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RECORDING OF CUSTODIAL INTERROGATIONS: POLICIES AND PRACTICES

by

LAURA RUBINO

THESIS

Submitted to the Graduate School

of Wayne State University,

Detroit, Michigan

in partial fulfillment of the requirements

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MAJOR: CRIMINAL JUSTICE

Approved By:

Advisor

Date

DEDICATION

I dedicate this thesis to my parents, Mary Lynn and Joe, for without their support, love, and encouragement this would not have been possible. I would also like to dedicate this thesis to my sisters and best friends, Jena and Sara, for without their humor and motivation, I would not have been able to complete this thesis.

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Introduction

On September 17th, 2007 two men broke into a home on Runyon Street in Detroit, Michigan. These men shot five people who were in the home at the time, killing four and leaving one woman wounded. The woman who survived managed to escape and find safety; she later gave police a description of the only shooter she had seen. She identified the man to be slim, about 6 feet tall, and around 30 to 35 years of age. Right after the shooting, a police officer who lived in the neighborhood rushed outside to investigate and saw two men running down the street. The officer fired his own gun that lead to the suspects returning fire, but no one was hit. The officer made a statement and described the first shooter as 5'11 or 6 feet tall, carrying a rifle and the second as slightly shorter and carrying a handgun. The shell casings of the shooter were found by police, who brought a police dog to follow the scent. The police dog followed the scent for a couple blocks and then stopped, police reasoned that the perpetrators fled by car from there.

On the same street, 14-year-old Davontae Sanford came out of his home to see what was going on. Officers spoke with Sanford and one sergeant went back to the boy's home and received written and signed consent from his grandmother to take Sanford back to the police station to talk. Officers took him to the crime scene where he was swabbed for gunshot residue, which came back negative. Then the police finally took him back to the station where he was questioned without permission from his grandmother after three o'clock in the morning. About an hour later, Sanford told police that he and four other peers conspired at a nearby restaurant to rob "Milk Dud." Sanford specified that one of the guns used was a .38 caliber pistol. There was no evidence that the pistol was used and the restaurant Sanford said he conspired at was closed. He was questioned several different instances and each time was more accusatory than the last. Sanford repeatedly changed his story to fit the detective's theory. Detectives told Sanford that he

could go home after he gave them “something” and called him names after he requested a lawyer, then failed to provide one to him. Officers explained that they found blood on his shoes and that is how they “know” he was involved, which was not accurate. Following the officer’s orders and information, Sanford made up a story so he could go home.

Immediately after Sanford confessed, he was charged with four counts of first-degree murder, one attempted murder, and an illegal use of a firearm. In court, the sergeant testified that Sanford drew a sketch of the house and where the bodies were located, which played a role in his conviction. Shortly after, Sanford, who has a learning disability, was sent to a psychologist where he instantly recanted his confession. On March 18, 2008, with the advice of his lawyer, Sanford pleaded guilty to four counts of second-degree murder and one count of an illegal use of a firearm. He was sentenced to 37 to 90 years in prison. A month later, Vincent Smothers was arrested and confessed to the murders on Runyon Street and provided details of the homicide that only the shooter would know. For eight years two men were in prison for the same murder and it was not until July 19, 2016 that all charges against Sanford were dismissed.

The Davontae Sanford case is a tragic example of coercive police interrogation tactics that lead to a false confession and then a wrongful conviction. Police interrogation practices have been under scrutiny in recent years. There is a growing body of scientific evidence on the effectiveness of different psychological techniques traditionally used in law enforcement (Meissner, Kelly, & Woestehoff, 2015). Some of the techniques used by law enforcement during interrogations have been found to have negative consequences, the most serious of which are false confessions (Kassin, Drizin, Grisso, Gudjonsson, & Leo, 2010). At the same time, there have been disputes in the courts over what occurs in interrogation rooms and one solution presented is the recording of custodial interrogation (Sullivan, 2005; Ratcliff, Lassiter, Schmidt,

& Snyder, 2006). Despite recommended best practices, we know very little about the specific policies and practices of audiovisual recordings during custodial interrogation within law enforcement agencies. Michigan passed a law in 2013, requiring law enforcement agencies to develop policies for implementation of electronic recordings during police interrogation (MI Legis. Assemb, 2013). The purpose is to study the implementation by Michigan law enforcement agencies of policies in regard to audiovisual recordings of custodial interrogations. This study also seeks to determine the various interrogation policies and practices of agencies as well as the challenges involved with implementation of the law.

CHAPTER 1: History of Interrogation Methods

Over the past hundreds of years, police interrogation methods have slowly adapted to society's ever-changing values. The American criminal justice system is operated through an adversary system, which is presumed to place less emphasis on state power. This power can be seen as unfair to defendants, or suspects of a crime, since police investigators collaborate with the prosecution. Investigators are often pushed to gain confessions from suspects, and as described by Leo (2008), "the goal of police interrogation is not necessarily to determine the truth" (p. 23). This section will outline the police interrogation techniques historically used in the United States and will explain how American society came to adopt modern interrogation methods.

In the nineteenth and twentieth century "the third degree" was a common police practice, which consisted of physical harm, threats, and even torture to gain a confession from a suspect (Leo, 2008). Leo (2008) contended that this practice gained confessions through torture in which many suspects falsely confessed to avoid further physical harm.

