportunity; attitude; thinking; motive; punishment; second chance; objection; results; tell loved ones” (Inbau, et al, 2013, p. 155-162). These behavior provoking questions probably evoked guilty or innocent responses through verbal; paralinguistic; and non-verbal content (Inbau, et al, 2013).

**Assessment.** The assessment protocols used to assess the BAI were through: verbal content; paralinguistic content; and non-verbal content. These protocols assessed the responses from the investigative and behavior provoking questions. These assessment protocols have been articulated in the coding manual of this study (Appendix W). The key to assessment was timing, and consistency of the responses in relation to the questions asked and the verbal; paralinguistic; and non-verbal protocols of assessing deception or truthfulness (Reid & Associates, 2014).

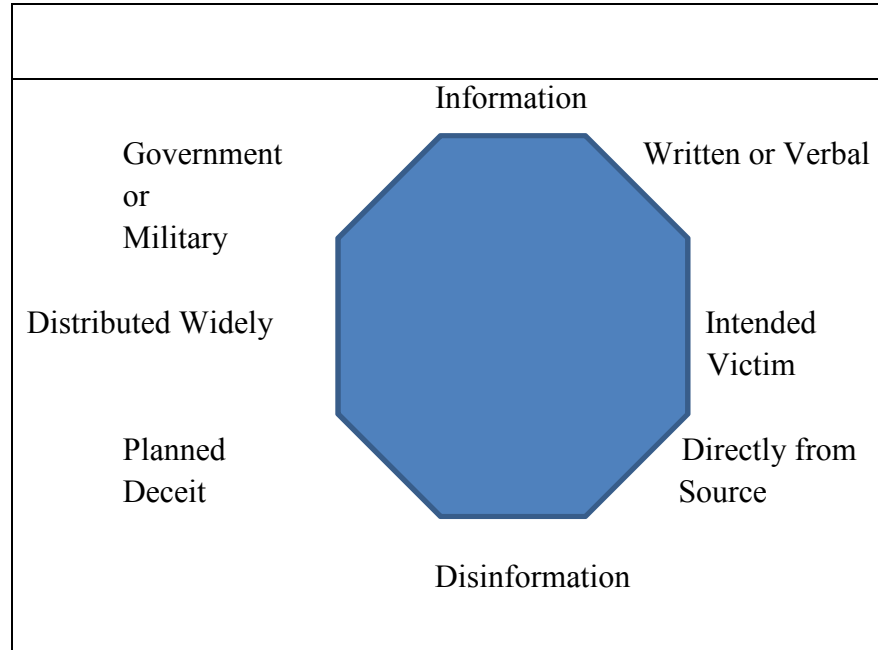
### **Disinformation**

Disinformation in the realm of detection of deception was a vital area in the interest of National Security and the detection of criminal behavior. Disinformation within this

study was when a subject was being interviewed either as a spy, terrorist, or a domestic criminal that gave information that was both truthful and deceptive with the purpose of throwing the focus of the investigation off the subject. There had been no research found that had studied this realm of deception within interviews and interrogation.

The term disinformation is defined by Merriam Webster (2017) “as false information deliberately and often covertly spread (as by the planting of rumors) in order to influence public opinion or obscure the truth” (Webster, 2017, para. 1). It could also be to influence another individual that you are telling the truth. Fallis (2015) defined disinformation as misleading information that has the function of misleading.

The Octagon of Disinformation. The conceptual framework consist of the elements in the following diagram:



*Figure 1. The octagon of disinformation.*



As the Information passes down the octagon, the framework consists of elements that are injected into the information and then became disinformation. It could have also been described in the following equation: Information → planned deceit + government or military + directly from source + written or verbal or doctored evidence + distributed widely + intended victim = Disinformation (Fallis, 2009).

**Description of elements of disinformation.** Fallis (2009) articulated the elements of disinformation as follows: The first element of disinformation was the information itself to be analyzed. The second element was planned deceit or intent. This was where the subject told them something with the intention of making the other person believe something was false. The next element was actual falsity, in order to dis-inform you have to intend that someone inferred something that was actually false. In order to dis-inform, you said something that actually was false with the intent to deceive. Another element was to communicate deceptively by communicating what the subject was saying was true by bringing about a false belief. Therefore you could say the truth that was opposite to what you know or believe. Therefore you have dis-informed without saying anything you believe to be false. This was one element that could potentially deceive the BAI. Next was disseminating misleading information through a third party, or doctored evidence which was representational content. The next step in disinformation was that the deception must be reasonable and intended for a subject to draw a conclusion and to take action from the deception that was misleading. Another element in disinformation was deceptive content, this was where the deceptive content was added on to the original information. This added deceptive content was intended to mislead and therefore dis-inform the intended party.

Another analysis was deception foreseen, this was where the information that was distributed to the target could have been foreseen by the source that the target believed the disinformation (Fallis, 2009).

**Predicting the probability of deception and disinformation.** This analysis was based on Sobers “game-theoretic model of deceptive lying and since dis-informing is very close to deceptive lying” (Fallis, 2009, sec. 6.1, para. 2), Sobers model could have been applied to dis-informing. The prediction of dis-informing depended on the expected costs and benefits.

The cost was defined as not being believed as compared with the benefits of being believed. The benefits of being believed are high relative to the costs of not being believed, therefore the intended audience of the disinformation would have been more than likely view the disinformation to be credible rather than being skeptical about the disinformation” (Fallis, 2009, Sec. 6.1, para.2).

**Identification of disinformation.** The identification of disinformation was very close to lying and therefore lie detection techniques could have been applied to disinformation through verbal, and non-verbal (BAI) (Inbau et al., 2011) and physiological indicators (Eckman, 1985). It also could have been detected through recorded information and analyzed through textual analysis. Research has indicated that textual analysis has found that “liars are somewhat less likely to use first-person pronouns” (Newman, Pennebaker, Berry, & Richards, 2003, p. 672).

**Verification analysis of information or disinformation.** Fallis (2004) states the problem of verifying information could have been analyzed through four different

elements. (a.) authority; which is the character of the witness and is reliable on the topic of information. To be reliable a two-step analysis is made; first, has the source provided accurate information in the past, and second; is there anything to suggest that this information source would not provide accurate information in this particular case. Another area within reliability; was statement given with sincerity, and if the subject did have the knowledge to the fact they are testifying to. The second element was the corroboration. This was where the statement was corroborated with other sources of information. The third element was plausibility and support; this was analyzed through determining if the information was unlikely accurate then the statement should have been inclined to be inaccurate. The fourth and final element of analysis was a presentation in how they present their testimony; does it have indicators of accuracy, was it widely believed and difficult to mislead and/or falsify, and it was empirically accurate. This analysis was similar to the Reid Technique in analyzing interviews, interrogations, and confessions (Inbau et al., 2011).

### **Similarities Between False Confessions and Disinformation**

The similarities between false confessions and disinformation are that they both have elements of truth and false information, however, in the case of false confessions, it can be caused by a number of factors such as psychological, coercion, and duress. However, the difference between the two was that in disinformation there was intent along with the statement of false information. Whereas, in false confessions, there was no intent.

The only analysis that disinformation could have been evaluated was through detection of deception in the BAI. This was based on the fact that disinformation was very

close to lying. Through a logical analysis, the only assessment that could have been made was that since there was truth intermixed with deception it could give off mixed BAI indicators. A way to combat this was to design the behavior provoking question narrowly so that no other information or disinformation could have been interjected.

Focusing the issue was a key element in establishing a psychological set in a person's mind and reinforcing it through a narrow question formulation of the relevant issue in polygraph examinations (Matte, 1996). This could establish a narrow focus that any evasive answer will be assessed as evasive through the BAI and therefore deceptive.

The BAI concept was applied in the Reid Technique and uses a common-sense analysis of truth or deception through verbal and non-verbal indicators. In the evaluation of the non-verbal indicators during the interrogation process of a coerced-internalized false confession, there could be false positives of deception communicated through verbal and non-verbal behavior during the BAI assessment. A common-sense application of attribution and attribution error of this concept was that if the suspect convinces himself he was guilty and confesses the BAI would show that the suspect was telling the truth. However, during the internalization process of the suspect, the BAI could show the truth in showing that he does not remember. If the suspect was being deceptive in saying he does not remember the BAI could show deception. This was a common-sense application of the BAI involving the verbal analysis (Inbau et al. 2013).

### **Verbal and Paralinguistic Cues**

In studies of verbal cues and paralinguistic cues, it was found that there was a greater accuracy in detecting deception (Virj, Edward & Bull, 2001). The relationship of

detection of deception to false confessions was recognized in studies by Appleby et al. (2013) and Garrett (2010) where it was found verbal cues of deception were found in false confessions. In another study by Willen and Stromwall (2012), it was found that three of the CBCA criteria distinguished between true and false confessions. The criteria were self-depreciation and doubts about testimony were found at higher rates in false confessions, and unexpected complications such as irrelevant information were found in true statements (Willen & Stromwall, 2012).

This shows the potential for distinguishing between true and false confessions utilizing the Reid Verbal Analysis of detection of deception (Inbau et al. 2013).

### **Language Style Matching**

In the area of confessions, it was important to know if there was coordination or alignment of verbal behavior between the suspect and the interrogator during the interrogation and what this could have told us about the confession in regard to voluntariness and ultimately false confessions. To determine this, a study was conducted to determine language style matching during an interrogation by Richardson, Taylor, Snook, Conchie, and Bennell, (2014). They were trying to determine if there was language style matching in an interrogation containing a confession, then an interrogation absent a confession. They were also trying to determine if there was language style matching would this predict a likelihood of a confession. Language Style Matching is “examining a process of alignment using a quantitative measure of verbal accommodation” (Richardson et al., 2014, p. 2). The verbal accommodation was based on function words which contain

“articles, prepositions, pronouns, adverbs, articles, auxiliary verbs, conjunctions, indefinite pronouns, negations, personal pronouns, and quantifiers” (Richardson et al., 2014, p. 4).

The study determined that:

Confessions were associated with increased matching of the interrogator’s language style by the suspect, while non-confessions were associated with similar levels of matching from both interrogator and suspect. This suggests who matches who plays a critical role in determining whether or not a confession emerges within an interrogation (Richardson et al., 2014, p. 7).

The matching occurred in two ways; “first, in terms of specificity in describing issues, as achieved through auxiliary verbs, prepositions, and quantifiers. Second in terms of their point of reference that the subject adopted the use of the personal pronoun use” (Richardson et al., 2014, p. 7). Therefore, in a false confession, you could see less language style matching however this has not been tested.

### **Misclassification of Detection of Deception Through Reid Verbal Analysis**

In evaluating a truthful subject through verbal behavior, if correctly assessed at the interview stage the danger of a false confession was diminished. However, if incorrectly assessed, an innocent person through misclassification and therefore submits the suspect to an interrogation then the risk of a false confession was heightened (Leo, 2009).

### **Reid Decision Model for Verbal Analysis**

The following is a logic formula for the Reid decision model for verbal analysis:

Reid Verbal Analysis is analyzed in the interview then a decision to assess a correct classification of a truthful or deceptive individual or an incorrect classification of a truthful

or deceptive individual is processed. Next the interrogation assessment of a correct classification of the individual being deceptive, (subject could still give a false confession but was covering for someone else) or gave an involuntary confession or incorrect classification of being truthful or a false negative or deceptive false positive of a possible false confession or involuntary confession (Inbau et al., 2013).

The incorrect classification of a truthful subject but in reality deceptive could result in a person being set free when actually the subject was guilty. However, if misclassified deceptive but was innocent then was interrogated this was where the formula of a false confession could have occurred. If a confession was given then the Reid false confession analysis needed to be implemented during the interrogation and on a post-confession analysis (Leo, 2009; Leo & Ofshe, 1998).

### **Linguistics**

Assessing the language of a confession in the Reid technique was through the BAI at the interview stage to detect deception or truth. This evaluation determined whether the suspect needed to be interrogated or determined to be truthful and eliminated from consideration of committing the crime in question. The BAI consisted of three parts they are: verbal behavior, nonverbal behavior, and paralinguistic behavior. All three of these assessments were made at the same time. There were no specific behaviors associated with the elements of the BAI. These assessments were made from inferences based on years of research in the development of the Reid technique (Inbau et al., 2013). The BAI analysis was made with the understanding that not every response would have matched with guilt or innocence. The interrogator must have evaluated the preponderance of responses that

occurred across the entire interview, and asked themselves as to whether the behavior exhibited by the suspect was appropriate. Two of these behaviors assessed the language of the suspect in the interrogation. They are verbal behavior and paralinguistic behavior (Inbau et al., 2013). The Reid technique had established these responses as truthful: (a) Responds to questions truthfully; (b) May deny broadly; (c) Offer confident and definitive responses; (d) Offer spontaneous responses. The paralinguistic truthful behaviors are: (a) Early responses; (b) Longer Responses; (c) Sincere emotions in tone and behavior; (d) Continuity of Response; (e) Erasure Behavior. For deceptive verbal behavior: (a) the subjects may answer evasively; (b) May offer specific details; (c) May offer qualified responses; (d) May offer rehearsed responses. For deceptive paralinguistic behavior is the opposite of truthful paralinguistic responses (Inbau et al., 2013). These language assessments assessed only for deception, not for false confessions or voluntary confessions. The question was does verbal detected deception have similarities to false confessions?

### **Legal Analysis of Coercive Linguistics in Interrogations Utilizing the Reid Technique**

**Promises.** In the Reid textbook, the authors gave a simple warning that a promise of leniency would have nullified a confession, then it articulated that certain kinds of promises were allowable. Reid Technique stated a guideline to follow on the policy of making a promise, “Nevertheless a safe practice for interrogators to follow is to avoid making any promises other than clearly innocuous ones” (Inbau et al., 2013, p. 421). Then the Reid technique articulated through case law about the language used in a promise of leniency. The inferred language used in a promise of leniency has been disputed and certain language utilized depends on also tone and how the word was used in a sentence



and everything surrounding that communicates, while at the same time the Reid textbook articulated through *State v. Nunn* (1958) “that not every inducement vitiates a confession but only such inducement as involves any fair risk of a false confession” (*State v. Nunn* 212 Ore. 546, p. 564).

The Reid technique established through case law that minimization and advice was not a promise. A lot of the allowable language turned on how the words in a sentence were used (Inbau et al., 2013). However, the courts have flat out allowed a promise by police stating “not to prosecute him if he confesses” (*U.S. v. LeBrun*, p. 725, 8<sup>th</sup> Cir, 2004). The court held that a promise in and of itself does not render a confession involuntary. The court stated that the standard to apply was to determine whether or not the authorities overbore the defendant's will and critically impaired his capacity for self-determination. The reasoning the court based their decision on was a totality of the circumstances of the defendant that he was highly educated with one year of law school, worked as a manager of a real estate office. The court stated that the defendant confessed after thirty-three minutes of interrogation, understood his Miranda rights. The defendant was aware of his surroundings and circumstances, and erroneously took advantage of a loophole in the law and spontaneously confessed (*U.S. v. LeBrun*, 8<sup>th</sup> Cir, 2004).

This case was an exception to the rule. The practice should not have been to make promises in an interrogation. A general guideline to be considered in making a promise in interrogation was to evaluate it under the standard of real consequences. In other words, if the promise had real consequences, then do not make the statement of a promise (Inbau et al., 2013). Real consequences have been defined by The Reid technique that anything that

“affects the suspects physical or emotional health, personal freedom or financial status. It is only when an interrogator uses this as leverage to induce a confession through the use of a promise that coercion may be claimed” (Inbau et al., 2013, p. 344).

**Threats.** Where the defendant was inflicted with physical force in an interrogation where a confession was obtained would void the confession. A threat of physical harm could have the same effect (Inbau et al., 2013). In the New Mexico Supreme Court in *State v. Evans* differentiated:

Between an impermissibly coercive threat and a permissible coercive threat. The court articulated the two types of threats as such: Threats which the accused may perceive as real have been held to be impermissibly coercive. On the other hand, threats that merely highlight potential real consequences or adjurations, to tell the truth are not characterized as impermissibly coercive (*State v. Evans*, 10 P.3d 216 N.M. 2009, para. 43).

As with promises, the threat has to have real consequences (Inbau et al., 2013).

### **Linguistics in True and False Confessions with the Reid Technique and Other Literature**

**Distinguishing between true and false confessions under Reid.** To assess the language to distinguish between true and false confessions there were certain non-specific guidelines in assessing the language used in a confession. These guidelines had to be listened for during interrogation and confessions from the suspect. There are four guidelines in evaluating a confession in distinguishing it from a true or false confession which is the following:

The first is the introduction of fictitious aspects of the crime and test whether the suspect will either accept them as true facts or disregard them as false, this is dependent upon no true facts of the case has been released in the interrogation or in the media. The second guideline is to evaluate the suspect's stated motives for confessing, if it is specified then it is probably a true confession, if it is vague then it is possibly false and needs to be vetted out. The third guideline is to determine if the confessor first told a loved one about the crime. This would be a truthful reaction, however, if the suspect only confessed to the interrogator this would be suspicious and would need to be vetted out. The fourth and final guideline is if the suspect provided independent corroboration of the crime, it would be a true confession, however, if the suspect cannot provide corroboration beyond the statement "I did it, this should be seriously questioned" (Inbau et al., 2013, p. 349-350).

Reid established a concept to verify if a confession was false and that was corroboration after a confession was given. This was to verify not only the information given but to determine if the confession led to new evidence and or matches the forensic evidence collected (Inbau et al., 2013). For this qualitative study, corroboration cannot be examined due to the corroboration occurs after the interrogation and confession have been obtained therefore outside the purview of the video.

### **Linguistic Indicators of a False Confession Compared With True Confessions**

In determining if there were any linguistic indicators in identifying false confessions we had to review the research that had studied this phenomenon. We know

from the literature that the judgment errors of false positives, in detecting deception raised the risk for false confessions (Bradford & Goodman-Delahunty, 2008). However, in the literature of predicting deception, adjective use decreased, this correlated to adjective use decreasing significantly during false confessions (Villar, Arciuli, and Paterson, 2013). In Villar et al (2013) study Verb use was found to decrease while noun use increased during false confessions compared with true confessions, but this indicator was not significant (Villar, Arciuli, and Paterson, 2013).

What this section showed was that there was a potential correlation between truth and deception involving verbal behavior with linguistics of coercion, deception, and false confessions in the fields of law and linguistics, and the Reid technique.

### **Conceptual Framework Models Interacting with the Attribution Process**

The conceptual model of the Reid technique consisted of first, the interview and interrogation of the suspect which included the factual analysis of the case facts (Keppens & Zeleznikow, 2003), then in the interview phase it consisted of a behavioral assessment of truth or deception. The next step in the model was the attribution of the defendant and attribution of the interrogator, this was occurring at the same time (Heider, 1958; Henkel & Coffman, 2004), as well as the attribution error by the defendant and the interrogator was occurring (Ross, 1977). Attribution error occurs after the attribution of the defendant and the interrogator (Henkel & Coffman, 2004; Ross, 1977). The process consists of elements of attribution of the defendant of memory distortion, and eventually false memory (Gudjonsson, 2014; Henkel & Coffman, 2004). The elements of the attribution of the

interrogator consisted of a verbal and non-verbal assessment of truth and deception, and false confession assessment (Inbau et al., 2013).

The attribution error of the defendant consisted of the actual articulating of a false confession (Gudjonsson, 2014; Ross, 1977). The attribution error by the interrogator consisted of misinterpreting or missing signs of the behavioral assessment or the false confession assessment (Inbau et al., 2013).

During this identification, there was a continuum of an Attribution of a suspect to the Attribution of the interrogator. At the same time Attribution from the interrogator to the suspect. Also, there was a continuum of Attribution Error of the suspect to the Attribution Error of the interrogator, and from the interrogator to the suspect (Henkel & Coffman, 2004).

In determining the difference between true and false confessions we had to evaluate deception occurring in the interrogation process. In this evaluation process of determining the difference between true and false confessions, we had to look at a valid false confession as well as the subtypes of a false confession. This involved an over-involvement false confession or an under involvement false confession or a confession that was deceptive but was disinformation which was a deceptive confession which was meant to lead the investigators in another direction away from the subject being interviewed and/or interrogated. These subtypes showed verbal and nonverbal signs of behavior during the interrogation. However, this analysis could be an attribution error, based on the subject articulating a false confession through a false memory.

In evaluating deception that was evaluated in this study was a subjective/objective analysis. The subjective analysis consisted of verbal behavior and nonverbal behavior. The objective analysis was corroboration that led the investigator to new evidence and/or that the suspect was able to describe something he did or that could have been confirmed by forensics (Inbau et al., 2013). For the purposes of this study, the focus was on the Reid legal analysis model and the legal casebook analysis model. However, the factual analysis was a critical component of both models.

The conceptual framework of the legal analysis model was for the purpose of utilizing the elements required for a voluntary confession and an involuntary confession, to determine if the legal analysis model could have identified a false confession. The legal analysis model started off with the interrogation utilizing the Reid Technique (Inbau et al., 2013).

During the interrogation process, a legal assessment was ongoing to determine the presence or non-presence of voluntariness and coercion that was based on the current case law at the time of the interrogation. The current case law that governs the legal analysis of voluntariness of a confession has been established since 1959 in *Spano v. New York* (360 U.S. 315), then was refined in 1962 in *Townsend v. Sain, Sheriff, et al.* (372 U.S. 293), and refined again in 1963 in *Haynes v. Washington* (373 U.S. 503), in these cases the constitutional voluntariness rule was established.

These cases together formulated a rule that stated that the analysis was to be applied on a case by case basis with the details of the interrogation and the defendant's characteristics were to be evaluated within the framework of the totality of the

circumstances to see if the defendant's will was overborne (*Haynes v. Washington*, 1963).

It established that the will was not overborne if the confession was the product of rational intellect and free will (*Townsend v. Sain*, 1962). However, in *Culombe v. Conn.* (1961) the court ruled that the will was overborne if the confession was not the product of an essentially free and unconstrained choice by the defendant (367 U.S. 568, 1961).

The U.S. Supreme Court then established a court procedure in evaluating the voluntariness of a confession in *Jackson v. Denno* (378 U.S. 368, 1964). The current case law in determining voluntary confessions is *Colorado v. Connelly* (1986) this case scaled back the voluntariness standard by shifting the focus away from the defendant's voluntary state of mind and behavior to the government's improper action. The court determined that the subjective analysis in determining the voluntariness of the defendant would be impossible. However, it did determine that an objective analysis in determining the improper police conduct would be the central issue in determining the voluntariness of confessions (479 U.S. 157, 1986).

Over the past few decades the courts have ruled on the voluntariness of confessions using the totality of circumstances on a case by case basis utilizing the objective test of improper police action in the interrogation as well as the characteristics of the defendant, to determine if those factors overborne the will of the defendant (Kozinski, 2015; Marcus, 2006). The problem with these decisions was the number of factors and variations that led to confusion for the interrogator. The causal connection between the cases was that the objective factors in totality that could lead to defendant's will be overborne.

Then the next process in the model was determined after the confession is obtained whether the confession was voluntary or involuntary (Kozinski, 2015; Marcus, 2006). This was evaluated utilizing the totality of the circumstances through evaluating the conditions of the interrogation and the characteristics of the defendant (Kozinski, 2015; Marcus, 2006). Then an analysis was made as to whether the confession was a true confession (did it meet the Reid elements of a true confession) or a false confession (did it meet the Reid elements of a false confession specifically a coerced-internalized false confession) (Inbau et al., 2013).

The legal analysis depended upon the legal reasoning of the case law (was the confession admissible or inadmissible) as it pertained to voluntary and involuntary confessions, in determining whether a confession is coerced and involuntary, through applying the current case law in applying the voluntary confession rule. The legal reasoning that was applied would start with the ultimate issue to be proved; was the confession voluntary or involuntary, then the legal rules governing voluntary and involuntary confessions were applied, then the interrogator would assess the evidence that was applicable to the legal rules (Walker, 2007).

The best procedure for the legal framework was to look for any or combination thereof of the objective factors that had been ruled by the courts to have found that those factors led to an involuntary confession such as the following: “Location of questioning, if Miranda warnings given, age, drug problems, experience with the criminal justice system, torture” (Kozinski, 2015, 243-248),



falsify physical evidence, deception about legal process, threats: physical harm against defendant or family, potential prosecution or arrest of friends and family, maximization of penalty, lack of protection against others who threaten suspect or family, use or refusal to authorize use of medical treatment, loss of employment or education and forfeiture of driver's license, promises not to charge or lesser counts if a statement is made, duration of interrogation, serious mental illness and IQ (Marcus, 2006, p. 614-631).

The fourth and final area was in Linguistics, the purpose of this area was what was the language that was being spoken to the defendant and the language spoken back to the interrogator from the defendant. The key issue was the identification of linguistic phrases of coercion being spoken to the defendant and the key phrases that were being verbalized to the interrogator in response to the coercion all within a false confession.

The conceptual framework relates to the study approach by recognizing the concepts needed in identifying attribution and attribution error on the part of the suspect and the interrogator in identifying a false confession. The concepts that were utilized are related to the research questions and enabled the development of a coding manual in the form of evaluation questions and thus data analysis.

### **Key Elements of the Models**

The key elements are defined as the Reid legal analysis model and the legal casebook analysis model, the Reid verbal/paralinguistic analysis model. Reid false confession model, the complete Reid technique (which includes all the Reid models listed above and including the Reid nonverbal Model) and the linguistic analysis model in detecting false confessions. In the legal models, there were elements of the legal model

and the attribution and attribution error in the assessment of coercion and voluntariness. This determined if there were similarities between the models with the identification of false confessions.

### **Reid Legal Analysis Model**

The elements in this study were defined as follows: The confession could have been manipulated through several concepts within the Reid Technique if the technique were not followed (Inbau, Reid, Buckley & Jayne, 2013),

1. Contamination,
2. Coercion,
3. Duress,
4. An investigator persuading a suspect that he was guilty of a crime while the suspect did not remember committing the crime (Inbau, Reid, Buckley & Jayne, 2013, p. 343-355),
5. Age,
6. IQ,
7. Miranda Warnings not given,
8. Drug Problems,
9. Torture,
10. Experience with the criminal justice system” (Kozinski, 2015, p. 243-248),
11. Falsify physical evidence,
12. Deception about the legal process,

13. Threats that include: physical harm against defendant or family, potential prosecution or arrest of friend and family, maximization of penalty, lack of protection against others who threaten suspect or family, refusal to authorize medical treatment, loss of employment or education, forfeiture of driver's license, promises not to charge or lesser counts if statement was made, duration of interrogation, serious mental illness (Marcus, 2006, p. 614-629).

These characteristics have been found in past cases to produce an involuntary confession during an interrogation. The Reid technique did not endorse these tactics in their manual (Inbau et al., 2013). These objective case results have been found to cause a confession to be inadmissible based on Involuntariness. These objective results also could have manipulated a confession if the Reid Interview and Interrogation Technique was not followed (Inbau et al., 2013).

There was the assessment of attribution and attribution error on the part of the suspect and the interrogator. The identification of the following attribution's and attribution errors between the suspect and interrogator involved the legal analysis of the Reid legal analysis model and the legal casebook analysis model (for further reference to the case law elements of involuntariness see Appendix E). These models correlated to attribution and attribution through the perception of each other's verbal and nonverbal behavior toward each other, during the Reid interview and interrogation technique (Inbau et al., 2013). The subjective /objective elements of the voluntariness of the confession were assessed through the verbal and non-verbal interaction between the interrogator and the

defendant. Therefore, the result was the attribution or attribution error of the legal assessment of voluntariness between the interrogator and the defendant.

The voluntariness assessment correlated to the false confessions through the fact that coercive elements within an involuntary confession ran a risk of a false confession (Leo, 1996). The coercive elements included interrogative pressure (for further examination see Appendix A).

### **Reid False Confession Model**

The verbal statement that the Reid technique cautioned interrogators to look out for in a false confession (especially coerced-internalized false confession) was, “if a person states that he has no memory of committing the crime, but states that he must be guilty of committing the act” (Inbau et al., 2013, p. 341).

The Reid technique established three prerequisites for a coerced-internalized false confession to occur after the suspect stated that he/she must be guilty but had no memory of committing the criminal act which is:

- (a.) the suspect must believe that it was possible that he/she committed the criminal act.
- (b.) the interrogator had not accounted for the suspect’s memory loss such as alcohol or drug-induced blackouts, signs of a multiple personality disorder, or amnesic episodes resulting from a neurological disorder or some other psychopathological disorder.
- (c.) the interrogator during the interrogation must have laid the foundation for the suspect to ultimately accept responsibility for a crime that he does not remember (Inbau et al, 2013, p. 350).

There are four guidelines in evaluating a confession in distinguishing it from a true or false confession which are:

The first was the introduction of fictitious aspects of the crime and to test whether the suspect would have either accepted them as true facts or disregarded them as false, this was dependent upon no true facts of the case had been released in the interrogation or in the media. The second guideline was to evaluate the suspect's stated motives for confessing, if it was specific then it was probably a true confession, if it was vague then it was possibly false and needed to be vetted out.

The third guideline was to determine if the confessor first told a loved one about the crime. This would be a truthful reaction, however, if the suspect only confessed to the interrogator this would be suspicious and would need to be vetted out. The fourth and final guideline was if the suspect provided independent corroboration of the crime, it would be a true confession, however, if the suspect cannot provide corroboration beyond the statement I did it, this should be seriously questioned (Inbau et al., 2013, p. 349).

Reid established a concept to verify if a confession was false and that was corroboration after a confession was given. This was to verify not only the information given but to determine if the confession led to new evidence and or matched the forensic evidence collected (Inbau et al., 2013). For this qualitative study, corroboration could not have been examined due to the corroboration occurred after the interrogation and confession had been obtained therefore outside the purview of the video.

The rule that Reid established if the false confession statement was made, and that was “never design questioning, suggest, or convince a suspect during interrogation that he must be guilty of the offense while the suspect is stating he has no recollection of committing the crime” (Inbau et al., 2013, p. 351).

During the interrogation process, the interrogator could contaminate the interrogation with facts of the case that were never known to the public, only known to the police which causes an attribution error by the interrogator. If this occurred then the attribution of the suspect could have come to believe that he/she was responsible for committing the criminal act (Garrett, 2010).

If the facts of the crime are known of the case in the video of the interrogation and confession contamination could have been coded and analyzed. The identification of the common- sense attribution and attribution error was relevant through the cognitive process of each party trying to interpret the event and the explanation thereof.

### **Reid Verbal/Paralinguistic Model**

**Reid verbal model.** The Reid verbal model consisted of assessing detection of deception through speech and mannerisms during speech that was consistent with deception (Inbau, et al, 2011). The guidelines used when evaluating the subject’s verbal response to interview questions were more categorized into a linguistic style of a defined phraseology of rather than specific linguistics of specific phrases and specific word count of the basic parts of speech (Inbau, et al, 2011). The defined phraseology in the verbal analysis looked for the following:

Table 1

*Verbal Indicators of Truth v. Deception*

Truthful	v.	Deceptive
Responding Directly		Evasiveness
Deny broadly		Specific denials
Confident and definitive responses		Qualified responses
Spontaneous responses		Rehearsed responses

(Inbau et al., 2013)

**Reid Paralinguistic Model**

The Reid paralinguistic model consisted of speech characteristics that were conducted in conjunction with the Reid verbal model. The connection of paralinguistic with verbal linguistics was that the speech characteristics were communicated at the same time. The speech characteristics were different between the two models in that the verbal model analyzes what was being said and the paralinguistic model analyzed how it was being said. The paralinguistic model analyzed communication through these guidelines.

Reid paralinguistic indicators of truth and deception:

1. Response Latency: Truthful - .5 sec, Deception – 1.5 sec.

Early Responses: A truthful subject may have offered early responses at the start of the interview.

2. Response Length: Truthful subjects offered longer responses to interview questions, volunteering more information than called for in question versus deceptive subjects.

3. Response Delivery: This was the subject's rate and pitch and clarity during a response which was either consistent or inconsistent with the verbal content.

Truthful

Deceptive

Rate and Pitch Increase

Rate and Pitch Decrease

Speaks clearly in an appropriate volume

Mumbles or talks quietly to where

Investigator had difficulty hearing

#### 4. Continuity of Response:

Truthful: Response was spontaneous and free-flowing and maintains continuity within the statement from one thought to another.

Deceptive: Response occurred if the subject begins his response in one direction but stops then starts in another direction.

5. Erasure Behavior: These were non-verbal behaviors that send a message to the listener that the previous statement was said in jest.

The following behaviors are conducive to Erasure Behavior: Wink or smile; laughs; coughs; and clearing of the throat. These behaviors should only be considered a possible indicator of deception when they immediately follow a significant denial (Inbau, et al., 2013).

### **Reid Non-Verbal Model**

The Reid nonverbal model was included within the complete (BAI) (Inbau, et al, 2013). The Reid Non-Verbal Model was based on communication non-verbally of the subject's behavior that consists of bodily movements. "The interrogator is primarily interested in non-verbal behaviors that reflect comfort v. anxiety, confidence v. uncertainty, and a clear conscience v. guilt or shame" (Inbau, et al., 2013, p. 121). The subject during the interview Non-Verbally communicated truth or deception with the non-verbal behavior based on the subject's anxiety level. When these behaviors were communicated the key



question that the interrogator must ask himself “Is it appropriate for the suspect to be experiencing, fear, guilt or decreased confidence through the suspect’s non-verbal communication” (Inbau, et al., 2013, p. 121).

### **Reid Non-Verbal Channels and Indicators of Truth and Deception**

#### 1. Posture:

Truthfulness	Deceptive
Open relaxed posture	Closed or retreated posture
Frontally aligned	Non-frontal alignment
Occasional forward leans	Constant forward lean
Display a number of postures during interview	Frozen Static

#### 2. Evaluating Hands:

Truthfulness	Deceptive
Illustrating behavior with hands	Passively, uninvolved, static
	Personal gestures
	Grooming gestures
	Supporting or protective gestures

#### 3. Evaluating Feet and Legs:

If changes in feet or leg movement that occur on cue with a verbal response to a relevant question then resume after response was experiencing anxiety.

#### 4. Evaluation of Facial Expressions:

Anger, resentment, disgust, ambivalence, acceptance, defeat, resignation, and confusion, could have assisted in helping an investigator confirm or refute the probable guilt of the suspect or a false confession.

#### 5. Evaluating Eye Contact:

The degree and nature of eye contact could have been a reliable indicator of confidence, certainty, guilt, or anxiety.

Truthful: Easily maintains eye contact

Deceptive: Poor eye contact (Inbau, et al., 2013)

### **Guidelines in Assessing Behaviors in the Reid Behavior Analysis Interview**

1. Looked for deviations from the suspect's normal behavior.
2. Evaluated all behavior indicators on the basis of when they occurred
  - i. (Timing) and how often (Consistency).
3. To be reliable, indicators of truth or deception, behavioral changes
  - i. should occur immediately in response to questions or simultaneously
  - ii. with the suspect's answers. Furthermore, similar behavioral responses
  - iii. should occur on a consistent basis whenever the same subject matter is
  - iv. discussed.
4. Always consider the evaluation of the subject's behavior symptoms in
  - i. conjunction with the case evidence and facts. Behavior should only be
  - ii. one component in the decision-making process (Inbau, et al., 2013, p. 136).

### **Linguistic Model**

The linguistic model consisted of assessing the similarities of the basic parts of speech and linguistic phraseology in detecting an involuntary confession and/or a false confession through a word and phrase count.

### **Legal Casebook Analysis Model**

A police officer had to apply common sense legal reasoning during the interrogation process based upon his training and education, to determine if the interrogator was applying coercion to overcome the will of the suspect. The U.S. Supreme Court ruled in 1986 in *Colorado v. Connelly* (479 U.S. 157), that to rule a confession involuntary there had to be some form of police action that prompted the suspect's confession. The ruling brought in the objective/subjective analysis, by establishing an objective threshold on the police action and the subjective analysis of the police action effect on the suspect. This overruled the suspect's free will absent any causal police action in determining an involuntary confession (Primus, 2015).

Some of those objective/subjective characteristics that have ruled a confession involuntary have been the following: (a) contamination; (b) coercion; (c) duress, (d) an investigator persuading a suspect that he was guilty of a crime while the suspect did not remember committing the crime (Inbau et al., 2013, p. 343-355); "(e) age; (f) IQ; (g) Miranda warnings given; (h) drug problems; (i) torture; (j) experience with the criminal justice system" (Kozinski, 2015, p. 243-248); (k) "falsify physical evidence; (l) deception about the legal process; (m) threats: physical harm against defendant or family, potential prosecution or arrest of friend and family, maximization of penalty, lack of protection

against others who threaten suspect or family, refusal to authorize medical treatment, loss of employment or education, forfeiture of driver's license, promises not to charge or lesser counts if statement is made, duration of interrogation, serious mental illness" (Marcus, 2006, p. 614-629).

These are the identifying elements that were utilized in identifying coercion and voluntariness within a false confession (for a further examination of these elements see Appendix E).

The Reid legal analysis model and the legal casebook analysis model were the assessment models. There was the legal assessment of voluntariness of the confession. The legal model consisted of identifying elements of coercion and voluntariness within the legal conceptual framework to determine if the legal analysis could have detected all types of false confessions. A content analysis was conducted in coding the linguistics of the videos for deception or truthful confessions, coercion and voluntariness, and true and false confessions.

All of these models analyzed the known true and false confessions together (Reid BAI) and separately to determine (a) if these indicators were present in true and false confessions, (b) if the interrogator detected these indicators in either false confessions or involuntary confessions, (c) if the interrogator looked for similarities between all of the models of false confessions and involuntary confessions.

### **Studies Using Confession Questionnaire's From Different Perspectives**

There have been several studies utilizing questionnaires' in obtaining information from the suspect (Gudjonsson & Sigurdsson, 1999), to measure why the suspect confessed.

The second study was in reference to the interrogator in surveying their beliefs and their interrogation techniques (Kassin, Leo, Meissner, Richman, Colwell, Leach, & LaFon, 2007). The third and fourth studies measured the interrogation practices through observation of the interrogation practices of all aspects of an interrogation through personal and video observation (Leo, 1996), (King & Snook, 2009).

In the third study of Leo (1996) measured the following:

“variables of the types of crimes, suspects response to Miranda Warnings, number of interrogation tactics used per interrogation, list of the types of interrogation tactics used and their frequency, length of interrogation, outcome of interrogations, coerciveness of interrogation, length of sentence received, suspects response to Miranda based on prior criminal record, effect of suspects response to Miranda on prosecutor’s decision to charge case, likelihood of conviction by response to Miranda, relationship between Miranda & plea bargaining, relationship between Miranda and sentence severity, effect of individual interrogation techniques dividing between most successful and least successful, relationship between the techniques that are significantly likely to yield incriminating information by the social and legal variables which identifies which police techniques are most likely to be successful but also the tactics to which different suspects are most likely to be vulnerable, length and effort of custodial interrogations to determine when detectives are more likely to interrogate aggressively in relationship to seriousness of the offense, the success of the interrogation, and gender of the victim, and the number of tactics relating to the seriousness of the offense, race of the suspect, and

the strength of evidence against a suspect, effect of confessions on case processing (p. 274-299).

This study was able to evaluate the interrogation process firsthand. This allowed a comparison of tactics in relation to other variables (Leo, 1996).

King and Snook (2009) replicated Leo's (1996) questionnaire on coercive tactics with some modification in analyzing the Reid Method of Interviewing and Interrogations (Inbau et al. 2013). The questionnaire was coercive strategies observed during an interrogation. The coercive strategies studied were:

suspect not read rights to silence and legal counsel; interrogator threatened suspect with psychological pain; interrogator touched suspect in an unfriendly manner; interrogator's questioning manner was unrelenting, badgering, or hostile; interrogator promised the suspect leniency in exchange for an admission of guilt; suspect is not permitted to make his/her rights to silence of legal counsel; suspect was in obvious physical pain; interrogator deprived the suspect of an essential necessity; suspect was in obvious psychological pain, interrogation lasted longer than six hours (King & Snook, 2009, p. 689).

The results shown in the King and Snook (2009) study showed that twenty-five percent of interrogations contained coercive strategies. What was not determined if these twenty-five percent of interrogations were held to be legally admissible?

## **Methodology**

### **Qualitative Case Study Research Method**

The qualitative case study research method was defined as the “intensive analysis of an individual unit (as a person or community) stressing developmental factors in relation to environment” (Merriam-Webster’s, 2009). Then in the Penguin Dictionary of Sociology (Abercrombie, Hill, & Turner, 2006) “Case Study is the detailed examination of a single example of a class of phenomena, a case study cannot provide reliable information about the broader class, but it may be useful in the preliminary stages of an investigation since it provides hypotheses, which may be tested systematically with a larger number of cases” (Abercrombie, Hill, & Turner, 2006, p. 45). Other definitions have been provided. Stake (2005) defined the case study as “an exploration of a single case or multiple cases over time” (Creswell, 1998, p. 61). This involved a detailed process that analyzed data that was rich in context (Patton, 2015). The process then identified key phrases or themes and then coded. The coded themes or phrases were analyzed for patterns in correlation to the research questions.

This study utilized the qualitative case study research method to observe videos of both true and false confessions, to identify false confessions through legal analysis models. This data was analyzed through content analysis of linguistics of deception and truth, coercion and voluntariness, and between true and false confessions. The data was coded and correlated between the three groups to determine if there is a correlation, in identifying false confessions and true confessions through video observation. The participants utilized a checklist of involuntary elements to determine if involuntary elements could have

distinguished between a true and false confession. The controlling variables were factors such as age, experience, education, training in Reid, Legal training, and job title, etc.

## **Summary and Conclusion**

### **Major Themes in the Literature**

The major themes in the literature consisted of False Confessions, The Reid Interview and Interrogation Technique Reid legal analysis, Reid Fact analysis, Attribution Theory, Distinguishing between True and False Confessions, legal reasoning, legal training of interrogators, lawyers, and judges, Legal Voluntariness rule for confession admissibility, coercion, duress, Trustworthy voluntary confession, Coerced Internalized false confession, voluntary false confession, coerced compliant confession, trickery and deceit, corroboration of confession, introducing fictitious evidence, video observation and identifying a false confession, evaluating videotaped confessions, attributional complexity and camera perspective bias, identifying a false confession, video observation, and the attribution process, analyzing videotaped interrogations and confessions, voluntary assessment, fact investigation, These major themes comprised this study, and were addressed in this summary.

