Introduction

What drives suspects to confess during police interrogation? In particular, what drives people to confess despite the overwhelming likelihood of negative personal consequences, such as long-term incarceration? Moreover, why do some people falsely confess to serious crimes, despite both the likelihood of severe negative consequences and their actual innocence? How can we explain these phenomena?

Too often, observers seeking simple answers endorse the mistaken belief that only people facing torture or people with severe mental illnesses or cognitive disabilities would confess falsely, a belief that the prominent legal scholar Richard A. Leo (2001) calls the “myth of psychological interrogation” (p. 37). If we accept this common but erroneous belief, we may raise important concerns about defendants with these characteristics, but we would miss the risks that result from additional factors. Examples include investigators’ biases about guilt, cultural views about race and crime that lead observers to view some suspects as more likely than others to be guilty, and the powerful effects of police deception on suspects, each of which can influence the nature of an interrogation and may lead to circumstances resulting in a false confession.

Even after considering a wide range of factors about the suspect, the investigators, the specific interrogation tactics, and many details surrounding the interrogation (e.g., length of questioning, emotional intensity of the interrogation, state of the suspect regarding hunger, thirst, fatigue, or withdrawal), we may fail to see the larger picture. That larger picture includes our history of policing, changing culture and practices for police interrogators, the slow emergence of legal restraints on police interrogation tactics, suspects’ limited and generally erroneous understanding of Miranda warnings, and legal assumptions about the effectiveness of protections provided by voluntariness hearings, jurors, and trial and appellate judges. Without this view of the totality of the circumstances, observers may struggle to understand the cultural, social,
cognitive, and other processes in interrogation and in suspects’ decisions to confess. Just as judges must evaluate the totality of the circumstances to decide whether to admit confession evidence at trial, an understanding of the totality of the circumstances is essential to grasp the influence of interrogation and the consequences of the resulting confessions, particularly coerced or false confessions.

This book considers police interrogation and confession very broadly, as it seeks to clarify the totality of the circumstances surrounding interrogation and confession. We have three primary goals for this book. First, we seek to educate readers about the processes of police interrogation and confession in the United States. To do so we examine many psychological, legal, cultural, personal, and other factors that lead to greater likelihood of confessions, including coerced or false confessions. Second, we address the interactions of these factors. For example, we explore the growing field of research evaluating the impacts of confessions on other evidence: a confession can make weak evidence look stronger, lead experts astray, and cause other unintended outcomes. Third, we emphasize the totality of the circumstances. Legal precedent requires judges to consider the totality of the circumstances very broadly, including potential limitations of the defendant (e.g., cognitive disability, mental illness, fatigue, addiction), investigatory biases (e.g., the degree to which interrogators believed the suspect was guilty and whether the confession may make other evidence appear more condemning), and interrogation tactics (e.g., presence and form of deception, time of interrogation) as well as other factors. Throughout this book, we review individual factors and their interactions as we seek fundamentally to reveal the larger and more complex picture. To illustrate these goals, we introduce two false confession cases in the United States: the false confessions, erroneous convictions, and near-executions of Stephen and Jesse Boorn in the early 1800s and the recent false confession, erroneous conviction, and subsequent exoneration of Jeffrey Deskovic. These two false confession cases present very different fact patterns, but an examination of the totality of the circumstances reveals important similarities, even though substantial cultural, legal, and policing changes emerged across the nearly two centuries that separate these crimes, false confessions, and mistaken convictions.
The Boorn Brothers

In 1812, Stephen and Jesse Boorn, along with their sister Sally, had earned reputations as reckless individuals, and these reputations did not fade when Sally married Russell Colvin. Colvin eventually lost his farm, and the couple moved in with her brothers on the Boorn farm (Borchard, 1932; Wilhelm, 2010). An eyewitness reported that the Boorn brothers argued intensely with Colvin just before Colvin mysteriously disappeared. Seven years later, an uncle of the Boorns had a dream in which Colvin appeared, announced that he had been murdered, and informed the dreamer where to find his remains. Based on this widely publicized dream (Warden, 2006), Jesse Boorn was arrested. An initial search failed to reveal evidence, but a more extensive search revealed bones that the court erroneously declared to be human. Facing likely execution, Jesse claimed that his brother, Stephen, had confessed to killing Colvin and that Jesse helped hide Colvin’s body (Warden, 2006). After Stephen’s subsequent arrest, a jailhouse informant facing counterfeiting charges reported that, while in custody, Jesse had confessed. The informant received leniency in exchange for this testimony (Borchard, 1932), even though differences existed between this supposed confession and Jesse’s original confession and despite the widespread realization that the bones, the only physical evidence in the case, were not human. When authorities arrested Stephen based on Jesse’s confession, Jesse immediately recanted, claiming he had falsely reported Stephen’s confession to save his own life. In custody, Stephen confessed to the murder, claiming he had killed Colvin in self-defense.

Based on these confessions, the jury sentenced both brothers to death. As one observer stated, “the court’s biggest problem . . . was finding a jury of twelve men who were not already convinced of [their] guilt” (Wilhelm, 2010, ¶13). Due to Jesse’s claim that Stephen was the killer, the court reduced Jesse’s sentence to life in prison.