The injuries suspects received from direct physical assaults frequently left physical marks. Some police beatings (referred to in police jargon as "hospital cases") were so vicious that suspects required immediate medical aid, and some suspects spent days, even weeks, recovering from their injuries. Like the police methods themselves, the injuries from the third degree violence were varied and numerous. (Leo, 2004, p. 43)

During this time, confessions were taken as conclusive; no matter how the confession was obtained, it was understood that this individual committed the crime. As a result, most suspects who confessed were prosecuted and convicted (Leo, 2008). In the early 1930s, when the American people learned from the media of "the third degree" interrogation method, which was originally exposed by the Wickersham Commission, many lost trust in the police and legal system, ultimately deeming them "dishonest and lawless" (Leo, 2008, p. 63). President Herbert

Hoover created the Wickersham Commission in 1929 (Leo, 2008). The Wickersham Commission was modeled after the Cleveland survey of criminal justice (Wickersham Commission Report, 1931), which objectively examined local law enforcement agencies' equipment, practices and procedures (Fosdick, 1922). Roscoe Pound, the Dean of Harvard Law School, and Felix Frankfurter, a professor at Harvard Law School, acted as co-principal investigators for the Cleveland study (Walker, 1998). Ultimately, the Wickersham Commission was created to further study criminal justice issues from a national level (Wickersham Commission Report, 1931). According to Hopkins (1931), law enforcement officers believed they needed to keep the third degree, as they perceived it to be the only way to gain confessions. In the Wickersham Commission Report (1931), one police leader explained:

If I have to violate the Constitution or my oath of office, I'll violate the Constitution... A policeman should be free as a fireman to protect his community.... I'm going to protect the community. If in so doing I make a mistake and trespass on somebody's rights, let him sue (as cited in Leo, 2008, p. 65).

Interestingly, the Wickersham Commission's *Report on Lawlessness in Law Enforcement* was the first government report to actually address "the third degree" and condemn its practice as "no other report so bluntly accused public officials of pervasive wrongdoing" (Walker, 2013, p. 1183). The Wickersham Commission Report (1931) noted that "the third degree" coerced confessions of suspects with very little evidence against them and created opportunities for wrongful conviction, which was not considered quality police work.

After the report was published, the media obtained records of these brutal police practices and shared "the third degree" with the American people. The public was outraged by these practices and initiated a reform movement of police practices. Police officers started to become

better trained and from more middle class background as opposed to officers untrained and from lower socioeconomic statuses (Leo, 2008). This reform movement included scientific crime detection, which paved the way for forced confessions by the third degree to become obsolete.

In 1932, the first federal crime lab was opened by the Federal Bureau of Investigation's (FBI) director, J. Edgar Hoover (Leo, 2008), who was also the founder of the National Police Academy in 1935 (Loveday, 1999). During this time, the FBI was responsible for advancing technological innovations for crime solving purposes, including: "fingerprint technology, ballistic tests, national identification records, police journals, and the Uniform Crime Reports" (Leo, 2008, p. 80). During this time, the FBI also gave suspects' warnings, preceding mandatory Miranda warnings (Howard & Rich, 2006). The FBI advised each suspect or arrested individual before an interview that it is not mandatory to make a statement to law enforcement, any statement made can be used against the individual in court, if the suspect cannot afford an attorney one can be provided (Howard & Rich, 2006). According to Nhan (2014):

Hoover transformed the image of law enforcement from that of a working-class profession to one of high respect and prestige, consisting of crime-fighting experts. Hoover marketed the FBI as incorruptible moral crusaders and technologically sophisticated and competent crime fighters. Innovations, such as the 10-most-wanted list, as well as a focus on complex crimes, such as kidnapping, bank robbery, and espionage, drew widespread public support and cemented the FBI as the nation's premier crime fighters. (p. 3)

Hoover, along with August Vollmer, a former police administrator and criminologist, pushed to recreate police interrogation methods by replacing the third degree with the polygraph (Leo, 2008; Wilson, 1953). The famous case that aided the change of interrogation methods was *Brown v. Mississippi* (1936), which held that it is unlawful for police to use physical abuse (i.e., the third degree) during interrogation (Leo, 1996). *Brown v. Mississippi* (1936) "established the basis for the Fourteenth Amendment "voluntariness" doctrine as the due process test for

assessing the admissibility of confessions” (as cited in Leo, 1996, p. 624). This case set the tone for assessing voluntary confessions during custodial interrogations.

Leo (2008) recognized Kidd (1940) as the first police interrogation manual published. Kidd (1940) stated that three things can happen to a suspect given the third degree: (1) they will tell you anything you want to hear, (2) they will go insane, (3) they will die. Kidd (1940) emphasizes the two major problems with the third degree: “1. Policemen lack training in interrogation. 2. They are too lazy to go to the necessary trouble to apply sound interrogation methods, and attempt to force the issue with various forms of torture” (p. 48). Without proper training, officers may interrogate by using the same methods as their supervisor does. Kidd (1940) also explains why law enforcement agencies should terminate the use of this interrogation method altogether:

1. It does not produce the truth. Under sufficient torture, a man will tell you anything you want to know. If you build your case on this "confession" you may find in court the man could not possibly have committed the crime. 2. Evidence so obtained is not admissible in court, and defense attorneys are quick to develop the facts surrounding the securing of the statement. 3. Public confidence in the police is shattered if knowledge of such methods is publicized. Unless the suspect dies, it is difficult to prevent such publicity. If he dies, a terrific public protest is inevitable. (p. 46-47)

About ten years after the *Police Interrogation* manual was published, there was a further call for police professionalism, increased police training, and higher police education to improve society’s perception of police officers at the national level (Leo, 2008). By the 1960s, the third degree was not a common practice and the police acquired a higher level of overall professionalism.