### **Themes**

The intention of this study was to identify if police officers could have identified false confessions through video observation of a Reid Interrogation using the Reid Legal Analysis in comparison to the legal casebook method. The themes of false confessions and distinguishing between true and false confessions, and the types of false confessions were coerced-internalized false confession, voluntary false confession and coerced compliant



confession. These themes consisted of the types of false confessions and how to distinguish between true and false confessions. The theoretical theme of Attribution described the psychological basis of social interaction and perception therefrom. The themes of legal reasoning and legal training of interrogators, lawyers and judges. These themes showed the reasoning process in applying the facts of a situation to the law. The legal training theme shows the types and depth of training an interrogator had as opposed to a judge and a lawyer.

The law concerning the voluntariness rule for confession admissibility and themes related of coercion, duress, trustworthiness, and elements involving those themes showed the assessment of the admissibility of the confessions to the law to judge the admissibility of a voluntary confession and hopefully identified a false confession. The Reid interview and interrogation themes included the Reid process, Reid legal analysis, and the Reid factual analysis, as opposed to legal fact investigation. These themes showed the application of the Reid interview and interrogation technique to assist in the admissibility of the confession and the distinguishing between a true and false confession.

The next major themes concerned the methodology of this study which was video observation and identifying a false confession, evaluating videotaped confessions, camera perspective bias, video observation, and the attribution process, analyzing videotape interrogations and confessions. These themes comprise the literature of the methodology in assessing the interrogation and confession, of voluntariness and distinguishing between a true and false confession. And the final theme of the voluntary assessment showed a procedure for assessing the voluntariness of a decision.

What was known about this topic was those police officers could have assessed voluntariness through video observation depending upon the camera perspective. It was also known that there was no procedure in identifying a false confession, during the interrogation. It was also known that there are no correlation studies in identifying voluntariness with false confessions. It was hopeful this study would have filled the gap in identifying a false confession through video observation while using the Reid Legal analysis of voluntariness. In attempting to answer the question of could have police officers detected a false confession through video observation utilizing the Reid Legal voluntariness assessment? This would have filled the gap in the research and enabled a determination if any training was needed to detect a false confession during a Reid Interview and Interrogation and confession.

The gap in the literature of identifying a false confession through video observation utilizing the Reid legal analysis was answered through the methodology of a non-experiment study which was articulated through; description of the research design and rationale, target population, sampling and sampling procedures, procedures for recruitment participation, and data collection, instrumentation and operationalization of constructs, operationalization for each variable, data analysis plan, threats to validity, and ethical procedures. This provided a methodological basis for the study.

## Chapter 3: Research Method

### **Introduction**

The purpose of this study was to determine if the Reid false confession model used in interrogation detected false confessions. The qualitative case study consisted of obtaining videos of confessions of real interrogations between police officers and defendants. The videos were then analyzed through content analysis, by analyzing and coding the language to determine if there are similarities between involuntariness and false confessions.

I triangulated the data with conversation analysis and discourse analysis per Patton's (2016) triangulation methodology. The topics that were addressed in this section are the research design and rationale, the role of the researcher, methodology, issues of trustworthiness, ethical procedures, and a summary.

### **Research Design and Rationale**

**Potential significance.** This study needed to be conducted to fill the gap in the literature on the detection of false confessions. I accomplished this through a qualitative analysis to determine if the Reid verbal analysis in detection of deception, the Reid legal analysis model, the Reid false confession model, and the legal casebook analysis model could identify a false confession. The study also supported the field of criminal interrogations and confessions by possibly limiting the risk of obtaining false confessions by using one or all of these models to detect them in order to limit the risk of a wrongful conviction.

## **Qualitative Framework**

The qualitative framework in this study was constructed from a generic framework of qualitative research using content analysis. This explored constituted a systematic comparative content analysis, conversation analysis, and discourse analysis to explain what I observed in the confession videos. This was an inductive/deductive process that built a theory to test. This occurred through an analysis of the confession videos to determine where the data would fall in various codes to establish a cluster of similarities that could point to a theory of common data that formed a false confession (see Patton, 2015).

## **State and Define Central Concepts/Phenomenon of the Study**

In this study, I explored how (if at all) these theories were used in attribution and attribution error analysis with the Reid interview and interrogation technique to detect false confessions. I also looked for similarities between the Reid models and the legal casebook analysis model of the voluntariness of a confession and the linguistic model to determine which individual model or all models together best detects a false confession.

## **Phenomenon of False Confessions**

It has only been in the last century that the awareness of false confessions through the third degree and the improper methods of psychological interrogation have been found to violate the involuntariness rule (Leo, 2008). Since DNA had been discovered for utilization as a forensic tool to exonerate those wrongfully convicted based on false confessions and or other false or misleading evidence. The problem was that people inside and outside the criminal justice system believed that a person would not confess unless they were physically tortured or mentally ill (Leo 2008). However, through DNA and

other tools, forensic experts have found that innocent people do confess to crimes they did not commit for a variety of reasons (Leo, 2008),

Within the last 30 years, false confessions in the criminal justice setting have been researched through psychological, criminal justice, communication, and legal disciplines. The research in these disciplines focused mainly on the objective analysis of the physical and mental condition of the suspects (Kassin et al., 2010). Research has been conducted on contamination of facts during the interrogation by the interrogator and has found that the contamination of facts did cause false confessions (Garrett, 2010).

### **Varieties of False Confessions**

Kassin and Wrightsman (1985) defined three types of false confessions. The first type was voluntary false confession, which meant a false confession that came without being elicited by the interrogator. The second type they identified was coerced-compliant false confession, which occurred when “the suspect publicly professes guilt in response to extreme methods of interrogation, despite knowing privately that he or she is truly innocent” (Kassin & Wrightsman, 1985, p. 77). The third type was defined as a coerced-internalized false confession in which the suspect during the interrogation “actually comes to believe that he or she committed the offense” (Kassin & Wrightsman, 1985, 78). Kassin and Gudjonsson (2004) renamed the last two as pressured compliant false confession and pressured internalized false confession with the same definitions.

## **Research Design and Methodology**

### **Method of Inquiry**

The purpose of this qualitative case study was to perform a content analysis in the identification of a false confession during an interrogation through video observations of the interrogations using the legal voluntariness models. To accomplish this, I used four models to attempt to identify a false confession. They were the Reid legal analysis model, and a legal casebook analysis model, the Reid verbal analysis model of detection of deception, the Reid nonverbal analysis model, the Reid false confession analysis model, the complete Reid technique, and the linguistic model.

The qualitative case study consisted of obtaining videos of confessions and false confessions from real interrogations between police officers and defendants. I then analyzed the videos through content analysis by coding the language to determine if there was a correlation of involuntariness and false confessions. Next, I explored similarities between the Reid verbal analysis of detection of deception and false confessions. Following this, I explored similarities between the Reid false confession analysis and false confessions. The methodology included triangulation with conversation analysis and discourse analysis (see Patton, 2016).

### **Identification of the Research Tradition**

The research tradition I employed for this study was content analysis. Content analysis was defined as a “research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use” (Krippendorff, 2013, p. 24).

The conceptual framework of content analysis involves obtaining a body of text, developing research questions that the researcher wants to answer, analyzing the text to make sense of the body of the text, operationalizing what the researcher knows about the context of the body of the text, developing inferences through techniques that answer the research question, then validating the evidence. The components needed to proceed from the texts to results are unitizing, sampling, recording, and coding, reducing the data, and deductively inferring the contextual data through techniques that justify inferences from the contextual data, finally narrating an answer to the research questions (Krippendorff, 2013).

There are many research techniques that could have been used in justifying inferences from the contextual data. The framework of justifying inferences from the data consisted of the following: extrapolation; which included looking for trends, patterns (including similarities), and differences; standards, which included, identification evaluations and judgments; indices and symptoms, which included the presence or absence of awareness or knowledge of an object or concept; linguistic representations that included interview transcripts and social interaction; conversation analysis, which looked at the structure of the speech occurring between the two parties; and the category of institutional processes, which included legal explanations of the legal conditions the communicators operated under (Krippendorff, 2013).

The justification for using the research tradition of conversation analysis with content analysis was to develop the inferences from the conversational interactions between two people. The research tradition that had emerged in the past 40 years as an approach to analyze the social interaction of communication was conversational analysis. This was

conducted by listening to audio and video recordings and then transcribing the conversations. The transcripts were analyzed then for understanding the structure of the speech between the participants in the conversation (Krippendorff, 2013).

The areas that were likely to be successful in content analysis were in the areas of attributions, social relationships, public behaviors, and institutional realities. “Content analysis is most likely to succeed when analysts address linguistically constituted social realities that are rooted in the kinds of conversations that produced the texts being analyzed” (Krippendorff, 2013, p. 80).

### **Rationale for the Chosen Research Tradition**

The reasoning in selecting content analysis was that it was the best research design available that answers the research questions. The design accomplished this through the methodology and framework of the design. Specifically, it allowed the analysis of the text through the transcription of the videos and or audios of confessions and then transcriptions were completed so that the language could be analyzed in identifying the parts of speech that identifies coercion, involuntariness, and true and false confessions. Then the inferences are analyzed for trends, patterns (including similarities), and differences; identification’s evaluations, and judgments; the presence or absence of awareness or knowledge of an object or concept; Next linguistic re-presentations included interview transcripts, and social interaction; Then conversation analysis, which analyzed the structure of the occurring speech between the two parties; next was the category of institutional processes, which included legal explanations of the legal conditions the communicators



operate under. This enabled the collection and analysis of the data to answer the research questions.

### **Research Questions**

These qualitative research questions focused on the problem of detecting false confessions utilizing various models. The data was collected and analyzed to determine if there were similarities between the models in detecting false confessions.

RQ1: How do interviewers attribute identification of false confessions during criminal interrogations using the Reid legal analysis model of involuntariness?

SQ1: What linguistic indicators of a false confession are identified using the Reid legal analysis model of involuntariness?

RQ2: How do interviewers attribute identification of a false confession during criminal interrogations using the legal casebook analysis model of involuntariness?

SQ2: What linguistic indicators of a false confession are identified using the legal casebook analysis model of involuntariness?

RQ3: How do interviewers identify attribution error of a false confession using the Reid legal analysis model of involuntariness?

SQ3: Can attribution error occur in identifying linguistic indicators using the Reid legal analysis model?

RQ4: How do interviewers identify attribution error of a false confession using the legal casebook analysis model?

SQ4: How does attribution error occur in identifying linguistic indicators using the legal casebook analysis model?

RQ5: How do interviewers attribute identification of a false confession during criminal interrogations using the Reid BAI of detection of deception?

SQ5: What linguistic indicators attribute identification of a false confession during criminal interrogations using the Reid verbal analysis of detection of deception?

RQ6: How do interviewers attribute identification of a false confession during criminal interrogations using the Reid false confession analysis?

SQ6: What linguistic indicators attribute identification of a false confession during criminal interrogations using the Reid false confession analysis?

(Walden IRB approval number 03-13-18-0278493)

### **Role of the Researcher**

The role of the researcher of this study was as an observer of the videos and coding of and collection and analysis of the data. There were no personal or professional relationships with the subjects within the confession videos. There were no supervisory or instructor relationships involving power or influence over the participants. The only biases that could have occurred were through knowledge of the outcome of any court hearings involving the confession videos. There was no researching of the confession videos to determine the outcome of admissibility of the confession video until after analysis. The outcome research was used for comparison within the results section of the study. If videos of confessions had come from my own work environment the following requirements would have been followed: No video selected would have been an active case. The case would have been closed to prevent any possibility of violation of attorney-client privilege, or any liabilities to the defendant. There would have been no conflicts of interest or power

differentials and no use of incentives to any participants in the videos. The participants in the videos would be in control of either YouTube or within the state agency.

**Qualifications.** The researcher has been in the criminal justice system as a police officer, detective, polygraph examiner, and as a state investigator evaluating criminal cases for a total of forty continuous years. The researcher has a B.S. in Criminal Justice specializing in Forensics and Law, and also M.A. in Criminal Justice, as well as an MBA specializing in fraud examinations. I had numerous certifications and training in interviews and interrogations and confessions.

**Observer participant.** The role the researcher had in this study was as observer-participant, this entailed the observer-participant observing and identifying linguistic indicators in videos of true and false confessions utilizing two legal analysis models that evaluated voluntariness and involuntariness of confessions in interrogations and in a court of law. The observer-participant evaluated the videos and looked for themes of linguistic indicators of voluntariness and involuntariness through the two legal analysis models articulated in the research questions. This entailed the thematic coding of the linguistic indicators of a true and false confession also.

**Relationship between researcher and participants and bias.** The researcher had no relationship with the participants in the videos. The researcher was able to objectively evaluate the videos due to not having any bias one way or the other in the outcome of the evaluation. The researcher did not have any power relationships over the participants in the videos.

## **Ethical Issues**

There were neither ethical problems with the collection of the data nor any relationships with the participants. The participants were in videos of true and false confessions that were already public information either on the internet or in a court of law.

## **Data Collection Methodology**

**Sources for data collection.** The sources for the data collection came from videos of interrogations and confessions. The source of these videos came from YouTube and actual court cases from the internet, and from actual court records. The videos from actual court records are where the video was placed into evidence and became part of the public record and was published on YouTube and a newspaper website. The videos from YouTube and the internet were verified by looking up the court cases in the jurisdiction where the case originated and search the records for verification. The interview and confession videos were part of real cases that had been placed on YouTube or through a website that had all the case information such as trial transcripts and court documents. The video confessions and interrogations and interviews had a time span of several hours.

The number of videos that were attempted to be selected was ten true confessions, ten false confessions, and ten unknown types of confessions, however, only three true confessions and three false confessions were collected. The criteria for selection was from three categories: True confessions, false confessions, and unknown type of confession. The selection of these video confessions were selected by the coder on the basis of authenticity, availability and evaluated as a true confession, or as a false confession, or as an involuntary confession, or a voluntary confession, or an unknown confession which was either true or

false, or linguistic indicators of truth and deception. The authenticity of the confessions was evaluated by the research author/coder. The authenticity was verified through court files from the originating jurisdiction if known. The analysis looked for similarities after analysis between true confessions and voluntary confessions, and false confessions and involuntary confessions, and linguistic indicators of truth with true confessions, and linguistic indicators of deception with false confessions. The lack of similarities with these categories was deemed as an unknown type of confession and that this language was coded and tabulated.

### **Sampling Procedure**

**Criteria for selection.** The sampling was a two-step process for both the internet and court records. The first step in the criteria was selecting any video found on the internet and within court records that involved the three categories of true confessions, false confessions, and unknown type of confessions. The second step was the verifiability of the video's authenticity and verified with court records within the original jurisdiction of the case. The videos that were selected must have had certain requirements. First, the interview could have been classified as an interrogation depending on the Interview and Interrogation method. Next, the video must have had some form of the Reid technique able to be identified in the video. Then, the video must have had either a confession, partial confession or denial of admission. The videos on YouTube and the Newspaper website met all the criteria for selection.

### **Data Collection Protocol**

The sources for data collection instruments of the legal case book analysis model came from the case law decided in the U.S. Supreme Court which was found in the U.S. Supreme Court Reports, and from the legal casebook used in law school which was *Modern Criminal Procedure: Cases, Comments, and Questions*. (Kamisar, La Fave, & Israel, King, Kerr, Primus, 2012). These cases have been established from the turn of the century to the present day, in interrogation and confession law. The validity of this data collection was established law from the highest court in the land in which every law enforcement officer must abide by its decisions.

The sources for data collection instruments of the Reid legal analysis model was found in the Reid textbook of Criminal interrogation and confessions (Inbau, Reid, Buckley, & Jayne, 2013). The legal analysis model in this text was established by state and federal case law that if followed by interrogators the confession has been found to be admissible.

The checklist for the linguistic indicators came from two sources, the first was a study titled Linguistic indicators of a false confession. (Villar, Arciuli, & Paterson, 2013). The second came from the Reid textbook of Criminal interrogation and confessions (Inbau, Reid, Buckley, & Jayne, 2013). Both of these data collection instruments involved verbal behavior in distinguishing true and false confessions and voluntariness and involuntariness. The validity of these data collection instruments was such that it depended upon the interrogator applying the techniques correctly if applied correctly they could have potentially identified true and false confessions.

### **Linguistic Indicators**

The linguistic indicators involved the identification of the legal analysis models language and the language of coercion that equals involuntariness, truth and deception, and true and false confessions. The language that was identified was broken down into the eight parts of speech: adjectives, verbs, nouns, pronouns, adverbs, conjunctions, interjections, and prepositions. The coding was based on the definitions of the eight parts of speech for definitions see appendix (V). The language was coded and matched with the variables within the legal analysis models. For the definitions of the variables of the legal analysis, models see appendix (I). These linguistic indicators were not only evaluated from the aspect of the suspect, but also of the interrogator. The coding sheets of the legal analysis models, the language indicators of true and false confessions, and coercion that equals involuntariness and truth and deception were articulated in appendix (J). This enabled the identification of attribution and attribution error from both the interrogator and the suspect.

### **Use of Legal Checklists and Verbal Behavior Checklist, and Linguistic Indicator Checklist**

The legal case book model checklist has been established from the turn of the century to the present day, in interrogation and confession law. The validity of this data collection was established law from the highest court in the land in which every law enforcement officer must abide by its decisions (see Appendix J). The Reid legal analysis model in this text was established by the state, federal case law and that if followed by interrogators the confession has been found to be admissible (Inbau et al. 2013).

The checklist for the linguistic indicators came from two sources, the first was a study titled Linguistic indicators of a false confession. (Villar, Arciuli, & Paterson, 2013). The second came from the Reid textbook of Criminal interrogation and confessions (Inbau et al., 2013). Both of these data collection instruments involved verbal behavior in distinguishing true and false confessions and voluntariness and involuntariness. The validity of these data collection checklists was such that it depended upon the interrogator applying the techniques correctly if applied correctly they could have potentially identified true and false confessions. The checklist for the Reid false confession model originates from the Reid Manual in distinguishing between true and false confessions (Inbau et al., 2013), depended on the application correctly applying the elements in the checklist.

The checklist for the linguistic indicators came from two sources, the first was a study titled Linguistic indicators of a false confession. (Villar, Arciuli, & Paterson, 2013). The second came from the Reid textbook of Criminal interrogation and confessions (Inbau et al., 2013). Both of these data collection instruments involved verbal behavior in distinguishing true and false confessions and voluntariness and involuntariness. The validity of these data collection instruments was such that it depended upon the interrogator applying the techniques correctly if applied correctly they could potentially identify true and false confessions.

**Representation of the best source of data.** These data checklists are a representation of the data available due to the established rule of law through custom and usage over the past century, and through research of verbal behavior through Reid case study analysis of the successes through corroboration of the confessions. Research of



linguistic indicators of false confessions was based on valid research in identifying those indicators.

**Sufficiency of data collection coding sheets in answering research questions.**

The data collection coding manual enabled the coder to collect and categorize the data and was analyzed to answer the research questions through the thematic analysis and coding of phrases within the interrogation and confession videos utilizing the various established checklists by identifying phrases that match or are similar in meaning of the various elements of each checklist.

**Published Data Collection**

**Development of the coding sheets and date of publication.** The data collection coding sheets of the legal casebook analysis models came from two sources the U. S. Supreme Court and published in the U. S. Supreme Court Reports. The case law was decided by the U. S. Supreme Court throughout the late 1800s to the present day. These cases have the full effect of excluding a confession if obtained outside the bounds of the case parameters. The same application applied to the Reid legal analysis model.

The complete Reid technique had evolved through research and court validation (Inbau et al., 2013) including the verbal behavior of the Reid technique since the 1940's to the present day (Inbau et al., 2013). However, the linguistic indicators of false confessions had only been developed recently and a qualitative assessment had not been conducted (Villar, Arciuli, & Paterson, 2013). The Reid false confession analysis was developed by Reid and placed in their manual (Inbau et al. 2013).

**Previous utilization of coding sheets in the coding manual.** The groups that the legal analysis models have been used on has been everybody who has been interrogated and confessed in a criminal investigation. The same group applied to the verbal behavior model that was utilized in the Reid Interview and Interrogation Technique since the 1940s. However, the linguistic indicators in false confessions were developed in 2013, it was unknown who and how many times this technique had been applied and with unknown successes (Appendix AA).

**How appropriate are the data collection coding sheets for this study.** These data collection coding sheets were appropriate for this study based on the ability to assist in the synthesis and analysis of the research questions but also on the ability to further the research in the area of false confessions. At this point there was no expectation that any modification would have been needed for the data collection coding sheets unless there was a change in the law in the area of interrogations and confessions, or if there were changes in research within the Reid technique in the analysis of verbal behavior or linguistic indicators or distinguishing between true and false confessions.

**How will content validity be established.** Content validity was established through a lens of people external to this study. This was accomplished through an external audit after the data had been collected and analyzed through the various models that were used in this study. This was conducted by people who were qualified to make those assessments such as an attorney with an Accounting undergraduate degree. Then, content validity was established through a rich description of the reviewer who was debriefed by the researcher (Creswell, & Miller, 2000).

**Context and culture-specific issues to the population in developing the coding manual.** The researcher had to address this through establishing a procedure for the researcher to orient themselves with the material, and to be adaptable to understand a diversity of speech by the subjects in the videos within the observation of the confession issues. This was accomplished by other listeners and equipment that enabled what the subjects were stating. This assisted the researcher in interpreting the language as to what was being stated.

#### **Procedures for Data Collection for Researcher Collecting their Own Data**

The sample contained three true confessions and three false confessions. The data was collected from the observation of confession videos obtained through YouTube or through court cases, where the confession was entered as evidence in court and became public record. The data was collected by the researcher of this study through observation of the confession videos.

The frequency of data collection was conducted as many times as necessary to collect all the data each video had to offer. The data was collected over a period of several days. The data was first recorded by video and audio and then a transcript was made of the confession from the recordings. The data was analyzed from the transcripts and videos. The data collection plan ensured the collection of the required data that answered the research questions in this qualitative study.

#### **Data Analysis Plan**

**Introduction.** This study was a qualitative content analysis study. The data came from video observation where the videos were of interrogations and confessions. A content

analysis was conducted on each video through themes consisting of all the Reid models; the linguistic model; and the legal casebook analysis model. These themes were coded for a pattern analysis matching the similarities with the types of confessions.

This plan consisted of identification of specific data to a specific connection to each research question. Then it identified each type of data with a type of coding and the procedure for that coding in the coding analysis. Then it identified any software used for analysis. Then, for each type of data, a manner of treatment of discrepant cases was articulated.

### **How Elements Will Interact**

The conceptual model of the Reid Technique consisted of first, the Interview and Interrogation of the suspect which included the factual analysis of the case facts (Keppens & Zeleznikow, 2003), then in the interview phase it consisted of a behavioral assessment of truth or deception. Then, the next step in the model was the attribution of the defendant and attribution of the interrogator, this was occurring at the same time (Heider, 1958; Henkel & Coffman, 2004), as well as the attribution error by the defendant and the interrogator was occurring (Ross, 1977). Attribution error occurred after the attribution of the defendant and the interrogator (Ross, 1977; Henkel & Coffman, 2004). The process consisted of elements of attribution of the defendant of memory distortion, and eventually false memory (Henkel & Coffman, 2004; Gudjonsson, 2014). The elements of the attribution of the interrogator consisted of a verbal and non-verbal assessment of truth and deception, and false confession assessment (Inbau et al., 2013).

The attribution error of the defendant consisted of the actual articulating of a false confession (Gudjonsson, 2014; Ross, 1977). The attribution error by the interrogator consisted of misinterpreting or missing signs of the behavioral assessment or the false confession assessment (Inbau et al., 2013).

During this identification, there was a continuum of attribution of a suspect to the attribution of the interrogator. At the same time attribution from the interrogator to the suspect. Also, there was a continuum of attribution error of the suspect to the attribution error of the interrogator, and from the interrogator to the suspect (Henkel & Coffman, 2004).

In determining the difference between true and false confessions, the confessions were evaluated for deception occurring in the interrogation process as well as the other models. In this evaluation process of determining the difference between true and false confessions, we have to look at a valid false confession as well as the subtypes of a false confession. This may involve an over-involvement false confession or an under involvement false confession or a confession that was deception but was disinformation which was a confession which is meant to lead the investigators in another direction. These subtypes should have shown verbal and nonverbal signs of behavior during the interrogation. However, this analysis could have been an attribution error, based on the subject articulating a false confession through a false memory.

In evaluating deception that was evaluated in this study was a subjective/objective analysis. The subjective analysis consisted of verbal behavior and nonverbal behavior. The objective analysis was corroborated that led the investigator to new evidence and/or

that the suspect was able to describe something he did or that could have been confirmed by forensics (Inbau et al., 2013). For the purposes of this study, the focus was on the Reid legal analysis model and the legal analysis model. However, the factual analysis was a critical component of both models.

The conceptual framework of the legal analysis model was for the purpose of utilizing the elements required for a voluntary confession and an involuntary confession, to determine if the legal analysis model could have identified a false confession. The legal analysis model started off with the interrogation utilizing the Reid technique (Inbau et al., 2013).

During the interrogation process, a legal assessment was ongoing to determine the presence or non-presence of voluntariness and coercion this was based on the current case law at the time of the interrogation. The current case law that governs the legal analysis of voluntariness of a confession has been established since 1959 in *Spano v. New York* (360 U.S. 315), then was refined in 1962 in *Townsend v. Sain, Sheriff, et al.* (372 U.S. 293), and refined again in 1963 in *Haynes v. Washington* (373 U.S. 503), in these cases the constitutional voluntariness rule was established.

These cases together formulated a rule that stated that the analysis was to be applied on a case by case basis with the details of the interrogation and the defendant's characteristics were to be evaluated within the framework of the totality of the circumstances to see if the defendant's will was overborne (*Haynes v. Washington*, 1963). It established that the will was not overborne if the confession was the product of rational intellect and free will (*Townsend v. Sain*, 1962). However, in *Culombe v. Conn.* (1961) the

court ruled that the will was overborne if the confession was not the product of an essentially free and unconstrained choice by the defendant (367 U.S. 568, 1961).

The U.S. Supreme Court then established a court procedure in evaluating the voluntariness of a confession in *Jackson v. Denno* (378 U.S. 368, 1964). The current case law in determining voluntary confessions is *Colorado v. Connelly* (1986) this case scaled back the voluntariness standard by shifting the focus away from the defendant's voluntary state of mind and behavior to the government's improper action. The court determined that the subjective analysis in determining the voluntariness of the defendant would be impossible. However, it did determine that an objective analysis in determining the improper police conduct would be the central issue in determining the voluntariness of confessions (479 U.S. 157, 1986).

Over the past few decades the courts have ruled on the voluntariness of confessions using the totality of circumstances on a case by case basis utilizing the objective test of improper police action in the interrogation as well as the characteristics of the defendant, to determine if those factors overborne the will of the defendant (Kozinski, 2015; Marcus, 2006). The problem with these decisions was the number of factors and variations thereof that could have led to confusion for the interrogator. The causal connection was that the objective factors in totality could lead to defendants will overborne.

Then the next process in the model was determining after the confession was obtained whether the confession was voluntary or involuntary (Kozinski, 2015; Marcus, 2006). This was evaluated utilizing the totality of the circumstances through evaluating the conditions of the interrogation and the characteristics of the defendant (Marcus, 2006;

Kozinski, 2015). Then an analysis was made as to whether the confession was a true confession (did it meet the Reid elements of a true confession) or a false confession (did it meet the Reid elements of a false confession specifically a coerced-internalized false confession) (Inbau et al., 2013).

The legal analysis depended upon the legal reasoning of the case law (is the confession admissible or inadmissible) as it pertains to voluntary and involuntary confessions, in determining whether a confession was coerced and involuntary, through applying the current case law in applying the voluntary confession rule. The legal reasoning that was applied started with the ultimate issue to be proved; was the confession voluntary or involuntary, then the legal rules governing voluntary and involuntary confessions was applied, then the interrogator would assess the evidence that would be applicable to the legal rules (Walker, 2007).

The best procedure for the legal framework was to look for any or combination thereof of the objective factors that have been ruled by the courts to have found that those factors lead to an involuntary confession such as the following: “Location of questioning, if Miranda warnings given, age, drug problems, experience with the criminal justice system, torture” (Kozinski, 2015, p. 243-248),

falsify physical evidence, deception about legal process, threats: physical harm against defendant or family, potential prosecution or arrest of friends and family, maximization of penalty, lack of protection against others who threaten suspect or family, use or refusal to authorize use of medical treatment, loss of employment or education and forfeiture of driver’s license, promises not to charge or lesser counts



if a statement is made, duration of interrogation, serious mental illness and IQ (Marcus, 2006, 614-631).

The fourth and final area was in Linguistics, the purpose of this area was what was the language that was being spoken to the defendant and the language spoken back to the interrogator from the defendant. The key issue was the identification of linguistic phrases of coercion being spoken to the defendant and the key phrases that were being verbalized to the interrogator in response to the coercion all within a false confession.

The conceptual framework related to the study approach by recognizing the concepts needed in identifying attribution and attribution error on the part of the suspect and the interrogator in identifying a coerced-internalized false confession. The concepts that were utilized are related to the research question and enabled the development of instruments in the form of evaluation questions and thus data analysis.

### **Content Analysis**

Krippendorff (2013) cites that content analysis was defined in Webster's (1961) dictionary as an analysis of communicated material either through verbal or printed material. This was accomplished by analyzing its key symbols and themes in order to identify its meaning and probable effect (Krippendorff, 2013). However, for our purposes of this study, a content analysis was a "research technique for making replicable and valid inferences from texts (or other data) to the contexts of their use" (Krippendorff, 2013, p. 24).

**Conceptual framework.** The conceptual framework for content analysis were the following steps: The first step was to have the text or data that a content analyst had

available to begin the analysis. In this study, the text or data was the transcripts of the confession video as well as the confession video. The next step was to have research questions the analyst sought to answer by examining the body of the text. The research questions had been constructed and were in the following section. The third step was to determine what context makes sense of the body of the text, in other words, context was determining what the analyst did with the texts or how the context of the data was related to the analyst's research questions. The context of the data was related to confession videos that were analyzed for linguistic indicators through use of the legal analysis models and to determine if true and false confessions were distinguished. The fourth step was to operationalize what the analyst knew about the context of the body of the text. This was accomplished through the similarities of the context of the data with the answers to the research questions. The fifth step was to determine similarities of the content of the answers to the coding questions to the research questions. This was accomplished through the process of logical analysis of the similarities of the coding data to the research questions. In this methodology of content analysis, the logic that was utilized was abductive inference, where the texts proceed to the research questions.

### **Conversation Analysis**

A conversation analysis of the data was conducted as a part of triangulation that validated the methodology of content analysis and data analysis. Conversation analysis was the study of talk in social interaction. Conversation analysis developed from sociology specifically ethnomethodological tradition which studied the common sense resources that members of society interpret interaction in their social world, that were constructed in their

minds as the interaction was ongoing (Liddicoat, 2007). Conversation analysis then was developed based on ethnomethodology.

The conversation is the way in which people socialize and develop and sustain relationships with each other. The conversation does not only concern itself with linguistics, but it also involves non-verbal communication in conjunction with the context in which the communication is produced (Liddicoat, 2007, p. 1).

Within the conversation analysis, the context of the applied methodology of different interrogation methods could have affected the linguistics and the non-verbal communication and therefore affect the meaning of the context of the linguistics and non-verbal communication within the analysis of any verbal statements during the interview and interrogation process.

Conversation analysis was an approach to studying social interaction between people. The goal was to describe the explanation of the competence that speakers use and rely on in participating in intelligent social interaction (Liddicoat, 2007).

**Methodology.** The data for the study was actual talk occurring in the actual context of social interaction. Video and tape recordings were utilized in capturing the interaction. The video and tape recordings were then transcribed after they were watched or listened to. The analysis of the transcripts was conducted through every single case of video confession. The analysis looked for patterns of speech through every single case. It then looked for repeated instances of action. It was then quantified whether the language was frequent or infrequent and expressed through descriptive language (Liddicoat, 2007). The study of the collected cases was a study of multiple single case examples that demonstrates

the systematic commonalities which exist across the collected confessions (Liddicoat, 2007).

The analytical approach was inductive, which built an understanding of regularities in how the talk was organized among social interactions, then showed the regularities that were produced by the participants in the confession videos (Liddicoat, 2007). If there was a deviant case of a false confession that was not accounted for through commonalities of linguistics then that case was treated as an indication which had not been accounted for by descriptions and taken as evidence that the case is not generalizable. There were no deviant cases of false confessions. However, there was a deviant case of a true confession which was only a partial true confession.

### **Discourse Analysis**

Discourse analysis was the third methodology in the triangulation of validity that validated the methodology of content analysis and the data analysis.

Discourse analysis is the study of language in use, one approach is the analysis of themes or issues being discussed in a conversation, another approach is the structure of language (grammar) and how this structure functions to make meaning in specific contexts (Gee, 2014, p. 8).

This latter approach was the one that was used for this study. It analyzed not only the grammar but also the utterances and sentences in speech. Together with sentences flowing one after another they relate to each other to create meaning or facilitate interpretation (Gee, 2014). It was with this discourse that an analysis of the language of the confession video was conducted.

**Methodology.** The videos were transcribed and the analysis started from the transcripts and analyzed the speakers and listeners language and identified the grammar being used and listened to flow of the sentences together to interpret the meaning of the speaker and interpretation of the listener.

**Analytical constructs.** The eight parts of speech were then analyzed to the known types of confessions, of true, false, and involuntary confessions. The true, false, and unknown types of confessions were to be analyzed by the legal analysis model checklists through the transcripts of the video confessions. The purpose of this part of the analysis was to determine if the legal analysis models detected true and false confessions through linguistic indicators. Similarities were then looked for between the legal analysis and the linguistics of the types of confessions, true, false, and involuntary.

**Connection of data to specific research questions.** This study was seeking data to answer qualitative questions if police officers are making correct judgments in assessing voluntariness in confession cases in identifying true and false confessions through linguistic indicators. If the officers are not making the correct decisions, are there similarities between involuntariness cases and false confessions through linguistic indicators, based on the legal analysis models of involuntariness.

The connection of the data to the first research question was where the data was analyzed through the Reid legal analysis model analyzing involuntariness to see if an officer distinguished between a true and false confession through the utilizing the Reid legal analysis model of involuntariness. This was conducted through a content analysis of the confession videos.

The connection of the data to the second research question was where the data was analyzed through the legal casebook analysis model analyzing involuntariness to see if an officer distinguished between a true and false confession. This was conducted through a content analysis of the confession videos.

This question determined from the data of the confession videos through the Reid legal analysis model analyzing involuntariness to see if the officer identified attribution error in distinguish between a true and false confession through linguistic indicators. This was conducted by determining if the data showed if the officer missed indicators in the interrogation and therefore accepted the confession as truthful when in fact it was false.

This question determined from the data of the confession videos through the legal casebook analysis model analyzing involuntariness to see if the officer identified attribution error in distinguish between a true and false confession through linguistic indicators. This is conducted by determining if the data showed if the officer missed any indicators in the interrogation and therefore accepted the confession as truthful when in fact it was false.

This question determined from the data of the confession video through the Reid verbal analysis of detection of deception analyzing the verbal and paralinguistic indicators in detecting deception to determine if the officer identified a false confession.

This question determined from the data of the confession video through the Reid false confession analysis in analyzing the false confession video to see if the officer identified the false confession.

### **Flow Chart of Methodology**

The flow chart of the methodology of the content analysis, conversation analysis, and discourse analysis consisted of first capturing the videos of true and false confessions. Then, the videos were observed recorded and transcribed. Next, the videos were analyzed to determine if interrogator was using the Reid technique and if not what technique was being used in the interrogation. The next step in the process was using the coding sheets in the coding manual developed for data collection. This included the following: Reid legal analysis model; legal casebook analysis model; Reid verbal/paralinguistic analysis model of detection of deception; the Reid false confession model; identification of Reid interview and interrogation model which consists of Reid themes and guidelines; Reid factual analysis; the Reid BAI model; Reid behavior guidelines; Reid nine steps of interrogation; legal casebook method which consists of preliminary fact investigation; influence tactics and coercive strategies observed in interrogations; interrogation analysis of voluntariness; interview and interrogation video checklist; interview and false confession assessment video checklist; influence tactics observed in interrogations; interrogation analysis of deception and voluntariness; and the linguistic model which consists of the eight basic parts of speech and verbal phrases that have similarities with false confessions.

Then similarities were analyzed between each of the data collection coding sheets and false confessions. Then similarities were explored to determine the relationship between illegal coercive tactics by the interrogator using the Reid technique or other techniques and false confessions, while using the Reid legal analysis model and the legal casebook analysis model through the linguistics of threats, promises or deception and other

elements of that either through a single element or a totality of circumstances to determine involuntary confession in a false confession.

Next, similarities were explored and analyzed to determine through the Reid verbal analysis model of detection of deception to determine if interrogator can identify defendant is giving off linguistic indicators from Illegal coercive tactics of a false confession and if the interrogator identified linguistic indicators of a false confession.

The final step in the collection and analysis was to look for similarities between the eight parts of speech and false confession to determine which part or parts of speech was prevalent in false confessions on a percentage basis.

### **Coding**

The data was coded based on the coding sheets of the Reid verbal analysis model of detection of deception, the Reid legal analysis model, the Reid false confession analysis model, the legal casebook analysis model, the information from the coding sheets of the Reid models have been taken from the Reid manual (Inbau et al., 2013). The legal casebook analysis model has been taken from established case law ruled upon from the U.S. Supreme Court on involuntariness of confessions (for further info. see Appendix Y). The coding depended on where the data fell within the various coding sheets.

### **Coding Scheme**

**Generic qualitative coding.** The schematic of the coding process for this study was as follows: First, there was the NVIVO coding where the data came from the confession videos of words or short phrases answering the coding sheets questions that came from the video participants own language. The second cycle of the coding consisted of pattern



coding that identified similarly coded data and organized the data of words and phrases from the NVIVO coding into themes or constructs and attributed meaning to the data, and explored for rules, causes and explanations in the data of the attribution between the interrogator and suspect and forming a theory of involuntariness and false confessions from the coding sheets. The third coding cycle was the Theoretical coding which drew from and covered all the codes from all the coding sheets that identified involuntariness and false confessions, this was not the theory itself but it did form a basis of theory construction (Saldana, 2016).

The coding procedure was as follows: All videos were analyzed according to the available data within the confession videos. The videos were transcribed and analyzed according to the procedures in content analysis, discourse analysis, and conversation analysis. The videos were manually coded according to the coding sheets in Appendices F, G, H, I, J, K, L, M, N, O, P, S, T, V, and X. These coding sheets were all included in Appendix W. This coding procedure explored for similarities between the coding sheet answers and the identified false confessions. Then after the manual coding, the coding was conducted through NVIVO, and the Linguistic Inquiry Word Count software, after that was conducted then the coding was rechecked manually and then peer-reviewed.

### **Application of Coding Procedure to NVIVO**

The transcripts were coded through NVIVO 10 Pro to obtain a cluster of the phrases through each variable in each coding sheet. Then a cluster of phrases was coded through all the coding sheets together. The results explored the similarities between each individual

coding sheet as compared with all of them put together. This enabled an analysis of the similarities of the different methods.

### **Application of Coding Procedure to Linguistic Inquiry Word Count Software**

The application of the Linguistic Inquiry Word Count Software was applied to the transcripts in order to identify the eight basic parts of speech and the quantity of each. This was to find similarities of the quantity of the eight basic parts of speech to false confessions.

### **Coding Procedure**

Based on the questions a tentative set of coding categories were constructed. Then a codebook was developed. The coder was trained in how to evaluate the confession videos and transcripts through the eight parts of speech. A pilot test of the codebook was tested against the video confession by the coder. Then a revision of the codebook was made based on the pilot test of coding. Then a retest of reliability of the codebook was made by conducting another pilot test. After the codebook was finalized the codebook was applied to all the data (Appendix W).

### **Coding Categories**

The factors used to form the categories of the confession were determined to be linguistics of coercion, involuntariness, based on the legal checklist of the legal analysis models and true and false confessions. Similarities were coded through linguistics based on each category listed above through the eight parts of speech to determine if the coding in involuntariness based on the legal models and the linguistics used had similarities to true and false confessions (Appendix W).

### **Reliability of Coding**

The reliability of coding was essential in good content analysis. This was achieved through an analysis of the coding categories if they were objective and straightforward, that consistent application was clearly likely, then perhaps this step was not necessary. If the categories required elements of subjectivity or uncertainty in applying the coding categories of legal decisions to the confession videos. Reliability tests were conducted in two stages: the first stage while training the draft coding instructions. The second was once the coding categories and instructions are completed. The test called for one coder to independently code a sample of videos and compare their results with the actual result of the confession as it was determined through the courts and with the peer reviewer results. Ten percent of the videos were used in the reliability testing the video confessions used in the test (Hall & Wright, 2008).

A most common statistic of simple percent of agreement was evaluated in the reliability testing. The reliability test was to also eliminate chance from the study, and this depended on the coding scheme that was developed. The more options in the coding scheme to choose from, the less probability of a chance selection. Therefore, several variables that reflected the extent of agreement beyond what was expected by chance were selected when possible. To ensure reliability, statistical testing was conducted of each variable independently not all combined. Response patterns were taken into account on each variable whether it is highly skewed or not (Hall & Wright, 2008).

The key question to answer was whether the reliability test agreed when they indicated a factor present. The testing consisted of reporting the simple percent of

agreement for the observations where the frequency of the variable appeared or did not.

This method of simple percent agreement for the observations where the frequency of the variable appeared or did not was the method for this study.

### **Alternative Coding Technique**

The coder of the coding of each case and the researcher assigned the outcome coded by the majority. If disagreements occurred the researcher used his own experience and expertise to resolve disagreements. Another alternative was the

Delphi Technique, this is where the coder first rated a case independently, then learns how peer experts have rated it with the actual case result, and then following discussion the expert gives an independent final rating, with the majority of coder and peer reviewer results controlling when there is not unanimity (Hall & Wright, 2008, p. 117).

This has been used in the medical field. It combines expertise, consensus building, and majority rule.

Also, another method would have been to analyze judicial texts entirely by computer looking for revealing patterns among the cases within their category then comparing the variables of the legal rule established with the language of the coding sheets of the video confessions to observe any similarities of coercion, involuntariness and true and false confessions (Hall & Wright, 2008). “Case content analysis tend to adopt a behavioral model that treats each case decision as an equal amount of weight” (Hall & Wright, 2008, p. 119).

In the judicial opinions and linguistics of the confession video, each variable was given a value of one. The reason for this is that the courts will use a totality of circumstances or if that one variable shock's the conscience of the court the decision could have ruled the confession involuntary. "Case content analysis tend to adopt a behavioral model that treats each case decision as an equal amount of weight" (Hall & Wright, 2008, p. 119).