After the trial, the Boorn brothers began arguing that Colvin was still alive. The Boorns’ attorneys, in spite of their own belief in the Boorns’ guilt, ran a newspaper advertisement seeking information about Colvin. A reader recognized Colvin as a farmhand living in New Jersey, but Colvin did not want to return to Vermont, even to save his brothers-in-law from execution. Returning Colvin to Vermont required extensive
deception, including hiring an attractive woman who enticed Colvin to travel to New York City as well as others who convinced Colvin to take a roundabout route back to New Jersey. Just over a month before Stephen's scheduled execution, Colvin emerged from a stagecoach in front of a crowd, and the case collapsed.¹ Later observers used this case to argue for caution regarding confessions (Anonymous, 1820; Greenleaf, 1860), and legal scholar David A. Moran (1993) argues that this case promoted the wider acceptance of the corpus delicti rule, which requires the prosecution to produce evidence (in this case, a body) that a crime was committed, as an important legal protection for suspects who confess.

Jeffrey Deskovic

In 1989, nearly two centuries after the Boorns' false confessions, an unknown assailant sexually assaulted and murdered 15-year-old Angela Correa. Police identified 16-year-old Jeffrey Deskovic as a suspect for three reasons. First, he had been late to school the day after the crime; second, the police believed he appeared excessively distressed about the death of his classmate; and third, he told police that he was eager to assist with the case (Innocence Project, 2018a). Police interviewed Deskovic extensively and asked him to complete a polygraph examination. Police provided Deskovic with large amounts of coffee but no food, and after several hours of polygraph testing Deskovic crawled under the table crying and confessed to the crime. After the confession but before trial, DNA analysis revealed that the biological evidence found on the victim did not match Deskovic. The prosecutors, aware of this dilemma, developed a theory allowing them to retain their claim that Deskovic was the lone perpetrator. They argued that the existing DNA evidence was the result of the victim having consensual sex with an unknown individual prior to being assaulted by Deskovic. The same prosecutors remained unable to explain how Deskovic left no evidence (Innocence Project, 2018a; for similar cases see Martin, 2011; Stroh & Vigoda, 2002). The jury convicted Deskovic, who spent 16 years in prison. In 2006, the court dismissed his conviction due to his actual innocence (Innocence Project, 2018a).

Steven Cunningham, the actual perpetrator, remained free throughout much of Deskovic’s incarceration. The DNA from the Deskovic case
eventually led investigators to Cunningham, but it was 2006 before investigators entered the evidence into the New York State DNA database of people convicted of felonies (Innocence Project, 2018a). Tragically, Cunningham had committed a second murder during Deskovic’s incarceration.

Many factors contributed to Deskovic’s wrongful conviction. A Westchester County report on the case found evidence of tunnel vision (i.e., an excessively narrow focus on Deskovic that led police to ignore other suspects and exculpatory evidence), limited and selective recording of the interrogation, Deskovic’s statements, and the confession, and other serious problems (Snyder, McQuillan, Murphy, & Joselson, 2007). Additionally, the police, convinced of Deskovic’s guilt, used the polygraph examination not as a truth detection tool but as an interrogation tactic and engaged in other misconduct (Bandler, 2014a, 2014b).

The Boorn and Deskovic cases occurred at very different times in the legal history of the United States, and there are many important differences. Perhaps the most striking difference between these cases is the nature of the alleged crimes. Colvin remained unharmed, whereas the assault and murder to which Deskovic confessed was real. Other important differences reveal long-term legal changes. Unlike the Deskovic case, in the Boorn case, observers—including jurors—viewed a relative’s dream as legal evidence of a crime. At the time, definitive evidence of a crime was not required before trial, and services such as a civilian police force, reliable forensic investigations, and adequate representation by counsel remained unavailable. Despite these differences, similarities reveal consistent difficulties.

In both cases, investigators quickly identified suspects and then failed to consider other options appropriately. In both cases, evidence that appeared to indicate guilt (the bones in the Boorn case and the emotional response of Deskovic) was not reliable but was believed to be so, even in the presence of contradictory evidence. In both cases, confessions emerged when the confessors believed that their situation was hopeless and conviction appeared inevitable. Perhaps the most striking similarity relates to the juries in these cases. Both juries faced evidence that was incompatible with the confession (the animal bones for the Boorns and the DNA exoneration for Deskovic), and both juries convicted the defendants despite the exculpatory evidence. Despite profound historical
Figure I.1. The Totality of the Circumstances Approach to Understanding Confession
changes, the legal and psychological factors related to false confessions and to the evaluation of this evidence remained largely unchanged. Even though differences existed across history and case details, the totality of the circumstances across these cases shows remarkable similarities regarding both the decisions to confess falsely and the effects of these confessions on jurors, courts, and other observers.

The Totality of the Circumstances

Throughout this book we engage the totality of the circumstances model and explore how different components of this model interact with others to influence the police interrogation process and its results. Figure 1 represents the totality of the circumstances model. When a chapter addresses a particular component, we will expand the box to include examples from that chapter. In the last chapter, when we discuss recommendations for reform, we will frame those recommendations within this model as well.

Overview

We begin with the history of civilian policing and interrogation in the United States. We return to these historical perspectives throughout the book. Next, we examine typical practices in police interrogation, including deceptive practices. We then turn to types and causes of false confessions, followed by examination of the costs and consequences of deception, coercion, and false confession. The next two chapters explore expert testimony and other safeguards against coercion. We conclude the volume with recommendations for reform, in particular advocating for the development of new interrogation techniques devoid of deception and coercion.