The Lie Detector

“Lie detection” techniques that require behavior to be observed are comprised of three functions: “truth verification, incrimination, and impression management” (Leo, 2008, p. 104).

Meissner and Kassin (2002) explain that behavioral lie detection techniques will continue to be steered by perceptions, experiences, and stereotypes, since there are no studies to date that discovered the “human lie response” (Leo, 2008). The second function, incrimination refers to law enforcement officers using different “lie detection” methods as a tool for incriminating statements (Leo, 2008). Lastly, impression management “is not simply to elicit incriminating statements but to create the perception that they are both voluntary and reliable” (Leo, 2008, p. 106). Because the purpose of interrogations are to “move a presumed guilty suspect from denial to admission” (Kassin et al., 2007, p. 383), methods are designed to persuade a suspect to confess.

Modern interrogation methods render the third degree obsolete, utilizing deception and “psychologically manipulative methods” (Leo, 2008, p. 80). Lombroso originated the idea that lying and certain physiological occurrences were associated with one another, specifically, he learned that when people lie, blood pressure and heart rate increase (Geddes, 2002). In 1920, a medical student, Larson, contributed to Lombroso’s work by adding a continuous recording of blood pressure and body respiration (Geddes, 2002). Leonarde Keeler modified these previous works to develop a more modern polygraph in 1926 by an instrument that recorded “changes in the blood pressure and changes in depth of respiration... on a moving strip of paper” (Le Moyne, 1943, p. 163). Meanwhile, the polygraph was termed the “lie detector” and was believed to enhance criminal investigations, give accurate readings, and eliminate the amount of false confessions (Leo, 2008). The polygraph lead police to appear more objective, professional, and fair during interrogations; however, interrogators often persuaded the suspect that the machine could read their mind (Leo, 2008). Confessions obtained with polygraphs typically lead to prosecutions (Leo, 2008), despite the fact that polygraphs were deemed inadmissible in court in

Frye v. United States (1923). After a confession is obtained, the actual result (i.e., pass or fail) of a polygraph test does not matter in regard to conviction (Leo, 2008). The polygraph replaced the third degree with a much more humane approach to interrogation; however, it was not without its faults. According to Lewis and Cuppari (2009):

This term lie detector can be misleading. Rather, the polygraph test measures physiological responses or arousal to certain sets of questions. The test's results are not black and white as most lay people believe. Rather, it is a comprehensive process and not intended to prove a case though it can serve as evidence or assist investigators. (p. 90)

Police investigators, however, would tell suspects that the polygraph tests were 99% accurate and that they would either pass or fail (Leo, 2008). Investigators often told suspects that they failed the polygraph, even if it was not true, to try to obtain a confession, and make it seem to the suspect that they have no choice but to confess to the crime (Leo, 2008). Some previous literature supported the polygraph test's high accuracy (Mangan, Armitage, & Adams, 2008); however, several following studies discovered major flaws in their methodology (Iacono, 2008; Bell, Kircher, & Bernhardt, 2008). Mangan et al. (2008) conducted a field study of criminal suspects who undertook a polygraph test and matched the pass/fail outcomes with confessions or no confessions. According to Iacono (2008):

studies designed in this manner systematically exclude possible cases where the examiner made an error. If a guilty person passed, there would be no interrogation to elicit a confession, leading to the exclusion of this error. If an innocent person failed, there would be an interrogation, but no confession, again leading to the exclusion of this error. (para. 5)

For example, consider a case in which two suspects underwent a polygraph test, one passed and one failed (Iacono, 2008). Iacono (2008) makes the argument that "If the post-test interview that follows the failed test leads to a confession, the polygraph charts from both of these individuals

are selected for inclusion in the validity study” (Iacono, 2008, para. 4). The problem is that the individual who failed the polygraph test and confessed could have been innocent and the individual who passed the polygraph test and confessed could have been innocent as well; however, these individuals would both be counted in the study as “guilty.” Hence, these charts were used to elicit confessions through deceptive means (Iacono, 2008). Countless studies bring the lack of the polygraph’s effectiveness, reliability, and validity to light (Kleinmuntz & Szucki, 1984; Iacono, 2008). Although polygraphs are believed to be accurate and effective, evidence shows that lie detectors may not always be accurate due to machine error, operator error, or misrepresentation of results. This presents a large problem when law enforcement officers and citizens believe polygraph testing to be accurate, because case studies show that this practice results in high misclassification rates (Kleinmuntz & Szucki, 1984). Kleinmuntz and Szucki (1984) explain the harm in high misclassification rates: “damaging by-products of these errors are false positive judgments that may label more than 50% of the innocent suspects as guilty” (p. 774). A false-positive refers to a situation in which the polygraph result determines the subject is lying when the subject is actually telling the truth.

In search of further lie detection methods, law enforcement turned to truth serum in the early twentieth century, the computer voice stress analyzer in the 1980s, and behavioral analysis in the late 1980s and thereafter (Leo, 2008). The “truth serum” was used in interrogations, as an alternative to the third degree to try to elicit confessions from suspects by giving them scopolamine, which is a drug that induced a type of sleep that “caused women to lose their inhibitions and share their private thoughts without hesitation, but later to forget what they had said” (Leo, 2008, p. 89). In the 1963 *Townsend v. Sain* U.S. Supreme Court decision, the use of truth serums was deemed unconstitutional because some serums affected individual’s

suggestibility levels (Leo, 2008). Next, the Computer Voice Stress Analyzer (CVSA) was created by the National Institute for Truth Verification through the modification of the Voice Stress Analyzer, which was used in the 1960s (Leo, 2008). The CVSA is similar to the polygraph and worked by recording a suspect's voice and measuring their stress levels (Leo, 2008).