### **Software Used for Analysis**

The software utilized for analysis was NVIVO Pro 11. This study utilized counts and frequencies to observe similarities of linguistics in relation to coercion, involuntariness, and true and false confessions. With the word count and frequency analysis themes and patterns were utilized to show a pure qualitative analysis of similarities. These themes and patterns were described through a conceptual description and narrative illustrations.

The Linguistic Inquiry Word Count program software identified the basic eight parts of speech and verbal phrases that are similar to false confessions.

### **Manner and Treatment of Discrepant Cases**

When reliability revealed discrepancies as it almost always does, this reveals unresolved questions in the coding instructions. The analyst corrected these problems after the pilot phase. The discrepancies were evaluated to determine if they are from overt errors or from judgment calls or inevitable ambiguities that may have virtually been impossible to eliminate without compromising the independence of the individual coder (Hall & Wright, 2008, p. 115).

The discrepant cases were evaluated for any patterns within discrepant cases to acceptable cases.

### **Qualitative Trustworthiness**

**Internal validity.** There are two types of validity that have a bearing with trustworthiness in a qualitative study. The first was internal validity which applied to the credibility of the study. To establish this there were several methods which were; “triangulation, prolonged contact, member checks, saturation, reflexivity, and peer review” (Simon & Goes, 2017, para. 2). To establish internal validity for this study, the application of methods of proof were triangulation, peer review, and reflexivity. The methods that did not apply were prolonged contact, member checks, and saturation. These methods did not apply based on the methodology of the study. Internal validity/credibility ensured that the study measured what it intended to measure. It accomplished this through first triangulation, peer review, and reflexivity.

**Triangulation.** There are four types of triangulation. First, through methodologies, then through data analysis, then theoretical, and finally the investigator. The purpose was to give broader types of triangulation methods to increase the validity of the study (Denzin, 1978). For triangulation, methodology was chosen. The triangulation of methods applied to the evaluation of the data with content analysis was conversation analysis and discourse analysis. Conversation analysis was a methodology that analyzed social interaction in the form of verbal and non-verbal communication and then transcribed the video or audio and then captured transcribed dialogue that demonstrated what was really going on in the conversation. The content analysis of the conversation involved the inference, from the

actions that follow. Another analysis was to differentiate among speech that came in the forms of questions, requests, promises, declarations, and expressions of feelings between the conversant's (Krippendorff, 2013).

The third point in the triangulation was discourse analysis which was a microanalysis of the speech of the social interaction between conversant's that can dissect the conversation into the eight parts of speech within conversation, which were called grammar units (Gee, 2014), that form into "syntax which governs the way words and phrases combine into sentences" (Gee, 2014). This forms the meaning of social interaction. In applying these methodologies in triangulation established the internal validity of the study through the similarity of the results of the methodologies.

**Peer review.** Peer Review was conducted by having an attorney with a background in English literature conduct the analysis of the results of the data analysis to determine the validity of the results of the study (Shenton, 2004). The peer reviewer evaluated the analysis of the coder and the coding sheets for accuracy within the law and determined the coding sheets correctly matched with the videos. The reflexivity entailed the researcher reflecting after each step in the data collection and data analysis on the effectiveness of the techniques employed in the study (Shenton, 2004).

**Validity.** The second type of validity in qualitative trustworthiness is external validity/transferability which was concerned with the extent to which the findings of this study were applied to other situations, in this study this would apply to all types of confessions to determine if the results were transferable to all types of false confessions, and were adaptable to real life situations in real time interrogations (Shenton, 2004).

“Content Analysis is valid if the inferences drawn from the available texts withstand the test of independently available evidence of new observations of competing theories or interpretations or of being able to inform successful actions” (Krippendorff, 2013, p. 329).

**Dependability.** To ensure dependability within the study a detailed description of the study was needed to be reported in as much detail as possible, to enable future researchers to repeat the work. This was to ensure if the “study were to be repeated in the same context, with the same methods, and with the same participant's similar results would be obtained” (Shenton, 2004, p. 71).

**Confirmability.** This was accomplished through establishing the findings of the study were the result of experiences of the videos and not the product of the researcher’s bias. This ensured an objective analysis of the confession videos’ (Shenton, 2004). This was established through the peer reviewer’s analysis.

### **Ethical Procedures**

This study offered something new and significant to the field through the evaluation of the confession videos to determine if attribution and attribution error was identified in false confessions. This was accomplished by identifying the linguistics between true and false confessions to determine if there was a consistent similarity between the eight parts of speech and false confessions.

The purpose of this qualitative case study was to perform a content analysis in the identification of a false confession during an interview and interrogation through video observations of the interrogations through the legal voluntariness models and other models already described herein. To accomplish this, the models were used to attempt to identify



if an officer does identify a false confession through the various models listed throughout this study to determine if there were similarities between each of the models and the false confession videos. There were no false confessions discovered, that had not been discovered.

### **Institutional Review Board Protection of Human Subjects**

In this study, there were no activities in this research that used illegal drugs or induce depression or suicidality. There also were no confidentiality issues, due to the fact that the confession videos that were used have first been presented in court, second, they have also been published on YouTube or in a court of law. The data already existed and had been published on YouTube. The data collected already had been adjudicated and published in a court of law. The coder and peer reviewer and anybody else involved in this study had no interaction with the individuals in the confession videos (Walden IRB approval number 03-13-18-0278493).

### **Research Involving Human Subjects Covered by 45 CFR 46**

To establish as to whether activity research involving human subjects was applicable to 45 CFR 46. To establish this a legal analysis of the regulation needed to be conducted through a series of questions that were answered by 45 CFR 46. The first question to answer, was this study considered research under 45 CFR 46, 102(d)? The answer to that question was, yes. The next question was, was the “activity a systematic investigation designed to develop or contribute to generalizable knowledge” (OHRP, 2016, Chart 1) under 45 CFR 46, 102(d)? The answer to that question was yes. The next question was, did the research involve human subjects (which is defined in 46.102 (f))?

The answer to that question was, yes. The next question was, did the “research involve obtaining information about living individuals which fell under CFR 46.102 (f)?” (OHRP, 2016, Chart 1), the answer to that question was, yes. The next question was, did the “research involve intervention or interaction with the individuals under 45 CFR 46.102(f) (1), (2)?” (OHRP, 2016, Chart 1), the answer here was no. Then the question asked, “was the information individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information under 45 CFR 46 102 (f) (2)?” (OHRP, 2016, Chart 1), the answer to this question was, yes. Then, the next question that was answered, “was the information private (this is about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording was taking place, or provided for specific purposes by an individual and which the individual could reasonably expect would not be made public which was under 45 CFR 46.102 (f) (2)?” (OHRP, 2016, Chart 1) The answer to this question was, no, the analysis here was that there was no expectation of privacy based on the collection of the confession video as evidence and that the video was published in a court of law at trial by the prosecution if the subject was charged. Or, that the videos have been uploaded to YouTube. Based on the answer to these questions the research was not research involving human subjects, and 45 CFR 46 does not apply (45 CFR 46, 2017).

### **Research Involving Human Subjects Eligible for Exemption under 45 CFR 46.101(b)**

The first question asked, “has HHS prohibited exemption of the human subject’s research?” (OHRP, 2016, Chart 2), the answer to this question was no. Then the question was, “was the only involvement of human subjects in one or more of the following

categories which were determined if the research was not exempt under (b)(1), (b)(2), or (b)(3) then the question was, did the research involve collection or study of existing data, documents, records, or pathological or diagnostic specimens?” (OHRP, 2016, Chart 2), the answer to this question was, yes. Therefore, there was an exemption and that 45 CFR 46.101 (b) (4) may apply. Therefore, an analysis of 45 CFR 46.101(b) (4) needed to be conducted (45 CFR 46, 2017).

#### **Exemption 45 CFR 46.101(b) (4) for Existing Data Documents and Specimens**

Once there may have been an exemption under 45 CFR 46.101(b) there needed to be a determination if there was an exemption under 45 CFR 46.101(b) (4). To answer this, the question asked was, “did the research involve only the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens?” (OHRP, 2016, Chart 5) The answer to this question was, yes. Then the next question was, were these sources publicly available? The answer to this question was yes and the determination was that the research was eligible for exemption under 45 CFR 46.101(b) (4) from 45 CFR 46 requirements. Therefore, there was no federal or state law that would prohibit the publication of the data that had been publicized. Since there was an exemption that existed of human subjects the description of the treatment of human subjects was not needed (45 CFR 46, 2017).

Based on the fact that there was no use of participants or need for agreements since this study only used existing public data (confession videos) already published in a court of law and/or disseminated on YouTube.

The only institutional permission needed for the proposal was the IRB approval to collect the data for the study. There were no concerns about confidentiality and anonymity because the data had been published on YouTube and/or a court of law. Therefore, no protections of confidentiality or anonymity were taken due to the nature of the published existing data. Storage of the data was under the control of the researcher. The data was accessible to the researcher/coder that was involved in the study. The data will be destroyed after five years.

### **Summary**

The social change implications of this study could possibly have an impact on the justice system through determining if detection of a false confession can be identified during an interrogation, utilizing the legal analysis models and preventing the false confessions to be used as evidence at trial. Therefore this could possibly prevent a wrongful conviction through the detection of a false confession. This could possibly prevent the loss of life, and liberty.

The methodological process consisted of capturing the videos on YouTube, then analyzing the videos for the identification of the Reid Technique or other techniques; then the collection of data through the utilization of the coding sheets, and the final process was to analyze the data collected in exploring for similarities to false confessions.

This chapter set out the research design, the role of the researcher, and the methodology in which the study was to be conducted. It also set out the instruments utilized in the data analysis. A data collection plan and data analysis plan have been articulated. The trustworthiness of the study has been articulated, as well as ethical

procedures that have been set out. Chapter four will consist of the actual implementation of the data collection and data analysis including the evidence of trustworthiness in the study.

## Chapter 4

### **Introduction**

In this chapter, I address the results of the study in which I evaluated six videos during interview and interrogations that resulted in confessions. Three were determined to be true confessions and three were determined to be false. The videos were evaluated through the methodology of content analysis using several different models. The purpose of the analysis was to evaluate if the models and the interrogators could determine if attribution elements of the models were present for the interrogator to identify and whether the confession was true or false. Another purpose was to determine if the elements of the various models were present and what attribution error was made in not identifying the elements.

### **Purpose**

The purpose of this study was to evaluate several models that are commonly used by interrogators in conducting a legal analysis of the voluntariness of a confession. The research determined if the interrogator could identify the elements of the models during the interview and interrogation video or if there was the error of not identifying them. Some of the models' themes consist of legal admissibility of confessions, nonverbal behaviors, linguistics, contamination, corroboration, detection of deception, and differentiation between true and false confessions, along with the signals the suspects give off during the confession video for identification by the interrogator.

I used content analysis of videos was used in the identification of a false confession during an interview and interrogation through the legal voluntariness models. To

accomplish this, I used seven models to attempt to identify a false confession. They were: a Reid legal analysis model, a legal casebook analysis model, a Reid verbal analysis model of detection of deception, the Reid false confession analysis model, and the linguistic models.

The purpose was based on the following seven factors: (a) to determine if there are some similarities between the use of illegal coercive tactics by the interrogator using the Reid legal analysis and false confessions, (b) to see if the defendant was giving off linguistic signals through the Reid verbal analysis in detecting deception in a false confession, and (c) using legal casebook analysis to determine the linguistic phrases that were given to the interrogator to signal a false confession and involuntariness in conjunction with illegal coercive tactics established by case law. I evaluated, the legal casebook analysis for involuntariness to detect false confessions and to determine if there were similarities between the detection of involuntariness and false confessions. I analyzed the legal casebook for similarities between each Reid model.

I conducted an evaluation of the linguistic analysis to determine if the linguistic analysis model could detect a false confession. Next, I determined similarities or differences with the Reid models and the legal casebook analysis model in detecting a false confession

### **Research Questions**

The following research questions were answered in the study:

RQ1: How do interviewers attribute identification of false confessions during criminal interrogations using the Reid legal analysis model of involuntariness?

SQ1: What Linguistic indicators of a false confession are identified using the Reid legal analysis model of involuntariness?

RQ2: How do interviewers attribute identification of a false confession during criminal interrogations using the legal casebook analysis model of involuntariness?

SQ2: What Linguistic indicators of a false confession are identified using the legal casebook analysis model of involuntariness?

RQ3: How do interviewers identify attribution error of a false confession using the Reid legal analysis model of involuntariness?

SQ3: Can attribution error occur in identifying linguistic indicators using the Reid legal analysis model?

RQ4: How do interviewers identify attribution error of a false confession using the legal casebook analysis model?

SQ4: How does attribution error occur in identifying linguistic indicators using the legal casebook analysis model?

RQ5: How do interviewers attribute identification of a false confession during criminal interrogations using the Reid BAI of detection of deception?

SQ5: What linguistic indicators attribute identification of a false confession during criminal interrogations using the Reid verbal analysis of detection of deception?

RQ6: How do interviewers attribute identification of a false confession during criminal interrogations using the Reid false confession analysis?

SQ6: What linguistic indicators attribute identification of a false confession during criminal interrogations using the Reid false confession analysis?



The answers to these questions could identify for training purposes the problems associated with interrogation and how to correct those problems.

### **Pilot Test**

I conducted a pilot test on the coding manual after an attorney reviewed the coding manual to determine its validity in the area of confession law, Reid technique, and false confessions. The attorney approved the coding manual to be used in evaluating the confessions in this study.

I conducted a pilot test of the manual on a selected confession in the data collection. The technique I used to analyze the confession was the Delphi technique, where the coder analyzes a confession by matching the elements in the coding manual with the transcripts and videos of the confession. I then determined through court records the result of the case to determine if the code manual result came to the same conclusion as the court case. The impact of this pilot study validated the manual by identifying elements of a true confession.

### **Setting**

The setting had no effect on the study due to the fact that the data was collected over the internet on YouTube and therefore no influences from the participants in the videos had any impact upon the present study. The participants who were in the videos were not contacted to collect any data.

The setting for this study was my residence over the Internet at the YouTube website where the videos of the confessions were available for public access viewing.

In this study, there were no current personal or organizational conditions that influenced participants or their experience that may have influenced their past experiences

in the videos at the time they were made that may influence the interpretation of these study results.

### **Background of Confessions**

#### **Case Facts of Beatrice 6**

In February 1985, Helen Wilson was discovered murdered in her apartment. She died due to suffocation and prior to death, she had been sexually assaulted vaginally and anally. Cliff Sheldon made statements to Deputy Sheriff Searcey implicating numerous people, Debra Shelden, Joseph White, JoAnn Taylor, and Thomas Winslow. The following is the background of the confessions of Winslow, Taylor, and Shelden (Duggan, 2009).

**Background of Thomas Winslow.** After Deputy Sheriff Searcey received information from an informant of Thomas Winslow's involvement, he was interviewed. Winslow was being held in jail pending other charges. Winslow was interviewed three times. During the first interview, Winslow admitted only loaning his car to Joseph White and JoAnn Taylor on the night of the murder.

During Winslow's second interrogation, he changed his previous statement and admitted that he had been in Wilson's apartment with White and Taylor on the night of the murder but left the apartment before anything had happened. During his third interrogation with Searcey, Winslow recanted his previous statements and claimed to have no memory of anything that happened in Wilson's apartment (Burke & Mertz, 2008; Duggan, 2009).

**Background of JoAnn Taylor.** The arrest of JoAnn Taylor was not until 1989. Deputy Sheriff Burdette Searcey had worked on the homicide of Helen Wilson as a private investigator. He lived by the Wilson family, and when he became a deputy, he requested to

be allowed to work on the case. An informant provided Searcey with evidence that indicated that Joseph White, JoAnn Taylor, and Thomas Winslow were involved in the murder. Winslow was interrogated first and promised consideration if he cooperated on his current charges. Taylor and White were later interrogated which led to Taylor's false confession (Duggan, 2009; Krupa, 2012).

**Background of Debra Shelden.** After Deputy Searcey interviewed Winslow, he discovered that none of the three suspects, White, Taylor, and Winslow, matched the blood type found at the scene of the crime. Debra Shelden then came into the focus of Searcey. She was a roommate of JoAnn Taylor and the wife of Clifford Shelden. Searcey found out that Debra Shelden did not match the blood type either. She claimed she dreamed that she was able to remember another person being present, James Dean. Debra falsely confessed to being an accomplice of White, Winslow, and Taylor (Burke & Mertz, 2008) (Krupa, 2012) (Duggan, 2009).

#### **Case Facts of Dave Tuck Case**

This case is a fraud case involving a non-profit for a special needs hockey team. The allegation was that between 2013 and 2016 the Tucks withdrew approximately \$30,000 from the hockey team, "The Huskies" account. The Tucks were the only ones authorized to withdraw from the account. Even though expenses were used for the non-profit, there was money that was unaccounted for (Vandonk, 2016). The Tucks were brought in for an interview and interrogation. Dave Tuck did make a statement to the police which was only a partial confession (Bahns, 2018). The Tucks plead not guilty and were cleared of charges. The money that was unaccounted for could be traced to the Tucks,

however, it could not be determined that it went to the Tucks for personal use (Vondonk, 2018).

### **Background of Elizabeth Wettlaufer**

Elizabeth Wettlaufer was an R.N. who was employed at a nursing home in Canada. Wettlaufer injected non-prescribed insulin into numerous patients which caused their deaths. She was designated a serial killer due to the fact that she had murdered more than three people. She admitted to killing a total of eight people by insulin injections. Her criminal activity occurred between 2010 and 2016. By 2016 she had started working as a school nurse but resigned because she did not trust herself to work with diabetic children in a school setting. In fear that she would harm herself or others she voluntarily admitted to her psychiatrist about the crimes, she had committed. The police were notified of the allegations and an interview and interrogation were arranged (Westoll, 2017).

Wettlaufer consented to the interrogation. In two interviews, she gave a detailed confession. On October 24, 2016, she pled guilty to four counts of attempted murder, eight counts of murder, and two counts of aggregated assault. She is serving eight life sentences for the murders to run concurrently, 10 years for the attempted murders to run concurrently to each other and all other sentences, and seven years for the aggregated assault charges to run concurrently to each other and all other sentences (CBCNews, 2017).

### **Background of Colonel Russell Williams**

**Introduction.** The confession of Colonel Russell Williams is unique. It is unique in that the perpetrator was a decorated high ranking military pilot who was entrusted with top secret information and flew British Royalty to and from England. Col. Williams was a

Canadian citizen and the crimes he committed took place in Canada. The crimes that he was investigated for were multiple rapes, murders, and other deviant sexual related crimes. The investigation of these criminal acts began to focus on Williams when certain tire tracks were found at the scene of a murder (Wikipedia, 2018).

**Criminal Behavior.** Williams' criminal behavior started in 2007 and continued for four years. Starting in 2007 to September 2009, he committed 82 fetish burglaries where he stole the woman occupant's underwear. In September 2009, his behavior escalated to two sexual assaults. No penetration occurred during these assaults. In the winter of 2009-2010, the criminal behavior escalated to raping and murdering two victims (Wikipedia, 2018).

**Investigation.** After the murders, the police detected tire tracks at one of the scenes and collected evidence of them. The police patrolled the area which Williams happened to live in and identified Williams' tires on his Pathfinder as matching the tire track evidence collected earlier (Dimmock, Stone, Humphreys, 2010).

**Interview and Interrogation.** Williams was brought in for an interview. During an intensive interview and interrogation, he confessed to all of the criminal activity including the murders. As part of his confession, he led police to a body and participated in other independent corroboration (Bahns, 2018; CBC News, 2018).

**Court Proceedings.** Colonel Williams pled guilty and gave a statement of facts that matched his confession. He was sentenced to two life terms.

### **Participant Demographics**

The demographics of the participants were evenly divided along gender lines. Three were female and three were male. However, within the two types of confessions of true and false the gender demographics were not evenly distributed. Within true confessions, two were male and one was female. Within false confessions two were female and one was male.

The ages of the defendants were approximated. The ages were never given during the videos. The ages of three of the defendants were between 20-30 years of age. These were in the false confessions. The ages approximated of the defendants in the true confessions were between 40-50 years of age.

All of the defendants were white. All of the interviewers were white and male. The defendants in the false confessions were all common laborers. Two of the defendants in the true confessions were highly educated, the other one was a non-profit entrepreneur, with an unknown education level.

None of the defendants in the true and false confessions were under the influence. The class status of the defendants in true confessions was upper class. The occupations of the true confession defendants were in professional occupations. It was unknown if the defendants in the true and false confessions had any mental problems except one.

### **Data Collection**

#### **Sources for Data Collection.**

The sources for the data collection came from videos of interrogations and confessions. The videos from actual court records could not be obtained. The videos from

YouTube and the internet were verified by looking up court documents on the Internet. The interview and confession videos were part of real cases that were placed on YouTube and verified through official information of the police transcripts and court documents. The video confessions, interrogations, and interviews have a time span from 30 minutes to several hours.

The number of videos that were collected was three true confessions and three false confessions. Unknown types of confessions were not found. The criteria for selection were from two categories: true confessions and false confessions. The selection of these videos were selected by the coder on the basis of authenticity, availability, and were evaluated as a true confession or as a false confession, or as an involuntary confession, a voluntary confession, or an unknown confession which was either true or false, or had linguistic indicators of truth and deception.

### **Sampling Procedure**

**Criteria for selection.** The sampling was a two-step process for both the Internet and court records. The first step in the criteria was selecting any video found on the internet on YouTube involving the three categories of true confessions, false confessions, and unknown type of confessions. The second step was the verifying of the video's authenticity with records on the case that was within the original jurisdiction of the case. The videos that were selected met the requirements for selection. First the interview was classified as an interrogation depending on the interview and interrogation method, next, the video had either a confession, partial confession, or denial of admission.

**Participants.** There were six videos selected on YouTube, which exists within the public domain. The participants in the videos were previously tape recorded during the investigatory process and included one suspect and one or two investigators involved in each video interview. The data were recorded off of YouTube via a video recorder that recorded audio and video.

### **Protocol**

**Checklists.** The sources for data collection instruments of the legal case book analysis model came from the case law decided in the U.S. Supreme Court which can be found in the U.S. Supreme Court Reports, and from the legal casebook used in law schools which is *Modern Criminal Procedure: Cases, Comments, and Questions* (Kamisar, La Fave, & Israel, King, Kerr, Primus, 2012). These cases have been established from the 1880s to the present day in interrogation and confession law. The validity of this data collection was established law from the highest court in the land in which every law enforcement officer must abide by its decisions (see Appendix Y).

The sources for data collection instruments of the Reid legal analysis model was found in the Reid textbook of *Criminal Interrogation and Confessions* (Inbau et al., 2013). The legal analysis model in the text is established by state and federal case law, and if followed by interrogators the confession has been found to be admissible (See Appendix X).

The checklist for the linguistic indicators came from two sources, the first was a study titled "*Linguistic Indicators of a False Confession*", (Villar, Arciuiuli, & Paterson, 2013). The second came from the Reid textbook of *Criminal Interrogation and Confessions*



(Inbau et al., 2013). Both of these data collection instruments involved verbal behavior in distinguishing true and false confessions and voluntariness and involuntariness. The validity of these data collection instruments is such that it depends upon the interrogator applying the techniques correctly. If applied correctly they could potentially identify true and false confessions. The checklist for the Reid false confession model originates from the Reid manual in distinguishing between true and false confessions (Inbau et al., 2013).

### **Linguistic Indicators**

The linguistic indicators involved the identification of the legal analysis model's language and the language of coercion that equals involuntariness, truth and deception, and true and false confessions. The language that was identified was broken down into eight parts of speech: adjectives, verbs, nouns, pronouns, adverbs, conjunctions, interjections, and prepositions. The coding was based on the definitions of the eight parts of speech. (for definitions see Appendix V). The language was coded and matched with the variables within the legal analysis models. For the definitions of the variables of the legal analysis, models see Appendix (I). These linguistic indicators were evaluated from the aspect of the suspect but also of the interrogator. The coding sheets of the legal analysis models, the language indicators of true and false confessions, and coercion that equals involuntariness and truth and deceptions articulated in Appendix (J). This enabled the identification of attribution and attribution error from both the interrogator and the suspect.

### **Representation of the Best Source of Data**

This data checklist is a representation of the data available due to the established rule of law through custom and usage over the past century, and through research of verbal behavior through Reid case study analysis of the successes through corroboration of the confessions. Research of linguistic indicators of false confessions is based on valid research in identifying those indicators.

### **Sufficiency of Data Collection Coding Sheets in Answering Research Questions**

The data collection coding manual enabled the coder to collect and categorize the data and analyzed the answer to the research questions through the thematic analysis and coding of phrases within the interrogation and confession videos utilizing the various established checklists by identifying phrases that match or are similar in meaning of the various elements of each checklist.

### **Published Data Collection**

**Development of the coding sheets and date of publication.** The data collection coding sheets of the legal casebook analysis models came from two sources, the U.S. Supreme Court, and materials published in the U.S. Supreme Court Records. The case law was decided by the U.S. Supreme Court throughout the late 1800s to the present day. These cases have the full effect of excluding a confession if obtained outside the bounds of the case parameter. The same application applies to the Reid analysis model.

The complete Reid technique has evolved through research and court validation (Inbau et al., 2013) including the verbal behavior of the Reid technique since the 1940s to the present day (Inbau et al., 2013). However, the linguistic indicators of false confessions

have only been developed recently and a qualitative assessment has not been conducted (Villar, Arciuli, & Paterson, 2013). The Reid false confession analysis was developed by Reid and placed in their manual (Inbau et al. 2013). However, the linguistic indicators in false confessions were developed in 2013 and it is unknown who and how many times this technique has been applied and with unknown successes (Appendix W).

These data collection coding sheets are appropriate for this study based on the ability to assist in the synthesis and analysis of the research questions but also on the ability to further the research in the area of false confessions. There was no expectation that any modifications are needed for the data collection coding sheets, there was no change in the law in the area of interrogations and confessions or the Reid technique in the analysis of verbal behavior of linguistic indicators or distinguishing between true and false confessions.

### **Variations in Data Collections from Chapter 3**

The variations were that the videos were not able to be obtained from actual court records because of court regulations and confidentiality in not releasing the videos. This was the only prohibition. An adjustment was made in relying on just the videos on YouTube and verifying content with official documents over the internet. The official documents were from Police and court transcripts of some of the interviews and confessions, and court pleadings. One police transcript was of the Interview and confession of Col. Williams, the other transcript was from the police transcript and court pleading of Elizabeth Wettlaufer, the other verifications came in the form of appellate cases and newspaper accounts and books written about the case.

### **Data Analysis**

The data was analyzed by utilizing the models that were taken from the research literature described in chapter two of the literature review. The models were broken down into guidelines and codes. Eight types of answers to the models were derived from the videos were as follows: yes, no, don't know, don't remember, not applicable, yes with explanation, no with explanation, descriptive answer.

The elements were broken down from the research that is included in the models. The elements in the models were conceptualized from the research that made up the models. For example, when the Reid manual described an element that needed to be evaluated it was conceptualized to determine if the element was present or not and what impact it had on the confession whether it was a positive or a negative impact.

### **Coding**

The data was coded based on the coding sheets of the Reid verbal analysis model of detection of deception, the Reid legal analysis model, the Reid false confession analysis model, and the legal casebook analysis model. The information from the coding sheets of the Reid models has been taken from the Reid manual (Inbau et al., 2013). The legal casebook analysis model was taken from established case law ruled upon from the U.S. Supreme Court on involuntariness of confessions (for further info. See Appendix W). The coding depended on where the data fell within the various coding sheets.

**Generic qualitative coding.** The schematic of the coding process for this study is as follows: First, NVIVO coding was used. The data came from the confession videos highlighting words or short phrases answering the coding sheets questions that came from

the video participants own language. The second cycle of the coding consisted of pattern coding that identified similarly coded data and organized the data of words and phrases from the NVIVO coding into themes or constructs and attributes meaning to the data, and explores for rules, causes, and explanations in the data of the attribution between the interrogator and suspect and forming a theory of involuntariness, and false confessions from the coding sheets. The third coding cycle was the Theoretical coding which draws from and covers all the codes from all the coding sheets that identify involuntariness and false confessions, this is not the theory but it does form a basis of theory construction (Saldana, 2016).

The coding procedure was as follows: All videos were analyzed according to the available data within the confession videos. The videos were transcribed and analyzed according to the procedures in content analysis, discourse analysis, and conversation analysis. The videos were manually coded according to the coding sheets in Appendices F, G, H, I, J, K, L, M, N, O, P, S, T, V, and X. Theses coding sheets are all included in Appendix W. This coding procedure explored for similarities between the coding sheet answers and the identified false confessions. Then after the manual coding, the coding was conducted through NVIVO, and the Linguistic Inquiry Word Count software, coding was then rechecked manually and then finally peer reviewed.

**Application of coding procedure to NVIVO.** The transcripts were coded through NVIVO 10 Pro to obtain a cluster of the phrases through each variable in each coding sheet. Next, clusters of phrases were coded through all the coding sheets together. The

results explored the similarities between each individual coding sheet as compared with all of them put together. This enabled an analysis of the similarities of the different methods.

**Applications of coding procedure to linguistic inquiry word count software.**

The application of the Linguistic Inquiry Word Count Software was applied to the transcripts in order to identify the eight basic parts of speech and the quantity of each. To find similarities of the quantity of the eight basic parts of speech to false confessions.

**Coding procedure.** Based on the questions, a tentative set of coding categories was constructed and a codebook was developed. The coder was trained in how to evaluate the confession videos and transcripts through the eight parts of speech. A pilot test of the codebook was tested against the video confession by the coder. There were no revisions of the codebook needed to be based on the pilot test of coding. A retest of reliability of the codebook was made by conducting another pilot test. The codebook was finalized then applied to all the data (Appendix W).

**Coding categories.** The factors used to form the categories of the confession were determined by the linguistics of coercion, involuntariness, based on the legal checklist of the legal analysis models and true and false confessions. Similarities were coded through linguistics based on each category listed above through the eight parts of speech to determine if the coding in involuntariness based on the legal models and the linguistics used have similarities to true and false confessions (Appendix W).

**Reliability of coding.** The reliability of coding is essential in good content analysis. This is achieved through an analysis of the coding categories if they are “objective and straightforward and that consistent application is clearly applied. This step may not be

necessary if the categories require elements of subjectivity or uncertainty in applying the coding categories of legal decisions” (Hall & Wright, 2008) to the confession videos. Reliability tests were conducted in two stages: the first stage while training the draft coding guidelines and protocols. Once the coding categories and instructions were completed, the second stage required the coder to independently code a sample of videos and compare their results with the actual result of the confession as it was determined through the courts and with the peer reviewer results. Ten percent of the videos were used in the reliability testing the video confessions used to the test (Hall & Wright, 2008).

A common statistic of simple percent of agreement was evaluated in the reliability testing. The reliability test is to also eliminate chance from the study, and this depends on the coding scheme that is developed. The more options in the coding scheme to choose from, the less probability of a chance selection. Therefore, several variables that reflect the extent of agreement beyond what is expected by chance were selected. To ensure reliability, statistical testing was conducted of each variable independently not all combined. Response patterns should be taken into account on each variable whether it is highly skewed or not (Hall & Wright, 2008).

The key question to answer is whether the reliability test agrees when it indicates a factor present. The testing consisted of reporting the simple percent of agreement for the observations where the frequency of the variable appears or does not. This method of simple percent agreement for the observations where the frequency of the variable appears or does not was the method for this study.

**Alternative coding technique.** The coder of the coding of each case and the researcher assigns the outcome coded by the majority. If disagreements occur the researcher uses his own experience and expertise to resolve disagreements. Another alternative is the “Delphi Technique, this is where the coder first rates a case independently, then learns how peer experts have rated it with the actual case result, and then following discussion the expert gives an independent final rating, with the majority of coder and peer reviewer results controlling when there is not unanimity. (Hall & Wright, 2008). This has been used in the medical field. It combines expertise, consensus building, and majority rule.

Also, another method would be to analyze judicial texts entirely by computer looking for revealing patterns among the cases within their category then comparing the variables of the legal rule established with the language of the coding sheets of the video confessions to observe any similarities of coercion, involuntariness and true and false confessions (Hall & Wright, 2008). “Case content analysis tend to adopt a behavioral model that treats each case decision as an equal amount of weight” (Hall & Wright, 2008, p. 120).

In the judicial opinions and linguistics of the confession video, each variable was given a value of one. The reason for this was that the courts will use a totality of circumstances or if that one variable shocks the conscience of the court the decision can rule the confession involuntary. “Case content analysis tend to adopt a behavioral model that treats each case decision as an equal amount of weight” (Hall & Wright, 2008, p. 120).



### **Manner and Treatment of Discrepant Cases**

The discrepant cases identified were handled through revising unresolved questions in the coding manuals that arose in the pilot phase. “When reliability reveals discrepancies as it almost always will, this reveals unresolved questions in the coding instructions” (Hall & Wright, 2008). The analyst corrected these problems after the pilot phase. The discrepancies were evaluated to determine if they were from overt errors or from judgment calls or inevitable ambiguities that may virtually be impossible to eliminate without compromising the independence of the individual coder. The discrepant cases were evaluated for any patterns within discrepant cases compared to acceptable cases.

### **Coded Units to Larger Representation of Categories and Themes**

The inductive movement of the coded units to a larger representation of categories and themes was a process of grouping the coded units within a model through the analysis of a true or false confession. An example of this was if there was a presence or lack of elements within a confession to determine if a confession was voluntary or involuntary. This is how the inductive movement occurred in the analysis.

### **Software Used for Analysis**

The software utilized for analysis was NVIVO Pro 11. This study utilized counts and frequencies to observe similarities of linguistics in relation to coercion, involuntariness, and true and false confessions. With the word count and frequency analysis themes and patterns were utilized to show a pure qualitative analysis of similarities. Those themes and patterns were described through a conceptual description and narrative illustrations. The Linguistics Inquiry Word Count Program software identifies the basic eight parts of speech

and verbal phrases that are similar to false confessions except for nouns and interjections.

The nouns and interjections had to be identified manually by the coder.

**NVIVO analysis.** After the recordings were made, they were transcribed and then the transcripts were compared with the official transcripts and the video for accuracy. Then the transcripts were imported into NVIVO and analyzed for word frequency and text search. The word frequency was to assist in developing themes and linguistic indicators. Next, a text search was conducted to assist in content, discourse, and conversation analysis.

**Linguistic word count.** The transcripts were run through the Linguistics Word Count (LIWC) software in analyzing the count of all the eight parts of speech. The full transcripts and then just the answers were run through both NVIVO and LIWC software programs for qualitative assessment in content, discourse, and conversation methodologies.

### **Content Analysis**

Krippendorff (2013) cites that Content Analysis is defined in Webster's (2018) Online Dictionary as an analysis of communicated material either through verbal or printed material. This is accomplished by analyzing its key symbols and themes in order to identify its meaning and probable effect. However, for the purposes of this study, a "content analysis is a research technique for making replicable and valid inferences from texts (or other data) to the contexts of their use" (Krippendorff, 2013, p. 24).

The content analysis frameworks consisted of first having the text or data to begin the analysis. In this study, the text or data was the transcripts of the confession video as well as the confession video. The next step was to have research questions the analyst seeks to answer by examining the body of the text. The research questions were constructed and

are in the Purpose section of this chapter. The third step was to determine what context makes sense of the body of the text, in other words, context is determining what the analyst does with the texts or how the context of the data is related to the analysis research questions. The context of the data was related to confession videos that are analyzed for linguistic indicators through the legal analysis models and to determine if true and false confessions can be distinguished. The fourth step was to operationalize what the analyst knows about the context of the body of the text. This was accomplished through the similarities of the context of the data with the answers to the research questions. The fifth step was to determine similarities of the content of the answers of the coding questions to the research questions. This was accomplished through the process of logical analysis of the similarities of the coding data to the research questions. In this methodology of content analysis, the logic that was utilized was abductive inference where the texts proceed to the research questions.

### **Conversation Analysis**

A conversation analysis of the data was conducted as a part of triangulation that would validate the methodology of content analysis and data analysis. Conversation analysis is the study of talk in social interactions. Conversation analysis developed from sociology specifically ethnomethodology tradition which studied the commonsense resources that members of society interpret interaction in their social world, that were constructed in their minds as the interaction was ongoing (Liddicoat, 2007). Conversation analysis then was developed based on ethnomethodology. The conversation is the way in which people socialize and develop and sustain relationships with each other. The

conversation does not only concern itself with linguistics, but it also involves non-verbal communication in conjunction with the context in which the communication is produced. Within the conversation analysis, the context of the applied methodology of different interrogation methods can affect the linguistics and the non-verbal communication within the analysis of any verbal statements during the interview and interrogation process.

Conversation analysis is an approach to studying social interaction between people. The analysis described the explanation of the competence that speakers use and rely on in participation in intelligent social interaction (Liddicoat, 2007).

The data for study must be actual conversation occurring in the actual context of social interaction. Video and tape recordings are utilized in capturing the interaction. The video and tape recordings were then transcribed after they are watched or listened to. The analysis of the transcripts was conducted through every single case of video confession. The analysis looked for patterns of speech through every single case. It then looked for repeated instances of action. It was then quantified whether the language is frequent or infrequent and expressed through descriptive language (Liddicoat, 2007). The study of the collected cases was a study of multiple single case examples that demonstrates the systematic commonalities which exist across the collected confessions (Liddicoat, 2007).

The analytical approach was inductive, which builds an understanding of regularities in how talk is organized among social interactions, then shows the regularities that were produced by the participants in the confession videos (Liddicoat, 2007). If there is a deviant case of a false confession that cannot be accounted for through commonalities

of linguistic's then that case will be treated as an indication which has not been accounted for by descriptions and taken as evidence that the case is not generalizable.

### **Discourse Analysis**

Discourse analysis was the third methodology in the triangulation of validity that validated the methodology of content analysis and the data analysis. "Discourse analysis is the study of language in use, one approach is the analysis of themes or issues being discovered in a conversation, another approach is the structure of language (grammar) and how this structure functions to make meaning in specific contexts" (Gee, 2014, p. 8). This latter approach was the one that was used for this study. It analyzed not only the grammar but also the utterances and sentences in speech. Together with sentences flowing one after another and they relate to each other to create meaning or facilitate interpretation (Gee, 2014). It was with this discourse that an analysis of the language of the confession video was conducted.

The videos were transcribed and the analysis started from the transcripts and analyzed the speaker's and listener's language and then identified the grammar being used and then listened to the flow of the sentences together to interpret the meaning of the speaker and interpretation of the listener.

### **Analytical Constructs**

The eight parts of speech were then analyzed to the known types of confessions of true, false, and involuntary confessions. The true, false, and unknown types of confessions were analyzed by the legal analysis model checklists through the transcripts of the video confessions. The purpose of this part of the analysis was to determine if the legal analysis

models can detect true and false confessions through linguistic indicators. Similarities were then looked for between the legal analysis and the linguistics of the types of confessions, true, false, and involuntary.

### **Connection of Data to Specific Research Questions**

This study sought data to answer qualitative questions if police officers are making judgments in assessing voluntariness in confession cases in identifying true and false confessions through linguistic indicators. If the officers are not making the correct decisions, are there similarities between involuntariness cases and false confessions through linguistic indicators, based on the legal analysis models of involuntariness.

The connection of the data to the first research question is where the data is analyzed through the Reid legal analysis model analyzing involuntariness to see if an officer can distinguish between true and false confessions through utilizing the Reid legal analysis model of Involuntariness. This was conducted through a content analysis of the confession videos. Research question one determined from the data of the confession videos through the Reid legal analysis model analyzing involuntariness to see if the officer can identify attribution error in distinguishing between a true and a false confession through linguistic indicators. This was conducted by determining if the data shows if the officer missed indicators in the interrogation and therefore accepted the confession as truthful when in fact it was false.

The connection of the data to the second research question is where the data is analyzed through the legal casebook analysis model analyzing involuntariness to see if an

officer can distinguish between a true and a false confession. This was conducted through a content analysis of the confession videos.

Research question two and four determined from the data of the confession videos through the legal casebook analysis model analyzing involuntariness to see if the officer can identify attribution error in distinguishing between a true and a false confession through linguistic indicators. This was conducted by determining if the data shows if the officer missed any indicators in the interrogation and therefore accepted the confession as truthful when in fact it was false.

Research question five determined from the data of the confession video through the Reid verbal analysis of detection of deception and the Reid behavioral analysis interview of detection of deception analyzing the verbal indicators in detecting deception to determine if the officer can identify a false confession.

Finally, question six determined from the data of the confession video through the Reid false confession analysis in analyzing the false confession video to see if the officer can identify the false confession.

### **Flow Chart of Methodology**

The flow chart of the methodology of the Content Analysis, Conversation Analysis, and Discourse Analysis consisted of first capturing the videos of true and false confessions. Then the videos were observed, recorded, and transcribed. Next, the videos were analyzed to determine if the interrogator was using the Reid Technique and if not, what techniques were being used in the interrogation. The next step in the process was the coding sheets in the coding manual developed for data collection. This includes the following: Reid legal

analysis model; legal casebook analysis model; the Reid false confession model; the Reid BAI model; legal casebook method which consists of preliminary fact investigation; influence tactics and coercive strategies observed in interrogations; interrogation analysis of voluntariness; interview and interrogation video checklist; interview and false confession assessment video checklist; influence tactics observed in interrogations; interrogation analysis of deception and voluntariness; contamination and corroboration and the linguistic model which consists of the eight basic parts of speech and verbal phrases that have similarities with false confessions.

Then similarities were analyzed between each of the data collection coding sheets and false confessions. Then similarities were explored to determine the relationship between illegal coercive tactics by the interrogator using the Reid technique or other techniques and false confessions, while using the Reid legal analysis model and the legal casebook analysis model through the linguistics of threats, promises, or deception and other elements of that either through a single element or a totality of circumstances to determine involuntary confession in a false confession.

Next, similarities were explored and analyzed to determine through the Reid verbal analysis model of detection of deception to determine if interrogators can identify if a defendant is giving off linguistic indicators from illegal coercive tactics of a false confession and if the interrogator can identify linguistic indicators of a false confession. The analysis also looked for similarities after analysis between true confessions and voluntary confessions, false confessions and involuntary confessions, and linguistic indicators of truth with true confessions, linguistic indicators of deception with false



confessions and linguistic indicators of false confession. The lack of similarities with these categories was deemed as an unknown type of confession and that this language was coded and tabulated. However, no unknown type of confessions was found.

The final step in the collection and analysis was to look for similarities between the eight parts of speech and false confession to determine which part or parts of speech are prevalent in false confessions on a percentage basis.

### **Evidence of Trustworthiness**

#### **Internal Validity**

There are two types of validity that have a bearing with trustworthiness in a qualitative study. The first is internal validity which applies to the credibility of the study. To establish this there are several methods which are; triangulation, prolonged contact, member checks, saturation, reflexivity, and peer review. To establish internal validity for this study, the application of methods of proof were triangulation, peer review, and reflexivity. The methods that were not applied were prolonged contact, member checks, and saturation. These methods did not apply based on the methodology of the study. Internal validity/credibility ensured that the study measured what it intended to measure. It accomplished this through triangulation, peer review, and reflexivity.

#### **Triangulation**

There are four types of triangulation, first through methodologies, then through data analysis, next theoretical, and finally the investigator. The purpose was to give broader types of triangulation methods to increase the validity of the study (Denzin, 1978). The triangulation of methods applied to the evaluation of the data with content analysis is

conversation analysis and discourse analysis. Conversation analysis is a methodology that analyzes social interaction in the form of verbal and non-verbal communication and then transcribes the video or audio recording to capture transcribed dialogue that demonstrates what is really going on in the conversation. The content analysis of the conversation could involve the inference from the actions that follow. Another analysis was to differentiate among speech that comes in the forms of questions, requests, promises, declarations, and expressions of feelings exchanged between the interrogator and the suspect. (Krippendorff, 2013).

The third point in the triangulation was discourse analysis which is a microanalysis of the speech of the social interaction between the interrogator and the suspect that can dissect the conversation into the eight parts of speech within conversation, these are called grammar units (Gee, 2014), that form into “syntax which governs the way words and phrases combine into sentences” (Gee, 2014, p. 17). This gives meaning to social interaction. Applying these methodologies in triangulation established the internal validity of the study through the similarity of the results of the methodologies.

The triangulation was employed in this study. Conversation and discourse analysis methodology were utilized to validate the content analysis method. The content analysis of the transcript and video of the confessions were utilized to determine if the elements in the coding manual determine the presence or lack of presence within the content of the transcript and video of each confession to determine if the models detected true or false confessions. The discourse analysis was conducted on the confessions to determine if the linguistics could determine if the confession was true or false.

The last methodology utilized was conversation analysis to determine if the speech in the confession could identify a true or false confession. These methodologies results were compared to determine if the methodologies came to the same conclusion on the confession analysis. The triangulation ensured the validity of the study.

### **Peer Review**

Peer review was conducted by having an attorney with a background in accounting conduct the analysis of the results of the data analysis to determine the validity of the results of the study (Shenton, 200). The peer reviewer evaluated the analysis of the coder and the coding sheets for accuracy within the law and to determine if the coding sheets are correctly matched with the videos. The reflexivity entailed the researcher reflection after each step in the data collection and data analysis on the effectiveness of the techniques employed in the study (Shenton, 2004).

### **Validity**

The second type of validity in qualitative trustworthiness is external validity/transferability which is concerned with the extent to which the findings of this study can be applied to other situations. In this study, this applied to all types of confessions to determine if the results are transferrable to all types of false confessions, and are adaptable to real life situations in real time interrogations (Shenton, 2004). “Content Analysis is valid if the inferences drawn from the available texts withstand the test of independently available evidence of new observations of competing theories or interpretations or of being able to inform successful actions” (Krippendorff, 2013, p. 329). The transferability depends not only on the accuracy of the elements but in their application

in another setting. This depends on the interpretation and understanding of the elements and how they are to be applied to confessions in a consistent manner.

The consistency and transferability were ensured through the training of the coder and recognizing the elements within the confession videos. If this methodology is consistently and accurately applied based on the definitions and guidelines of the models, the models are then transferable to other settings. In this study, transferability was ensured through the application of the models to other confessions based on training and consistent application. If there is a failure of transferability it is not with the models but with the individuals' not following training guidelines and in the application of the elements in the models to the confessions.

### **Dependability**

To ensure dependability within the study, a detailed description of the study was reported in as much detail as possible, to enable future researchers to repeat the work. This is to ensure if the “study were to be repeated in the same context, with the same methods, and with the same participants, similar results would be obtained” (Shenton, 2004, p. 71).

### **Confirmability**

Confirmability was accomplished through establishing the findings of the study as a result of experiences of the videos and was not the product of the researcher's bias. This ensured objective analysis of the confession videos. (Shenton, 2004). This was established through the peer reviewer's analysis.

## **Reliability Testing and Results**

The reliability of the coding manual was reviewed by an expert defense attorney who reviewed the manual and protocols and found the manual to be in compliance with the legal standards and Reid standards. A sample of the confessions was tested. The procedure was that a confession was analyzed based on the coding manual operation on the guidelines and protocols established in the coding manual. (Appendix W)

An attorney coding technique was utilized for the reliability testing which was the Delphi Technique where the codes analyzed a sample confession then determined through court records the result of the case through court documents.

The technique in the reliability tests was analyzing the judicial cases entirely by the computer looking for revealing patterns among the cases and the Reid technique then comparing the variables which developed the coding manual. The coding manual was then compared with the transcripts and video recording to observe any similarities of coercion, involuntariness, and false confession. This technique was not only used in the reliability testing but throughout the data analysis of the rest of the confessions.

### **Results**

The results of the test showed that the coding manual was reliable due to it revealing that a true confession based on several factors of lack of coercion, lack of involuntariness, and did not show any positive variables in a false confession or contamination from the interrogator to the suspect. The testing did show discrepancies of unresolved questions in the coding instructions.

The questions to be resolved were what to do with variables that could not be answered due to limitations from the transcripts or video recordings. The discrepancies were handled by if the variable could not be answered yes or no, N/A or unknown was assigned in the answer to the variable. N/A could mean; not applicable, not asked, not answered.

### **Discrepant Case**

There was one case in the true confessions that were evaluated as mainly true but showed deception. However, through the fault of the interrogator he did not detail out his questioning and the suspect was found not guilty. This case was classified as a partial true confession.

### **Legal Casebook Results**

The model focuses in on 210 elements that if present could lead to the exclusion or admissibility of a confession. The major themes that the elements are grouped under are as follows:

- Offensive Police Methods to Induce Confessions
- Totality of Circumstances Factors
- Influence Tactics
- Coercive Strategies Observed
- Interrogation Analysis for Deception and Voluntariness
- Pre Interrogation Variables
- Interrogation Process Variables
- Interview variables

- Interrogation Tactics Employed by the Interrogator
- Interrogation Outcome Variables
- False Confession Variables
- Contamination of investigative facts in the interrogation
- Corroboration evidence. (See Appendix Y for a list of all elements)

The purpose of this model is to see the differences and similarities of attribution and attribution error in true and false confessions utilizing the Legal Casebook Analysis Model.

Table 2 details the codes for the Legal Casebook Analysis Model for True and False Confessions.

Table 2

*Codes for Legal Casebook Analysis for True and False Confessions*

Theme	Code
Offensive police methods to induce confessions	OPMTIC
Totality of circumstances factors	TOCF
Influence tactics	IT
Coercive strategies observed	CSO
Preinterrogation variables	PIV
Interview variables	IV
Miranda	MIR
Interrogation tactics employed by interrogator	ITEBI
Interrogation outcome variables	IOV
False confession variables	FCV
Contamination	CONT
Corroboration	CORR

**Elements.** The elements in the legal casebook analysis model have been articulated in Appendix E. The elements were taken from Kamisar's casebook on criminal procedure and from U. S. Supreme Court cases the past 140 years. The elements are defined by the

definitions supplied in the casebook and the case analysis from the case law that articulated the rule of law for the elements. Some of the elements were defined in law review articles that gave definitions to some of the elements. These elements were articulated in the appendix Y of the legal casebook analysis model.

**Scoring.** How the elements were evaluated was to look for the content in the videos to determine the presence or lack of presence, or unknown, or N/A, or a Descriptive answer. For this research question, a yes answers a positive impact that the element was evaluated by the interrogator or the element is just present. A no answer represented a negative impact that the element was not evaluated by the interrogator or the element is not present. An unknown answer was unable to be determined whether the element was evaluated by the interrogator. An N/A answer meant that the element was not applicable. A descriptive answer means that the answer was answered by a word, term or phrase. However, certain elements answered yes could also mean a negative impact. This also pertains to a no answer which could mean a positive impact.

Percentages were taken of all types of answers within each confession, then those percentages were added then divided by the number of confessions to obtain an average of each type of answers within each theme.

**Answers to Research Questions 2 and 4.** Research question 2 asked, how interviewers attribute identification of false confessions during criminal interrogations utilizing the legal casebook analysis model and identifying linguistic indicators utilizing the legal casebook analysis model of involuntariness. In the evaluation of the elements, there were some themes that could be evaluated to determine if there was a positive impact or a



negative impact. The themes that could evaluate the positive and negative impact were offensive police methods to induce confessions, the totality of circumstances factors, coercive strategies observed, interrogation tactics employed by the interrogator, interrogation outcome variables, contamination, and corroboration. The answers to the elements under these themes were evaluated to determine the positive or negative impact upon the voluntariness of the confession and its relationship between true and false confessions. The accurate application of the elements also could determine the negative or positive impact on the relationship between true and false confessions. The elements that could only evaluate their presence in true and false confessions could show that these elements were prevalent in each of these types of confessions and could show differences and similarities. These themes are influence tactics, interview process variables, and pre-interrogation variables. The linguistic indicators of the presence or absence of the elements depended upon a subjective/objective assessment of actions and the attribution of the observer/coder of the videos. The linguistic indicators are included with the attribution of the presence or absence of the elements of the legal casebook analysis model.

Research question 4 and sub-question 4 dealt with attribution error in identifying false confessions utilizing the legal casebook analysis model and identifying linguistic indicators utilizing the legal casebook analysis model. The same process of analysis listed above was utilized. However, the identification of attribution error in identifying false confessions depended upon the subjective/objective assessment of action and communication of the observer/coder of the videos. The linguistic indicators are included

with the attribution error of the presence or absence of the elements of the legal casebook analysis model.

The methodologies utilized in the subjective/objective assessment were content analysis, conversation analysis, and discourse analysis. This was done by first determining the content of the interaction between the interrogator and the suspect in the application of the elements. Conversation analysis was the back and forth communication and applying the elements to determine the attribution and attribution error within the communication to determine the application of the elements. The last methodology was discourse analysis, this measured the parts of speech to determine whether certain parts of speech or all parts of speech increased or decreased in true or false confessions.

This model applies to research questions 2 and 4, and Sub-questions 2 and 4. research question 2 asked, how do interviewers attribute identification of a false confession during criminal interrogations utilizing the legal casebook analysis model? In research question 4 it asked, how do interviewers identify attribution error of a false confession utilizing the legal casebook analysis model? The interviewers can either identify or not identify false confessions first by recognizing the elements that are either present or not during the interrogation and therefore making the correct attribution in identifying the false confession or making an attribution error in not identifying the false confession.

The legal analysis was applied in analyzing the confessions in both transcript and video through the methodology from content analysis, conversation analysis, and discourse analysis. In the recordings of the true and false confessions, it was noticed that in the false confession not all of the interview and interrogations were recorded which put the videos in

suspect as to if any violations of the application of the various models occurred. Whereas, in the true confessions they were continuously recorded.

The application of the elements was assessed by the presence or absence and then determined if the presence or absence of the elements had a positive or negative impact upon the confession. The following table shows the assessment of the elements grouped under themes. The assessment showed that there was a lower positive impact on false confessions than in true confessions. This analysis coincided with the presence or absence of the elements.

**Narrative of results of true confessions.** The results in the Legal Casebook Analysis Model of True Confessions showed that there was a positive impact on true confession throughout the model. This is demonstrated in table 3

Table 3

*Legal Casebook Analysis Model in True Confessions*

Theme	Positive impact	Negative impact	Present	Absent
OPMTIC	72.16%	27.7%	27.7%	72.16
TOCF	67.8%	5.6%	5.6%	67.8%
IT			30.4%	45.4%
CSO	70%	10%	10%	70%
PIV			8.3%	9.7%
IV			7.6%	24.3%
MIR	100% NV			
ITEBI	47.8%	56.4%	56.4%	47.8%
<b><u>IOV</u></b>				
Elements 192-203	100%			
Elements 191-217	Des. 21.3%		13.3%	65.3%
<b><u>FCV</u></b>				
Contamination	25.4%	17.6%		
Corroboration	88.8%	11.1%		

*Notes.* Des. means Descriptive Answer. NV means Not Violated. Unk. means Unknown. In Pre-interrogation Variables there was 23.5% Unknown and 41.6% Descriptive answers. BAI means Behavioral Analysis Interview. The BAI was not needed in 53.8% of the Interviews.

Narrative of results of false confessions. The results showed that in the false confessions there was a lower percentage in positive impact than in true confessions. The telling elements were in the difference in the false confession variables. The results here showed the opposite findings than in true confessions. The false confessions had a higher negative impact than in true confessions. The following table will show the difference in the percentage of the themes than in false confessions.

Table 4

*Legal Casebook Analysis Model of False Confessions*

Theme	Positive impact	Negative impact	Present	Absent
OPMTIC	38.8%	22.1%		
TOCF	44.7%	14.8%	14.8%	44.7%
IT			36.1%	57.9%
CSO	50%	10%		
PIV			8%	8%
IV	14%	71.7%		
MIR	100% NV			
ITEBI	74.6%	15.9%	14%	74.6%
<b>IOV</b>				
Elements 192-203	71.8%	15.4%		
Elements 191-217			43.3%	56.6%
<b>FCV</b>				
Contamination	13.6%	27.4%	Des. 27.4%	Unk. 31.3
Corroboration	11.1%	66.6%	Unk. 22.2%	

*Notes.* Des. means Descriptive Answer. NV means Not Violated. Unk. means Unknown. In Pre-interrogation Variables there was 38.6% Unk.-Unknown and 37.3% Descriptive answers. BAI means Behavioral Analysis Interview. The BAI was not needed in 53.8% of the Interviews.

**Reid Legal Analysis**

The Reid legal analysis model was taken out of the Reid manual (Inbau et al, 2013).

The model focuses in on four elements if present could lead to the exclusion of a confession. The purpose of this model is to see the differences and similarities of attribution and attribution error in true and false confessions.

**Elements.** The elements that were applied to the transcripts to determine the evidence of the differences and similarities were defined in legal terms taken from the Reid Manual, and are as follows:

- Duress
- Coercion

- Promises of Leniency
- Real Consequence
- Psychological Threats
- Deception from Fabricated Evidence (See Appendix X for Model)

**Results.** This model applies to Research Question 1; SubQuestion 1; Research Question 3; SubQuestion 3. The Reid legal analysis was applied in analyzing the confessions in both transcript and video through the methodology from Content Analysis, Conversation Analysis, and Discourse Analysis. In the recordings of the true and false confessions, it was noticed that in the false confession not all of the interview and interrogations were recorded which put the video in suspect as to if any violations of the application of the various models. Whereas in the true confessions they were continuously recorded.

**Scoring.** How the elements were evaluated is to look for the content in the videos to determine the presence or lack of presence, or unknown, or N/A, or a Descriptive answer. For this research question, a yes answers a positive impact that the element was evaluated by the interrogator. A no answer represented a negative impact that the element was not evaluated by the interrogator. An unknown answer was unable to be determined whether the element was evaluated by the interrogator. An N/A answer meant that the element was not applicable. A descriptive answer means that the answer was answered by a word, term or phrase.

**RQ1 and SQ1.** Research questions one asked, how interviewers attribute identification of false confessions during criminal interrogations utilizing the Reid legal

analysis model of voluntariness. In evaluating the similarities and differences between true and false confession determined the only element that was similar was the element of real consequences. The differences were that in the false confession there could not be a complete evaluation on the majority of the elements due to the confession was not recorded entirely. However, the initial evaluation of the recordings that were available did not show any violations of the Reid legal analysis model. However, on a reevaluation of the false confession videos, there was a change in the data answers on one of the false confessions. There were two changes in JoAnn Taylor's false confession on the elements of any promises to the defendant (protection of daughter) and coercion (good cop-bad cop routine). The answers to those elements changed from the unknown. to yes. These answers were changed due to the presence of the data in the limited availability of the videos.

In SQ1, the question asked, what linguistic indicators of a false confession are identified utilizing the Reid legal analysis model of involuntariness. The interrogator could not identify any linguistic indicators from the suspect using the Reid legal analysis model of involuntariness. Linguistic indicators showed no indications from the interrogator or the suspect utilizing the Reid legal analysis model of involuntariness that was observed to detect a false confession in the false confessions. The main reason was the lack of video recording of the confessions. In the true confessions, it was found that there were no linguistic indicators of a false confession nor any violations of the Reid legal analysis model of involuntariness.

For RQ 1 and SQ 1 the observer could not identify any linguistic indicators from the suspect using the Reid legal analysis model of involuntariness.

**RQ3 and SQ3.** In RQ3; the question was, how do interviewers identify attribution error of a false confession utilizing the Reid legal analysis model of voluntariness? In the observation of the videos of the false confessions utilizing the Reid legal analysis model of involuntariness, it was observed the interrogator does not identify the false confession using the Reid legal analysis model. There is evidence from the observer's standpoint that a false confession could have been identified using the Reid legal analysis model. The evidence of this is the interrogator not identifying the false confession. In the true confession in applying the Reid legal analysis model, it was discovered that there was no attribution error by the interrogator in applying the Reid legal analysis model to the confession. There were no linguistic indicators of violations of the Reid legal analysis model. The interrogator did not in applying the Reid legal analysis model identify a false confession in the true confession video.

In SQ3 the question is, can attribution error occur in identifying linguistic indicators utilizing the Reid legal analysis model? In answering this question attribution error can occur at this stage due to the elements of the model if violated could occur and cause a false confession as has been documented through case law and throughout confession and interrogation law history. However, in this study, the model could determine attribution error in identifying linguistic indicators due to the interrogator not recognizing the presence of certain elements of the Reid legal analysis model.

**Results.** The similarities between true and false confessions were that in true confessions there were no promises of leniency, the same was found in false confessions. The one difference was in one confession the county attorney might have made a promise



of leniency, but not the officer. The leniency was not made on the recording but referred to between the officer and suspect during the interrogation.

The similarities in the element of threats in true confession and false confessions are that in one false confession and all the true confessions there was no communication of any threats in the videos, however, with the interrogation in the false confessions it is unknown if any threats, and/or promises were made due to the missing videos of interviews and communications. The differences stem from the analysis of the lack of videos of the interviewers in addition to the hostile questioning of the interviewer, it is unknown if there were any threats made off camera.

In the true confessions, there was no deception from fabricated evidence. The similarities with the false confessions are that two of the false confessions had no deception from fabricated evidence. In one of the false confessions, it is unknown if there was any deception.

The definition of real consequence is “any consequences that are real that affect the suspect’s physical or emotional health, personal freedom, or financial status. The guideline is when the interrogator uses real consequences as leverage to induce a confession through the use of promises or threats that coercion may be claimed. These are apt to cause an innocent person to confess is improper according to Reid” (Inbau et al., 2013, p. 344). In both true and false confessions, all the confessions had real consequences.

In all true confessions, there were no threats made to the suspects. In the false confessions, it is unknown but no threats were recorded therefore, it is unknown if any threats were made to induce a confession. In the true confessions, there were no promises

made to induce a confession. In the false confessions, there was one confession where there was a promise in protecting her daughter and her. The other two false confessions it is unknown if there were any promises made. There were no similarities.

In the true confessions, there was no duress applied. In the false confessions, it is unknown if any duress was applied off camera, however, on camera there was none. In the true confessions, there was no coercion applied. In the false confessions, it was unknown if coercion was applied except in one video where coercion was applied when interrogators applied hostile questioning and the utilization of the good cop bad cop routine of a high-risk suspect who had psychological problems.

Interviewers can attribute identification of false confessions in two ways, one way would be if there is the answering of yes to the presence of negative impact elements that would raise doubt to the voluntariness or admissibility of the confession. The other answer that could attribute identification of false confessions is by answering unknown by the observer or interrogator in evaluating the confession. The unknown would be the answer if any element were or were not present in the Reid legal analysis. This occurred in the false confessions where a percentage range of 37.5 to 62.5 answers to elements was unknown due to the lack of full recordings of every interrogation with the suspects in the false confession videos.

The other occurrence was in the answering of yes to the elements that showed a negative impact on the voluntariness in the confessions. The percentage range was 12.5 to 37.5 percent on average of the three false confessions was 20.8 percent. This showed that the false confession elements in showing a negative impact involuntariness were a higher

percentage than true confessions showing only 12.5 percent in the true confessions. This could identify a false confession. This also could cause an attribution error by the interrogator and evaluator of the confession if they would tend to believe the confession to be true either through confirmation bias or other reasons. Interviewers could also attribute the identification of a confession that was voluntary by the majority of the answers being no which would have a positive impact on the voluntariness of the confession and therefore could be admissible.

Table 5

*Positive and Negative Impact of True Confessions*

Answers to Elements	No=Positive Impact	Yes=Negative Impact
Yes	0%	12.5%
No	87.5%	0%
Unknown	0%	0%
Descriptive	0%	0%

Note: A no answer represents a lack of presence of a negative impact from the elements, which is a positive impact. A yes answer represents a presence of a negative impact from the elements.

Table 6

*Positive and Negative Impact of False Confessions*

Answers to element	Unknown	Descriptive	No=Positive impact	Yes=Negative impact
Yes	0%	0%	0%	12.5%-37.5%
No	0%	0%	12.5%-37.5%	0%
Unknown	37.5%-62.5%	0%	0%	0%
Descriptive	12.5%	0%	0%	12.5%

Note. A no answer represents a lack of presence of a negative impact from the elements, which is a positive impact. A yes answer represents a presence of a negative impact from the elements.

**Interpretation.** The interpretation of this model in the determination by the interrogator of attribution and attribution error in determining between a true and false confession is that the evidence shown by the data indicates that a majority of the illegal elements of involuntariness were not applied in the true confessions at an average percentage of 12.5%. However, in the false confessions, it showed an average percentage of 20.8% in the application of illegal elements of involuntariness. This was a difference of 8% between true confessions and false Confessions. This showed that false confessions could be identified if strict adherence to the Reid legal guidelines were followed and identified in the interrogation process.

#### **Reid Method of Verbal Analysis of Deception**

This model is in relation to the research question that asked; how do interviewers attribute identification of false confessions during criminal interrogations utilizing the Reid method of verbal analysis of deception? What is asked is, can the detection of the Reid verbal analysis for deception detect indicators of a false confession for the interrogator to assess and attribute to a false confession?

**Elements.** This model bases its assessment on whether the assessment is truthful or deceptive with the following truthful elements followed by the deceptive elements: truthful elements; responding to directions directly, subject denies broadly, subject offers confident and definitive responses, subject denial will be specific and will let stand on its own, subject will offer spontaneous responses. The deceptive elements are the following: subject answered evasively, subject may offer specific denials, subject may offer qualified responses, subject may blame their memory, subject may omit part of their answer through

qualifiers, subject may give estimation phrases and not an exact statement, subject denial may be bolstered to make it sound more credible, subject may lie with a statement against interest to reduce anxiety within a false statement, and subject may offer rehearsed responses (See Appendix Z for complete model).

**Scoring.** To assess truthfulness or deception by determining the presence or absence of the elements in a yes or no answer. The results were assessed and the average percentage was taken from both the true confessions and the false confessions. Specifically, the true confession percentages were calculated then the average of all three were calculated in the following combinations, the yes answers in truthfulness and the no answers in deceptiveness and then the yes answers in deceptiveness and the no answers in truthfulness. The next two combinations were the yes answers in deceptiveness and the no answers in truthfulness. These two groups of answers were then averaged out. This procedure was followed in false confessions also.

**Narrative.** The results showed that in True Confessions there was a higher average in truthfulness and no deception group than in the false confessions of the same group. In the true confession, it also showed that deceptiveness and the non-truthfulness average was lower than in false confessions in the same type of group. Table 7 shows the results.

Table 7

*Reid Method of Verbal Analysis of Deception Percentage of Average of Truthfulness and Deception in True and False Confessions*

Element answers	True confessions	False confessions
<u>True confessions</u>		
Truthful (Yes) and	41.5%	0%
Deceptive (No)	0%	0%
Deceptive (Yes) and	8.2%	0%
Truthful (No)		
<u>False confessions</u>		
Truthful (Yes) and	0%	30.9%
Deceptive (No)	0%	0%
Deceptive (Yes) and	0%	11.8%
Truthful (No)	0%	0%

### **Linguistic Model for False Confession**

This research question is to determine if the linguistic model for false confessions analysis model can identify a false confession during a criminal interrogation. This model evolved from other research (Villar, Arciuli, & Paterson, 2013). This model was designed to focus in on four specific parts of speech to determine the presence or absence of the parts of speech in relation to true and false confessions. The methodology that was used was through discourse analysis.

**Elements.** The purpose of the application was to identify the prevalence of the elements to the transcripts to see if there was a percentage differentiation between true and false confession. It also was to determine which part of speech was more prevalent in true or false confessions. The elements that were applied to the transcripts to determine the presence or absence and the prevalence of the following defined terms are as follows:

- Nouns

- Verbs
- Adjective
- Adverb

These elements were applied to the transcripts answers of the true and false confessions to identify these parts of speech within the transcript answers, determined which parts of speech identified a true or false confession (See Appendix BB for complete model).

**Scoring.** The scoring procedure in this model was to first obtain a linguist word count utilizing the LIWC program. Then obtain the percentages of the elements from the LIWC program. In this model the only element that had to be manually tabulated was nouns. This was done first by running the word frequency procedure in the NVIVO program which identified every word in the transcript answers. This enabled a manual tabulation of the nouns in each of the transcript answers. Then a percentage was figured from the total nouns divided by the total word count which gave a percentage of nouns in each transcript.

**Results.** The average percentage was figured from adding the percentages within each element then dividing the added figure into the number of confessions. The results showed that nouns, verbs, adjectives, and adverbs did show a decrease in usage in false confessions than in true confessions

**Relationship to RQs.** This model is a supplement to the other models not used in conjunction but used separately with other models. It can be used as a reliability and validity test in support of the other models. The relationship to the sub-questions, the linguistics model cannot be utilized within the other models as part of that model.

Linguistic indicators cannot be used by other models because they are not designed to detect linguistic indicators, except the Reid Verbal Analysis, but not as in-depth as the linguistic models. Table 8 details the results of this analysis.

Table 8

*Average Percentage of Parts of Speech Usage in True and False Confessions*

<u>Parts of speech</u>	<u>True confessions</u>	<u>False confessions</u>
Nouns	14.1%	11.6%
Verbs	60.76%	56.87%
Adjectives	7.68%	5.73%
Adverbs	18.6%	12.2%

**Linguistic Indicators Model in Differentiation between True and False Confessions**

The linguistic indicators model in differentiation between true and false confessions is a model that stands alone in its analysis. It can be utilized in conjunction with other models as a supplement to the models utilized. This model focuses in on the eight parts of speech to determine the differentiation between true and false confessions. The model is designed to determine the difference between true and false confessions through either the increase in the eight parts of speech or a decrease. The methodology that was used was through discourse analysis.

**Elements.** The purpose of the application was to identify the prevalence of the elements to the transcripts to see if there was a percentage differentiation between true and false confession. It also was to determine which part of speech was more prevalent in true or false confessions. The elements that were applied to the transcripts to determine the presence or absence and the prevalence of the following defined terms are as follows:



- Nouns
- Verbs
- Adjective
- Adverb
- Pronoun
- Preposition
- Conjunction
- Interjection
- Sentence

These elements were applied to the transcripts answers of the true and false confessions to identify these parts of speech within the transcript answers, determined which parts of speech or all of them identified a true or false confession (See Appendix AA for model).

**Scoring.** The scoring procedure in this model was to first obtain a linguist word count utilizing the LIWC program. Then, obtain the percentages of the elements from the LIWC program. In this model the only element that had to be manually tabulated was nouns. This was done first by running the word frequency procedure in the NVIVO program which identified every word in the transcript answers. This enabled a manual tabulation of the nouns in each of the transcript answers. Then a percentage was figured from the total nouns divided by the total word count which gave a percentage of nouns in each transcript.

**Results.** The results showed that in all eight basic parts of speech and the average of multiple sentences and average total sentences was higher in true confession than in false confessions. The following table shows the results.

Table 9

*Average Percentage of Linguistic Indicators Showing Differentiation between True and False Confessions*

Parts of speech	True confessions	False confessions
Nouns	14.1%	11.6%
Pronouns	64.97%	58.49%
Verbs	60.76%	56.87%
Adjectives	7.68%	5.73%
Adverbs	18.6%	12.12%
Prepositions	33.61%	26.68%
Conjunctions	20.3%	15.79%
Interjections	.02%	.135%
Total Average		
Multiple Sentences	75.6	54.6
Total Words	8,408	5,467

**Relationship to RQ.** This model is a supplement to the other models not used in conjunction but used separately then with other models. It can be used as a reliability and validity test in support of the other models. The relationship to the sub-questions, the linguistics model cannot be utilized within the other models as part of that model. Linguistic indicators cannot be used by other models because they are not designed to detect linguistic indicators, except the Reid Verbal Analysis, but not as in-depth as the linguistic models.

**Interpretation.** This showed that there was an increase in all the model elements in true confessions over false confessions. The linguistic indicators would be applied as a tool

to determine if a confession needed to be analyzed closer to determine if it was true or false. In regards to the differences in the average of multiple sentences and average of total word usage, this shows that in true confessions there is more of richness in detail than in false confessions.

### **Reid Nonverbal Analysis Model**

This model is in relation to the research question that asked; how do interviewers attribute identification of false confessions during criminal interrogations utilizing the Reid non-verbal analysis? What is asked; can the detection of the Reid non-verbal analysis for deception detect indicators of a false confession for the interrogator to assess and attribute to a false confession?

**Elements and scoring.** In answering the research question the Reid behavioral analysis interview of detection of deception (BAI) is applied to the transcripts for assessment to determine the absence or presence of the elements in the assessment of deception and its relation in percentage in true and false confessions.

The BAI consisted of elements for assessment of attitude, posture, hands, hand shrugs, personal gestures, grooming gestures, supporting or protective gestures, evaluating feet and facial expressions and eye contact. To assess truthfulness or deception by determining the presence or absence of the elements. Due to the various answers, a range of percentages was taken in each category in evaluating the true confession and the false confession (See Appendix CC for complete model).

**Results.** Tables 9 through 12 detail the results of the relationship of the BAI to the true confessions and false confessions.

Table 10

*Reid Nonverbal Analysis Model in Relation to True Confessions*

Elements	Truthful	Deceptive
Attitude	85.7%-100%	0%
Posture	100%	0%
Hands	100%	0%
Hand shrugs	100%	0%

Table 11

*Reid Nonverbal Analysis Model in Relation to True Confessions*

Adaptive behaviors Elements	Range of percentage of presence or absence of elements	
	Present	Absent
Personal gestures	0%	71.4%-100%
Grooming gestures	0%	75%-100%
Supporting or protective gestures	0%	66.6%-100%
Evaluating feet	0%	60%-80%
Truthful Facial expressions and eye contact	75%-100%	

Table 12

*Reid Non-Verbal Analysis Model in Relation to False Confessions*

Elements	Truthful	Deceptive
Attitude	83%-100%	0%
Posture	50%-75%	0%
Hands	100%	0%
Hand Shrugs	0%	100%

Table 13

*Reid Non-Verbal Analysis Model in Relation to False Confessions*

Adaptive behaviors Elements	Range of percentage of presence or absence of elements		
	Unable to Evaluate	Present	Absent
Personal gestures	0%	0%	57%-100%
Grooming gestures	0%	0%	100%
Supporting or protective Gestures	0%	0%	33.3%-100%
Evaluating feet	100%	0%	0%
<u>Elements</u>	<u>Truthful</u>	<u>Not Deceptive</u>	
Facial expressions & eye contact	50%-75%	0%	80%-100%

**Reid Model of Detecting False Confessions**

This research question was to determine if the Reid false confession analysis model can identify a false confession during a criminal interrogation. The Reid false confession model was taken out of the Reid Manual (Inbau et al, 2013). The model focuses in on corroboration and contamination. Along with other elements described below and if the suspect is a high-risk suspect. The purpose of the model is to determine if the Reid false confession model is to see the differences and similarities of attribution and attribution error in true and false confessions.

**Elements.** The elements that were applied to the transcripts to determine the evidence of the differences and similarities were defined in terms obtained from the Reid Manual and are as follows:

- Dependent Corroboration
- Independent Corroboration
- Rational Corroboration

- Faulty Corroboration
- Duress
- Coercion
- Psychological Characteristics of Suspect

The other elements are descriptive which the following are: whether a confession was retracted, Reid states that if the confession was not retracted until days or weeks later the confession is probably truthful. However, Reid states that in coerced internalized false confessions this does not apply and should be carefully scrutinized. Another element was asking if there was a presence of specific corroboration and if not then the confession should be viewed suspiciously. The next element was the suspect accepting full responsibility but omits specific emotional details (See Appendix DD for complete model).

**Results.** This model applies to Research Question 6 and sub-question 6. The Reid method of detecting false confessions was applied in both transcript and video analysis through the methodology from content analysis, conversation analysis, and discourse analysis. In the video recordings, it was noticed that in the false confession not all of the interview and interrogations were recorded which put the videos in suspect as to if any violations of the application of this model occurred off camera. Whereas in the true confessions they were continuously recorded.

**Scoring.** How the elements were evaluated is to look for the content in the videos to determine the presence or lack of presence, or unknown, or N/A, or a Descriptive answer. For this research question, a yes answers a positive impact that the element was evaluated by the interrogator. The caveat to this is if the answer yes to duress and coercion it is a

negative impact. A no answer represented a negative impact or a positive impact that the element was either present or not present in the video or not evaluated by the interrogator. The caveat to this is in the answers to elements of Duress and Coercion if there are no answers here it is a positive impact because there was no duress or coercion in the interrogation. An unknown answer was unable to be determined whether the element was evaluated by the interrogator. An N/A answer meant that the element was not applicable. A descriptive answer means that the answer was answered by a word, term or phrase. The analysis was conducted in the assignment of yes and no answers and unknown, N/A, and descriptive answers. The yes and no answers could be either be a positive impact or a negative impact. The determination of the elements and answers were determined to be a negative impact or a positive impact. Therefore weighted percentages were evaluated in either a positive impact or a negative impact.

**RQ6 and SQ6.** In research question 6 it asked, how do interviewers attribute identification of a false confession during criminal interrogations utilizing the Reid false confession analysis? The results showed that in evaluating the true confession through the transcripts showed in the true confessions transcript analysis all corroborations had an 86.6% positive impact with an 11.4% negative impact. The true confessions video analysis on all corroborations showed the same percentage scoring distribution as in the transcript analysis. The following Table 1 shows the breakdown analysis of the true confession in true and false confessions in both transcript and video analysis.

The results showed that in evaluating the false confessions through the transcript analysis it showed there were both a 100% positive impact and a 100% negative impact.

This was due to 2 elements that had a scoring of 100% negative impact and one element had a 100% positive impact. The video and transcript analysis had the same percentage scoring distribution. Table 14 and 15 shows the breakdown of the percentage of the elements.

Table 14

*Percentage of Positive and Negative Impact of True Confession Analysis*

True confessions	Positive impact	Negative impact
<u>Transcript analysis</u>		
All corroborations	88.6%	11.4%
Independent corroboration	100%	0%
Dependent corroboration	66.6%	33.3%
Rationale corroboration	100%	0%
Contamination	100%	0%
Duress	100%	0%
Coercion	100%	0%
Faulty corroboration	66.6%	33.3%
High risk suspect	66.6%	33.3%
<u>Video analysis</u>		
All corroborations	88.6%	11.4%
Independent corroboration	100%	0%
Dependent corroboration	66.6%	33.3%
Rationale corroboration	100%	0%
Contamination	100%	0%
Duress	100%	0%
Coercion	100%	0%
Faulty corroboration	66.6%	33.3%
High risk suspect	66.6%	33.3%

*Note.* All elements were weighted as to the effect of positive or negative impact on True and False Confessions.



Table 15

*Percentage of Answers of Positive and Negative Impact of False Confession Analysis*

False confessions	Unknown	Positive impact	Negative impact
<u>Transcript analysis</u>			
All corroborations		100%	100%
Independent corroboration		0%	100%
Dependent corroboration		0%	100%
Rationale corroboration		100%	0%
Contamination		0%	100%
Duress		100%	0%
Coercion		100%	0%
Faulty corroboration		0%	100%
High risk suspect	33.3%	33.3%	33.3%
<u>Video analysis</u>			
All corroborations		100%	100%
Independent corroboration		0%	100%
Dependent corroboration		0%	100%
Rationale corroboration		100%	0%
Contamination		0%	100%
Duress		100%	0%
Coercion		66.6%	33.3%
Faulty corroboration		0%	100%
High risk suspect	33.3%	33.3%	33.3%

*Note.* All elements were weighted as to the effect of positive or negative impact on True and False Confessions.

In sub-question 6 it asks for the linguistic indicators of a false confession during criminal interrogations utilizing the Reid false confession analysis? This was evaluated through the content of the language of the interrogator using hostile questioning, good cop-bad cop routine, the use of two interrogators, the promise of protecting her daughter, not conducting specific corroboration, and pressuring a high-risk suspect. This showed that the interrogators pressured for more information when the suspect could not remember a lot of details.

## Summary

The research questions were able to be answered from the data collected. The first research question asked, how do interviewers attribute identification of false confessions during criminal interrogations utilizing the Reid legal analysis model of involuntariness?

The model did determine that the true confessions were identified by the answering of the non-presence of the elements that showed that true confessions were voluntary and that the false confessions elements were unknown, this would raise doubt and awareness that the false confession could be involuntary. However, the recordings were only partial recordings of all the interrogations and could cause an attribution error of a determination of a true confession or a false confession.

The linguistic indicators that are identified utilizing the Reid legal analysis model of involuntariness consist of verbalization of any threats or promises communicated to the suspect. This model did not detect any verbalized threats or promises to the suspect.

The question involving the legal casebook analysis model of involuntariness was more in-depth than the Reid model of legal analysis. The results of the data showed that even though the impact was positive for admissibility the negative impact elements generally scored higher in false confessions than true confessions in both the transcript and video analysis. The linguistic indicators showed there was no verbalization of threats or promises to the suspect.

The research question of determining if interviewers attributions could identify a false confession utilizing the Reid behavioral analysis interview of detection of deception (non-verbal) The results showed that false confessions showed a higher range of

percentages in truthfulness assessment and a lower lack of presence in adaptive behaviors of gestures, feet evaluators, and facial expression than in true confessions.

The linguistic indicators of the Reid verbal analysis of deception in reaction to the interviewer's identification of a false confession during criminal interrogations. The answers of truthfulness "yes" scored higher in percentage in false confessions than in true confessions. The results in answering "yes" to deceptive in false confessions were higher than in true confessions.

The results in the question of interviewer's attribution identification of a false confession during criminal interrogations utilizing the Reid false confessions analysis showed that the range of percentages of negative impact was lower in true confessions than in false confessions which were higher in negative impact. Another aspect of this analysis was the evaluation between specific corroboration verses circular corroboration in true and false confessions. The results showed that true confessions had 100% circular corroboration. This also shows that when corroboration is done true confessions are validated and that other confessions such as false confessions are not validated.

If the interviewer utilizes corroboration methods, the interviewer probably could detect false confessions. Another aspect of this study was to analyze linguistic indicators utilizing the discourse methodology in which it was found that there was a higher noun, verb, adjective, and adverb content in true confessions than in false confessions. It was also determined that there was an increase in the use of pronouns, prepositions, conjunctions, and interjections in true confessions over false confessions. There was also an increase in sentences used in true confessions over false confessions.

In chapter five an interpretation of the findings, recommendations for further research, and implications for social change will be articulated as well as implications upon the aspect of interviews and interrogations in the Criminal Justice system and intelligence field. In conclusion, the key message of this study will be addressed.

## Chapter 5

### **Introduction**

The purpose of this qualitative case study was to perform a content analysis of the identification of a false confession during an interview and interrogation through video observations of the interrogations through the legal voluntariness models. To accomplish this, seven models were used to attempt to identify a false confession: a Reid legal analysis model, a legal casebook analysis model, a Reid verbal analysis model of detection of deception, Reid BAI model (nonverbal), the Reid false confession analysis model, the complete Reid technique, and two linguistic models.

The purpose of this study was based on the following seven factors: (a) to use the Reid legal analysis to determine if there were similarities of illegal coercive tactics by the interrogator and false confessions, (b) to see if the defendant was giving off linguistic signals through the Reid verbal analysis in detecting deception in a false confession (and then to determine if the interrogator identified the linguistic signals), (c) to use legal casebook analysis to assess what the linguistic phrases were given to the interrogator to signal a false confession and involuntariness in conjunction with illegal coercive tactics established by case law, (d) to determine what the linguistic phrases were given to the interrogator to signal a false confession that is similar with illegal coercive tactics established by the Reid Legal analysis model, (e) to evaluate if the Reid false confession model was utilized in the interrogation and confession to detect false confessions and if in fact the Reid false confession analysis could detect a false confession, (f) to determine if the complete Reid technique could detect a false confession, and (g) to use linguistic

models to determine if linguistic phrases and word count of the basic parts of speech could detect a false confession.

I conducted an evaluation of the legal casebook analysis to analyze for involuntariness to detect false confessions in order to determine if there were similarities between the detection of involuntariness and false confessions. The legal casebook analysis was then reviewed for similarities between each Reid model and the complete Reid technique.

I conducted an evaluation of the linguistic analysis to determine if that model could detect a false confession. Next, I determined if there were similarities and dissimilarities with all of the models. I calculated a percentage of positive impact or negative impact to assist in evaluating the impacts of each model in detecting a false confession.

The qualitative case study consisted of obtaining videos of confessions from real interrogations by police officers of defendants. The videos were then analyzed through content analysis by coding the language to determine if there was a correlation of involuntariness and false confessions.

### **Nature of Study**

The research design that I used for this study was a qualitative case study with a content analysis of the data. The purpose of this was to establish a qualitative basis in the identification of attribution and attribution error in identifying false confessions with the Reid models and then compared with the legal casebook analysis model and the linguistic models. With this study, I tested to determine if false confessions could be identified from a sample of true and false confessions. These confessions were a sample taken from

publicized confessions in a video recorded format. These confessions had already been shown in court and publicized on youtube or other public/social media. In this study, I also determined which model would best detect false confessions. I compared similarities between known true and false confessions, and I analyzed the results to determine which model was more effective in identifying false confessions.

### **Summary of Key Findings**

RQ1: How do interviewers attribute identification of false confessions during criminal interrogations using the Reid legal analysis model of involuntariness?

The model did determine that the true confessions were identified by the answering of the nonpresence of the elements that showed that true confessions were voluntary and that the false confession elements were unknown. This would raise doubt and awareness that the false confession could be involuntary. However, the recordings were only partial recordings of all the interrogations, which could cause an attribution error of a determination of a true confession or a false confession.