According to Hopkins, Benincasa, Ratley, and Grieco (2005), the CVSA is an:

energy-based detection system that produces a filtered waveform for evaluation and is computer based. Testing is live and multiple waveforms can be displayed on a single page. The audio is passed through the sound card and is automatically directed to the CVSA system. (p.4)

The purpose of CVSA was also to elicit confessions, despite its lack of validity (Leo, 2008). Leo (2008) argues “the CVSA arguably takes junk science inside the interrogation room to new heights” (p. 93).

In 1986, a new method of lie detection was created called behavioral analysis (Leo, 2008). This technique focused on observing the suspects' behavior during interrogation (Leo, 2008). John Reid first introduced behavioral analysis “as a supplementary criterion in the scoring of polygraph charts in the 1940s” (Leo, 2008, p. 93). According to Reid and Inbau (1977), suspects who were lying would: be late or postpone the “interview,” be too polite or overly friendly, suffer from dry mouth, show nervousness, and often sigh or yawn. According to Inbau, Reid, and Buckley (1986), the leading behavior analysis technique is the Behavioral Analysis Interview (BAI), which was promoted and created by John Reid and Associates (as cited in Leo, 2008, p. 94). The BAI worked by asking the suspect 15 to 20 questions and observing his responses through verbal, nonverbal, and paralinguistic cues. Similar to the polygraph, “the real purpose of behavioral analysis is not to detect deception or verify truth-

telling, but to assist the interrogator in developing an interrogation strategy and eliciting incriminating statements” (Leo, 2008, p. 97). Because of this, BAI became a standard investigatory technique (Jayne & Buckley, 1999). Reid and Associates claimed that 85% of cases are accurately discriminated as deceptive or truth-telling statements by trained law enforcement officers (Meissner & Kassin, 2002). However, there is a lack of credible empirical evidence to support the accuracy of the BAI (Vrij, Mann, & Fisher, 2006).

Another alternative to the polygraph is “statement analysis,” which is often referred to as Scientific Content Analysis (SCAN) (Leo, 2008; Vrij, 2008). SCAN was developed by a former polygraph examiner and Israeli police lieutenant, Avioam Sapir (Vrij, 2008). First, a statement was written in the suspect’s own words, and then given to an examiner for evaluation (Vrij, 2008). This technique is used to make “replicable and valid inferences from data to their context” (Krippendorff, 1989, p. 403). Sapir (2005) argues that:

people who are described in the statement should be introduced with name and role (e.g., My friend, John). If a person leaves out information (e.g., We stole the key), so leaving out the name, role or both, this indicates deception. Another criterion is the “structure of the statement”. According to SCAN, 20% of the statement should consist of information that led up to the event, 50% should be about the main event and 30% of the statement should be about what happened after the event. The more the statement deviates from this structure, the higher the likelihood that the statement is deceptive. (as cited in Bogaard, Meijer, Vrij, & Merckelbach, 2016, para 4)

To date, the majority of literature has conceded that there is no credible evidence to support SCAN as an accurate way to measure truth telling or deception in humans (Bogaard et al., 2016; Heydon, 2009; Porter & Yuille, 1996; Smith, 2001; Vanderhallen, Jaspert, & Vervaeke, 2016). According to Heydon (2016), SCAN remains “an extremely dangerous risk to law enforcement agencies and governments, and a threat to civil and human rights” (p.9).

The Reid Method

One well-known psychological interrogation technique used by law enforcement agencies is the “Reid Method.” In the United States, the Reid method is the most prevalent trained police interrogation technique (Buckley, 2006; Kassin et al., 2007). The Reid method is a psychological technique of interrogation that focuses on neutralizing the suspect’s resistance and forces the suspect to comply with the interrogator (Leo, 2008). After neutralizing the suspect, the interrogator’s job is to convince the suspect of a limited scenario of how and why he could have committed the crime (Leo, 2008). Lastly, interrogators are trained to obtain confessions in writing from the suspect on a “voluntary” basis (Leo, 2008).

In *Missouri v. Seibert* (2004, pp. 610-11, n. 2), the US Supreme Court recognized training provided to law enforcement officials by John Reid and Associates and other providers as legitimate means of protecting citizen’s Miranda rights (Buckley, 2006). Inbau and Reid developed this method and published several series of police interrogation and training manuals (Leo, 2008). Before this technique was given a defined name, it started off as Behavior Symptom Analysis and then the Behavioral Analysis Interview, which is described in the section above.

According to Reid and Associates (2007), the Reid method helped law enforcement officers increase their confession rates using nine steps. Before the interrogation, law enforcement officers are encouraged to conduct an interview with the suspect to develop rapport in a non-accusatory form (Reid & Associates, 2007). The interview process is part of the Reid method and should start prior to the nine-step interrogation (Buckley, 2006). During this time, the interrogator should avoid note taking to ensure the suspect feels comfortable with the officer (Buckley, 2006). Further, the officer is instructed to analyze the suspect’s demeanor, word choice, tone, facial expressions, and eye contact to decide whether the suspect is telling the truth

(Buckley, 2006). This interview is also necessary to assess the suspect's demeanor, allow the suspect to tell their story, and to develop an interrogation plan (Reid & Associates, 2007).