The linguistic indicators that were identified consisted of verbalization of any threats or promises communicated to the suspect. This model did not detect any threats or promises verbalized to the suspect.

The question involving the legal casebook analysis model of involuntariness was more in-depth than the Reid model of legal analysis. The results of the data showed that even though the impact was positive for admissibility, the negative impact elements generally scored higher in false confessions than true confessions in both the transcript and

video analyses. The linguistic indicators showed there was no verbalization of threats or promises to the suspect.

The research question of determining if interviewer attributions could identify a false confession using the Reid behavioral analysis interview of detection of deception (nonverbal) showed that false confessions showed a higher range of percentages in truthfulness assessment and a lower lack of presence in adaptive behaviors of gestures, feet evaluators, and facial expression than in true confessions.

The linguistic indicators of the Reid verbal analysis of deception in reaction to the interviewer's identification of a false confession during criminal interrogations showed the answers of truthfulness "yes" scored higher in percentage in false confessions than in true confessions. The results in answering "yes" to being deceptive in false confessions were higher than in answering yes to being deceptive in true confessions. This showed that deception is higher in false confessions than in true confessions.

The results in the question of interviewer's attribution identification of a false confession during criminal interrogations using the Reid false confessions analysis showed that the range of percentages of negative impact was lower in true confessions than in false confessions. Another aspect of this analysis was the evaluation between specific corroboration versus circular corroboration in true and false confessions. The results showed that true confessions had 100% independent corroboration. This also shows that when corroboration is done, true confessions are validated and that false confessions are not validated.



If the interviewer utilizes corroboration methods, the interviewer probably could detect false confessions. Another aspect of this study was to analyze linguistic indicators utilizing the discourse methodology in which it was found that there was a higher noun, verb, adjective, adverb, pronoun, preposition, conjunction, and interjection content in true confessions than in false confessions. There was also an increase in sentences used in true confessions over false confessions.

### **Interpretation of Findings**

The findings confirm knowledge in the discipline in both the legal casebook analysis and the Reid method of detecting false confessions in the area of corroboration and contamination. Garrett's (2010) studies showed that contamination of the facts of the case during the interview and interrogation and with the lack of corroboration caused false confessions. This was brought out also in some of Leo's (2009) studies. In the legal casebook analysis model, the results of the current study showed that in the comparison between the true and false confessions, the contamination had a greater impact in true confessions than in false confessions. This was also true for corroboration. This showed that with true confessions, when contamination is low and corroboration is conducted, the true confessions have a greater chance of being confirmed and false confessions detected.

The fifth edition of the Reid manual has addressed and acknowledged and incorporated from its critics the need and the analytical concepts of false confession analysis.

In relation to the Reid verbal analysis of deception, the truthful assessment in true confessions was higher than in false confessions. This was confirmed in the Reid manual (Inbau, et al, 2013).

The next model that the results were confirmed in the literature was the Reid BAI of detection of deception (nonverbal). The results showed that in relation to true confessions the assessment of truthfulness was higher in true confessions than in false confessions, this was confirmed in the Reid manual (Inbau et al, 2013). The literature is split, in confirming (Hovath, Jayne, Buckley, 1994), (Hovath, Blair, Buckley, 2008) (Inbau, et al, 2013) and disconfirming (Virj, Mann, Fisher, 2006), (Masip et al, 2011) the BAI non-verbal analysis of detection of deception. However, the key is in the corroboration, if there is independent corroboration established it then validates the confession and the deception analysis of the BAI. If there is no independent corroboration, then the deception analysis of the BAI cannot be confirmed and neither can the confession.

The Reid legal analysis model of involuntariness. Showed that there was a lower percentage of the positive impact of voluntariness of false confessions than true confessions. The elements of this model were taken from case law, therefore, the elements were confirmed in the literature from the court rulings and the model process. The results of this model were confirmed by this process also.

The findings did show that the attribution between the interrogator and suspect in the true and false confessions demonstrated that during an interrogation the attribution is triggered from a question or a statement of an interrogation that is reinforced throughout the interrogation. When attribution is triggered with the suspect after a question the

thought process (attribution) occurs, the suspect searches his memory for a response, if the answer is not spontaneous then the attribution is further triggered in searching in his memory for an answer, it is here when the non-verbal indicators of the BAI are exhibited during the pause while searching for their memory. The suspect then makes a decision to be deceptive, truthful, or puts out disinformation. The attribution is further triggered in the suspect's statement through a verbal analysis of attribution. The detective then further evaluates the suspect through his attribution of what he is observing and hearing.

The detective's attribution is triggered through his thought process of what he is hearing and observing through a verbal analysis and a non-verbal analysis. The attribution between the suspect and detective occurs in the back and forth communication between the suspect and detective. It is here that attribution error can be triggered through the misinterpretation in the suspect's false memory occurring causing them to falsely make a statement or confession. The attribution process is further triggered by the minimization and maximization techniques and/or contamination, it is here that the suspect can be influenced to fill gaps of memory with false statements. The attribution of the interrogator then needs to evaluate the matching statements or confession with the evidence in the case and to obtain independent corroboration that leads to new evidence, not circular corroboration. It is in this process that attribution error can occur.

This occurs when the suspect is influenced through the minimization and maximization and contamination and through coercive tactics employed by the interrogator where the suspect fill gaps in memory with the contamination and is influenced to parrot it back and makes a false confession. The attribution error can occur by the detective in not

recognizing through his zealous tactics and confirmation bias and/or contamination of the facts into the interview/interrogation. Therefore, not recognizing the parroting back of contaminated facts and not obtaining corroboration, therefore, the interrogator then makes an attribution error in not recognizing a false confession.

The attribution and attribution error processes were validated in the analysis of the true and false confessions in this study. It is based on the higher percentage of positive impact in true confessions when no contamination was conducted and corroboration was conducted and established over false confessions. The attribution process of verbal phrases of I don't remember was stated more often in false confessions than in true confessions. It was further demonstrated in false confessions the interrogator utilized a biased accusatorial questioning tactic that interfered with both the interrogator's attribution and with the suspect's attribution. With the interrogator utilizing only circular corroboration and not linear corroboration, therefore, causing an attribution error on the interrogators part.

Therefore, if the interrogator is listening and assessing in an empathetic and unbiased attribution process while not contaminating the interrogation and conducting linear (independent) corroboration, the interrogator has a greater chance of detecting false confessions.

The attribution process is a check and balance process in determining if confessions are true or false in connection with the utilization of the models in this study that differentiated between true and false confessions. The attribution and attribution process of each model depends upon the attribution assessment of the elements within each model and its application to true and false confession videos in this study. The attribution error is the

incorrect assessment in the application of the elements within each model and its application to true and false confession videos in this study.

Attribution and attribution error within the models tested in this study showed through an objective/subjective analysis that true and false confessions can be differentiated in a post-assessment analysis utilizing these models.

### **True Confessions**

The data established that interrogators seem to be more open-minded and receptive and not falling into traps of confirmation bias, tunnel vision, and contamination and not conducting a corroboration analysis. In true confessions the interrogators conduct and establish independent corroboration, this affects the attribution of the interrogator and had a positive impact on the confession analysis. It affects the attribution of the interrogator by eliminating the potential of attribution error by not contaminating the confession or having confirmation bias and tunnel vision and conducting a corroboration analysis that leads to new evidence. The possible influence for these results in the true confessions is that the confessions were obtained within the last eight years where the Reid technique did implement in their manual to eliminate the confirmation bias, tunnel vision, and contamination and for the interrogator not to stop investigating after the confession was obtained but to conduct a corroboration analysis to obtain the independent corroboration which is the strongest corroboration that leads to new evidence where the interrogators in the true confessions did acquire except in one confession of Jeffery Tuck, a partial confession was obtained and did not follow through with the analysis that could have led to new evidence.

## **False Confessions**

The data established from the interviews that the interrogator did not recognize the signs of a person possibly giving a false confession, through the Linguistic and Reid models. Within these models, there was an analysis of whether contamination through leading questions was present, and if a corroboration analysis was conducted that would lead to new evidence. Instead, there was a circular corroboration that is ongoing throughout the investigation where the information given by the suspect is only corroborated by other codefendants that do not lead to new evidence. This attribution leads to attribution error on the part of the interrogator.

The reasons for the attribution error are the following: First, the interrogator has a tunnel vision in focusing in on the suspects, based on an anonymous tip and ignores other leads. Second, the interrogator has a conflict of interest. The interrogator was hired by the victim's family to investigate the death of the victim. Then when the investigator became a deputy sheriff, he specifically requested to take over the murder investigation of the homicide he was working as a private investigator. Third, the investigator then through the interrogations elicits confessions from the suspects that confirms the information between themselves. Through the interviews and interrogations and ultimate confessions, this, therefore, established a confirmation bias.

This is shown through the fact that no further corroboration analysis was conducted. Another factor that contributed to the tunnel vision and confirmation bias was through the forensic examination of blood and body fluids where the forensic scientist in Oklahoma perjured her examination and report of the results of her test on the evidence that showed

the suspects were the ones involved. It was later found that an individual they had interviewed initially in the investigation as a suspect was, in fact, the suspect who committed the crime. This was a contributing factor in the confirmation bias that led to an attribution error. The fourth and last factor is that the attribution of the signs exhibited by the confessor in the videos as assessed by the linguistic and Reid models are missed by the interrogator, therefore, causing an attribution error by the interrogator.

The models also determined that the interrogators legally obtained the confessions and that they were voluntary. This was determined through only partial recordings of the interrogations. The observations were of the interrogator and the suspect. The problem with the false confession videos was that they were not completely recorded.

Despite the problems in the false confessions, the variation of the Reid technique that was applied was from the third edition of the Reid manual in the 1980s. In that edition, there is no assessment method on detection of false confessions.

The results that support the conclusions are in the application of the Reid and linguistic models in this study. The application of the model's established possible indicators of differentiating between true and false confessions. However, for the false confessions, these models were not available in the 1980s

### **Disconfirming Knowledge in the Discipline**

The linguistic models for true and false confessions were disconfirmed by the literature. The results of the models showed there was an increase in all parts of speech of true confessions as opposed to false confessions. The disconfirmation in the literature

showed that there was no discrimination of word usage between true and false confession except a decrease in adjectives in false confessions (Vilar, Aricali, Paterson, 2012).

### **Application of Theory to Study**

The application of the attribution process to the Reid technique of interviews and interrogations applies to this study through the common sense psychology in the evaluation of emotions and verbal, and non-verbal behavior resulting in a legal analysis during the interaction of the interrogator and suspect (Abelson & Kanouse, 1966; Försterling, 2001; Garvey & Caramazza, 1974; Grice, 1975; Heider, 1958; Inbau, Reid, Buckley & Jayne 2013; Kanouse, 1972; McArthur, 1972; Myer, 1984; Weiner, 1995).

During these evaluation processes of the attribution and the Reid technique, the interrogator was trying to determine only three results of either deception, truth or legal admissibility (Inbau et al., 2013). However, the fourth result of false confessions has not been a primary concern during the evaluation process (Inbau et al., 2004).

### **Conceptual Framework**

The conceptual framework was grounded in the field of law in criminal procedure specifically confession law dealing with the voluntariness of a confession. The second field was in the area of criminal justice specifically dealing with interviews and interrogation utilizing the Reid technique specifically the Reid legal analysis. The third area was in the field of psychology specifically attribution and attribution error. The fourth area was in the field of linguistics and how it applies to the assessment areas of coercion, deception, and false confessions through the legal assessment guides. The purpose of these



four areas combined developed the conceptual framework for this experimental study and was for the specific purpose of identifying false confessions.

In determining the difference between true and false confessions there was an evaluation of deception occurring in the interrogation process. In the evaluation process of determining the difference between true and false confessions, we had to look at a valid false confession as well as the subtypes of a false confession. This may involve an over-involvement false confession or an under involvement false confession or a confession that is deception. These subtypes showed verbal and nonverbal signs of behavior during the interrogation. However, this analysis could be an attribution error, based on the subject articulating a false confession through a false memory. In evaluating deception that was evaluated in this study was a subjective/objective analysis. The subjective analysis consisted of verbal behavior and nonverbal behavior. The objective analysis corroborated lead the investigator to new evidence and/or that the suspect was able to describe something he did or that could be confirmed by forensics (Inbau et al., 2013). For the purposes of this study, the focus was on the Reid legal analysis model and the legal analysis model. However, the factual analysis was a critical component of both models.

The conceptual framework of the legal analysis model was for the purpose of utilizing the elements required for a voluntary confession and an involuntary confession, to determine if the legal analysis model could identify a false confession. The legal analysis model started off with the interrogation utilizing the Reid technique (Inbau et al., 2013). During the interrogation process, a legal assessment was ongoing to determine the presence

or non-presence of voluntariness and coercion, this was based on the current case law at the time of the interrogation.

The conceptual framework relates to the study approach through recognizing the concepts and linguistic indicators needed in identifying attribution and attribution error of coercion, deception, and false confession on the part of the suspect and the interrogator in identifying a false confession. The concepts that were utilized were related to the research question and enabled the development of coding sheets in the form of evaluation questions and thus data analysis.

### **Factors That Could Lead to Attribution Error with False Confessions**

The factors that could lead to attribution error on the interrogators part are (a) an incorrect assessment of the evidence within the fact analysis. (b) Lack of training to assess the factors in differentiating between true and false confessions. (c) Time constraints in making an assessment of factors in differentiating between true and false confessions. (d) Leading questions that lead to contamination. (e) Lack of Corroboration that leads to new evidence. (f) Presumption of guilt that leads to a confirmation bias that prevents the interrogator to reevaluate the confession.

### **Limitations of the Study**

The limitations that could affect the study are in the following areas and reasons; in the area of internal validity, attribution and attribution error elements may not be identifiable, therefore causing false confessions not to be identified. In the area of external validity that could affect the study, is in the area of a population drop out and the lack of training of the population in attribution and attribution error elements competency cannot

be obtained. The confounding variable is where variables that are being identified can be put into two different categories such as the identification of false confessions where the confession is an under involvement or an over-involvement false confessions they both can go into the false confession category.

The biases that could influence the study could come from the biases of the population is not only the beliefs that false confessions do not occur but in not wanting to recognize false confessions due to the facts of the case. This is counterproductive to their training in the Reid interrogation technique. Recently, Reid has implemented training in recognizing false confessions. To overcome these biases, training would be given to the samples of the study on current training of the Reid technique in the area of false confessions.

The key to address the limitations is training in false confessions, and attribution and attribution elements of legal analysis need to be taught and demonstrated on how to apply them in the interrogation process.

### **Addressing Potential Limitations**

In addressing potential limitations the following were eliminated during the study. It was discovered that attribution and attribution error elements were identifiable through a process of applying and assessing the elements of the models and identifying the communication in the confession videos that matched the elements in the models. Training in the Reid models was obtained by the coder in preparation for the collection of the data, also education in the area of confession law, and other parameters of the study was obtained by the coder to cut down any mistakes in the data analysis process.

**Limitations to Trustworthiness.**

There were no limitations in this study pertaining to internal validity; triangulation; peer review; dependability; confirmability; ethical procedures; content analysis; and discourse analysis.

The limitations in trustworthiness that occurred in this study occurred in the methodologies in collecting the data. In conversation analysis, there was much more difficulty in the evaluating of the transcripts. Questions and answers were evaluated to determine the attribution and attribution error process, then the answers were only evaluated to determine the verbalization of the warning signs of false memory or not remembering any details that could lead to a false confession. In the questions, it was evaluated to determine the language of the question to evaluate contamination in the form of leading questions. This form of contamination was a constant process utilized by the interrogator in the false confession videos. The procedure in reducing the limitation was to evaluate the transcript and video together.

The other limitation of trustworthiness that involved validity was transferability. The limitation of this study came in the form of not being able to evaluate an interview/interrogation first hand in real time in assessing the models all at the same time. The closest the assessment came to meeting this type of evaluation was observing the videos and trying to assess all models at the same time.

Another limitation of this study was in evaluating the confirmation bias of the interrogator. In this study, it could only be evaluated by the actions taken or not taken by the interrogator during the interrogation with the suspect. An example of this would be if

there were no questions as to assessing their innocence. There were no other limitations in this study.

### **Recommendations for Further Research**

The recommendation for further research is to expand this qualitative study with other models such as the complete Reid technique to evaluate other sections within the technique and to determine on a cumulative study if the entire Reid technique can differentiate between true and false confessions. Other models to evaluate would be the federal law on corroboration from U.S. Supreme Court cases and pattern instructions for jurors in comparison with state law on corroboration to determine if the law on corroboration can detect a false confession, as well as the rest of the models articulated in Ch. 2 of this study. In the area of the disinformation model, there needs to be a study conducted to determine if this model can differentiate between a true or false confession, if not, what parts of the confession are true and what parts are false? Another study would be to test actual investigators assessments of interrogation videos using all the models available.

A quantitative study needs to be conducted in determining a statistical analysis of each model and of all the models combined and the weight of each element in differentiating between true and false confessions.

### **Implications**

This new knowledge will impact society by bringing a possible reform in the assessments of interviews and interrogations. It will potentially prevent false confessions

being admitted as evidence and becoming part of a wrongful conviction and then if exonerated of a wrongful conviction it will prevent lawsuits in the millions.

The individuals involved in this potential impact are not only the suspect being interrogated and the officer conducting the interview/interrogation, but it will impact their families and organization they represent. In regard to the families, it will prevent the separation of the wrongfully convicted from their families which could be a lifetime. In regard to the officer's organization, it will prevent lawsuits and his potential loss of employment.

For the organization, the officer represents it could prevent lawsuits, and judgments in the millions. This would affect not only the city, and county, but the state also. The economic impact could affect the budgets of other agencies and programs for the people of the state.

For society, it will promote trust in their law enforcement in that the profession is seeking truth and fairness and implementing due diligence in the assessment of the interviews and interrogations.

In the area of policy making, the impact here will implement the assessment of interviews and interrogations by the agency, for not only the due diligence, but also the fairness in the assessment process, and showing the court that officers are assessing their interrogations and confessions to make sure they are true confessions and at the same time looking for false confessions. This type of policy will show that law enforcement's purpose is not only to look for guilt but also innocence. It will also show that law enforcement's empathy toward a society in the enforcement of the law.

The methodological and conceptual process shows implications that utilizing these models in this study and other models can differentiate between true and false confessions. By conceptualizing all the research it enables law enforcement to evaluate and assess the interrogations for admissibility and detection of true and false confessions.

### **Recommendations for Practice**

The implications of this study have led to the following recommendations.

1. All contacts, interviews, interrogations, and confessions are required to be recorded by video and audio.
2. All cases should be thoroughly reviewed from a factual analysis utilizing all evidence collected and information about the person to be interviewed. The factual analysis needs to evaluate both guilt and innocence without confirmation bias.
3. Next, the interview and interrogation need to be conducted within the legal parameters of the law in interviews/interrogations and confessions.
4. An assessment of the suspect needs to be conducted of any psychological or physical issues that would interfere with the trustworthiness of the confession.
5. The interview and interrogation need to be professionally conducted and strictly adhered to within the parameters of the Reid technique.
6. If a confession is obtained there needs to be an assessment of corroboration and determine if any contamination entered into the interrogation that would cause a false confession.

7. An assessment needs to be conducted to determine if the confession is false utilizing the Reid technique of detecting false confession.
8. The final post-assessment is to conduct a narrative analysis of the suspect's statement with all the known objective evidence.
9. Conduct an evidentiary analysis to determine if it matches with the suspect and his statement.
10. Remember the contamination of facts prevents corroboration.
11. Corroboration needs to be linear, not circular.

### **Conclusion**

In conclusion, this study has demonstrated that false confessions and contamination can be detected and prevented through corroboration. The key is if contamination and corroboration are not looked for, then how do we know if the confession is a true confession? The two aspects that are important to remember is that if there is contamination first then it prevents any type of corroboration. First, there needs to be an evaluation of contamination and then corroboration needs to be evaluated. It is important to make sure that the corroboration is linear and not circular. There could be a reason why the complete Reid technique is going awry, in this study the assessments of each model were conducted separately instead of all at once as in the complete Reid technique. This could account for problems in making assessments in an interrogation in real time. Each part of the Reid method needs to be evaluated independently after the confession, to validate the assessment of the complete Reid technique made in real time during the interrogation.



A prime example of contamination and circular and linear corroboration is of an FBI investigation in 2013 of a double homicide on an Indian reservation. The father of two daughters was drinking with an individual one night and drank until he passed out. Just before he passed out he remembered his drinking friend leaving. The next morning the father got up and went into his daughters' bedroom and observed his daughters had been slaughtered. He then was crying and holding his daughters and blood was all over him. The father was taken into custody and the FBI was notified. The FBI agent then ordered the interrogation to be recorded. After a couple of hours, the father stated that he did not remember doing it but must have done it. He then gave specific facts (United States v. Bagola, 2015).

Upon the FBI agent's review of the interrogation, he found out that he had contaminated the interview and interrogation with approximately 80% of the facts of the investigation. The FBI agent then called the lab and told them to expedite any DNA evidence. At the autopsy, fingernail scrapings were taken and they were analyzed for DNA and compared against the father's DNA and they did not match. Therefore the FBI then conducted a neighborhood check and found a person of interest that had a deep fresh scratch on his neck. The FBI agent then asked the person of interest for a DNA sample. A sample was obtained and the DNA matched. The suspect was charged and convicted of the double homicide (United States v. Bagola, 2015).

The evaluation of this case showed that two things happened initially, first circular corroboration was assessed in that the father was there, no one else was and when the father woke up he discovered the crime and had blood on him from holding his daughters. An

interrogation of the father occurred, during that interrogation the FBI agent contaminated facts into the interview and interrogation, therefore obtaining a false confession.

The linear assessment of the interrogation showed first that there was contamination in the interview and interrogation process. Once that was found the DNA was expedited and found not to be the fathers. A reevaluation of the investigation led to a person of interest who became a suspect and then a defendant when the DNA matched. This is an example of linear corroboration. Remember two points: 1. Confirmation bias allows circular corroboration and 2. Contamination prevents corroboration and can lead to false confessions.

The key lesson to take away from this study is to never stop investigating or assessing the case even after the confession is obtained and always assess the confession from a true or false perspective, during the interrogation, and after the confession.

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### Appendix A: The Fulcrum of the Voluntariness Rule

In analyzing the involuntariness and the voluntariness rule is to use an equilibrium principle of involuntariness on one side and voluntariness on the other with the fulcrum as interrogation pressure. At this point involuntariness and voluntariness are level, with no interrogation pressure,  $I, \& V = 0$ . The value of each element of duress, coercion, and involuntariness factors, are valued at one. Plus one and additional factors equal to the totality of circumstances. Minus one and additional factors equal to the totality of circumstances. Plus or minus one can in and of itself be enough to satisfy the totality of circumstances. I.e., physical abuse alone can negate a confession (Nash, 1950).

The question to answer is at what point does a confession become voluntary or involuntary? To answer this, the test of equilibrium and weighing the results of interrogation pressure and weighing the determination of either voluntariness or involuntariness by adding either the presence or non-presence of coercion, duress, and involuntary elements to either voluntariness side of the fulcrum or the involuntariness side of the fulcrum to determine the confession admissibility. If the greater value is on the involuntary side of the fulcrum then the confession is inadmissible. This means that the elements of involuntariness added up to be greater than voluntariness. The formula is as follows  $IC=D+C+IV+IP$ . If the greater value of minus the involuntary elements then the confession is admissible. This means that the elements of voluntariness added up to be greater than involuntariness. The formula is as follows:  $VC= (-IP) + (-IV) + (-C) + (-D)$  (Nash, 1950).

### **Interrogative Pressure**

Interrogative pressure is the fulcrum where how much pressure that is applied can tip the scale of voluntariness or involuntariness in either direction. Interrogative pressure comes in the form of negative feedback. “Negative feedback is communication perceived by interviewees to mean that their answers, or they themselves are in some sense unsatisfactory” (McGroarty & Baxter, 2007). During an interrogation negative feedback is used within the Reid Interview and Interrogation technique, especially when the interrogator is refusing to accept denials in the nine step process (Inbau, Reid, Buckley, and Jayne, 2011). Negative feedback correlates to the Reid Technique through the perception of the interviewer that their answers are in some sense unsatisfactory. It is at this point depending on the attribution of the interviewee that an attribution error can occur. The question remains, at what point does interrogative pressure will make a confession involuntary or cause a false confession?

The interrogative pressure process applies when after denials by the interviewee, the negative feedback is articulated by the interviewer and perceived by the interviewee which then leads to an attribution of the interviewee and then triggers the source monitoring of the interviewee’s memory (Henkel & Coffman, 2004). Then if enough pressure is applied then “acceptance of negative feedback can increase anxiety, temporarily reduce self-esteem and increase interviewees’ uncertainty, such that they came to rely on cues present in the interview rather than on their own recall” (McGroarty & Baxter, 2007), and causes an attribution error. The interviewee either then articulates a false confession or an involuntary confession.

At this time the legal principle of overborne the will of the interviewee applies through a subjective/objective analysis of the totality of the circumstances. The objective analysis can be made through the case law of coercive elements that have been ruled upon by the courts (For further information on case law see Appendix E).

The question then becomes, how is the interrogative pressure measured subjectively? The subjective analysis can be measured through the interviewee's susceptibility to suggestibility. This is measured through the use of the Gudjonsson Suggestibility Scales 1 and 2. This would measure the probability of the interviewee's susceptibility of the changing of the interviewee's answers. The other subjective measure would be to test the interviewee's memory, through a memory questionnaire. If leading questions are used and the distance between the event and the questioning can cause the interviewee to yield to leading questions which depends on the interviewee's psychological vulnerability (McGroarty & Baxter, 2007).

The results of McGroarty and Baxter (2007), of their study on Interrogative pressure using negative feedback, showed that negative feedback can cause a change of the interviewee's answers to questions that are inaccurate and lead to more responses that are inaccurate (McGroarty & Baxter, 2007).

Therefore depending on the objective factors of psychological vulnerability and interrogative pressure the interviewee could articulate a false confession or an involuntary confession based on negative feedback (McGroarty & Baxter, 2007).

## Appendix B: Framework for the Legal Test in Determining Voluntariness of Confessions

The framework for the legal test in determining the voluntariness of confessions starts off with a scale which is at an equilibrium. On one side of the scale is the voluntariness side and on the other side is the involuntariness side. In the middle is the fulcrum of the legal test. The legal test determines what elements are coercive and which are not coercive. The non-coercive elements would go on the voluntariness side and the coercive elements would go on the involuntary side. To determine the application of the elements a legal test is applied. However no one single element (unless it shocks the conscience of the court, such as physical torture) would by itself cause an involuntary confession. The result will be an analysis of any coercive elements of the totality of circumstances and determining whether that element is voluntary or involuntary (Nash, 1950).

### Appendix C: History of Detection of Deception

The history of detection of deception has been around since ancient times and in various cultures and countries. In China deception was detected through the observation of a dry mouth. The Greeks felt the pulse of the individual to detect deception. The Hindu's had a method of detecting deception where a subject was placed into a closed room with an Ass. The subject was placed into a closed room with a sacred ass. The subject was told he would be left alone with the animal and to think over the charge carefully. Then the subject was told to grasp the tail of the ass with both of their hands. If the animal brayed the subject would be adjudged guilty, if the ass does not the subject would be adjudged innocent. The subject did not know, that the animal's tail had been dusted with black powder. The theory was an innocent person would have no hesitancy about grasping it, a guilty person alone and unwatched would not grasp the tail. The subject emerging from the chamber with black powder on the hands was set free, the one with clean hands was found to be guilty of the offense (Mulbar, 1951).

In biblical history, King Solomon was faced with the dilemma in trying to determine who the mother of a child was between two women. King Solomon then told both women that he could not determine who the mother was. King Solomon then stated he therefore had no choice but to cut the child in two and a half given to each of you. One of the women was silent. The other fell to her knees and pleaded with the King to spare the child's life. She stated she would rather have the child go to the arms of the other woman than be sacrificed. The King then awarded the child to the pleading mother (Mulbar, 1951). Torture was employed up to the 19<sup>th</sup> century to detect deception. This is when



scientists developed psychological methods to detect deception such as the word association test, where the guilty person would delay answers (Mulbar, 1951). This long history leads us to the third degree of interrogation where torture was employed. It was not until the 1930's after the Wickersham commission that the psychological method was developed. This brings us to the development of the development of Lie Detection and Criminal Interrogation in 1942 developed by Fred Inbau.

#### Appendix D: History of Police Interrogation Techniques

The police interrogation techniques of the period of prior to 1940 became a national scandal. The third degree techniques utilized came in the form of physical abuse which was tantamount to torture such as beatings, water torture, and electric shock (Leo, 2004). There was also the psychological abuse and duress, this included prolonged incommunicado interrogation under extreme psychological coercion. This would occur from 24 hrs. too one to two weeks, without rest or food. It also included threats of harm and mock executions (Leo, 2004). These abuses were brought to light by the Wickersham Report (1931) that was derived from the Wickersham Commission in 1930. After these abuses were exposed an outcry for the need of police reform was heeded by police executives across the country including FBI Director J. Edgar Hoover condemned the practices, and through cases decided by the U.S. Supreme Court regarding abusive interrogation techniques. It was from this context that police interrogation reform occurred through new police interrogation manuals were written and from those manuals, the evolution of the psychological interrogation was developed and replaced the third degree practices. The first manual condemned the abusive interrogation practices based on credibility and reliability (Kidd, 1940). The second manual developed the psychological method of interrogation (Inbau, 1942). The manuals contributed to the education and reform of police interrogators on appropriate and inappropriate methods, new psychological techniques to extract confessions, detection of deception, and the law governing interrogations and confessions. Prior to Miranda, the manuals focused on the voluntariness standard established by the U.S. Supreme Court (Leo, 2004).

### Appendix E: Case Law Elements That Can Determine Involuntariness

There were a number of cases decided by the U.S. Supreme Court that decided the voluntariness of confessions based on coercive elements employed and ruled on in the 1940's that were excluded. The due process requirement is not to exclude false evidence but to prevent the fundamental unfairness in the use of evidence whether true or false as was articulated in *Lisenba v. California* (1941). The other case that articulated the coercive elements in the 1940's and excluded the confessions are the following: Age of suspect (*Haley v. Ohio*, 1948); Denied Counsel (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Malinski v. New York*, 1945); (*Turner v. Pennsylvania*, 1949); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940), defendant Illiterate (*Harris v. South Carolina*, 1949); (*Ward v. Texas*, 1942); (*White v. Texas*, 1940), lack of food (*Watts v. Indiana*, 1949), solitary confinement (*Watts v. Indiana*, 1949), Interrogation was coercive (*Ashcroft v. Tennessee*, 1944); (*Harris v. South Carolina*, 1949), lack of control of situation (*Chambers v. Florida*, 1940), length of interrogation (*Ashcroft v. Tennessee*, 1944); (*Chambers v. Florida*, 1940); (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Turner v. Pennsylvania*, 1942); (*Ward v. Texas*, 1942); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940), mental abuse from threats by police (*Chambers v. Florida*, 1940); (*Harris v. South Carolina*, 1949); (*Malinski v. New York*, 1945); (*Ward v. Texas*, 1942), defendant was moved to a faraway jail (*Ward v. Texas*, 1942), Multiple police officers/ interrogators present during interrogation (*Chambers v. Florida*, 1940); (*Harris v. South Carolina*, 1949); (*Turner v. Pennsylvania*, 1942), defendant suffered physical abuse (this was established either through conflicting testimony, disputed evidence, not confirmed, and confirmed evidence) (*Chambers v.*

*Florida*, 1940); (*Haley v. Ohio*, 1948); (*Ward v. Texas*, 1942); (*White v. Texas*, 1940), relay questioning by police (*Ashcroft v. Tennessee*, 1944); (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Ward v. Texas*, 1942); (*Watts v. Indiana*, 1949), denial of rights (*Turner v. Pennsylvania*, 1942), no sleep or rest (*Ashcroft v. Tennessee*, 1944); (*Chambers v. Florida*, 1940), lack of social support from friends or family (*Chambers v. Florida*, 1940); (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Malinski v. New York*, 1945); (*Turner v. Pennsylvania*, 1942); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940), stranger to community (*Chambers v. Florida*, 1940), trickery by police (*Malinski v. New York*, 1945), held without charges (*Chambers v. Florida*, 1940); (*Turner v. Pennsylvania*, 1942); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940). As can be seen, some of these cases have numerous elements of coercion within the facts of each case.

In the 1950's the cases that were found in coerced confessions that the U.S. Supreme Court suppressed are: Denial of counsel (*Fikes v. Alabama*, 1957); (*Payne v. Arkansas*, 1958); (*Spano v. New York*, 1959); Lack of education (third grade) (*Fikes v. Alabama*, 1957), Denial of food (*Payne v. Arkansas*, 1958), highly suggestible (*Fikes v. Alabama*, 1957), Solitary confinement (kept in segregation unit) (*Fikes v. Alabama*, 1957), length of interrogation (*Fikes v. Alabama*, 1957); (*Leyra v. Denno*, 1954), mental abuse (fear) (*Payne v. Arkansas*, 1958), mental illness (schizophrenic and highly suggestible) (*Fikes v. Alabama*, 1957), moved to far away jail (*Fikes v. Alabama*, 1957), denial of rights (*Payne v. Arkansas*, 1958), lack of sleep and rest (1.5 hrs. of sleep over four days) (*Leyra v. Denno*, 1954), lack of social support (father refuse to be able to visit) (*Fikes v. Alabama*,

1957), trickery by police (*Leyra v. Denno*, 1954); (*Spano v. New York*, 1959), not charged but detained (*Fikes v. Alabama*, 1957); (*Payne v. Arkansas*, 1958).

In the 1960's the factors the U.S. Supreme Court relied on to find confessions coerced are the following: Denial of counsel (*Blackburn v. Alabama*, 1960); (*Clewis v. Texas*, 1967); (*Reck v. Pate*, 1961), drugs used to assist confession (*Beecher v. Alabama*, 1967); (*Reck v. Pate*, 1961), lack of education (*Blackburn v. Alabama*, 361 U.S. 199, 1960); (*Clewis v. Texas*, 1967); (*Columbe v. Connecticut*, 1961); (*Davis v. North Carolina*, 1966); (*Reck v. Pate*, 1961), denial of food (*Brooks v. Florida*, 1967); (*Clewis v. Texas*, 1967); (*Davis v. North Carolina*, 1966); (*Reck v. Pate*, 1961), solitary confinement (*Brooks v. Florida*, 1967); (*Davis v. North Carolina*, 1966), incompetent (*Blackburn v. Alabama*, 1960), interrogation setting (*Blackburn v. Alabama*, 1960), defendant had no control of his situation (completely dominated by police) (*Brooks v. Florida*, 1967); (*Columbe v. Connecticut*, 1961); (*Reck v. Pate*, 1961), unlawful and length of confinement without hearing (*Brooks v. Florida*, 1967); (*Columbe v. Connecticut*, 1961); (*Reck v. Pate*, 1961), length of interrogation (*Blackburn v. Alabama*, 1960); (*Clewis v. Texas*, 1967); (*Columbe v. Connecticut*, 1961); (*Davis v. North Carolina*, 1966); (*Reck v. Pate*, 1961), mental abuse (*Beecher v. Alabama*, 1967); (*Davis v. North Carolina*, 1966); (*Lynumn v. Illinois*, 1963), mental illness (*Blackburn v. Alabama*, 1960); (*Columbe v. Connecticut*, 1961); (*Reck v. Pate*, 1961), multiple police in room/multiple interrogators interrogating (*Blackburn v. Alabama*, 1960); (*Clewis v. Texas*, 1967); (*Reck v. Pate*, 1961), noticeable injury/sickness (*Clewis v. Texas*, 1967); (*Reck v. Pate*, 1961), no prior trouble with law enforcement (*Clewis v. Texas*, 1967); ); (*Lynumn v. Illinois*, 1963); (*Reck v. Pate*, 1961), denial of rights

(*Haynes v. Washington*, 1963); (*Columbe v. Connecticut*, 1961), no or little sleep/rest (*Clewis v. Texas*, 1967), no social support (*Blackburn v. Alabama*, 1960); (*Brooks v. Florida*, 1967); (*Davis v. North Carolina*, 1966); (*Haynes v. Washington*, 1963); (*Reck v. Pate*, 1961), police trickery (*Beecher v. Alabama*, 1967); (*Columbe v. Connecticut*, 1961), held with no charges (*Clewis v. Texas*, 1967); (*Columbe v. Connecticut*, 1961); (*Haynes v. Washington*, 1963).

In the 1970's there was only one case that the U.S. Supreme Court found a coerced confession and that was *Mincey v. Arizona* in 1978. The following factors were found to be coercive. Denial of counsel, interrogation setting, and the defendant had no control of the situation, length of interrogation, mental abuse, noticeable injury, no social support, and police trickery, these factors formed the basis that the interrogation was involuntary.

There were no confession cases found to be coerced by the court in the 1980's. In the 1990's there was only one confession case found by the court to have been coerced. The case was *Arizona v. Fulminate* (1991). The factors found to be coercive was, lack of education or low intelligence, mental abuse, mental illness, police trickery.

## Appendix F Coding Sheet for Reid Verbal Analysis of Deception

1. \_\_\_ Truthful: subject responded to directions directly.  
 \_\_\_ Deceptive: subject answered evasively
2. \_\_\_ Truthful: subject denies broadly.  
 \_\_\_ Deceptive: subject may offer specific denials.
3. \_\_\_ Truthful: subject offers confident and definitive responses.  
 \_\_\_ Deceptive: subject may offer qualified responses.  
 \_\_\_ Deceptive: subject may blame their memory.  
 \_\_\_ Deceptive: subject may omit part of their answer through qualifiers  
 \_\_\_ Deceptive: subject may give estimation phrases and not an exact statement.
4. \_\_\_ Truthful: subject denial will be specific and will let stand on its own.  
 \_\_\_ Deceptive: subject denial may be bolstered to make it sound more credible.  
 Bolstering phrases would be appropriate from an innocent subject who has been wrongfully accused of committing a crime during an interrogation.  
 \_\_\_ Deceptive: Subject may lie with a statement against interest to reduce anxiety within a False statement.
5. \_\_\_ Truthful: subject will offer spontaneous responses.  
 Deceptive: subject may offer rehearsed responses.  
 \*Rehearsed responses are in the form of a non-contracted denial.

\*Innocent subject can articulate a non-contracted denial, when a subject becomes more frustrated and angry they will emphasize their denial through a non-contracted denial.



### Appendix G: Coding Sheet for Reid Paralinguistic Behavior Analysis

- A.** Response Latency – defined as the length of time between the last word of the interviewer’s question and the first word of the subject’s response.

Truthful: .5 second.

Deceptive: 1.5 second

To evaluate this the interrogator needs to establish a norm for the response latencies of each subject.

- B.** Early Response – A response offered before the interviewer finishes asking his question.

Truthful: Subject who is somewhat nervous may offer early responses at the beginning of the interview and repeated after the interviewer finishes asking his question.

Deceptive: Early responses are often not repeated. However the reliability of deception increases. Early responses occurs during the middle and end of the interrogation. General Nervous Tension should have subsided.

- C.** Response Length

Truthful: Subject offers longer responses to interview questions than do deceptive subjects. The truthful subject wants to completely respond to the question.

Deceptive: Subject may respond by offering just enough information to satisfy the investigator’s question. Deceptive subjects may ramble and get off track by the time the response is complete.

**D. Response Delivery** – The increase of a subject’s rate, and pitch and clarity.

Truthful: A subject’s phrase where each word is separated for emphasis, his rate and pitch will increase as they relive the event. A truthful subject wants the investigator to understand his responses and, therefore, will speak clearly and in an appropriate volume.

Deceptive: Subjects pitch and rate will decrease, editing information. Subject may mumble during a response or talk so quietly that the investigator has difficulty hearing the response.

**E. Continuity of Response**

Truthful: Subject response is free flowing of thought will naturally stem from another thought.

Deceptive: Where the subject’s continuity of their response is broken through starting and stopping behavior where the thoughts within a response start in one direction and head in another.

**F. Erasure Behavior**

Truthful: Subject will engage in laughs, coughs, or clearings of the throat for a variety of reasons from general nervousness to cold symptoms. The engagement reasons will occur at unspecified times during the interview and interrogation.

Deceptive: Subject uses laughs, coughs, or clearings of the throat following a significant denial.

\*This Erasure Behavior analysis should only be considered when it is followed by a significant denial.

## Appendix H: Coding Sheet for the Reid Method of Detecting False Confessions

In determining if a confession is trustworthy (True v. False) is separate from the legal analysis of voluntariness. For a confession to be trustworthy it must be factual.

### **Types of False Confessions**

In the detection of false confessions, it is imperative to know the definitions of the types of false confessions for identification purposes.

1. “Coerced Compliant Confession – The suspect claims that he confessed to achieve an instrumental gain. Such gains include being allowed to go home, bringing a lengthy interrogation to an end or avoiding physical injury.
2. Voluntary False Confessions – When a subject surrenders to the police in the absence of an interrogation and falsely confesses.
3. Coerced Internalized False Confessions – When the interrogator successfully convinces the subject that:
  - a. There is incontrovertible evidence that the suspect committed the crime even though the suspect claims no recollections of committing it.
  - b. The interrogator explains there is a good and valid reason why the suspect has no memory of committing the crime.
4. Non-Extent Confession – A statement made by the subject where there is no acceptance of responsibility” (Inbau et al, 2013).

### **Guidelines in Determining True or False Confessions**

1. “A confession that was not retracted until days or weeks after it was made is probably truthful.
2. The suspect’s explanation for offering a false confession should be carefully scrutinized.
3. The absence of any specific corroboration within the confession should be viewed suspiciously.
4. It is not unusual for a true confessor to accept full responsibility for committing the crime but omit specific emotional details especially when blamed on memory failure.
5. Inconstancies between the confession statement and those of the victim are common place in true confessions” (Inbau et al, 2013).

#### **True Confession**

A confession that was not retracted not until days or weeks after it was made is probably truthful.

If subject gives perceptions as to why they confessed.

Presence of any specific corroboration.

Not unusual for confessor to omit specific Details when blamed on memory failure

#### **False Confession**

Time lapse of retraction does apply to a coerced Internalized false confession

If suspect gives a specific cause for confessing falsely.

Absence of any specific corroboration.

Faulty corroboration, absence of identifying motivations

**True Confession**

Omits details that are eventually corroborated through forensics. Inconstancies between the confessor's statement and those of victim common place (Inbau et al, 2013).

**False Confession**

Contains false specific details that is uncorroborated.

Faulty corroboration that would taint the credibility of the confessor.

**Definitions of False Confession Checklist**

The types of corroboration to be utilized in evaluating a confession as to its trustworthiness are the following:

1. "Dependent Corroboration – This consists of information about the crime purposefully withheld from all suspects and the media. Therefore when the suspect confesses and gives specific information that only the guilty person would know about the crime. The key is the withholding of the specific facts.
2. Independent Corroboration – This describes information about a suspect's crime that was not known until the confession and was independently verified by the investigator.
3. Rational Corroboration – Elements of rational corroboration include a statement accepting personal responsibility for committing the crime, as well as a detailed description of how the crime was committed, why it was committed and perhaps how the suspect felt after committing the crime. In other words, the credibility of the confession is assessed by evaluating whether the described behaviors appear rational. This represents the weakest form of corroboration, and courts should view it with the most scrutiny." (Inbau et al, 2013).
4. Faulty Corroboration – "The suspect's confession contains details that do not match known facts" (Reid & Associates, 2012).

5. Duress – “An interrogation environment which is intolerable because of interrogation conditions and setting, deprivation of biological needs analyzes the subject’s psychological and physiological manner, such as fatigue, withdrawal, hunger, thirst, or a craving for other biological needs, length of interrogation, isolation, and tag team interrogation (Inbau et al, 2013).

6. Coercion – Physical abuse and or psychological abuse and or threats or promises of physical harm or severe consequences combined with promises of leniency (Reid & Associates, 2012).

7. Psychological Characteristics of Suspect – Some characteristics of suspects make them more susceptible to falsely confessing. Reid defines Low Risk suspects as anyone above the age of 15, with an IQ above 64, with no mental illness or personality disorders.

Reid defines High Risk Suspects as anyone below the age of 16, within IQ below 65, and the presence of mental illness or personality disorders (Reid & Associates, 2012).

\*It should be noted that there is no quantified studies to determine the weighted value of each element of the false confession checklist. Therefore the only thing that can be established is the presence of the elements in the checklist.

#### **False Confession Checklist**

<b>Element</b>	<b>Present Yes or No</b>
Independent Corroboration	
Dependent Corroboration	
Rationale Corroboration	
Faulty Corroboration	
Duress	
Coercion	
High Risk Suspect	

The assessment values to the elements could be rated by the strength of the element in proving the elements association with a true or false confession.

“To identify the probable trustworthiness of a confession clearly requires an analysis of the circumstances and content of the interrogation as well as intrinsic factors within the suspect who offered the confession. In considering the trustworthiness of a confession, the court must consider the totality of circumstances surrounding the confession” (Inbau et al, 2013).

## Appendix I: Reid Confession Voluntariness Analysis

Voluntariness Analysis is a two-step process.

1. Coercion: To determine if coercion is present depends on the presence of any communication or action of threats, promises in exchange for a confession. The current legal climate is that if communicated the confession will be suppressed based on the suspects will was overborne.

As a general guideline, if a confession is obtained through the leverage that addresses real consequences of promises and or threats, coercion maybe claimed.

2. Duress: analyzes the subject's psychological and physiological manner, such as fatigue, withdrawal, hunger, thirst, or a craving for other biological needs, length of interrogation, isolation, and tag team interrogation, and this serves as a primary incentive for the subject to give a confession, duress may be claimed.

The guideline here is to determine if the interrogators intentionally prolonged the interrogation to break the will of the suspect.

To evaluate Duress

1. Can the excessive length of interrogation be explained by the suspect's behavior? Did the suspect offer a series of different versions of events before offering the first incriminating statement?

2. Did the suspect physically or verbally attempt to seek fulfillment of biological needs?

A. If they did were the requests denied or used as leverage to obtain a confession.

B. Document lack of requests

C. Evaluate if the suspect decided that the condition of the interrogation were intolerable.

3. Were there any threats made with respect to denying the suspect basic biological needs unless they confessed? (Inbau et al, 2013).



Appendix J: Coding Sheet for Legal Casebook Analysis on Involuntariness of Confessions

The key areas in assessing involuntariness of a confession are: whether a subjects will was overborne at the time the subject confessed. The second area is the police mistreatment of subjects in wearing them down to obtain a confession. To asses this there are factors developed through case law that have been found either on their own or through a totality of circumstances have rendered a confession involuntary.

<b>Elements</b>	<b>Present Yes or No</b>
Age/Juvenile	
Lack of Counsel	
Drugs used to assist confession	
Low Education	
Low IQ	
Deprived of Food	
Highly suggestible questioning	
Length of Detention	
Solitary Confinement	
Incompetent	
Length of Interrogation	
Mental abuse	
Mental Illness	
Shuttled to another jail far away	
Multiple Officers/Interrogators	

Noticeable Injury/Sickness

Lacked experience with police

Physical Abuse or Threat of force

Relay Questioning

Not advised of Miranda Warnings

Violation of Rights

Lack of Sleep/Rest

Denied Social Support

Stranger to Community

Trickery

Deceptive

Promises Leniency made if confessed

Threats of adverse governmental action

Combination of Factors Listed above.

Appendix K: Coding Sheet for the Identification of the Reid Interview and Interrogation

Method in King and Snook's Study

**Reid Themes Observed in Interrogations**

Appeal to suspect's pride with flattery

Play one offender against the other

Minimize the moral seriousness of the offense

Point out the futility of resisting telling the truth

Sympathize with suspect by condemning others

Use third person theme

Anyone else under similar circumstances might have done the same

Suggest non-criminal intent for the offense

Point out the possibility of exaggeration on part of the accuser or victim

Point out the consequences and futility of continuation of criminal behavior

Exaggerate the nature and seriousness of the offense

**Reid Guidelines and Suggestion Observed in Interrogations**

Did not pace the room

Suspect not handcuffed/shackled during interrogation

Has evidence folder in hand upon entry/beginning of interrogation

No telephone in room

No small loose objects within suspect's reach

No handshake between suspect and interrogator upon meeting

Suspect alone in interrogation room prior to entry of interrogator

Straight back chairs

No decorative ornaments in room

Room plain in color

Interrogator and suspect seated to directly face each other

Polygraph offer made to suspect

Police caution given by someone other than primary interrogator

(King & Snook 2009)

## Appendix L: Coding Sheet Influence Tactics and Coercive Strategies Observed in

## Interrogations

Based on Leo's Study in 1996

<b>Influence Tactics</b>	<b>Present Yes or No</b>
Confront suspect with existing evidence of guilt	
Offer moral justifications/psychological excuses	
Use praise and/or flattery	
Identify contradiction in suspect's account	
Appeal to suspect's conscience	
Minimize the moral seriousness of the offense	
Appeal to interrogator's expertise/authority	
Appeal to the suspect's self-interest	
Minimize the facts/nature of the offense	
Undermine suspect's confidence in denial of guilt	
Any behavioral analysis interview questions	
Invoke metaphors of guilt	
Touch suspect in friendly manner	
Appeal to the importance of cooperation	
Accuse suspect of other crimes	
Refer to physical symptoms of guilt	
Minimize the nature/purpose of questioning	
Good cop-bad cop routine	

Yell at suspect

Attempt to confuse the suspect

Exaggerate the facts/nature of the offense

Exaggerate the moral seriousness of the offense

Exaggerate the nature/purpose of questioning

**Coercive Strategies Observed in Interrogation**

Suspect was not read rights to silence and legal counsel

Interrogator threatened suspect with psychological pain

Interrogator touched suspect in an unfriendly manner

Interrogator's questioning manner was unrelenting, badgering, or hostile

Interrogator promised the suspect leniency in exchange for an admission of guilt

Suspect is not permitted to invoke his or her rights to silence of legal counsel

Suspect was in obvious physical pain

Interrogator deprived the suspect of an essential necessity

Suspect was in obvious psychological pain

Interrogation lasted longer than six hours

(Leo, 1996)

## Appendix M: Interview and Video Interrogation Checklist

**Miranda**

What time was contact made with you?

Was your interview or interrogation audio or video recorded?

How was contact made with you by authorities in regards to your case?

What did the authorities say to you when they made contact with you?

Did you go to the police station or did they pick you up?

What was the description of the area where you were questioned?

Was the door locked?

Did you feel that you were free to leave? If not describe why you did not feel free to leave.

Did the police read your Miranda rights?

Was there any conversation by the police to you prior to the Miranda warnings were advised to you? If so what?

Was there any conversation to you after the advisement of the warnings and before you waived your Miranda Warning?

Were any promises or threats given to you by police before the waiver?

Did you sign the waiver or just give a verbal waiver?

**Coercion**

During the interrogation, was there any promises of leniency?

If so what promises were made?

Was there any physical abuse or threats of physical abuse?

Was there any verbal threats?

What was the demeanor of the interrogator?

**Duress**

Were any physical needs not met?

Such as:

Such as bathroom breaks

Food

Sleep

**Involuntariness**

Were you on any kind of medication? If so what were they? Did you have your meds that day?

Did you have any physical problems occurring at that time?

Are you under a Dr.'s care? If so what for?

Have you been diagnosed with any psychological problems?

If so what are they?

Are you taking any meds for those problems?

Are you under a psychologist or psychiatrist care?

If so for what?

Have you been given an IQ test? Do you know your score?

How old are you?

What is the highest grade in school did you complete?

Were you in Special Education Classes?

What schools did you attend?



Have you had any previous experience with law enforcement contacting you?

What is your criminal history?

Did law enforcement give you any facts of the crime or show you any evidence of the crime?

During the interrogation did law enforcement trick or deceive you in combination with a promise?

If so how?

How long was the interrogation?

Was there any corroboration of your statement? In other words did law enforcement tell you that they had witnesses or crime scene evidence linking you to the crime?

Is there any corroboration of your statement?

## Appendix N: Interview and Video False Confession Assessment

## False Confession Elements

Suggestibility

Contamination of facts

Repeated Questioning and Leading questions

Causing extreme mental stress such as:

Hopelessness

Extreme Anxiety

Guilt

Were there any memory distortions?

Were you under the influence of drugs or alcohol at the time of the crime?

Does the defendant trust his memory? If not why?

Was there any guessing on defendant's part?

Do you remember committing the crime? If not why?

Was there anything that was said to you that caused you to believe you committed the crime?

Was there a false memory (to detect this rich in detail coupled with detail right up to the event and then right after event) Memory recall questionnaire.

Was there an absence of any specific corroboration or faulty corroboration?

Were there any Involuntary Elements such as:

Low IQ

Lack of Mental Stability

Physical impediments

Age

Previous experience with Law Enforcement

Was there any trickery or deceit coupled with promises or threats or both?

Were there any elements of Coercion?

Promises of Leniency

Threats verbal or real physical harm

Psychological threats, such as taking job or family away?

Were there any elements of Duress?

Any physical needs deprived

Undergoing Health problems

Drug and Alcohol problems

Sleep Deprivation

Length of Interrogation

## Appendix O: Interview and Interrogation and Confession Assessment Forms

Note: If possible transcribe verbatim any audio and/or video of interview, interrogation and confession.

### **Interview Miranda Assessment**

Present during interview

Were notes taken?

Was Subject in Custody?

What were the custodial or noncustodial factors?

Was Miranda given? Time, place, and by whom.

Was a waiver obtained? Signed or verbal, time, date and place

Did subject invoke Miranda at anytime? Time, date and place

Did subject reinitiate interview/interrogation? Time, date, and place

Was a post invocation advisement & waiver of Miranda obtained? Time, date, and place

If so, what was the wording?

Was there any post invocation questioning? Time, date, and place

Recorded Audio: Yes, No

Recorded Video: Yes, No

### **Interview Form**

Date

Time interview started

Demographic information of subject (name, age, dob, ph#, address, city, state, right or left handed, occupation, employment, marital status, any children, family history)

Physical condition

Name of physician

Names of prescribed medications being taken: dosage, and times taken

Names of over the counter medications/supplements being taken.

Any physical disabilities

Is subject experiencing any discomfort

Educational background & IQ, any learning disabilities

Any psychological conditions or disabilities

Names of prescribed medications being taken: dosage, and times taken

Name of psychologist/psychiatrist

How much sleep has subject had in last 24 hrs.

When did subject last eat?

How does subject feel now

Note: Establish a norm in responses from non-threatening questions to threatening questions in reference to nonverbal behavior and verbal behavior.

Nonverbal behavior: Note and observe indicators whether they are present or not.

Note and observe before question/during question/end of question

Note and observe before answer/during answer/end of answer

Break eye contact

Maintained eye contact

Cross arms

Clear throat

Deep breath/sigh

Grooming gesture

Illustrators

Nervous laugh

Shift in chair

Answered no to question

Answered yes to question

Repeat question

Scratching

Early response

Delayed response

Strong & Emphatic

Have subject write out a narrative as to what happened that day in detail.

Have subject tell you what happened verbally as to what happened that day.

Ask subject: what information they have about this incident.

Ask subject: who do you think would have done this

Ask subject: if they have an alibi when the incident occurred

Who were you with?

What were you doing?

What is your attitude about the incident?

What do you think should be done to the person who committed the crime?

Do you think they should be given a second chance?

What is your attitude about being questioned about the incident?

Did you tell family members about being questioned?

What did you tell them?

What did they say?

Did you talk to an attorney before being questioned today?

What did your attorney say?

How can we confirm the information you are telling us today?

How credible in your opinion is the accuser?

Did you have the opportunity to commit this crime?

If not you, then who would have committed this crime?

Why do you think this crime was committed?

Did you ever think about committing this crime or something like it?

Did you ever dream or fantasize about committing this crime or something like it?

Note: Do not contaminate the interview with facts of the crime.

Is there any objection made by the subject at any time during interview?

Utilize a bait question (i.e., is there any reason why the accused or witnesses say you committed the crime?)

Investigation Results: Once the investigation is completed how do you think the investigation will come out?

Time interview ended? Date    Time

Interview Decision

Let subject go.    Yes    No

Proceed to interrogation Yes No

What is the basis to Interrogate?

(Used with permission from Reid & Associates, 2019)

### **Interrogation Confession Assessment**

Recorded? Yes No

Audio? Yes No

Video? Yes No

Who was present during Interrogation?

Were notes taken?

Accusation statement: (exact wording)

Subjects response to accusation statement: (exact wording)

Transition statement: (of giving an opening for subject to confess) (exact wording)

Theme development: (Does the language turn into a promise or threat)

Was a proper theme developed?

Did the theme turn into a promise?

Time of first admission

Any breaks during interrogation?

Any food provided?

Any water provided?

Any bathroom breaks provided?

Are any promises of leniency or threats communicated to the subject?



Is any duress or coercion (physical, verbal, psychological, or medical treatment withheld during interrogation?

Any admissions given by subject?

If so what facts of the crime corroborated the admission?

Did the admission lead to new evidence?

Was details given by the subject?

Date and time interrogation ended

(Used with permission from Reid & Associates, 2019)

### **Confession Assessment**

Present at confession

Any notes taken

Written?    Yes    No

Verbal?    Yes    No

Both?      Yes    No

Confession Recorded?    Yes    No

Audio?    Yes    No

Video?    Yes    No

Note: Transcribe all recordings verbatim

Details of Confession: (Does the confession lead to new evidence (linear))

Corroborate with existing evidence.

If no corroboration reevaluate for a false confession

Ask why subject decided to tell the truth

Has the subject left anything else out of the confession?

Ask how the subject feels they were treated today?

Did anybody mistreat you, threaten you, or make any promises to you?

(Inbau, et al., 2013)

### **False Confession Assessment**

Are any of the following present or not present? If present state yes if not state no.

Independent Corroboration

Dependent Corroboration

Rationale Corroboration

Faulty Corroboration

Duress

Coercion

Promises

Threats

High Risk Suspect

Contamination (What are the facts that were contaminated in the interrogation)

Parroting (what facts were being fed back to the interrogator of facts provided in interview and/or interrogation)

Cannot give details of crime

Details of corroboration

Linear to New evidence

Circular to present evidence (Inbau, et al., 2013)

Appendix P: Assessment to determine if Reid Technique was used in Interrogation

Step One: Direct positive accusation: Was there a direct positive accusation. Present?

Yes No

Step Two: Theme development: (excuses, justifications, but not legal justifications) was a theme developed to induce cooperation from the suspect to confess. Present?

Yes No

Step Three: Handling denials: Was there a handling of denials used by the interrogator, by using verbal or nonverbal methods to cut the subjects denial off. Present?

Yes No

Step Four: Overcoming objections: Did the interrogator express agreement & understanding and explained to the subject the positive implications of the objection if true and the negative implications if objection is not true. Present?

Yes No

Step Five: Attaining the subject's attention: Did the interrogator take steps to regain the subject's attention if withdrawn by physically moving closer to focus the subject's attention to interrogator's themes. Present?

Yes No

Step Six: Handling subject's passive mood: Did the interrogator shorten his themes when subject shows signs of defeat or remorse and moves toward alternative question. Present?

Yes No

Step Seven: Presenting the alternative question: Did the interrogator present two choices for subject's involvement of presenting an acceptable choice and an unacceptable choice if answers either one implicates subject. Present?  
Yes No

Step Eight: Obtaining the verbal confession: Did the interrogator in obtaining the confession get details of the crime that leads to new evidence without leading questions and contamination. Present?  
Yes No

Step Nine: Elements of written confession: Was the verbal statement converted to written form typed or electronically recorded and establishes voluntariness of the subjects written statement. Present?  
Yes No

(Used with permission from Reid & Associates, 2019)

## Appendix Q: Reid Behavior Profile Guidelines

### **Key points to Guidelines**

No one behavior indicates that a subject has withheld relevant information.

Look for clusters or groups of behaviors as a more reliable indicator of whether a subject has withheld relevant information or told the truth.

Carefully assess the timing and consistency of the subject's behavior's when answering the questions.

Be aware of the different factors that can affect the reliability of behavior conditions such as medical conditions.

Be aware of the relationship and nonrelationship of BAI in evaluating truthful and untruthfulness with false confession assessment.

Note: Check if the following is present, if not present leave blank.

### **Attitudes**

#### **Truthful**

Composed

Nervousness decreases

Appropriate concern

Cooperative

Direct/spontaneous

Open/volunteers information

Sincere

**Untruthful**

Overly anxious

Nervousness increases

Feigned unconcern

Lack of Cooperation

Evasive/hesitant

Defensive/Guarded

Phony/overly polite

Complains/rationalizes

**Body Postures****Truthful**

Upright, but not frigid

Frontally Aligned

Natural changes of posture

Open posture

Leans forward when answering

**Untruthful**

Slouches/unnaturally rigid

Turned away

Immobile/erratic posture changes

Barrier posture

Retreats or withdraws when responding

**Eye Contact****Truthful**

Generally engages in appropriate eye contact and looks directly at the interviewer when answering key questions

**Untruthful**

Generally avoids eye contact when answering key questions or may display extreme eye contact such as staring.

**Gestures & Movements****Truthful**

Less likely to engage in grooming gestures or major body movements when answering key questions.

**Untruthful**

More likely to engage in grooming gestures or major body movements as tension relievers when answering key questions.

**Verbal Responses****Truthful**

Uses realistic language

Denies in general

Direct & spontaneous answers

Stays on topic

Does not use qualifiers

Volunteer's useful information

Demonstrates appropriate recall

**Untruthful**

Avoids realistic or harsh words

Overly specific denials

Delayed and evasive answers

Utilizes stalling techniques including repeating the question

May talk off subject

Qualifies answers “not really” & I don’t think so”

Lack of helpful information, guarded responses to questions

May have a selective memory

(Used with permission from Reid & Associates, 2019)



## Appendix R: Federal PIK Instruction for Voluntariness

### 1.25

#### VOLUNTARINESS OF STATEMENT BY DEFENDANT

##### (Single Defendants)

Evidence has been presented about a statement attributed to the defendant alleged to have been made after the commission of the crime (or crimes) charged in this case but not made in court. Such evidence should always be considered by you with caution and weighed with care. You should give any such statement the weight you think it deserves, after considering all the circumstances under which the statement was made.

In determining whether any such statement is reliable and credible, consider factors bearing on the voluntariness of the statement. For example, consider the age, gender, training, education, occupation, and physical and mental condition of the defendant, and any evidence concerning his treatment while under interrogation if the statement was made in response to questioning by government officials, and all the other circumstances in evidence surrounding the making of the statement.

After considering all this evidence, you may give such weight to the statement as you feel it deserves under all the circumstances. If you determine that the statement is unreliable or not credible, you may disregard the statement entirely.

##### Comment

The Committee has not used the terms "confession" and "admission." These labels that the law gives to statements may be confusing in jury instructions. "[S]tatements' is a more neutral description than 'confession,' and should be used in its place . . . unless the statements can be considered a 'complete and conscious admission of guilt—a strict confession,'" *Opper v. United States*, 348 U.S. 84, 91 (1954), in which case the instruction may be adapted by the trial judge.

In *Lego v. Twomey*, 404 U.S. 477 (1972), the Supreme Court set the minimum burden of proof required to establish that a confession is voluntary when such confession has been challenged as involuntary. The Court stated that the burden must be "at least by a preponderance of the evidence." The court stated that the states are free to adopt a higher standard as a matter of state law. In *United States v. McCullah*, 76 F.3d 1087, 1100 (10th Cir. 1996), the Tenth Circuit incorporated the language of *Lego*, "at least by a preponderance of the evidence," thereby establishing the burden for this circuit.

*United States v. Toles*, 297 F.3d 959, 965-66 (10th Cir. 2002), discusses voluntariness analysis but does not include gender specifically among factors to be considered. Nothing in *Toles* seems to suggest that those factors specifically referred to are exhaustive. According to *Toles*, the determination of voluntariness is based on the totality of circumstances, including the characteristics of the accused and the details of the interrogation. *See also United States v. Gonzales*, 164 F.3d 1285, 1289 (10th Cir. 1999). Such factors include age, intelligence, education of the defendant, length of detention, length and nature of questioning, whether defendant was advised of constitutional rights and whether defendant was subjected to physical punishment. *United States v. Glover*, 104 F.3d 1570, 1579 (10th Cir. 1997) *abrogated on other grounds*, *Corley v. United States*, 129 S. Ct. 1558 (2009).

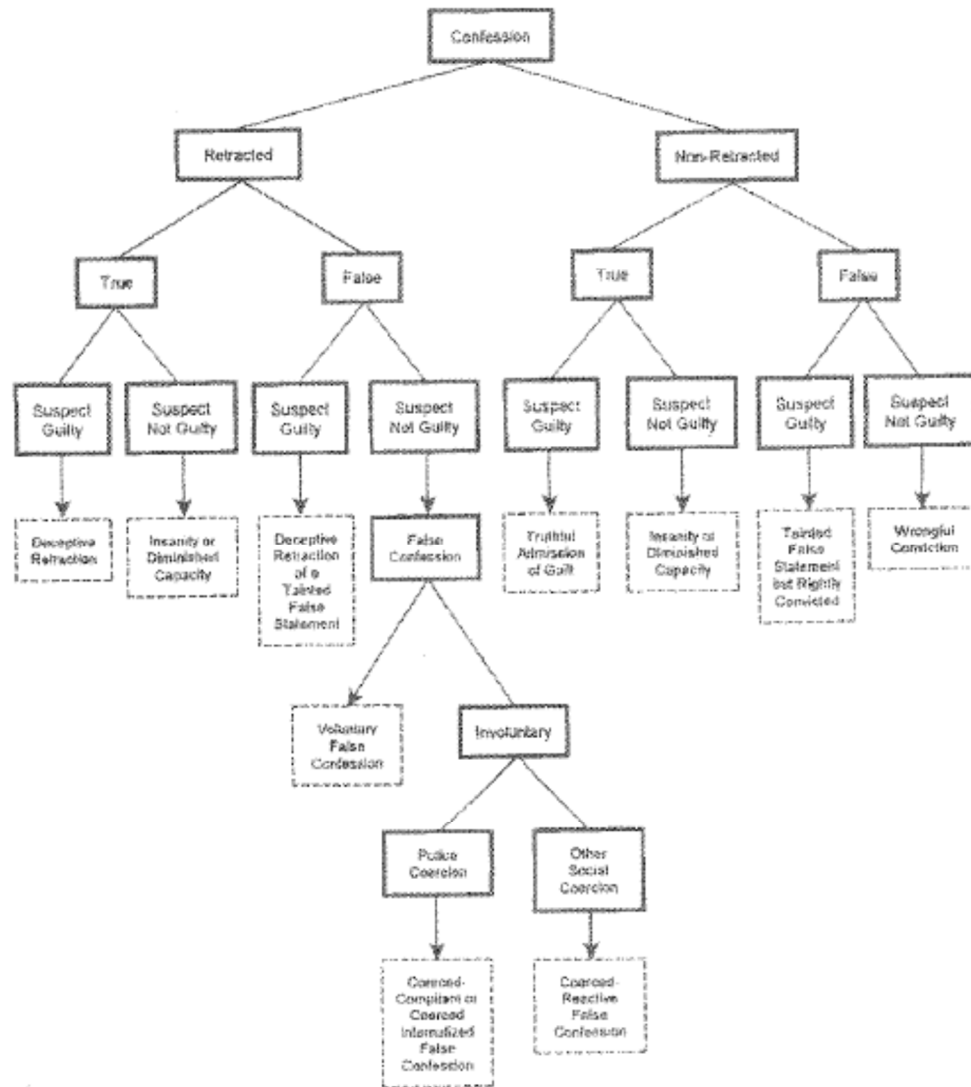
The instruction is consistent with *United States v. March*, 999 F.2d 456, 462-63 (10th Cir. 1993), and *United States v. Janoe*, 720 F.2d 1156, 1163-64 (10th Cir. 1983).

For a discussion of how the length of time between a defendant's arrest and his presentation before a magistrate may affect the voluntariness of statements made in the interim, *see Corley v. United States*, 129 S. Ct. 1558 (2009).

#### Use Note

*See* Instruction 1.05.1 for "preponderance of evidence."

## Appendix S: Decision Tree for Conceptualizing Types of Confessions



A Decision Tree for Conceptualizing Types of Confessions. (McCann, 1998)

## Appendix T: Coding Sheet for Interrogation Analysis for Deception, and Voluntariness

**Pre Interrogation Variables**

Method of observation of interrogation

A. Video Tape

B. Audio Tape

Was the suspect under arrest /not free to leave?

Was the suspect not under arrest/free to leave?

Was the interrogation custodial or non-custodial?

Where was the interrogation performed?

What was the type of offense suspect interrogated about?

How many interrogating officer's present?

Race of interrogating officer?

Gender of primary interrogating officer?

Race of secondary interrogating officer?

Gender of secondary interrogating officer?

Who does suspect seem to be communicating with the most?

Does the suspect seem confused?

Is the suspect under the influence?

Does the suspect have any physical or mental disabilities?

Age of Suspect?

Race of Suspect?

Gender of Suspect?

Suspect Employed?

Occupation of suspect?

Class Status of suspect?

Education level of suspect?

Conviction record of suspect?

Strength of evidence against suspect prior to interrogation?

### **Interrogation Process Variables**

#### **Interview**

Were the Miranda Warnings Given?

Were the Miranda Warnings read from the standard form?

If Miranda Warnings were not read from the standard form, were Miranda warnings stated correctly?

Did suspect waive or invoke Miranda warnings?

Did suspect sign waiver?

Possible interview tactics employed by interrogator to ascertain truth or deception through verbal or non-verbal responses from suspect? (Reid Behavior Analysis Interview)

A. Do you know why I have asked to talk to you here today?

B. Did you Commit \_\_\_\_\_?

C. Who do you think committed \_\_\_\_\_?

D. Is there any reason you can think of that someone would name you as a suspect?

E. Who would eliminate you from suspicion?

- F. How do you feel about being interviewed concerning this \_\_\_\_\_?
- G. Why do you think the victim is saying you are the one who did this?
- H. Who do you think would have had the best chance to do \_\_\_\_\_?
- I. Why do you think someone would have done \_\_\_\_\_?
- J. Did you ever think about doing \_\_\_\_\_ even though you didn't go through with it?
- K. Tell me why you wouldn't do something like this?
- L. What do you think should happen to the person who did this?
- M. How do you think the results of the investigation will come out on you?
- N. If it becomes necessary would you be willing to take a polygraph test to verify what you have told me about this issue, is the truth?
- O. Do you think the person who did this would deserve a second chance under any circumstances?
- P. Is there any evidence that you could think of to support your story?
- Q. Do you have an alibi?
- R. What is your alibi? (details)
- S. Is there any reason why you would have done \_\_\_\_\_?
- T. Any other Behavior Analysis Interview questions.

### **Interrogation Tactics Employed by the Interrogator**

- A. Identify contradictions in interviewee's story
- B. Undermine the interviewee's confidence in denial of involvement
- C. Attempt to confuse the interviewee
- D. Invoke metaphors of guilt
- E. Refer to physical symptoms of guilt
- F. Confront interviewee with existing evidence
  - 1. Physical evidence
  - 2. Eyewitness evidence
  - 3. Co-conspirator testimonial evidence of his/her guilt
  - 4. Photo/real line-up ID
  - 5. Polygraph results
  - 6. Other evidence
- G. Confront interviewee with false evidence of his/her guilt
  - A. Physical evidence
  - B. Eyewitness evidence
  - C. Play one against the other (specify)
  - D. False ID of line-up (photo or real)
  - E. Running a fake polygraph
  - F. Polygraph results

- G. False lab reports or other reports
- H. Other false evidence
  - H. Accuse interviewee of other crimes
  - I. Exaggerate the nature/purpose of the questioning
  - J. Exaggerate the facts/nature of the offense
  - K. Exaggerate the moral seriousness of the offense
  - L. Minimize the nature or purpose of the questioning
  - M. Minimize the facts/nature of the offense
  - N. Minimize the moral seriousness of the offense
  - O. Offer interviewee moral justifications/psychological excuses to account for suspects behavior
  - P. Use praise and flattery
  - Q. Appeal to expertise/authority of interrogating officer
  - R. Appeal to interviewee's conscience
  - S. Appeal to interviewee's self-interest
  - T. Touch interviewee in a friendly manner
  - U. Touch interviewee in an unfriendly manner
  - V. Play on interviewee's fears
- A. Threat of actual or potential physical harm
- B. Interviewee would get in trouble by not telling
- C. It would look bad for interviewee if he remained silent
- D. Tell of trouble to family



E. Interviewee will receive more punishment if he does not confess

F. Other suspect(s) might have cut a deal before interviewee

G. Other

W. Good Cop/Bad Cop routine

X. Yell at suspect

Y. Other

### **Interrogation Outcome Variables**

Length of interrogation?

Was Interrogation coercive according to contemporary judicial standards?

Yes (If one or more below)

- Miranda warnings were not read; or suspect not permitted to invoke
- Suspect touched in unfriendly manner
- Suspect in physical pain
- Suspect threatened with harm if he or she didn't confess
- Suspect received promises of leniency
- Suspect deprived of biological essential necessities
- Unrelenting, badgering, hostile questioning
- Interrogation exceeds reasonable time limit, (6 hrs.)
- Will is overborne or voluntariness overcome by some other factor or combination of factors
- Other

No (if not one or more of above)

Contamination of non-public facts

Outcome of questioning

- Received full confession
- Received (intentional) admissions
- Received (unintentional) incriminating statements
- Did not receive any incriminating information
- Was a written statement obtained
- Other

Strength of evidence obtained solely from interrogation

- Weak
- Strong
- Moderate
- Contaminated

## Appendix U: Coding Procedure for Coding Sheets in Confession Analysis using NVIVO

### **Coding Procedure**

The coding procedure will be as follows: All videos will be analyzed according to the available data within in the confession videos. The videos will be transcribed and analyzed according to the procedures in content analysis, discourse analysis, and conversation analysis. The videos will be manually coded according to the coding sheets in Appendices F, G, H, I, J, K, L, M, N, O, P, S, T, V and X. This coding procedure will explore for similarities between the coding sheet answers and the identified false confessions. Then after the manual coding the coding will be conducted through NVIVO, after that is conducted then the coding will be rechecked manually and then peer reviewed.

### **Application of Coding Procedure to NVIVO**

The transcripts will then be coded through NVIVO 10 Pro to obtain a cluster of the phrases through each variable in each coding sheet. Then cluster of phrases will be coded through all the coding sheets together. The results will explore the common similarities between each individual coding sheet as compared with all of them put together. This will enable an analysis of the common similarities of the different methods.

## Appendix V: Eight Basic Parts of Speech

### THE EIGHT PARTS OF SPEECH

There are eight parts of speech in the English language: noun, pronoun, verb, adjective, adverb, preposition, conjunction, and interjection. The part of speech indicates how the word functions in meaning as well as grammatically within the sentence. An individual word can function as more than one part of speech when used in different circumstances. Understanding parts of speech is essential for determining the correct definition of a word when using the dictionary.

#### 1. NOUN

A noun is the name of a person, place, thing, or idea.

A noun is a word for a person, place, thing, or idea. Nouns are often used with an article (*the, a, an*), but not always. Proper nouns always start with a capital letter; common nouns do not. Nouns can be singular or plural, concrete or abstract. Nouns show possession by adding 's. Nouns can function in different roles within a sentence; for example, a noun can be a subject, direct object, indirect object, subject complement, or object of a preposition.

#### 2. PRONOUN

A pronoun is a word used in place of a noun.

A pronoun is a word used in place of a noun. A pronoun is usually substituted for a specific noun, which is called its antecedent. In the sentence above, the antecedent for the pronoun *she* is the girl. Pronouns are further defined by type: personal pronouns refer to specific persons or things; possessive pronouns indicate ownership; reflexive pronouns are used to

emphasize another noun or pronoun; relative pronouns introduce a subordinate clause; and demonstrative pronouns identify, point to, or refer to nouns.

### 3. VERB

A verb expresses action or being.

The verb in a sentence expresses action or being. There is a main verb and sometimes one or more helping verbs. ("*She can sing.*" *Sing* is the main verb; *can* is the helping verb.) A verb must agree with its subject in number (both are singular or both are plural). Verbs also take different forms to express tense.

### 4. ADJECTIVE

An adjective modifies or describes a noun or pronoun.

An adjective is a word used to modify or describe a noun or a pronoun. It usually answers the question of which one, what kind, or how many. (Articles [a, an, the] are usually classified as adjectives.)

### 5. ADVERB

An adverb modifies or describes a verb, an adjective, or another adverb.

An adverb describes or modifies a verb, an adjective, or another adverb, but never a noun. It usually answers the questions of when, where, how, why, under what conditions, or to what degree. Adverbs often end in -ly.

### 6. PREPOSITION

A preposition is a word placed before a noun or pronoun to form a phrase modifying another word in the sentence.

A preposition is a word placed before a noun or pronoun to form a phrase modifying another word in the sentence. Therefore a preposition is always part of a prepositional phrase. The prepositional phrase almost always functions as an adjective or as an adverb. The following list includes the most common prepositions.

## 7. CONJUNCTION

A conjunction joins words, phrases, or clauses.

A conjunction joins words, phrases, or clauses, and indicates the relationship between the elements joined. Coordinating conjunctions connect grammatically equal elements: and, but, or, nor, for, so, yet. Subordinating conjunctions connect clauses that are not equal: because, although, while, since, etc. There are other types of conjunctions as well.

## 8. INTERJECTION

An interjection is a word used to express emotion.

An interjection is a word used to express emotion. It is often followed by an exclamation point.

Appendix W: Coding Manual for Interview and Interrogations in Evaluating  
Involuntariness and False Confessions through the Reid Method of Interview and  
Interrogations, the Legal Casebook Method, and the Linguistic Method

### Introduction

This coding manual will assist in categorizing the data from the confession videos to identify where the data will fall within these three methodologies to determine if these methods can detect the attribution and attribution error within false confessions.

#### Coding Procedure for Coding Sheets in Confession Analysis using NVIVO

##### **Coding Procedure**

The coding procedure will be as follows: All videos will be analyzed according to the available data within the confession videos. The videos will be transcribed and analyzed according to the procedures in content analysis, discourse analysis, and conversation analysis. The videos will be manually coded according to the coding variables set out in this manual. This coding procedure will explore for similarities between the coding sheet answers and the identified false confessions. After the manual coding the coding will be conducted through NVIVO and the Linguistic Inquiry program, finally the coding will be rechecked manually and then peer reviewed.

##### **Application of Coding Procedure to NVIVO**

The transcripts will then be coded through NVIVO 10 Pro to obtain a cluster of the phrases through each variable in each coding sheet. Next clusters of phrases will be coded through all the coding sheets together. The results will explore the common similarities

between each individual coding sheet as compared with all of them put together. This will enable an analysis of the common similarities of the different methods.

#### Application of Coding to Linguistic Inquiry and Word Count Program

The text of the transcript will then be analyzed by the Linguistic Inquiry and Word count program that analyzes different emotions, thinking styles, social concerns, and parts of speech. The data will then be analyzed for similarities between true and false confessions, and true and deceptive confessions.

#### **The Application of Detection of Deception to True and False Confessions**

The connection in applying deception detection techniques to true and false confessions is distinguished through the analysis of false confessions containing detailed facts of the crime. This was found in a study by Appleby et al. (2013) and Virj (2008). The causation determined was that the suspect was shown evidence collected at the crime scene, this was supported in a study by Professor Garrets study in 2010. This contradicts a study conducted by Masip, Sporer, Garrido, & Herrero (2005). This study showed that there was less detail found in their sample of false confessions. The difference in these studies could come in the form of a causation of false memory (Inbau, et al., 2011).

The verbal cues of deception connected to false confessions were found in studies by Appleby et al. (2013), where remorse or apologies were found more frequently in false confessions. The second verbal cue that was detected in a study by Willen & Stromwall (2012) found that doubts about their confessions are expressed more frequently in false confession than true confessions. To validate this research the following codes will be



applied in this study to determine if identification of these codes can be detected in false confessions.

#### Codes

\_\_\_\_\_ Did suspect express remorse or apologies during the confession?

\_\_\_\_\_ If so what was the transcript of the verbal response?

\_\_\_\_\_ Did suspect express doubts about their statement during the confession?

\_\_\_\_\_ If so what was the transcript of the verbal response?

\_\_\_\_\_ Did the false confession contain rich detail of facts of the crime?

\_\_\_\_\_ If so what were the rich detail of facts of the crime described in the confession?

\_\_\_\_\_ Did the false confession contain a lower amount of detail of facts of the crime?

\_\_\_\_\_ If so what were the lack of details of facts of the crime described in the confession?

### **Reid Method of Interview and Interrogation**

#### **1. Type of Interrogation Method**

##### 101. Reid Method of Interview and Interrogation

A. Factual Analysis- This will include any analysis of the facts of the crime and evidence as it pertains to potential suspects.

##### Defined

Fact Analysis is the ability to identify from factual information the probable motivation for a crime, unique access requirements; the window of time during which the crime was committed, and propensity characteristics about the person who committed the crime.

##### Guidelines for the Reid Factual Analysis

1. Prior to an interview, and preferably before any contact with the suspect, the investigator should attempt to become thoroughly familiar with all the known facts and circumstances of the offense.
2. Correlate all forensic evidence to interviews and interrogations. Keep an open mind when analyzing forensic evidence to other facts and evidence to establish an M.O. Evaluate discrepancies. Marshall the evidence objectively.
3. Remember that when circumstantial evidence or especially physical evidence points toward a particular person, that person is usually the one who committed the offense. However keep an open mind and do not let tunnel vision interfere with your analysis
4. Be aware of any confirmation bias of the interrogator or any fact givers information related to the interrogator.

#### Information about the Offense needed for Factual Analysis

1. The legal nature and elements of the crime.
2. Date, Time, and Place of the Occurrence in accurate detail
3. Description of the crime area and of the crime scene itself
4. M.O of crime and known details of its commission
5. Possible motives for the commission of the crime
6. Incriminating factors regarding a particular suspect.

#### Information about the Suspect or Suspects needed for Factual Analysis

1. Personal background information

2. Present physical and mental condition, as well as medical and psychological history, including any addictions to drugs, alcohol, or gambling.

3. Attitude toward investigation

4. Relationship to victim or crime scene

5. Incriminating facts or possible motives

6. Alibi or other statements that the suspect related to investigators.

7. Religious or fraternal affiliations or prejudices

8. Home environment

9. Social Attitudes in general

10. Hobbies

11. Sexual interests or deviation, But only if directly relevant to the investigation

12. Abilities or opportunities to commit the offense

Information about the Victim or Victims

Companies or other institutions

1. Attitudes and practices toward employees and public

2. Financial status

Persons

1. Nature of injury or harm and details thereof

2. Age, sex, marital status, and family responsibilities and number of dependents

3. Social attitudes regarding race, nationality, religion, etc.

4. Gang Affiliation, or any other Organized crime affiliation

5. Financial and Social Circumstances

6. Physical and mental characteristics

7. Sexual interests or deviations, But only if directly relevant to the investigation

8. Blackmail potentialities

Coding

\_\_\_\_\_ Were any of the above elements obtained for factual analysis?

\_\_\_\_\_ If so, identify which ones were obtained:

#### B. Reid Case Solution Possibilities Guidelines

Start an investigation by asking three important questions:

1. What information did the guilty person have to know or possess to commit the crime?

2. What did the guilty person do to commit this crime?

3. Why was the crime committed the way it was and at the time it was committed?

Codes

\_\_\_\_\_ Were these questions answered either in the interview and interrogation or before?

\_\_\_\_\_ If so which ones:

\_\_\_\_\_ What were the answers to the questions?

Motives and Characteristics of the Crime

1. Consider each crime from several possible motivations

2. Identify characteristics of the crime or the offender to help focus the investigation around particular suspects. Analyze the crime scene from the perspective of the offender what the guilty person must have done or known to have committed this crime.

3. Always consider the possibility of complicity involving inside knowledge, preparation or planning.

4. In cases involving a human victim, consider the possibility of an exaggerated or false claim.

5. A truthful victim's account will follow the guideline of adhering to normal human behavior both for the victim and the assailant.

6. Do not allow a single piece of circumstantial evidence to focus the entire investigation around one suspect to the exclusion of other possibilities.

7. Do not discount any information developed during an investigation; what might appear initially as irrelevant information may provide a valuable lead.

8. A suspect's alibi should be thoroughly checked out whenever possible prior to any Interrogation.

9. In some instances the reporter or discoverer of a crime should be given prime consideration as a suspect.

10. Before conducting an interrogation an effort should be made to learn if the suspect has been previously interrogated by someone else investigating the case, and how a custodial suspect had been treated during this period of incarceration. Was there any illegal actions on the part of the interrogator towards the suspect during interrogation?

Did the suspect confess and then retract confession? Look for evidence of abuse, threats or promises that might have induced an innocent person to confess.

11. Does the suspect have any known physical, mental, or emotional impairment? Has the suspect been taking any medication? If so determine if medication(s) could affect

reactions during interview and interrogation. Physical, mental, emotional impairment and medications could lead to misleading behaviors.