The first step to the Reid method is direct positive confrontation (Reid & Associates, 2007). One example of this step is an officer explaining: "I have in this file the results of our investigation into the (issue). The results of the investigation clearly indicate that you are the person who (issue)" (Reid & Associates, 2007, p. 28). Next, the interrogator should pause and observe the suspect's behavior, including verbal and nonverbal cues, and then assess their reaction (Reid & Associates, 2007). According to Reid and Associates (2007), step two encompasses theme development in which officers are trained to suggest motives or reasons the suspect may have committed the crime. Then the interrogator is instructed to place blame for the suspect's actions on a circumstance, situation, or another person. This step includes three possible elements: "(1) condemn the victim, (2) condemn the accomplice, or (3) condemn anyone else upon whom some degree of moral responsibility might conceivably be placed for the commission of the crime under investigation" (Inbau et al., 2013, p. 220). The main goal of this step is to establish why the act was committed (Reid & Associates, 2007). For example, an interrogator on an identity theft case may present the following theme:

Bill, I know that a year ago you had a job and were trying to finish your sentence while living in the halfway house. But we both know you weren't happy and you were struggling to pay your bills while working at the grocery store. You desperately wanted your life back. You wanted to live with your wife and children. Due to your desperation to live a normal life and to be free again, you decided to be with your family. By doing that though, you had to move your family around constantly. To avoid getting caught by law enforcement and to keep your family together you had to frequently move at a moment's notice. This meant that neither you nor your wife could hold a normal job to support your family. You had to do something to get money. (Copes, Vieraitis, & Jochum, 2007, p. 455)

If the suspect further denied that scenario, then the detective would come up with an alternative theme as to why the suspect committed the crime (Copes, Vieraitis, & Jochum, 2007).

Step three includes handling denials and interrogators are instructed to beware of denials from deceptive suspects. According to Inbau et al. (2013), when suspects are confronted with a crime, some will defend themselves by making statements, such as: “You’re just out to get me. I’m being framed!” (p. 265) or “Well, I figured you wouldn’t believe me. It’s been nice talking to you but I have an attorney to see” (p. 265). Sometimes suspects make denials in forms of apology: “I’m really sorry to have caused you this trouble, but honestly, I didn’t do this” (Inbau et al., 2013, p. 265). Inbau et al. (2013) noted that suspects usually show nonverbal cues of guilt that include: “avoiding eye contact with the investigator, slouching in the chair, moving the chair away from the investigator, or shifting posture” (p. 265) (e.g., crossing their legs or arms). In this step suspects that are truth telling “usually do not ask to talk, and they do not move beyond step three – their denials strengthen” (Reid & Associates, 2007, p. 31). Conversely, a guilty suspect would change their tactic to try and gain some control over the dialogue (Inbau et al., 1986).

Next, step four deals with overcoming objections. Objections are followed by accusations in step two and are offered to discount or prove that the accusation is not true. For example, “I don’t need any money—I’ve got plenty of money,” is a statement typically offered by a guilty party (Reid & Associates, 2007, p. 31). Another example would be an identity theft case in which the suspect claimed that he did not commit the crime because he does not have access to sensitive information (Copes, Vieraitis, & Jochum, 2007). After a suspect uses an objection, the officer is instructed use an agreement statement and to discuss the punishment if the objection were false (Reid & Associates, 2007). According to Reid & Associates (2007), step five of the Reid method deals with procurement and retention of suspect’s attention. In this step, the suspect is often focused on the punishment for the crime, defensive, and withdrawn (Reid & Associates, 2007). Following the identity theft example, the interrogator would present evidence

to invalidate the suspect's claim and then explain why and how the crime was committed (Copes, Vieraitis, & Jochum, 2007). According to Senese (2005): "The suspect may exhibit signs of this psychological resignation, such as moving into a head and body slump, taking deep breaths, beginning to nod the head in an affirmative manner as the interrogator describes how he [she] thinks the suspect committed the crime" (p. 35). Next, the interrogator is ordered to establish physical closeness with the suspect, use sincere gestures, and get back to the escalating theme.

Handling a suspect's passive mood is step six (Reid & Associates, 2007). In this step, the suspect may become less tense, appear defeated, and may break down (Reid & Associates, 2007). The officer should intensify the theme and bring to light important elements, while remaining in close proximity and introducing alternative questioning (Reid & Associates, 2007). Next, step seven involves presenting an alternative question. Reid and Associates (2007) concede that an alternative question is one in which "the suspect is offered two incriminating choices concerning some aspect of the crime – based on an assumption of guilt" (p. 33). The two choices should contrast each other and be presented as: (1) a desirable action with good reason; and (2) an undesirable action with negative reasoning behind it (Reid & Associates, 2007). One of these explanations is morally sound and the other is described as "reprehensible and repulsive" (Copes, Vieraitis, & Jochum, 2007, p. 449). Then, the suspect usually makes an admission of guilt by choosing the morally sound reason and is followed by open-ended questions from the interrogator to gain more details of the crime (Copes, Vieraitis, & Jochum, 2007). Furthermore, the interrogator is encouraged to follow the question with a supporting statement, explaining to the suspect that the crime was committed for a good reason.

Step eight involves the suspect relating to details of the crime, while the interrogator asks open ended questions to gain more information about the incident (Reid & Associates, 2007).

The interrogator is instructed to gain corroboration and focus on “facts that only the guilty would know” (Reid & Associates, 2007, p. 33). Finally, step nine deals with “converting an oral confession into a written confession” (Reid & Associates, 2007, p. 33). During this phase, a third party is used to witness an oral confession, and then the suspect or interrogator writes the confession down (Reid & Associates, 2007). Inbau, Reid, Buckley, and Jayne (2004) argue that this step is very important in the interrogation process because a written and signed confession is more likely to hold up in court, even if the suspect retracts the confession afterward. Because of this, it is recommended that interrogators convince suspects to write and sign their confession as soon as their guilt is said verbally (Inbau, et al., 2004). Lastly, it is important to establish that suspects volunteered the confession and was not coerced (Reid & Associates, 2007).

CHAPTER 2: False Confessions

These nine steps of the Reid method are still widely practiced in law enforcement agencies today; however, there are some underlying concerns that this method may elicit false confessions. Leo (2008) identifies three sequential errors in the investigation process that contribute to false confessions: misclassification error; coercive error; and contamination error. Firstly, a misclassification error can take place during the investigation. This error consists of detectives mistakenly assuming an innocent suspect is guilty (Leo, 2008). After guilt is assumed, suspects are interrogated, which plays a key factor in police investigation (Leo, 2008). Before the interrogation process starts, the interview phase is supposed to filter out innocent suspects, however, when suspects proceed to the interrogation room they are presumed to be guilty. In this stage, confirmation bias can contribute to a detective's methodological approach of gathering evidence and interpreting information to fit preexisting beliefs (Nickerson, 1998). Kassin, Goldstein and Savitsky (2003) describe this method as "theory-driven social interactions founded upon a presumption of guilt" (p.188). During the interview process investigators are trained to look for certain cues, both verbal and nonverbal to try and distinguish an innocent suspect from a guilty one. There is no credible empirical evidence to support the claim that police can discriminate deceptive statements by innocent suspects as opposed to guilty suspects (Kassin, Goldstein, & Savitsky, 2003).

Next, coercive error takes effect (Leo, 2008). After the detective classifies a suspect as "guilty" in their mind, the suspect is sent to interrogation. The detective's primary goal becomes to obtain a confession from the suspect. During the interrogation, detectives are able to use various psychological approaches to obtain that confession outside of the third degree. The two processes on which the Reid method is based: (1) "Breaking down denials and resistance", and

(2) “Increasing the suspect’s desire to confess” (Gudjonsson, 2003, p. 11), function by increasing the suspect’s anxiety, while reducing the fear of consequences (Leo, 2008). This can include the use of false evidence as a ploy to gain confessions under certain conditions, as upheld in the 1969 case, *Frazier v. Cupp*. This false evidence tactic involves interrogators that “bolster an accusation by presenting the suspect with supposedly incontrovertible evidence of his or her guilt (e.g., a fingerprint, blood or hair sample, eyewitness identification, or failed polygraph)—even if that evidence does not exist” (Perillo & Kassin, 2010, p. 327). This type of situation tends to be highly persuasive and highly controversial because it is told by a person of authority, carries much weight as “perceived” evidence, and is reinforced by assumptions of technological accuracy (Leo, 2008). According to Inbau et al. (1986):

During a legal interrogation reality cannot be changed. A confession will be inadmissible as evidence if the interrogator takes away the consequences of the confession (promises), or physically adds anxiety (threats, abuse) during interrogation. However, the interrogator can legally change the suspect’s *perception* of the consequences of confession or the suspect’s *perception* of the anxiety associated with deception through influencing the suspect’s beliefs. (p. 333)

Using false evidence as a method to gain a confession may lead to an innocent suspect confessing to a crime they did not commit.

Contamination error is the final step in eliciting a false confession (Leo, 2008). In this phase, detectives continue to use accusatory tones from the preadmission phase of interrogation (Leo, 2008). This step takes place when a detective pushes an innocent suspect to create a more detailed postadmission narrative (Leo, 2008). The postadmission narrative occurs after a suspect claims, “I did it” (Leo, 2008). The goals of this phase are: to gain a narrative from suspects about how and why they committed the crime; to convince suspects they share a common goal with detectives in helping the suspect; and to obtain a convincing narrative consistent with the detective's theory to make it easier to convict the suspect in court (Leo, 2008). According to Leo

(2008), if detectives were neutral they would switch to an interviewing style of questioning with more open ended questions; however, interrogators continue to use “confrontational, suggestive, and manipulative interrogation techniques” (p. 166). Interrogators use this when the suspects’ narrative does not follow the detective’s theory about how the crime took place (Leo, 2008).

Interrogators may suggest facts and situations that may have occurred during the crime, which could lead to the contamination of a suspect's’ postadmission narrative (Leo, 2009). In this context, the narrative is typically “replete with errors when he responds to questions for which the answers cannot easily be guessed by chance” (p. 337), unless interrogators provided that information (Leo, 2009). The information given by interrogators may be intentional or unintentional (Leo, 2009). Detailed narratives are taken as authentic and serve as convincing evidence in court (Leo, 2008). According to Kassin (2005), confessions have the most influence over jurors even when confessions are presumed to be coerced.

Police investigative error may contribute to false confessions, but looking at the psychological process underlying false confessions is just as important. One of the most influential modern works in police interrogation, deemed by Leo (2008), was Kassin and Wrightsman’s (1985) chapter “Confession Evidence.” Kassin and Wrightsman (1985) identify three types of false confessions: (1) voluntary, (2) coerced-compliant, and (3) coerced-internalized. The first type is when a suspect voluntarily gives a false confession, which could be due to a mental disability, part of an effort to protect the real perpetrator, or to receive notoriety for the crime (Kassin & Wrightsman, 1985). According to Dr. Joshua Davis, some individuals with serious mental disabilities that have trouble differentiating reality and fiction are at a higher risk of voluntarily giving a false confession (personal communication, July 7th, 2016).