12. Determine suspect's previous attitude about anticipated interview if possible.

Codes

\_\_\_\_\_ Were any of the above elements followed if so which ones:

### C. Interview process

1. Non-threatening questions-These questions elicit biographical information, employment information, and casual conversation that can build rapport with the suspect.

2. Investigative questions- These questions elicit information through letting the suspect tell their side of the story, then asking questions to clarify details of the story. Then ask direct questions to develop additional information that was not addressed in the initial story or in the clarification questions. Then develop information to ascertain motive and opportunity.

### 3. Behavior provoking questions

1. Purpose-Advise as to general nature of the investigation, then ask the question as to their understanding of the purpose of this interview.

2. History/You-(History) this is where the investigator succinctly states the issue under investigation then (You) ask the suspect if they were involved in committing the crime.

\_\_\_\_\_ Deceptive: in a cluster of indicators the suspect could verbalize a bolstered, delayed, or evasive response along with non-verbal indicators of crossing of legs, shifting

in the chair, or grooming behavior. The timing of the responses is correlated to the question asked.

\_\_\_\_\_ Truthful: The response will be an emphatic and immediate denial, and during this

the non-verbal behavior will be the person will lean forward in the chair, establish direct eye contact, and may use illustrators to reinforce the confidence of his statement.

3. Knowledge-Then the subject should be asked specifically whether or not he knows who did commit the crime.

\_\_\_\_\_ Deceptive: Subject will typically distance himself geographically and emotionally

from the crime and is likely to deny any knowledge of who might have committed the crime without giving the question much thought.

\_\_\_\_\_ Truthful: The subject will have spent time thinking about who may be guilty of the crime and when asked the knowledge question may intimate a suspicion as to who might have done it. Behaviorally, the innocent subject will sound sincere in his response and often indicate that he has given previous thought to who might be guilty of the offense.

4. Suspicion-The subject should then be asked who they suspect committed the crime

\_\_\_\_\_ Deceptive: Subject will be deny who the guilty subjects might be.

\_\_\_\_\_ Truthful: Subject will name one or more people who they think might have committed the crime.

5. Vouch- Subject will be asked whom he could vouch for. The purpose of the vouch question is to evaluate the subject's thoughts concerning the crime are more typical of the guilty or innocent.

\_\_\_\_\_ Deceptive: Subject will be non-committal because subject does not want to eliminate any one individual from suspicion, they prefer to surround themselves with other possible suspects.

\_\_\_\_\_ Truthful: Subject will readily name specific individuals who he feels would be above reproach or for whom he would vouch as not being involved.

6. Credibility-which evaluates whether or not the subject is realistic in his assessment of the crime.

\_\_\_\_\_ Deceptive: Subject is offered an opportunity to confuse the investigation. They may suggest unrealistic possibilities.

\_\_\_\_\_ Truthful: Subject will agree that a crime was committed.

7. Opportunity: relates to the subject being realistic in their assessment of the crime in who would have had the best opportunity to commit the crime.

\_\_\_\_\_ Truthful: if the subject had the best opportunity to commit the crime they will typically be open and realistic in disclosing that information.

\_\_\_\_\_ Deceptive: Will name unrealistic suspects but not himself.

8. Attitude-is when the subject is asked how he feels about being interviewed concerning the crime.

\_\_\_\_\_ Truthful: Does not mind.

\_\_\_\_\_ Deceptive: voice negative feelings about being interviewed.



9. Think-is when subject is asked if they have ever thought of doing something like this.

\_\_\_\_\_ Truthful: rejects any possibility of the thought of doing a crime like this.

\_\_\_\_\_ Deceptive: A guilty person would consider thinking about committing a crime at issue.

10. Motive-is when the subject is asked why do you think someone would commit this crime.

\_\_\_\_\_ Truthful: an innocent suspect can be expected to offer a reasonable motive for the crime.

\_\_\_\_\_ Deceptive: a guilty suspect would be unwilling to speculate as to possible motives.

11. Punishment-is when the subject is asked what he thinks what should happen to the person who committed the crime.

\_\_\_\_\_ Deceptive: Will offer lenient a punishment

\_\_\_\_\_ Truthful: Offer a harsher punishment.

12. Second Chance- is when the subject is asked if the person who committed the crime be given a second chance.

\_\_\_\_\_ Truthful: No second chance

\_\_\_\_\_ Deceptive: Likely to agree with a second chance

13. Objection: is when subject is asked, tell me why you wouldn't do something like this.

\_\_\_\_\_ Truthful: Two responses: First; mentions a personal trait expressed in a first person response. Second; refer to present responsibilities or past accomplishments.

\_\_\_\_\_ Deceptive: offers a third person response or involves references to future consequences, or external factors.

14. Investigative Results- is when the subject is asked, once we complete the entire investigation, what do you think the results will be with respect to your involvement in committing this crime.

\_\_\_\_\_ Truthful: expresses confidence in being exonerated.

\_\_\_\_\_ Deceptive: One word responses or I do not have any control over the investigation, so I do not know. Some will even say that it will be negative results against them.

15. Tell Loved one- Subject is asked if they have told a loved one about the interview

\_\_\_\_\_ Deceptive: Does not tell love one

\_\_\_\_\_ Truthful: discusses at length, the issue under investigation.

16. Bait Question- is when the question is asked that implies the possibility of developing incriminating evidence, and asks the subject how he would explain such evidence.

\_\_\_\_\_ Truthful: the subject emphatically denies that possibility

\_\_\_\_\_ Deceptive: Delays in answering, then could answer I believe, as far as I remember, to the best of my knowledge.

**D. BAI Assessment****Attitude**

## Truthful

 Composed Concerned Cooperative Open Direct Sincere

## Deceptive

 Overly Anxious Unconcerned Defensive Overly Polite Evasive Complaining Guarded**Evaluating Posture**

## Truthful

 Open Relaxed Posture Frontally Aligned Occasional Forward Lean

\_\_\_\_\_ Dynamic Posture-subject comfortable responding to internal messages indicating need to alter the posture to accommodate blood circulation and muscle tension within the body.

During the course of a 30-40 minute interview, the subject should display a number of different postures.

Deceptive

\_\_\_\_\_ Closed Retreated Posture

\_\_\_\_\_ Non-Frontal Alignment

\_\_\_\_\_ Constant Forward Lean

\_\_\_\_\_ Frozen and Static

### **Evaluating Hands**

Truthfulness

\_\_\_\_\_ Illustrators, hands moving away from body and gestures expressing

Deceptive

\_\_\_\_\_ Hands Frozen

Hand Shrugs- When the hand or hands extend from the body with the palms turned upward, with the shoulders often rise.

Truthfulness

\_\_\_\_\_ When the hand shrug reinforces the verbal response

Deceptive

\_\_\_\_\_ When the hand shrug contradicts the verbal response.

Adaptive Behavior-When hands come in contact with some part of the body.

## Adaptive Behaviors Three Categories

### 1. Personal Gestures

- \_\_\_ A. Hand wringing
- \_\_\_ B. Hand contact with face
- \_\_\_ C. Scratching any part of the body
- \_\_\_ D. Wiping sweat from neck or brow
- \_\_\_ E. Repetitive hand behaviors such as knuckle popping or drumming fingers are often displaying anxiety.

Both truthful and deceptive suspects exhibit personal gestures. For this reason they must be carefully evaluated.

Before a personal gesture as a possible indication of deception the behavior must be:

- \_\_\_ 1. Be inappropriate, given the verbal content of the statement.
- \_\_\_ 2. Be consistent within the particular suspect.

### 2. Grooming Gestures

These gestures should be associated with guilt or shame. The basis is that as the persons fear of detection increases and have a heightened awareness of how the investigator views them. Consequently, the suspect may appropriately feel the need to improve their appearance by engaging in some of the following behaviors:

- \_\_\_ A. Adjustment of clothing, jewelry, or accessories.
- \_\_\_ B. Lint picking, dusting clothing, or pulling threads
- \_\_\_ C. Cleaning or inspecting fingernails
- \_\_\_ D. Attention to hair, beard or moustache

As with all non-verbal behaviors grooming gestures must be evaluated in the context of the verbal response.

### 3. Supporting or Protective Gestures

Behaviors should be associated with decreased confidence.

\_\_\_\_\_ A. The suspect resting head on his palm while responding to questions.

\_\_\_\_\_ B. The hand covering the suspects mouth or eyes while answering a question

\_\_\_\_\_ C. Suspect hiding hands and feet (sitting on hands, putting hands in pocket, shifting on feet).

Is behavior inappropriate for the circumstance?

Just because a person has a lack of confidence does not indicate deception.

This behavior should go away once suspect is comfortable.

### **Evaluating Feet**

The Evaluation of feet and legs is conducted because a person has the least control over legs and feet thus the potential for behavioral leakage.

Ongoing foot bouncing or leg movements which do not start on cue to a question merely displace anxiety, are not indications of deception.

\_\_\_\_\_ However changes in foot behavior on cue to a verbal response indicate that the suspect experienced anxiety or fear at the point of the interview will last a second or two and subject will resume his normal foot activity.

\_\_\_\_\_ A norm should be observed in questioning but needs to be evaluated with caution due to physical conditions as with any non-verbal behavior.

\_\_\_\_\_ Feet involved with posture changes called shifts in chair, plants feet raises off of chair to assume new posture and precedes a response in which subject is buying time for a response to questions.

\_\_\_\_\_ Shifts in chair occur during or immediately following a significant statement such as a denial indicate fear of detection and associated with deception.

Codes

\_\_\_\_\_ Norm established on feet and leg movements.

\_\_\_\_\_ Foot bouncing and/or leg movements that do not start on cue to a question.

\_\_\_\_\_ Does a suspect buys time for a response by shifts in chair and leg and feet movement?

\_\_\_\_\_ In following a statement of denial does suspect shift in chair and or have leg and feet movement?

\_\_\_\_\_ Does movements of legs and feet occur when relevant questions are asked only about the crime outside the norm established?

### **Facial Expressions and Eye Contact**

Facial expressions reflect internal emotions and are most reliable.

Eye contact can be a reliable indicator of confidence, certainty, guilt, or anxiety. Caveat: Unless affected by culture, neurological disorders, introverted personality, medications, or other physical conditions.

Deceptive – lack of eye contact could disguise by rubbing eyes, picking up object, inspecting fingernails, etc. or by starrng.

Truthful – suspects easily maintain eye contact, no concern about credibility of their answers, attentive, casual manner is unrestrained.

#### General Guidelines in Using Eye Contact to Assess if Suspect is Truthful or Deceptive

1. Generally speaking, a suspect who does not make direct eye contact is probably withholding information.
2. Under no circumstances should an investigator challenge the suspect to look him straight in the eye.
3. Instead of staring at the suspect the investigator should somewhat casually observe his eyes and other behavior symptoms to avoid making the suspect feel uncomfortable.
4. A suspect should not be permitted to wear dark glasses during the interview or interrogation unless there is a medical condition requiring their use indoors.

#### Codes

##### Deceptive

\_\_\_\_\_ Does suspect avoid eye contact at relevant times.

\_\_\_\_\_ Does suspect rub eyes at relevant times.

\_\_\_\_\_ Does suspect pick up objects at relevant times.

\_\_\_\_\_ Does suspect inspect fingernails at relevant times.

\_\_\_\_\_ Does suspect stare at interrogator outside the norm.

##### Truthful

\_\_\_\_\_ Suspect maintains eye contact on relevant questions.

\_\_\_\_\_ Suspect attentive



\_\_\_\_\_Suspect has a casual manner about them.

\_\_\_\_\_Suspect has no concern about credibility.

### **Assessment of Behavior Symptoms**

It is exceedingly important indeed critical that a suspects behavior symptoms are assessed in accordance with the following general guidelines:

1. Look for deviations from the suspect's normal behavior.
2. Evaluate all behavioral indications on the basis of when they occur (timing) and how often they occur (consistency).
3. The reliable indicators of truth or deception, behavioral changes should occur immediately in response to questions or simultaneously with the suspect's answers. Furthermore, similar behavioral responses should occur on a consistent basis whenever the same subject matter is discussed.
4. Always consider the evaluation of a subjects behavior symptoms in conjunction with the case evidence and facts. Behavior should only be one component in the decision making process.

Studies have shown that verbal analysis is more accurate than non-verbal assessment (Virj, 2008). However Reid states that verbal and non-verbal assessments are to be used together to give a high probability of detection of deception.

### **Reid Paralinguistic Behavior Analysis**

Codes

- G. Response Latency – defined as the length of time between the last word of the interviewer's question and the first word of the subject's response.

\_\_\_\_\_ Response Latency: Truthful: .5 sec.

\_\_\_\_\_ Response Latency: Deceptive: 1.5 sec.

To evaluate this the interrogator needs to establish a norm for the response latencies of each subject.

**H.** Early Response – A response offered before the interviewer finishes asking his question.

Truthful: Subject who is somewhat nervous may offer early responses at the beginning of the interview and repeated after the interviewer finishes asking his question.

Deceptive: Early responses are often not repeated. However the reliability of deception increases. Early responses occurs during the middle and end of the interrogation. General Nervous Tension should have subsided.

\_\_\_\_\_ Early Response: Truthful: subject who is somewhat nervous may offer early responses at the beginning of the interview and repeated after the interviewer finishes asking his question.

\_\_\_\_\_ Early Response: Deceptive: Early responses are often not repeated. Early responses occurs during the middle and end of the interrogation.

Response Length

Truthful: Subject offers longer responses to interview questions than do deceptive subjects. The truthful subject wants to completely respond to the question.

Deceptive: Subject may respond by offering just enough information to satisfy the investigator's question. Deceptive subjects may ramble and get off track by the time the response is complete.

\_\_\_\_\_ Response Length: Truthful: Subject offers longer responses to interview questions completely responding to the question.

\_\_\_\_\_ Response Length: Deceptive: Subject offers just enough information to satisfy the Question.

\_\_\_\_\_ Response Length: Deceptive: Subject rambles and gets off track by the time the response is complete.

**I. Response Delivery – The increase of a subject's rate, and pitch and clarity.**

Truthful: A subject's phrase where each word is separated for emphasis, his rate and pitch will increase as they relive the event. A truthful subject wants the investigator to understand his responses and, therefore, will speak clearly and in an appropriate volume.

Deceptive: Subjects pitch and rate will decrease, editing information. Subject may mumble during a response or talk so quietly that the investigator has difficulty hearing the response.

\_\_\_\_\_ Response Delivery: The increase of a subject's rate, and pitch clarity.

\_\_\_\_\_ Response Delivery: Truthful: A subject's phrase where each word is separated for emphasis, the rate and pitch will increase as they relive the event. The subject will speak clearly and in an appropriate volume.

\_\_\_\_\_ Response Delivery: Deceptive: Subjects pitch and rate will decrease, editing information. Subject may mumble during a response or talk so quietly that the Investigator has difficulty hearing the response.

#### Continuity of Response

Truthful: Subject response is free flowing of thought will naturally stem from another thought.

Deceptive: Where the subject's continuity of their response is broken through starting and stopping behavior where the thoughts within a response start in one direction and head in another.

\_\_\_\_\_ Continuity of Response: A subject's response is free flowing from one thought to another and will be naturally connected.

\_\_\_\_\_ Continuity of Response: Truthful: Subject response is free flowing of thought will naturally stem from another thought.

\_\_\_\_\_ Continuity of Response: Deceptive: Where the subject's continuity of their response is broken through starting and stopping behavior where the thoughts within a response start in one direction and head in another.

#### J. Erasure Behavior

Truthful: Subject will engage in laughs, coughs, or clearings of the throat for a variety of reasons from general nervousness to cold symptoms. The engagement reasons will occur at unspecified times during the interview and interrogation.

Deceptive: Subject uses laughs, coughs, or clearings of the throat following a significant denial.

\_\_\_\_\_ Erasure Behavior: Is a non-verbal communication of a wink or smile or a laugh, cough, or clearings of throat immediately following a specific denial. These types of communication have the effect of erasing the implied connotation of the statement.

\_\_\_\_\_ Erasure Behavior: Truthful: Subject will engage in laughs, coughs, or clearings of the throat for a variety of reasons from general nervousness to cold symptoms. The engagement reasons will occur at unspecified times during the interview and interrogation.

Deceptive: Subject uses laughs, coughs, or clearings of the throat following a significant denial.

\*This Erasure Behavior analysis should only be considered when it is followed by a significant denial.

### **Reid Method of Verbal Analysis of Deception**

\_\_\_\_\_ Truthful: subject responded to directions directly.

\_\_\_\_\_ Deceptive: subject answered evasively.

\_\_\_\_\_ Truthful: subject denies broadly.

\_\_\_\_\_ Deceptive: subject may offer specific denials.

\_\_\_\_\_ Truthful: subject offers confident and definitive responses.

\_\_\_\_\_ Deceptive: subject may offer qualified responses.

\_\_\_\_\_ Deceptive: subject may blame their memory.

\_\_\_\_\_ Deceptive: subject may omit part of their answer through qualifiers.

\_\_\_\_\_ Deceptive: subject may give estimation phrases and not an exact statement.

\_\_\_\_\_ Truthful: subject denial will be specific and will let stand on its own.

\_\_\_\_\_ Deceptive: subject denial may be bolstered to make it sound more credible.

\_\_\_\_\_Deceptive: subject may lie with a statement against interest to reduce anxiety within a false statement.

\_\_\_\_\_Truthful: subject will offer spontaneous responses.

\_\_\_\_\_Deceptive: subject may offer rehearsed responses.

### Verbal Phrase Analysis

#### Phrase

1. As far as I can remember  
saying  
To the best of my knowledge

If I recall correctly

At this point and time

2. The next thing I knew

Before I knew it

Eventually

3. To be honest with you

To tell you the truth

4. Quite frankly

Quite honestly

5. As crazy as it sounds

Not to evade your question but

You probably won't believe this

6. As I told the other investigator

Like I wrote in my statement

Earlier I told you

As I previously testified

7. I swear

As God as my witness

#### Interpretation

I am not 100% certain of what I am

I am blaming my poor memory for not telling you the complete truth.

I am leaving something out of my account

This happened very quickly

I have not been completely honest (truthful) with you up to this point (usually through omission)

What I am about to tell you is only part of the truth.

I want you to accept my response even though it is crazy, is evasive or is not believable.

I don't want to lie twice about this.

I am frustrated having to go through this again.

You shouldn't believe what I am about to say

You probably won't believe what I am about to say

You've got to believe me

8. I can't remember

It is not in my best interest to remember, to tell you, or to help you out.

I can't tell you

I can't help you out

Because of some intrinsic reason (embarrassment, fear, anger) I don't want to talk about this.

9. I probably

It is possible that something other than what I said in my response really happened.

Most likely I

It would be typical for me to

10. My answer would be

I am offering an estimation and don't know for certain

I would have to say

If I tell you what happened I would incriminate myself.

11. I feel

I am offering an opinion, but have no specific proof to back up my position.

I believe

I think

12. I know

I am telling you something that I personally witnessed

I remember

I heard

I saw

13. I don't know

The subject has no knowledge or memory of the event.

I don't remember

The subject is being guarded and does not want to expand on their answer

14. There's no doubt in my mind

The subject is accepting full responsibility for his response and is confident in it.

I'm absolutely sure

The subject is purposefully being too certain in his response to fend off further questions.

I'm certain

I'm positive

Of course

Additional Reid verbal Considerations

Use of Pronouns – Missing I, when a subject relates a story in the first person “I”, and then drops the “I” from a sentence, it suggests that the person is trying to disassociate himself from that particular time period or event.

Use of Possessive Pronouns

“My, our, your, his, hers, their” reveal an attachment. A suspect may change the pronoun Or drop it completely when opting not to show possession or admit association.

### **E. Interrogation Nine Steps**

1. Direct positive confrontation statements-After interview advise suspect “Our investigation clearly indicates that you committed the crime.

\_\_\_\_\_ What is the interrogator’s non-verbal response to this step?

\_\_\_\_\_ What is interrogator’s verbal response to this step?

\_\_\_\_\_ What subject’s verbal response to this step?

\_\_\_\_\_ What is subject’s non-verbal response to this step?

2. Theme Development- Present justifications or excuses for the subject’s involvement in the matter.

\_\_\_\_\_ What is the interrogator’s non-verbal response to this step?

\_\_\_\_\_ What is interrogator’s verbal response to this step?

\_\_\_\_\_ What is subject’s verbal response to this step?

\_\_\_\_\_ What is subject’s non-verbal response to this step?

3. Handling Denials- Whenever the subject tries to interrupt you, talk over the subject and use nonverbal gestures to cut the subject off. If the denials continue to be



strong, sincere, and voiced using realistic words, the subject may be innocent and the investigator should begin to step down the interrogation.

\_\_\_\_\_ What is the interrogator's non-verbal response to this step?

\_\_\_\_\_ What is interrogator's verbal response to this step?

\_\_\_\_\_ What is subject's verbal response to this step?

\_\_\_\_\_ What is subject's non-verbal response to this step?

- Overcoming Objections- Is when a subject offers an objection or excuse why he could not be involved, express agreement or understanding. Explain to the subject the positive implications of the objection if it is indeed true, and the negative implications if it is not true.

\_\_\_\_\_ What is the interrogator's non-verbal response to this step?

\_\_\_\_\_ What is interrogator's verbal response to this step?

\_\_\_\_\_ What is subject's verbal response to this step?

\_\_\_\_\_ What is subject's non-verbal response to this step?

5. Attaining the Subject's Attention- The subject is on the defensive and may become withdrawn. At this point Interrogator should move closer physically to gain the subject's attention on the themes the interrogator.

\_\_\_\_\_ What is the interrogator's verbal response to this step?

\_\_\_\_\_ What is the interrogator's non-verbal response to this step?

\_\_\_\_\_ What is subject's verbal response to this step?

\_\_\_\_\_ What is subject's non-verbal response to this step?

6. Handling a Suspect's Passive Mood- The subject begins to show signs of defeat or remorse. The themes are shortened and should begin to lead toward the alternative question.

\_\_\_\_\_ What is the interrogator's verbal response to this step?

\_\_\_\_\_ What is the interrogator's non-verbal response to this step?

\_\_\_\_\_ What is subject's verbal response to this step?

\_\_\_\_\_ What is subject's non-verbal response to this step?

7. Presenting the Alternative Question- Present two choices for the subject's involvement. Contrast a more acceptable sounding choice with an unacceptable choice. Stress one of the alternatives, usually the acceptable choice, to encourage the subject to acknowledge one of the alternatives.

\_\_\_\_\_ What is the interrogator's verbal response to this step?

\_\_\_\_\_ What is the interrogator's non-verbal response to this step?

\_\_\_\_\_ What is subject's verbal response to this step?

\_\_\_\_\_ What is subject's non-verbal response to this step?

8. Having Suspect Relate the Various Details of the Offense (obtaining the verbal confession) - If the subject chooses one of the alternatives, express understanding. Encourage the subject to talk about aspects of the crime. Avoid leading questions. Attempt to get details of the crime that would only be known to the guilty subject. Have a second person witness the subject's verbal admissions.

\_\_\_\_\_ What is the interrogator's verbal response to this step?

\_\_\_\_\_ What is the interrogator's non-verbal response to this step?

\_\_\_\_\_ What is subject's verbal response to this step?

\_\_\_\_\_ What is subject's non-verbal response to this step?

9. Converting an Oral Confession into a Written Confession (elements of the written confession) - Convert the verbal statement into a written, typed or electronically recorded form. Establish the voluntariness of the subject's written statement.

\_\_\_\_\_ What is the interrogator's verbal response to this step?

\_\_\_\_\_ What is the interrogator's non-verbal response to this step?

\_\_\_\_\_ What is subject's verbal response to this step?

\_\_\_\_\_ What is subject's non-verbal response to this step?

\_\_\_\_\_ Other type of method-This will include any other identified interrogation method other than Reid.

\_\_\_\_\_ Hybrid of Methods-This will include any unidentified Interrogation method or deviation from any identified methods.

#### The Reid Assessment Protocol for Contamination and Corroboration

The protocol for contamination lies within the protocol for corroboration, specifically dependent corroboration. The protocol is to withhold information about the crime purposefully from all suspects, victims and witnesses and media. This will ensure that the only people who should know this info are the investigators and the person's or person who committed the crime. The weakness is that sometimes the information is unknowingly released to innocent suspects, or to the media and anybody else that is involved in the case and gets back to the suspect or suspects. The result is that the facts released are parroted back to the investigator. The precondition is that the suspect states

that he may have committed the crime even though the subject has no recollection of it, then the contaminated facts are parroted back to the investigator. The caveat to this is for an assessment of this if the crime facts are not known to the assessor is to rely on independent corroboration.

\_\_\_\_\_ Were there any known details of the crime contaminated into the interview or interrogation?

\_\_\_\_\_ Was there a holdback list of details of the crime that nobody knew about except the police written out to not reveal during the interview and interrogation?

\_\_\_\_\_ In the interview and interrogation or confession, were there any details the subject verbally responded that was unknown prior to the interview and interrogation, and were they corroborated?

#### Reid Reliability Confession Assessment

In order to obtain a reliable confession, the mere words in a confession are not adequate in ensuring a reliable confession. Only if the confession has been comprehensively analyzed through the establishment of two types of evidence in ensuring a reliable confession. The two types are: Independent evidence which is defined as “verifiable information known only by the perpetrator of a crime but not revealed until the confession” ([www.reid.com](http://www.reid.com), 2017). The second type of evidence to analyze in a confession is “verifiable information known by both the investigators as well as the perpetrator that had been withheld from the public” ([www.reid.com](http://www.reid.com), 2017). The Reid Method of obtaining a reliable confession is similar to the Reid analysis of a false confession and the Reid Corroboration protocol.

Codes

\_\_\_\_\_ Was there Independent Evidence or verifiable information known only by the perpetrator of a crime but not revealed until the confession?

\_\_\_\_\_ Was there Dependent Evidence which is defined as verifiable information known by both the investigators as well as the perpetrator that had been withheld from the public?

Reid Confession Voluntary Analysis

Voluntariness Analysis is a two-step process.

1. Coercion: To determine if coercion is present depends on the presence of any communication or action of threats and/or promises in exchange for a confession. The current legal climate is that if communicated the confession will be suppressed based on the suspects will was overborne.

As a general guideline if a confession is obtained through the leverage that addresses real consequences of promises and or threats, coercion maybe claimed.

2. Duress: analyzes the subject's psychological and physiological manner, such as fatigue, withdrawal, hunger, thirst, or a craving for other biological needs, length of interrogation, isolation, and tag team interrogation, and this serves as a primary incentive for the subject to give a confession, duress may be claimed.

The guideline here is to determine if the interrogators intentionally prolonged the interrogation to break the will of the suspect.

To evaluate Duress

1. Can the excessive length of interrogation be explained by the suspect's behavior? Did the suspect offer a series of different versions of events before offering the first incriminating statement?
2. Did the suspect physically or verbally attempt to seek fulfillment of biological needs?
  - A. If they did were the requests denied or used as leverage to obtain confession.
  - B. Document lack of requests
  - C. Evaluate if the suspect decided that the condition of the interrogation were intolerable.
3. Were there any threats made with respect to denying the suspect basic biological needs unless they confessed? (Inbau et al, 2013).

#### Codes

\_\_\_\_\_ Were there any threats made to subject to make a confession?

\_\_\_\_\_ Were there any promises made to subject to make a confession?

\_\_\_\_\_ Was any illegal Duress applied to subject to get a confession?

\_\_\_\_\_ Was any illegal coercion applied to subject to get a confession?

#### Reid Method of Detecting False Confessions

In determining if a confession is trustworthy (True v. False) is separate from the legal analysis of voluntariness. For a confession to be trustworthy it must be factual.

#### **Types of False Confessions**

In detection of false confessions it is imperative to know the definitions of the types of false confessions for identification purposes.

1. “Coerced Compliant Confession – The suspect claims that he confessed to achieve an instrumental gain. Such gains include being allowed to go home, bringing a lengthy interrogation to an end or avoiding physical injury.
2. Voluntary False Confessions – When a subject surrenders to the police in the absence of an interrogation and falsely confesses.
3. Coerced Internalized False Confessions – When the interrogator successfully convinces the subject that:
  1. There is incontrovertible evidence that the suspect committed the crime even though the suspect claims no recollections of committing it.
  2. The interrogator explains there is a good and valid reason why the suspect has no memory of committing the crime.

4. Non-Extent Confession – A statement made by the subject where there is no acceptance of responsibility” (Inbau et al, 2013).

### **Guidelines in Determining True or False Confessions**

- 1.” A confession that was not retracted until days or weeks after it was made is probably truthful.
2. The suspect’s explanation for offering a false confession should be carefully scrutinized.
3. The absence of any specific corroboration within the confession should be viewed suspiciously.
4. It is not unusual for a true confessor to accept full responsibility for committing the crime but omit specific emotional details especially when blamed on memory failure.

5. Inconstancies between the confession statement and those of the victim are common place in true confessions” (Inbau et al, 2013).

### **True Confession**

A confession that was not retracted not until days or weeks after it was made is probably truthful.

If subject gives perceptions as to why they confessed.

Presence of any specific corroboration.

Not unusual for confessor to omit specific Details when blamed on memory failure

### **True Confession**

Omits details that are eventually corroborated through forensics.  
Inconstancies between the confessor’s statement and those of victim common place (Inbau et al, 2013).

### **False Confession**

Time lapse of retraction does apply to a coerced Internalized false confession

If suspect gives a specific cause for confessing falsely.

Absence of any specific corroboration.

Faulty corroboration, absence of identifying motivations

### **False Confession**

Contains false specific details that is uncorroborated.

Faulty corroboration that would taint the credibility of the confessor.

### **Definitions of False Confession Checklist**

\*The types of corroboration to be utilized in evaluating a confession as to its

trustworthiness are:

1. “Dependent Corroboration – This consists of information about the crime purposefully withheld from all suspects and the media. Therefore when the suspect



confesses and gives specific information that only the guilty person would know about the crime. The key is the withholding of the specific facts.

2. Independent Corroboration – This describes information about a suspect’s crime that was not known until the confession and was independently verified by the investigator.

3. Rational Corroboration – Elements of rational corroboration include a statement accepting personal responsibility for committing the crime, as well as a detailed description of how the crime was committed, why it was committed and perhaps how the suspect felt after committing the crime. In other words, the credibility of the confession is assessed by evaluating whether the described behaviors appear rational. This represents the weakest form of corroboration, and courts should view it with the most scrutiny.” (Inbau et al, 2013).

4. Faulty Corroboration –“The suspect’s confession contains details that do not match known facts” (www.reid.com, 2012).

5. Duress – “An interrogation environment which is intolerable because of interrogation conditions and setting, deprivation of biological needs analyzes the subject’s psychological and physiological manner, such as fatigue, withdrawal, hunger, thirst, or a craving for other biological needs, length of interrogation, isolation, and tag team interrogation (Inbau et al, 2013).

6. Coercion – Physical abuse and or psychological abuse and or threats or promises of physical harm or severe consequences combined with promises of leniency (www.reid.com, 2012).

7. Psychological Characteristics of Suspect – Some characteristics of suspects make them more susceptible to falsely confessing. Reid defines Low Risk suspects as anyone above the age of 15, with an IQ above 64, with no mental illness or personality disorders.

Reid defines High Risk Suspects as anyone below the age of 16, within IQ below 65, and the presence of mental illness or personality disorders ([www.reid.com](http://www.reid.com), 2012).

\*It should be noted that there is no quantified studies to determine the weighted value of each element of the false confession checklist. Therefore the only thing that can be established is the presence of the elements in the checklist.

### **False Confession Checklist**

<b>Element</b>	<b>Present Yes or No</b>
Independent Corroboration	
Dependent Corroboration	
Rationale Corroboration	
Faulty Corroboration	
Duress	
Coercion	
High Risk Suspect	

The assessment values to the elements could be rated by the strength of the element in proving the elements association with a true or false confession.

“To identify the probable trustworthiness of a confession clearly requires an analysis of the circumstances and content of the interrogation as well as intrinsic factors within the suspect who offered the confession. In considering the trustworthiness of a confession, the court must consider the totality of circumstances surrounding the confession” (Inbau et al, 2013).

## **Legal Casebook and Law Review Method**

### **Voluntariness Rule**

In *Columbe v. Connecticut* (1961) in a majority opinion written by Justice Frankfurter “accurately established the relationship between the concept of voluntariness and overborne wills” (Grano, 1996). Therefore established the voluntariness test in confession law.

“The ultimate test remains that which has been the only clearly established legal test in Anglo-American courts for two hundred years in the test of voluntariness. The test of voluntariness, asks, is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process” (367 U.S. 568, 1961).

In breaking down this definition of voluntariness is with the following rule: The exercise of the will is an act of free unconstrained choice.

### **Definitions**

To assist in the legal analysis there needs to be definitions articulated to form a basis of analysis.

The words that need to be defined to establish involuntariness are the following:

Overborne – “Overpowered or overcame” (American Heritage Dictionary, 2016).

Will – “The mental faculty by which one deliberately chooses or decides upon a course of action” (American Heritage Dictionary, 2016).

Free Will – “The ability or discretion to choose; free choice. Philosophy; 1. The apparent human ability to make choices that are not externally determined. 2. The ability to make a choice without coercion” (American Heritage Dictionary, 2016).

Coerced Confession – “A confession that is obtained by threats or force” (Garner, 2009).

Involuntary Confession – “A confession induced by the police or other law enforcement authorities who make promises to, coerce, or deceive the suspect” (Garner, 2009).

Voluntary Confession – “A confession given freely, without any benefit or punishment promised, or threats” (Garner, 2009).

Persuaded Confession – “A false confession by a suspect who has no knowledge of a crime but adopts a belief in his or her guilt” (Garner, 2009).

Coerced - Compliant Confession – “A confession by a suspect who knows that he or she is innocent but is overcome by fatigue, the questioners tactics, or a desire for some potential benefit – also termed coerced compliant false confession” (Garner, 2009).

Coercion – “Forced to do what his free will would refuse” (Garner, 2009).

Determination of the Presence or absence of Voluntariness

Basis of Coding Methodology

Three phased process as established in *Columbe v. Connecticut* (1961).

First – Find the historical facts of the case – the external circumstances and events surrounding the confession.

Second – Evaluate the mental state of internal psychological inferential fact.

Third – The application to this psychological fact of legal standards of judgment, the rules of law which also involve also induction form and anticipation of factual circumstances.

Rule: Determine the historical fact; recreate a psychological condition; and read these findings through the law.

In Brooks (1998) he broke down Justice Frankfurter's definition of an admissible confession and articulated the only "admissible confession is that offered by an autonomous human agent unconstrained in his or her choice".

The question is how do we know when a will has been overborne. Brooks (1998) articulated "If voluntariness is a legal habitat then it must be derived from its mental habitat and can only be determined through indicators that have been exhibited externally".

Justice Frankfurter stated that "the mental state of voluntariness upon which the due process turns can never be affirmatively established other than circumstantially and interpreted through inference" (*Columbe v. Connecticut*, 1961).

Therefore, there must be an evaluation of the facts of the case and evaluate the totality of circumstances and draw an inference from them to determine voluntariness. The line to evaluate is at what moment at which free will, free determination passed over into compulsion (Brooks, 1998).

Code

If the following relevant inferential indicators of involuntariness are present and the confession is verbalized, then it can be inferred that free will has passed into compulsion.

Subjective/Objective Test – If under the totality of circumstances, was the defendant will overborne considering the following factors of Defendant's characteristics (such as age, education, physical or mental condition) and nature, manner, and length of detention and interrogation? Were, force, threats, promises, or deceptions used (that overborne the defendant's will or calls into question the reliability of the confession)?

### **Current Test for Involuntary Confessions**

There are two strands of the test for involuntariness of confessions, the first one is the offensive police methods form, this is where the police methods to obtain the confession are offensive, the second is the effect on the suspect form of involuntariness (Primus, 2015). Within the second strand there are two categories', the first one is that there are police tactics that increase the potential for a false confession. The second category is the tactics used on a person whose characteristics and vulnerabilities will increase the potential for a false confession (Primus, 2015).

The current law to determine the voluntariness of a confession is in the 1986 decision of *Colorado v. Connelly* (1986). This decision requires in the offensive police methods involuntariness strand for there to be police action to induce a confession. The next strand of effect on the suspect form of involuntariness strand, it is not enough for the confession to be unreliable, but that police action must trigger that unreliable confession (Primus, 2015).

## Case Law Elements that can Determine Involuntariness

There were a number of cases decided by the U.S. Supreme Court that decided the voluntariness of confessions based on coercive elements employed and ruled on in the 1940's that were excluded. The due process requirement is not to exclude false evidence but to prevent the fundamental unfairness in the use of evidence whether true or false as was articulated in *Lisenba v. California* (1941). The other case that articulated the coercive elements in the 1940's and excluded the confessions are the following: Age of suspect (*Haley v. Ohio*, 1948); Denied Counsel (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Malinski v. New York*, 1945); (*Turner v. Pennsylvania*, 1949); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940), defendant Illiterate (*Harris v. South Carolina*, 1949); (*Ward v. Texas*, 1942); (*White v. Texas*, 1940), lack of food (*Watts v. Indiana*, 1949), solitary confinement (*Watts v. Indiana*, 1949), Interrogation was coercive (*Ashcroft v. Tennessee*, 1944); (*Harris v. South Carolina*, 1949), lack of control of situation (*Chambers v. Florida*, 1940), length of interrogation (*Ashcroft v. Tennessee*, 1944); (*Chambers v. Florida*, 1940); (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Turner v. Pennsylvania*, 1942); (*Ward v. Texas*, 1942); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940), mental abuse from threats by police (*Chambers v. Florida*, 1940); (*Harris v. South Carolina*, 1949); (*Malinski v. New York*, 1945); (*Ward v. Texas*, 1942), defendant was moved to a faraway jail (*Ward v. Texas*, 1942), Multiple police officers/ interrogators present during interrogation (*Chambers v. Florida*, 1940); (*Harris v. South Carolina*, 1949); (*Turner v. Pennsylvania*, 1942), defendant suffered physical abuse (this was established either through conflicting testimony, disputed evidence, not confirmed, and confirmed evidence) (*Chambers v.*

*Florida*, 1940); (*Haley v. Ohio*, 1948); (*Ward v. Texas*, 1942); (*White v. Texas*, 1940), relay questioning by police (*Ashcroft v. Tennessee*, 1944); (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Ward v. Texas*, 1942); (*Watts v. Indiana*, 1949), denial of rights (*Turner v. Pennsylvania*, 1942), no sleep or rest (*Ashcroft v. Tennessee*, 1944); (*Chambers v. Florida*, 1940), lack of social support from friends or family (*Chambers v. Florida*, 1940); (*Haley v. Ohio*, 1948); (*Harris v. South Carolina*, 1949); (*Malinski v. New York*, 1945); (*Turner v. Pennsylvania*, 1942); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940), stranger to community (*Chambers v. Florida*, 1940), trickery by police (*Malinski v. New York*, 1945), held without charges (*Chambers v. Florida*, 1940); (*Turner v. Pennsylvania*, 1942); (*Watts v. Indiana*, 1949); (*White v. Texas*, 1940). As can be seen some of these cases have numerous elements of coercion within the facts of each case.

In the 1950's the cases that were found in coerced confessions that the U.S. Supreme Court suppressed are: Denial of counsel (*Fikes v. Alabama*, 1957); (*Payne v. Arkansas*, 1958); (*Spano v. New York*, 1959); Lack of education (third grade) (*Fikes v. Alabama*, 1957), Denial of food (*Payne v. Arkansas*, 1958), highly suggestible (*Fikes v. Alabama*, 1957), Solitary confinement (kept in segregation unit) (*Fikes v. Alabama*, 1957), length of interrogation (*Fikes v. Alabama*, 1957); (*Leyra v. Denno*, 1954), mental abuse (fear) (*Payne v. Arkansas*, 1958), mental illness (schizophrenic and highly suggestible) (*Fikes v. Alabama*, 1957), moved to far away jail (*Fikes v. Alabama*, 1957), denial of rights (*Payne v. Arkansas*, 1958), lack of sleep and rest (1.5 hrs. of sleep over four days) (*Leyra v. Denno*, 1954), lack of social support (father refuse to be able to visit) (*Fikes v. Alabama*,



1957), trickery by police (*Leyra v. Denno*, 1954); (*Spano v. New York*, 1959), not charged but detained (*Fikes v. Alabama*, 1957); (*Payne v. Arkansas*, 1958).

In the 1960's the factors the U.S. Supreme Court relied on to find confessions coerced are the following: Denial of counsel (*Blackburn v. Alabama*, 1960); (*Clewis v. Texas*, 1967); (*Reck v. Pate*, 1961), drugs used to assist confession (*Beecher v. Alabama*, 1967); (*Reck v. Pate*, 1961), lack of education (*Blackburn v. Alabama*, 1960); (*Clewis v. Texas*, 1967); (*Columbe v. Connecticut*, 1961); (*Davis v. North Carolina*, 1966); (*Reck v. Pate*, 1961), denial of food (*Brooks v. Florida*, 1967); (*Clewis v. Texas*, 1967); (*Davis v. North Carolina*, 1966); (*Reck v. Pate*, 1961), solitary confinement (*Brooks v. Florida*, 1967); (*Davis v. North Carolina*, 1966), incompetent (*Blackburn v. Alabama*, 1960), interrogation setting (*Blackburn v. Alabama*, 1960), defendant had no control of his situation (completely dominated by police) (*Brooks v. Florida*, 1967); (*Columbe v. Connecticut*, 1961); (*Reck v. Pate*, 1961), unlawful and length of confinement without hearing (*Brooks v. Florida*, 1967); (*Columbe v. Connecticut*, 1961); (*Reck v. Pate*, 1961), length of interrogation (*Blackburn v. Alabama*, 1960); (*Clewis v. Texas*, 1967); (*Columbe v. Connecticut*, 1961); (*Davis v. North Carolina*, 1966); (*Reck v. Pate*, 1961), mental abuse (*Beecher v. Alabama*, 1967); (*Davis v. North Carolina*, 1966); (*Lynumn v. Illinois*, 1963), mental illness (*Blackburn v. Alabama*, 1960); (*Columbe v. Connecticut*, 1961); (*Reck v. Pate*, 1961), multiple police in room/multiple interrogators interrogating (*Blackburn v. Alabama*, 1960); (*Clewis v. Texas*, 1967); (*Reck v. Pate*, 1961), noticeable injury/sickness (*Clewis v. Texas*, 1967); (*Reck v. Pate*, 1961), no prior trouble with law enforcement (*Clewis v. Texas*, 1967); (*Lynumn v. Illinois*, 1963); (*Reck v. Pate*, 1961), denial of rights

(*Haynes v. Washington*, 1963); (*Columbe v. Connecticut*, 1961), no or little sleep/rest (*Clewis v. Texas*, 1967), no social support (*Blackburn v. Alabama*, 1960); (*Brooks v. Florida*, 1967); (*Davis v. North Carolina*, 1966); (*Haynes v. Washington*, 1963); (*Reck v. Pate*, 1961), police trickery (*Beecher v. Alabama*, 1967); (*Columbe v. Connecticut*, 1961), held with no charges (*Clewis v. Texas*, 1967); (*Columbe v. Connecticut*, 1961); (*Haynes v. Washington*, 1963).