Vulnerable suspects, such as individuals with mental disabilities may acquire poor social skills,

for example, a lack of assertiveness (Redlich, 2004). The lack of assertiveness can play a role when an individual is being interrogated, which may lead to a false confession (Redlich, 2004). Also, certain personality characteristics may play a role in false confessions by an individual need for compliance. Gudjonsson (2004) found that individuals who have neurotic and introversion personality traits had a higher likelihood of compliance. In other instances, individuals may confess to a crime they did not commit to protect the person that actually committed the crime (Kassin & Wrightsman, 1985), for example, a mother confessing to protect her child. Other individuals voluntarily falsely confess to get recognition for the crime (Leo, 2008), for instance, a number of individuals came forward to try and get credit for kidnapping and murder in the Lindbergh case. Further possible motives may include “the unconscious need to expiate guilt over previous transgressions via self-punishment” (Kassin & Wrightsman, 1985, p. 77), or to claim guilt for one crime to cover up a more serious crime committed (Leo, 2008).

The coerced-compliant types usually confess after extreme interrogation methods, while recognizing deep down that they are actually innocent (Kassin & Wrightsman, 1985). This type of confession usually starts with the suspect feeling a great deal of psychological stress because of copious factors, which may lead to the compliance of a confession to stop the interrogation (Leo, 2008). Gudjonsson (2003) maintained that incentives for this type of false confession may be from suspects not being allowed to eat, sleep, drink water, or feed a drug habit (as cited in Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2010). These incentives may have more influence over individuals who are younger, have mental disabilities, are more socially dependent, or have a fear of being confined (Kassin, et al., 2010). Police pressure or promises of leniency both could play a role in contributing to suspect stress (Leo, 2008). A suspect may confess “as an act of social compliance when they feel trapped by the apparent strength of the

evidence against them and perceive no other means of escape” (Perillo & Kassin, 2010, p. 327), Perillo and Kassin (2010) found that the anxiety and pressure associated with the interrogation process may result in the confession of an innocent or guilty suspect similarly. The third degree method of interrogation, which used physical coercion to obtain confessions, can be compared to coercive psychological techniques that use leniency to acquire confessions (Leo, 2008). When leniency is used, suspects may feel pressure to confess to avoid a greater punishment, especially if an interrogator is reassuring them that “they know they did it” (Kassin & Wrightsman, 1985).

Some suspects under similar pressure, described in the coerced-compliant confession type, internalize the accusation by detectives and end up giving a false confession called the coerced-internalized type (Kassin & Wrightsman, 1985). In this type of confession, the individual is factually innocent; however, they come to believe that they actually committed the crime (Kassin & Wrightsman, 1985). This type is also referred to as “persuaded false confessions,” in which the suspect is convinced that despite having no memory of the crime, he must have committed the crime (Leo, 2008). Suspects could form false memories of actually committing the crime, especially if the suspect is vulnerable (i.e. children, the elderly, IQ under 75, mentally disabled) (Clare & Gudjonsson, 1995; Leo, 2008; Redlich & Goodman, 2003).

This false confession type is when the suspect comes to believe, even temporarily, that he committed the crime (Kassin & Wrightsman, 1985). A suspect may be given an abundance of misinformation, which may “create confusion and lead people to doubt their own beliefs, at times internalizing guilt and confabulating memories for crimes they did not commit” (Perillo & Kassin, 2010, p. 327). When this type of false confession occurs, the suspect confesses in speculative and putative language (Leo, 2008, p. 210). For example, the suspect may say something along the lines of “I must have done it” (Leo, 2008). According to Leo (2008), there

are three stages of persuaded false confessions. First, the interrogator gets the suspect to question their innocence by constantly accusing the suspect of committing the crime with confidence.

Next, the interrogator points out that the suspect's reasoning is illogical and remains confident in their accusal. Lastly, the interrogator presents the suspect with "irrefutable" evidence of guilt based off fabricated stories (Leo, 2008). These stages may result in a false confession.

Interrogation Training

Despite the training process law enforcement officers are required to complete before entering the interrogation room, scholarly literature suggests that training may not play a factor in deciding if a suspect is telling the truth or lying. Even with training, humans are poor at judging deceptive reactions, lying, and truth telling (Granhag & Stromwall, 2004; Memon, Vrij, & Bull, 2003). Kassin and Fong (1999) found that training did not improve the interrogators accuracy in determining whether or not the suspect was telling the truth in regard to verbal and nonverbal cues. Police officers reported that nonverbal cues are more reliable than verbal cues (Stromwall & Granhag, 2001); however, research has suggested that evaluating verbal cues are more accurate at detecting deceit, than nonverbal cues (Vrij, 2000). Interestingly in some instances, interrogation training impaired detectives' judgment (Kassin & Fong, 1999). Another study found that those who make judgments for a living (e.g., detectives, psychiatrists, federal agents) are very prone to error (Ekman & O'Sullivan, 1991). Kassin and Fong (1999) noted that in practice detectives are able to control more information and ask questions relating to the suspect's responses, creating a more interactive discussion, which may help or hinder their ability to accurately judge the suspect.