In the 1970's there was only one case that the U.S. Supreme Court found a coerced confession and that was *Mincey v. Arizona* in 1978. The following factors were found to be coercive. Denial of counsel, interrogation setting, and the defendant had no control of situation, length of interrogation, mental abuse, noticeable injury, no social support, and police trickery, these factors formed the basis that the interrogation was involuntary.

There were no confession cases found to be coerced by the court in the 1980's. In the 1990's there was only one confession case found by the court to have been coerced. The case was *Arizona v. Fulminate* (1991). The factors found to be coercive was, lack of education or low intelligence, mental abuse, mental illness, police trickery.

#### Coding Sheet for Legal Casebook Analysis on Involuntariness of Confessions

The key areas in assessing involuntariness of a confession are: whether a subject's will was overborne at the time the subject confessed. The second area is the police mistreatment of subjects in wearing them down to obtain a confession. To assess this there are factors developed through case law that have been found either on their own or through a totality of circumstances have rendered a confession involuntary.

<b>Elements</b>	<b>Present Yes or No</b>
Age/Juvenile	
Lack of Counsel	
Drugs used to assist confession	
Low Education	
Low IQ	
Deprived of Food	
Highly suggestible questioning	
Length of Detention	
Solitary Confinement	
Incompetent	
Length of Interrogation	
Mental abuse	
Mental Illness	
Shuttled to another jail far away	
Multiple Officers/Interrogators	
Noticeable Injury/Sickness	
Lacked experience with police	
Physical Abuse or Threat of force	
Relay Questioning	
Not advised of Miranda Warnings	
Violation of Rights	

Lack of Sleep/Rest

Denied Social Support

Stranger to Community

Trickery

Deceptive

Promises Leniency made if confessed

Threats of adverse governmental action

Combination of Factors Listed above.

Identification of the Reid Interview and Interrogation Method in King and Snook's Study

### **Reid Themes Observed in Interrogations**

Appeal to suspect's pride with flattery

Play one offender against the other

Minimize the moral seriousness of the offense

Point out the futility of resisting telling the truth

Sympathize with suspect by condemning others

Use third person theme

Anyone else under similar circumstances might have done the same

Suggest non-criminal intent for the offense

Point out the possibility of exaggeration on part of the accuser or victim

Point out the consequences and futility of continuation of criminal behavior

Exaggerate the nature and seriousness of the offense

### **Reid Guidelines and Suggestion Observed in Interrogations**

Did not pace the room

Suspect not handcuffed/shackled during interrogation

Has evidence folder in hand upon entry/beginning of interrogation

No telephone in room

No small loose objects within suspect's reach

No handshake between suspect and interrogator upon meeting

Suspect alone in interrogation room prior to entry of interrogator

Straight back chairs

No decorative ornaments in room

Room plain in color

Interrogator and suspect seated to directly face each other

Polygraph offer made to suspect

Police caution given by someone other than primary interrogator (King & Snook 2009).

Influence Tactics and Coercive Strategies Observed in Interrogations Based on Leo's Study in 1996

### **Influence Tactics**

### **Present Yes or No**

Confront suspect with existing evidence of guilt

Offer moral justifications/psychological excuses

Use praise and/or flattery

Identify contradiction in suspect's account

Appeal to suspect's conscience

Minimize the moral seriousness of the offense

Appeal to interrogator's expertise/authority

Appeal to the suspect's self-interest

Minimize the facts/nature of the offense

Undermine suspect's confidence in denial of guilt

Any behavioral analysis interview questions

Invoke metaphors of guilt

Touch suspect in friendly manner

Appeal to the importance of cooperation

Accuse suspect of other crimes

Refer to physical symptoms of guilt

Minimize the nature/purpose of questioning

Good cop-bad cop routine

Yell at suspect

Attempt to confuse the suspect

Exaggerate the facts/nature of the offense

Exaggerate the moral seriousness of the offense

Exaggerate the nature/purpose of questioning

### **Coercive Strategies Observed in Interrogation**

Suspect was not read rights to silence and legal counsel

Interrogator threatened suspect with psychological pain

Interrogator touched suspect in an unfriendly manner

Interrogator's questioning manner was unrelenting, badgering, or hostile

Interrogator promised the suspect leniency in exchange for an admission of guilt

Suspect is not permitted to invoke his or her rights to silence of legal counsel

Suspect was in obvious physical pain

Interrogator deprived the suspect of an essential necessity

Suspect was in obvious psychological pain

Interrogation lasted longer than six hours

Interrogation Analysis for Deception, and Voluntariness

### **Pre Interrogation Variables**

Method of observation of interrogation

C. Video Tape

D. Audio Tape

Was the suspect under arrest /not free to leave?

Was the suspect not under arrest/free to leave?

Was the interrogation custodial or non-custodial?

Where was the interrogation performed?

What was the type of offense suspect interrogated about?

How many interrogating officer's present?

Race of interrogating officer?

Gender of primary interrogating officer?

Race of secondary interrogating officer?

Gender of secondary interrogating officer?

Who does suspect seem to be communicating with the most?

Does the suspect seem confused?

Is the suspect under the influence?

Does the suspect have any physical or mental disabilities?

Age of Suspect?

Race of Suspect?

Gender of Suspect?

Suspect Employed?

Occupation of suspect?

Class Status of suspect?

Education level of suspect?

Conviction record of suspect?

Strength of evidence against suspect prior to interrogation?

### **Interrogation Process Variables**

#### **Interview**

Were the Miranda Warnings Given?

Were the Miranda Warnings read from the standard form?

If Miranda Warnings were not read from the standard form, were Miranda warnings stated correctly?

Did suspect waive or invoke Miranda warnings?

Did suspect sign waiver?



Possible interview tactics employed by interrogator to ascertain truth or deception through verbal or non-verbal responses from suspect? (Reid Behavior Analysis Interview)

Do you know why I have asked to talk to you here today?

Did you Commit this crime?

Who do you think committed this crime?

Is there any reason you can think of that someone would name you as a suspect?

Who would eliminate you from suspicion?

How do you feel about being interviewed concerning this?

Why do you think the victim is saying you are the one who did this?

Who do you think would have had the best chance to do?

Why do you think someone would have done this crime?

Did you ever think about doing this crime even though you didn't go through with it?

Tell me why you wouldn't do something like this?

What do you think should happen to the person who did this?

How do you think the results of the investigation will come out on you?

If it becomes necessary would you be willing to take a polygraph test to verify what you have told me about this issue, is the truth?

Do you think the person who did this would deserve a second chance under any circumstances?

Is there any evidence that you could think of to support your story?

Do you have an alibi?

What is your alibi? (details)

Is there any reason why you would have done this crime?

Any other Behavior Analysis Interview questions.

### **Interrogation Tactics Employed by the Interrogator**

Identify contradictions in interviewee's story

Undermine the interviewee's confidence in denial of involvement

Attempt to confuse the interviewee

Invoke metaphors of guilt

Refer to physical symptoms of guilt

Confront interviewee with existing evidence

Physical evidence

Eyewitness evidence

Co-conspirator testimonial evidence of his/her guilt

Photo/real line-up ID

Polygraph results

Other evidence

Confront interviewee with false evidence of his/her guilt

Physical evidence

Eyewitness evidence

Play one against the other (specify)

False ID of line-up (photo or real)

Running a fake polygraph

Polygraph results

False lab reports or other reports

Other false evidence

Accuse interviewee of other crimes

Exaggerate the nature/purpose of the questioning

Exaggerate the facts/nature of the offense

Exaggerate the moral seriousness of the offense

Minimize the nature or purpose of the questioning

Minimize the facts/nature of the offense

Minimize the moral seriousness of the offense

Offer interviewee moral justifications/psychological excuses to account for suspects behavior

Use praise and flattery

Appeal to expertise/authority of interrogating officer

Appeal to interviewee's conscience

Appeal to interviewee's self-interest

Touch interviewee in a friendly manner

Touch interviewee in an unfriendly manner

Play on interviewee's fears

Threat of actual or potential physical harm

Interviewee would get in trouble by not telling

It would look bad for interviewee if he remained silent

Tell of trouble to family

Interviewee will receive more punishment if he does not confess

Other suspect(s) might have cut a deal before interviewee

Other

Good Cop/Bad Cop routine

Yell at suspect

Other

### **Interrogation Outcome Variables**

Length of interrogation?

Was Interrogation coercive according to contemporary judicial standards?

Yes (If one or more below)

Miranda warnings were not read; or suspect not permitted to invoke

Suspect touched in unfriendly manner

Suspect in physical pain

Suspect threatened with harm if he or she didn't confess

Suspect received promises of leniency

Suspect deprived of biological essential necessities

Unrelenting, badgering, hostile questioning

Interrogation exceeds reasonable time limit, (6 hrs.)

Will is overborne or voluntariness overcome by some other factor or combination of factors

Other

No (if not one or more of above)

Contamination of non-public facts

Outcome of questioning

Received full confession

Received (intentional) admissions

Received (unintentional) incriminating statements

Did not receive any incriminating information

Was a written statement obtained

Other

Strength of evidence obtained solely from interrogation

Weak

Strong

Moderate

Contaminated

Detection of False Confessions

Identification and Characteristics

Definitions

Voluntary false confessions – False confession that are offered in absence of elicitation is cause by some type of mental illness (Kassin & Wrightsman, 1985).

Coerced compliant false confession – Where suspect publicly professes guilt in response to extreme methods of Interrogation despite knowing privately that the subject is truly innocent usually from threats promises or physical abuse (Kassin & Wrightsman, 1985).

Coerced Internalized false confession – occurs when the suspect through the fatigue pressures and suggestions of the interrogation process actually comes to believe that he/she committed the offense (Kassin & Wrightsman, 1985).

The process of how a subject might come to internalize the events as suggested by police, there is a transition of denial through confusion and self-doubt to finally articulating the statement (Kassin & Wrightsman, 1985).

#### The Legal Process of Detecting a False Confession

The legal processes of detecting a false confession is through the reliability criteria of a confession and corroboration, plus the identification of false confessions and recognizing them through the definitions of the types of false confession and the identification of contamination within an interrogation and subsequent confession.

Therefore, the inferential evidence and factual evidence is analyzed and determined if it supports the analysis of a false confession.

The first process to analyze is contamination, this is where analysis is conducted to determine if inside information of the case has been released and has found its way into the confession. The second process is corroboration, this is where the information received from the confession is corroborated with independent evidence that was not known by the police. The third process is legal corroboration/reliability test this is where the content of the confession is corroborated and leads to new evidence.

## Contamination

The research shows that in Garrett's (2010) study that there is a correlation between contamination and interrogation resulting in false confessions.

## Definition

Contamination - is defined as the "transfer of inside information-non-public details about the crime that only the true perpetrator could have known from one person to another person during a police interrogation" (Nirider, Tepfer, & Drizen, 2012).

## Contamination Process

The contamination process starts with the misclassification of guilt which includes tunnel vision; verification bias, focusing on signs of guilt explaining away evidence contrary to guilt. During this initial step somewhere within the interrogation either through frustration of not getting the suspect to confess or the other signs mentioned above or all of them contamination is leaked into the interrogation either on purpose or inadvertently. This is usually followed by interrogative pressure with the potential following elements of deceptive tactics, false evidence ploys, duration of interrogation over three hours, sleep deprivation, age, intellectually disabled, leading questions.

This could lead to the suspects will overborne, and then parrots back the contaminated facts leaked into the interrogation. This then could lead to a false confession and/or an involuntary confession. Contamination leads to the illusion of corroboration (Nirider, Tepper, & Drizen, 2012).

### Source of Contamination

The sources of contamination could come from the following sources:

Contamination from outside sources; leading questions; investigators response to suspects answer may signal a wrong answer or investigator may accuse suspect of lying, then agreeing when the suspect gets the question right; cold reading techniques; revealing evidence & crime scene photos; theme development; and finally investigator just tells the suspect.

### Codes

\_\_\_\_\_ What were the investigative facts?

\_\_\_\_\_ Were there any non-public investigative facts held back?

\_\_\_\_\_ What were the confession details?

\_\_\_\_\_ What confession details matched the investigative facts?

\_\_\_\_\_ Does the confession details match the physical evidence or non-public investigative facts?

\_\_\_\_\_ Were any facts of evidence, non-public facts, leaked inadvertently, to suspect, media, witnesses or victims?

\_\_\_\_\_ If so, describe them.

\_\_\_\_\_ Were any facts of evidence, non-public facts leaked to suspect, witnesses, victims, media, on purpose?

\_\_\_\_\_ Was there inside information documented in the case not to be leaked or fed to suspects, victims, or witnesses or media?

\_\_\_\_\_ Were leading questions asked during the interview and interrogation?



\_\_\_\_\_ Was a complete recording of all contacts with the suspect made.

\_\_\_\_\_ Was a review of all recordings made of all contacts, interviews and interrogations made reviewed and evaluated for contamination?

\_\_\_\_\_ Did the suspect have a pre-crime familiarity with the crime scene?

\_\_\_\_\_ Evaluate who is telling the story suspect or interrogator.

\_\_\_\_\_ Does suspect give rational or independent corroboration to the confession?

\_\_\_\_\_ When interrogator gives incorrect information provided by suspect that actually increases their culpability, is there any evidence to suggest what they are saying is true?

\_\_\_\_\_ Suspect provides confession to horrific details, but can they give mundane details about the crime that the suspect should know?

Corroboration/Reliability

Corroboration

“The orthodox corpus delicti rule requires corroboration-independent of the confession that the crime charged was committed by someone”. It does not require that the defendant committed the crime only that a crime occurred”. It does not require any corroboration of the contents of the confession (Leo, Neufeld, Drizen, & Tailitz, 2013). In 1954 the Supreme Court ruled in *Smith v. U.S.* (348 U.S. 147) and *Opper v. U.S.* (348 U.S. 84) which established the trustworthiness rule which required corroboration of the confession itself rather than just that a crime occurred. This rule has not been effective in stopping false confessions due to the DNA exonerations. In 1998 Leo & Ofshe pointed out that there are at least three criteria to establish reliability of a confession. These are similar to the corroboration rules utilized in Reid. The three criteria are the following: “The

statement leads to discovery of evidence unk. To the police; The statement includes identification of highly unusual elements of the crime that have not been made public; and finally the statement includes an accurate description of the mundane details of the crime which are not easily guessed and have not been reported publicly” (Leo & Ofshe, 1998).

#### Codes

Evaluating a trustworthy, reliable, corroborated confession

\_\_\_\_\_ Did the confession lead to discovery of evidence unknown to police?

\_\_\_\_\_ Did the confession include identification of highly unusual element of the crime that have not been made public?

\_\_\_\_\_ Did the statement include an accurate description of the mundane details of the crime which are not easily guessed and have not been reported publicly?

#### Linguistic Model for False Confessions

This model will evaluate the linguistics of false confessions to determine what parts of speech are found significantly from the suspect’s true or false confession. Then the evaluation will consist of the analysis of the frequency of words, sentences and complexity thereof, as well as rate of adjectives and adverbs in evaluating deception and truthfulness. Finally the model will evaluate the verbal cues to deception and then determine any similarities’ of linguistics with false confessions.

#### THE EIGHT PARTS OF SPEECH

There are eight parts of speech in the English language: noun, pronoun, verb, adjective, adverb, preposition, conjunction, and interjection. The part of speech indicates how the word functions in meaning as well as grammatically within the sentence. An individual

word can function as more than one part of speech when used in different circumstances.

Understanding parts of speech is essential for determining the correct definition of a word when using the dictionary.

### 1. NOUN

A noun is the name of a person, place, thing, or idea.

A noun is a word for a person, place, thing, or idea. Nouns are often used with an article (*the, a, an*), but not always. Proper nouns always start with a capital letter; common nouns do not. Nouns can be singular or plural, concrete or abstract. Nouns show possession by adding 's. Nouns can function in different roles within a sentence; for example, a noun can be a subject, direct object, indirect object, subject complement, or object of a preposition.

### 2. PRONOUN

A pronoun is a word used in place of a noun.

A pronoun is a word used in place of a noun. A pronoun is usually substituted for a specific noun, which is called its antecedent. In the sentence above, the antecedent for the pronoun *she* is the girl. Pronouns are further defined by type: personal pronouns refer to specific persons or things; possessive pronouns indicate ownership; reflexive pronouns are used to emphasize another noun or pronoun; relative pronouns introduce a subordinate clause; and demonstrative pronouns identify, point to, or refer to nouns.

### 3. VERB

A verb expresses action or being.

The verb in a sentence expresses action or being. There is a main verb and sometimes one or more helping verbs. ("*She can sing.*" *Sing* is the main verb; *can* is the helping verb.) A

verb must agree with its subject in number (both are singular or both are plural). Verbs also take different forms to express tense.

#### 4. ADJECTIVE

An adjective modifies or describes a noun or pronoun.

An adjective is a word used to modify or describe a noun or a pronoun. It usually answers the question of which one, what kind, or how many. (Articles [a, an, the] are usually classified as adjectives.)

#### 5. ADVERB

An adverb modifies or describes a verb, an adjective, or another adverb.

An adverb describes or modifies a verb, an adjective, or another adverb, but never a noun. It usually answers the questions of when, where, how, why, under what conditions, or to what degree. Adverbs often end in -ly.

#### 6. PREPOSITION

A preposition is a word placed before a noun or pronoun to form a phrase modifying another word in the sentence.

A preposition is a word placed before a noun or pronoun to form a phrase modifying another word in the sentence. Therefore a preposition is always part of a prepositional phrase. The prepositional phrase almost always functions as an adjective or as an adverb.

The following list includes the most common prepositions.

#### 7. CONJUNCTION

A conjunction joins words, phrases, or clauses.

A conjunction joins words, phrases, or clauses, and indicates the relationship between the elements joined. Coordinating conjunctions connect grammatically equal elements: and, but, or, nor, for, so, yet. Subordinating conjunctions connect clauses that are not equal: because, although, while, since, etc. There are other types of conjunctions as well.

## 8. INTERJECTION

An interjection is a word used to express emotion.

An interjection is a word used to express emotion. It is often followed by an exclamation point.

Codes

\_\_\_\_\_ Did the adjective use decrease or increase significantly during false confessions?

\_\_\_\_\_ Did the adjective use decrease or increase significantly during true confessions?

\_\_\_\_\_ Did the adjective use decrease or increase significantly during deceptive confessions?

\_\_\_\_\_ Did the verb use decrease or increase significantly during false confessions?

\_\_\_\_\_ Did the verb use decrease or increase significantly during true confessions?

\_\_\_\_\_ Did the verb use decrease or increase significantly during deceptive confessions?

\_\_\_\_\_ Did the noun use decrease or increase significantly during false confessions?

\_\_\_\_\_ Did the noun use decrease or increase significantly during true confessions?

\_\_\_\_\_ Did the noun use decrease or increase significantly during deceptive confessions?

\_\_\_\_\_ What were the total words used in a false confession?

\_\_\_\_\_ What were the total words used in a true confession?

\_\_\_\_\_ What were the total sentences used in a false confession?

\_\_\_\_\_ What were the total sentences used in a true confession?

\_\_\_\_\_ What were the total adverbs used in a false confession?

\_\_\_\_\_ What were the total adverbs used in a true confession?

## Appendix X: Reid Legal Analysis Variables

3. **Reid Legal Analysis Variables**
4. Promises of leniency
5. Threats
6. Deception from fabricated evidence.
7. Real Consequences
8. Were there any threats made to subject to make a confession?
9. Were there any promises made to subject to make a confession?
10. Was any illegal Duress applied to subject to get a confession?
11. Was any illegal coercion applied to subject to get a confession?

## Appendix Y: Legal Casebook Analysis Variables

12. **Legal Casebook Analysis Variables**
13. Voluntariness – The free unconstrained choice to confess by its maker.
14. Offensive Police Methods to induce a confession
15. Promises of leniency
16. Threats
17. Deception from fabricated evidence.
18. Duress: Physically; Psychologically
19. Real Consequences
20. Police Action Triggers Confession
21. Totality of Circumstances of factors or on their own that render a confession involuntary
22. Factors
23. Age/Juvenile
24. Lack of Counsel
25. Drugs used to assist confession
26. Low Education
27. Low IQ
28. Deprived of Food
29. Highly suggestible questioning
30. Length of Detention
31. Solitary Confinement
32. Incompetent
33. Length of Interrogation
34. Mental abuse
35. Mental Illness
36. Shuttled to another jail far away
37. Multiple Officers/Interrogators
38. Noticeable Injury/Sickness
39. Lacked experience with police
40. Physical Abuse or Threat of force
41. Relay Questioning
42. Not advised of Miranda Warnings
43. Violation of Rights
44. Lack of Sleep/Rest
45. Denied Social Support
46. Stranger to Community
47. Trickery
48. Deceptive
49. Promises Leniency made if confessed
50. Threats of adverse governmental action



51. Combination of Factors Listed above.
- 52. Influence Tactics**
53. Confront suspect with existing evidence of guilt
54. Offer moral justifications/psychological excuses
55. Use praise and/or flattery
56. Identify contradiction in suspect's account
57. Appeal to suspect's conscience
58. Minimize the moral seriousness of the offense
59. Appeal to interrogator's expertise/authority
60. Appeal to the suspect's self-interest
61. Minimize the facts/nature of the offense
62. Undermine suspect's confidence in denial of guilt
63. Any behavioral analysis interview questions
64. Invoke metaphors of guilt
65. Touch suspect in friendly manner
66. Appeal to the importance of cooperation
67. Accuse suspect of other crimes
68. Refer to physical symptoms of guilt
69. Minimize the nature/purpose of questioning
70. Good cop-bad cop routine
71. Yell at suspect
72. Attempt to confuse the suspect
73. Exaggerate the facts/nature of the offense
74. Exaggerate the moral seriousness of the offense
75. Exaggerate the nature/purpose of questioning
- 76. Coercive Strategies Observed in Interrogation**
77. Suspect was not read rights to silence and legal counsel
78. Interrogator threatened suspect with psychological pain
79. Interrogator touched suspect in an unfriendly manner
80. Interrogator's questioning manner was unrelenting, badgering, or hostile
81. Interrogator promised the suspect leniency in exchange for an admission of guilt
82. Suspect is not permitted to invoke his or her rights to silence of legal counsel
83. Suspect was in obvious physical pain
84. Interrogator deprived the suspect of an essential necessity
85. Suspect was in obvious psychological pain
86. Interrogation lasted longer than six hours
87. Interrogation Analysis for Deception, and Voluntariness
- 88. Pre Interrogation Variables**
89. Method of observation of interrogation
90.     A. Video Tape
91.     B. Audio Tape
92. Was the suspect under arrest /not free to leave?
93. Was the suspect not under arrest/free to leave?
94. Was the interrogation custodial or non-custodial?

95. Where was the interrogation performed?
96. What was the type of offense suspect interrogated about?
97. How many interrogating officer's present?
98. Race of interrogating officer?
99. Gender of primary interrogating officer?
100. Race of secondary interrogating officer?
101. Gender of secondary interrogating officer?
102. Who does suspect seem to be communicating with the most?
103. Does the suspect seem confused?
104. Is the suspect under the influence?
105. Does the suspect have any physical or mental disabilities?
106. Age of Suspect?
107. Race of Suspect?
108. Gender of Suspect?
109. Suspect Employed?
110. Occupation of suspect?
111. Class Status of suspect?
112. Education level of suspect?
113. Conviction record of suspect?
114. Strength of evidence against suspect prior to interrogation?
- 115. Interrogation Process Variables**
- 116. Interview**
117. Were the Miranda Warnings Given?
118. Were the Miranda Warnings read from the standard form?
119. If Miranda Warnings were not read from the standard form, were Miranda warnings stated correctly?
120. Did suspect waive or invoke Miranda warnings?
121. Did suspect sign waiver?
122. Possible interview tactics employed by interrogator to ascertain truth or deception through verbal or non-verbal responses from suspect? (Reid Behavior Analysis Interview)
123. 1. Do you know why I have asked to talk to you here today?
124. 2. Did you Commit this crime?
125. 3. Who do you think committed this crime?
126. 4. Is there any reason you can think of that someone would name you as a suspect?
127. 5. Who would eliminate you from suspicion?
128. 6. How do you feel about being interviewed concerning this crime?
129. 7. Why do you think the victim is saying you are the one who did this?
130. 8. Who do you think would have had the best chance to do this crime?
131. 9. Why do you think someone would have done this crime?
132. 10. Did you ever think about doing this crime even though you didn't go through with it?
133. 11. Tell me why you wouldn't do something like this?

- 134. 12. What do you think should happen to the person who did this?
- 135. 13. How do you think the results of the investigation will come out on you?
- 136. 14. If it becomes necessary would you be willing to take a polygraph test to verify what you have told me about this issue, is the truth?
- 137. 15. Do you think the person who did this would deserve a second chance under any circumstances?
- 138. 16. Is there any evidence that you could think of to support your story?
- 139. 17. Do you have an alibi?
- 140. 18. What is your alibi? (details)
- 141. 19. Is there any reason why you would have done this crime?
- 142. 20. Any other Behavior Analysis Interview questions.

**143. Interrogation Tactics Employed by the Interrogator**

- 144. 1. Identify contradictions in interviewee's story
- 145. 2. Undermine the interviewee's confidence in denial of involvement
- 146. 3. Attempt to confuse the interviewee
- 147. 4. Invoke metaphors of guilt
- 148. 5. Refer to physical symptoms of guilt
- 149. 6. Confront interviewee with existing evidence
  - 150. A. Physical evidence
  - 151. B. Eyewitness evidence
  - 152. C. Co-conspirator testimonial evidence of his/her guilt
  - 153. D. Photo/real line-up ID
  - 154. E. Polygraph results
  - 155. F. Other evidence
- 156. 7. Confront interviewee with false evidence of his/her guilt
  - 157. A. Physical evidence
  - 158. B. Eyewitness evidence
  - 159. C. Play one against the other (specify)
  - 160. D. False ID of line-up (photo or real)
  - 161. E. Running a fake polygraph
  - 162. F. Polygraph results
  - 163. G. False lab reports or other reports
  - 164. H. Other false evidence
- 165. 8. Accuse interviewee of other crimes
- 166. 9. Exaggerate the nature/purpose of the questioning
- 167. 10. Exaggerate the facts/nature of the offense
- 168. 11. Exaggerate the moral seriousness of the offense
- 169. 12. Minimize the nature or purpose of the questioning
- 170. 13. Minimize the facts/nature of the offense
- 171. 14. Minimize the moral seriousness of the offense
- 172. 15. Offer interviewee moral justifications/psychological excuses to account for suspects behavior
- 173. 16. Use praise and flattery
- 174. 17. Appeal to expertise/authority of interrogating officer

- 175. 18. Appeal to interviewee's conscience
- 176. 19. Appeal to interviewee's self-interest
- 177. 20. Touch interviewee in a friendly manner
- 178. 21. Touch interviewee in an unfriendly manner
- 179. 22. Play on interviewee's fears
  - A. Threat of actual or potential physical harm
  - B. Interviewee would get in trouble by not telling
  - C. It would look bad for interviewee if he remained silent
  - D. Tell of trouble to family
  - E. Interviewee will receive more punishment if he does not confess
  - F. Other suspect(s) might have cut a deal before interviewee
  - G. Other
- 23. Good Cop/Bad Cop routine
- 24. Yell at suspect
- 25. Other

### **Interrogation Outcome Variables**

Length of interrogation?

Was Interrogation coercive according to contemporary judicial standards?

Yes (If one or more below)

- 1. Miranda warnings were not read; or suspect not permitted to invoke
- 2. Suspect touched in unfriendly manner
- 3. Suspect in physical pain
- 4. Suspect threatened with harm if he or she didn't confess
- 5. Suspect received promises of leniency
- 6. Suspect deprived of biological essential necessities
- 7. Unrelenting, badgering, hostile questioning
- 8. Interrogation exceeds reasonable time limit, (6 hrs.)
- 9. Will is overborne or voluntariness overcome by some other factor or combination of factors
- 10. Other

No (if not one or more of above)

Contamination of non-public facts

Outcome of questioning

- A. Received full confession
- B. Received (intentional) admissions
- C. Received (unintentional) incriminating statements
- D. Did not receive any incriminating information
- E. Was a written statement obtained
- F. Other

Strength of evidence obtained solely from interrogation

- A. Weak
- B. Strong
- C. Moderate
- D. Contaminated

### **False Confession Variables**

Contamination

Codes

- \_\_\_\_\_ What were the investigative facts?
- \_\_\_\_\_ Were there any non-public investigative facts held back?
- \_\_\_\_\_ What were the confession details?
- \_\_\_\_\_ What confession details matched the investigative facts?
- \_\_\_\_\_ Does the confession details match the physical evidence or non-public investigative facts?
- \_\_\_\_\_ Were any facts of evidence, non-public facts, leaked inadvertently, to suspect, media, witnesses or victims?
- \_\_\_\_\_ If so, describe them.
- \_\_\_\_\_ Were any facts of evidence, non-public facts leaked to suspect, witnesses, victims, media, on purpose?
- \_\_\_\_\_ Was there inside information documented in the case not to be leaked or fed to suspects, victims, or witnesses or media?
- \_\_\_\_\_ Were leading questions asked during the interview and interrogation?
- \_\_\_\_\_ Was a complete recording of all contacts with the suspect made.
- \_\_\_\_\_ Was a review of all recordings made of all contacts, interviews and interrogations made reviewed and evaluated for contamination?
- \_\_\_\_\_ Did the suspect have a pre-crime familiarity with the crime scene?
- \_\_\_\_\_ Evaluate who is telling the story suspect or interrogator.
- \_\_\_\_\_ Does suspect give rational or independent corroboration to the confession?
- \_\_\_\_\_ When interrogator gives incorrect information provided by suspect that actually increases their culpability, is there any evidence to suggest what they are saying is true?
- \_\_\_\_\_ Suspect provides confession to horrific details, but can they give mundane details about the crime that the suspect should know?

Corroboration

Codes

Evaluating a trustworthy, reliable, corroborated confession

- \_\_\_\_\_ Did the confession lead to discovery of evidence unknown to police?
- \_\_\_\_\_ Did the confession include identification of highly unusual element of the crime that have not been made public?
- \_\_\_\_\_ Did the statement include an accurate description of the mundane details of the crime which are not easily guessed and have not been reported publicly?

## Appendix Z: Reid Method of Verbal Analysis of Deception

### Reid Method of Verbal Analysis of Deception

- \_\_\_\_\_ Truthful: subject responded to directions directly.
- \_\_\_\_\_ Deceptive: subject answered evasively.
- \_\_\_\_\_ Truthful: subject denies broadly.
- \_\_\_\_\_ Deceptive: subject may offer specific denials.
- \_\_\_\_\_ Truthful: subject offers confident and definitive responses.
- \_\_\_\_\_ Deceptive: subject may offer qualified responses.
- \_\_\_\_\_ Deceptive: subject may blame their memory.
- \_\_\_\_\_ Deceptive: subject may omit part of their answer through qualifiers.
- \_\_\_\_\_ Deceptive: subject may give estimation phrases and not an exact statement.
- \_\_\_\_\_ Truthful: subject denial will be specific and will let stand on its own.
- \_\_\_\_\_ Deceptive: subject denial may be bolstered to make it sound more credible.
- \_\_\_\_\_ Deceptive: subject may lie with a statement against interest to reduce anxiety within a false statement.
- \_\_\_\_\_ Truthful: subject will offer spontaneous responses.
- \_\_\_\_\_ Deceptive: subject may offer rehearsed responses.

### Additional Reid verbal Considerations

1. Use of Pronouns – Missing I, when a subject relates a story in the first person “I”, and then drops the “I” from a sentence, it suggests that the person is trying to disassociate himself from that particular time period or event.

### Use of Possessive Pronouns

2. “My, our, your, his, hers, their” reveal an attachment. A suspect may change the pronoun or drop it completely when opting not to show possession or admit association.

Appendix AA: Linguistic Indicators in Differentiation between False and True Confessions  
Guidelines

Nouns – Look for increase in false confessions

Verbs – Look for decrease in false confessions

Adjectives – Look for significant decrease in false confessions

Presence (P) or Absence (A)

Nouns

Verbs

Adjectives

Adverbs

## Appendix BB: Linguistic Model for False Confessions

**Linguistic Model for False Confessions**

## THE EIGHT PARTS OF SPEECH

NOUN

PRONOUN

VERB

ADJECTIVE

ADVERB

PREPOSITION

CONJUNCTION

INTERJECTION

Codes

- \_\_\_\_\_ Did the adjective use decrease or increase significantly during false confessions?  
 \_\_\_\_\_ Did the adjective use decrease or increase significantly during true confessions?  
 \_\_\_\_\_ Did the adjective use decrease or increase significantly during deceptive confessions?  
 \_\_\_\_\_ Did the verb use decrease or increase significantly during false confessions?  
 \_\_\_\_\_ Did the verb use decrease or increase significantly during true confessions?  
 \_\_\_\_\_ Did the verb use decrease or increase significantly during deceptive confessions?  
 \_\_\_\_\_ Did the noun use decrease or increase significantly during false confessions?  
 \_\_\_\_\_ Did the noun use decrease or increase significantly during true confessions?  
 \_\_\_\_\_ Did the noun use decrease or increase significantly during deceptive confessions?  
 \_\_\_\_\_ What were the total words used in a false confession?  
 \_\_\_\_\_ What were the total words used in a true confession?  
 \_\_\_\_\_ What were the total sentences used in a false confession?  
 \_\_\_\_\_ What were the total sentences used in a true confession?  
 \_\_\_\_\_ What were the total adverbs used in a false confession?  
 \_\_\_\_\_ What were the total adverbs used in a true confession?



## Appendix CC: Reid Non-Verbal Analysis

**Reid Non-Verbal Analysis Variables**

## D. BAI Assessment

**Attitude**

## Truthful

- Composed
- Concerned
- Cooperative
- Open
- Direct
- Sincere

## Deceptive

- Overly Anxious
- Unconcerned
- Defensive
- Overly Polite
- Evasive
- Complaining
- Guarded

**Evaluating Posture**

## Truthful

- Open Relaxed Posture
- Frontally Aligned
- Occasional Forward Lean
- Dynamic Posture-subject comfortable responding to internal messages indicating need to alter the posture to accommodate blood circulation and muscle tension within the body.

During the course of a 30-40 minute interview, the subject should display a number of different postures.

## Deceptive

- Closed Retreated Posture
- Non-Frontal Alignment
- Constant Forward Lean
- Frozen and Static

**Evaluating Hands**

## Truthfulness

- Illustrators, hands moving away from body and gestures expressing

## Deceptive

- Hands Frozen

Hand Shrugs- When the hand or hands extend from the body with the palms turned upward, with the shoulders often rise.

Truthfulness

\_\_\_\_\_ When the hand shrug reinforces the verbal response

Deceptive

\_\_\_\_\_ When the hand shrug contradicts the verbal response.

Adaptive Behavior-When hands come in contact with some part of the body.

Adaptive Behaviors Three Categories

1. Personal Gestures

\_\_\_\_\_ A. Hand wringing

\_\_\_\_\_ B. Hand contact with face

\_\_\_\_\_ C. Scratching any part of the body

\_\_\_\_\_ D. Wiping sweat from neck or brow

\_\_\_\_\_ E. Repetitive hand behaviors such as knuckle popping or drumming fingers are often displaying anxiety.

Both truthful and deceptive suspects exhibit personal gestures. For this reason they must be carefully evaluated.

Before a personal gesture as a possible indication of deception the behavior must be:

\_\_\_\_\_ 1. Be inappropriate, given the verbal content of the statement.

\_\_\_\_\_ 2. Be consistent within the particular suspect.

2. Grooming Gestures

These gestures should be associated with guilt or shame. The basis is that as the persons fear of detection increases and have a heightened awareness of how the investigator views them, consequently, the suspect may appropriately feel the need to improve their appearance by engaging in some of the following behaviors.

\_\_\_\_\_ A. Adjustment of clothing, jewelry, or accessories.

\_\_\_\_\_ B. Lint picking, dusting clothing, or pulling threads

\_\_\_\_\_ C. Cleaning or inspecting fingernails

\_\_\_\_\_ D. Attention to hair, beard or moustache

As with all non-verbal behaviors grooming gestures must be evaluated in the context of the verbal response.

3. Supporting or Protective Gestures

Behaviors should be associated with decreased confidence.

\_\_\_\_\_ A. The suspect resting head on his palm while responding to questions.

\_\_\_\_\_ B. The hand covering the suspects mouth or eyes while answering a question

\_\_\_\_\_ C. Suspect hiding hands and feet (sitting on hands, putting hands in pocket, shifting on feet).

Is behavior inappropriate for the circumstance?

Just because a person has a lack of confidence does not indicate deception.

This behavior should go away once suspect is comfortable.

### **Evaluating Feet**

The Evaluation of feet and legs is conducted because a person has the least control over legs and feet thus the potential for behavioral leakage.

Ongoing foot bouncing or leg movements which do not start on cue to a question merely displace anxiety, are not indications of deception.

\_\_\_\_\_ However changes in foot behavior on cue to a verbal response indicate that the suspect experienced anxiety or fear at the point of the interview will last a second or two and subject will resume his normal foot activity.

\_\_\_\_\_ A norm should be observed in questioning but needs to be evaluated with caution due to physical conditions as with any non-verbal behavior.

\_\_\_\_\_ Feet involved with posture changes called shifts in chair, plants feet raises off of chair to assume new posture and precedes a response in which subject is buying time for a response to questions.

\_\_\_\_\_ Shifts in chair occur during or immediately following a significant statement such as a denial indicate fear of detection and associated with deception.

#### **Codes**

\_\_\_\_\_ Norm established on feet and leg movements.

\_\_\_\_\_ Foot bouncing and/or leg movements that do not start on cue to a question.

\_\_\_\_\_ Does a suspect buys time for a response by shifts in chair and leg and feet movement?

\_\_\_\_\_ In following a statement of denial does suspect shift in chair and or have leg and feet movement?

\_\_\_\_\_ Does movements of legs and feet occur when relevant questions are asked only about the crime outside the norm established?

### **Facial Expressions and Eye Contact**

Facial expressions reflect internal emotions and are most reliable.

Eye contact can be a reliable indicator of confidence, certainty, guilt, or anxiety.

Caveat: Unless affected by culture, neurological disorders, introverted personality, medications, or other physical conditions.

Deceptive – lack of eye contact could disguise by rubbing eyes, picking up object, inspecting fingernails, etc. or by starring.

Truthful – suspects easily maintain eye contact, no concern about credibility of their answers, attentive, casual manner is unrestrained.

General Guidelines in Using Eye Contact to Assess if Suspect is Truthful or Deceptive

1. Generally speaking, a suspect who does not make direct eye contact is probably withholding information.
2. Under no circumstances should an investigator challenge the suspect to look him straight in the eye.
3. Instead of staring at the suspect the investigator should somewhat casually observe his eyes and other behavior symptoms to avoid making the suspect feel uncomfortable.
4. A suspect should not be permitted to wear dark glasses during the interview or interrogation unless there is a medical condition requiring their use indoors.

## Codes

### Deceptive

- \_\_\_\_\_ Does suspect avoid eye contact at relevant times.
- \_\_\_\_\_ Does suspect rub eyes at relevant times.
- \_\_\_\_\_ Does suspect pick up objects at relevant times.
- \_\_\_\_\_ Does suspect inspect fingernails at relevant times.
- \_\_\_\_\_ Does suspect stare at interrogator outside the norm.

### Truthful

- \_\_\_\_\_ Suspect maintains eye contact on relevant questions.
- \_\_\_\_\_ Suspect attentive
- \_\_\_\_\_ Suspect has a casual manner about them.
- \_\_\_\_\_ Suspect has no concern about credibility.

## **Assessment of Behavior Symptoms**

It is exceedingly important indeed critical that a suspects behavior symptoms are assessed in accordance with the following general guidelines:

1. Look for deviations from the suspect's normal behavior.
2. Evaluate all behavioral indications on the basis of when they occur (timing) and how often they occur (consistency).
3. The reliable indicators of truth or deception, behavioral changes should occur immediately in response to questions or simultaneously with the suspect's answers. Furthermore, similar behavioral responses should occur on a consistent basis whenever the same subject matter is discussed.
4. Always consider the evaluation of a subjects behavior symptoms in conjunction with the case evidence and facts. Behavior should only be one component in the decision making process.

Studies have shown that verbal analysis is more accurate than non-verbal assessment (Virj, 2008).

However Reid states that verbal and non-verbal assessments are to be used together to give a high probability of detection of deception.

## Appendix DD: Reid Method of Detecting False Confessions

### **Reid Method of Detecting False Confessions**

1. A confession that was not retracted until days or weeks after it was made is probably truthful.
2. The suspect's explanation for offering a false confession should be carefully scrutinized.
3. The absence of any specific corroboration within the confession should be viewed suspiciously.
4. It is not unusual for a true confessor to accept full responsibility for committing the crime but omit specific emotional details especially when blamed on memory failure.
5. Inconstancies between the confession statement and those of the victim are common place in true confessions" (Inbau et al, 2013).

### **False Confession Checklist**

#### **Element**

Independent  
Corroboration

Dependent  
Corroboration

Rationale  
Corroboration

Faulty  
Corroboration

Duress

Coercion

High Risk  
Suspect

## Appendix EE: E-Mail Granting Permission to Use Reid &amp; Associates Copyrighted

## Material

Michael Johnson

From: Jbuckley  
Sent: Saturday, May 04, 2019 6:36 AM  
To: Michael Johnson  
Subject: Re: Reid information ref. permission to publish copyrighted form  
in dissertation.

OK you have our written permission to use these items for the sole purpose of including them as part of your dissertation as outlined below. I look forward to seeing the final product.

Joseph P. Buckley  
President  
John E. Reid and Associates

On May 3, 2019, at 11:13 AM, Michael Johnson wrote:

President Buckley

Attached is the documents that are copyrighted. The pdf named Behavioral Guidelines is used verbatim and the Reid Nine points was modified but 85% verbatim. The Subject interview sheets was modified with questions from my polygraph training. The forms in issue is not an exact carbon copy or a screen shot but modified to word and not in the exact format of the forms.

Michael L Johnson

From: Jbuckley Sent: Friday,  
May 03, 2019 4:36 AM