Police interrogation is often perceived as a game, due to the manner in which detectives are trained (Leo, 2008). During training, detectives are taught that if they are not able to gain a

confession from a suspect, then they should try to catch the suspect in lies and suggest different scenarios or themes (Leo, 2008). According to Leo (2008) this role is displayed through interrogation in which four phases are recognized: “the softening up phase, the Miranda warning phase, the interrogation proper (i.e., from denial to admission), and the postadmission interrogation (i.e., from admission to confession)” (p. 26). During the softening phase, detectives are responsible for building rapport with the suspect through friendly small talk to divert the suspect’s attention (Leo, 2008). Next, the Miranda waiver phase warns suspects of their rights and encourages suspects to waive those rights; however, confessions are not discontinued if detectives fail to follow Miranda (Leo, 2008, p. 27). In the interrogation proper phase, detectives address the crime and confront the suspect with real or fake evidence, encouraging them to plead guilty in their own self-interest (Leo, 2008). One of the goals of this phase is to break the suspect’s self-confidence, “the suspect should come to perceive himself as caught, trapped, and utterly powerless to change a seemingly unchangeable situation” (Leo, 2008, p. 28). In the final post-admission stage, if the suspect’s narrative fails to coincide with the one the detectives believe to be true, then investigators tend to “use confrontational, suggestive, and manipulative interrogation techniques” (Leo, 2008, p. 29). In many cases, interrogators stop the investigation and are not concerned about errors suspects make in the postadmission process, if the suspect previously uttered the words “I did it” (Leo, 2008). This process may unintentionally lead a suspect to confess to a crime they did not commit (i.e., a false confession).

Wrongful Convictions

False confessions are one of the contributing factors to wrongful convictions. According to the National Registry of Exonerations by University of Michigan’s Law School, there have been 1817 people exonerated in the United States since 1989 as of June 15, 2016. Of those cases,

false confessions served as a contributing factor to a wrongful conviction in 227 cases (National Registry of Exonerations, 2016). Although false confessions played a factor in the initial conviction of 12.51% of these cases, there are other contributing factors that work alongside false confessions to convict an innocent suspect (National Registry of Exonerations, 2016).

Gould, Carrano, Leo, and Hail-Jares (2014) identified the major sources of wrongful convictions, which are: incompetent defense representation, prosecutorial misconduct, forensic misinterpretation, informant testimony, tunnel vision, false confession, and inaccurate eyewitness identification. The small percentage of false confessions may be due to fairly new research on psychological techniques. According to the National Registry of Exonerations (2016), there are many more exoneree cases in recent years regarding false confessions, as they used to be a rare occurrence. Recognizing and understanding why wrongful convictions occur is very important. Over the years, the criminal justice system, as well as criminal justice scholars recognized that wrongful convictions do exist and presents a major problem in the criminal justice system (Gould et al., 2014). The emergence of DNA testing significantly helped law enforcement solve cases more accurately and allowed for past wrongful conviction cases to be corrected (Gould et al., 2014). DNA testing has also emphasized that human judgment is fallible (Leo, 2008). Countless news stories were published and television reports aired in the awaking of DNA testing and the first DNA exoneration in 1989 (Leo, 2008). This brought wrongful convictions to the public's attention and gained greater recognition throughout the political realm (Leo, 2008). This created the innocence movement. This movement focuses on reducing the amount of wrongful conviction cases before they occur and identifying cases where defendants are factually innocent and exonerate them. Factual innocence can be defined as an instance where no crime was committed or that another person committed that crime. Innocence studies

suggest that the occurrence of a wrongful conviction increase when 2 or more sources are present and the criminal justice system fails to operate correctly (Carrano & Zalman, 2014). Carrano and Zalman (2014) argue that wrongful convictions should be dealt with on a macro and micro level to view the problem from different angles. Although ridding false confessions altogether will not solve the problem as a whole, it is a step in the right direction and will contribute to minimizing wrongful convictions.

Organizational Structure. Several criminal justice systemic factors such as lack of accountability and fragmentation play a role in wrongful convictions (Garret, 2011). Wrongful convictions typically do not occur because of one “bad apple” but due to a problem in how the criminal justice system functions at every level (Leo, 2008). Proper law enforcement agency operation is imperative. Law enforcement agencies must each acquire certain structural and organizational standards (Feeley, 1973). According to Feeley (1973), these standards are extremely important and determine the efficiency of agency operation. If an agency’s internal structure is corrupt, then the delivery of service will not be effective; or if an agency fails to organize employees and data, then criminal justice services will not be efficient. The criminal justice system exists to arrest people who commit certain crimes, to decide whether the individual is guilty or innocent, to determine a proper sentence, and then to decide on a proper sanction if found guilty. The system must also take into consideration the defendant’s constitutional rights and ensure they have not been violated during the criminal justice process. Agencies have structural and organizational standards that must be met for the proper delivery of criminal justice (Feeley, 1973).

Furthermore, the organizational structure of the interrogation process can be viewed in the context of case routinization within law enforcement agencies. According to Waegel (1981),

police detectives are “guided and constrained by two organizational imperatives: 1) the requirement to submit investigative reports, and 2) the requirement to produce arrests” (p. 266). These two aspects of police detective work tend to shape how they carry out their duties. For example, if detectives gain promotions by the amount of arrests they accrue, then they are given incentives to arrest as many individuals related to their case-work as possible and some may experience tunnel vision, especially in highly routinized cases (Waegel, 1981). According to Waegel (1981), in highly routine cases:

Detectives often rely upon assumptions to add detail to a case rather than actually gather information to further specify the type of case at hand. In other words, it is frequently taken for granted that certain investigative procedures will have predictable outcomes. Frequently, this process manifests itself in the fudging, doctoring and manipulation of formal organizational reports. (p. 274)

Case routinization and tunnel vision may be part of the problem in regard to interrogation practices. This could play a role in obtaining a false confession and conviction of an innocent suspect.

Wrongful Conviction Reforms. A movement has been created to reduce the prevalence of wrongful convictions, which is referred to as the innocence movement. This movement focuses on wrongful conviction cases where defendants are factually innocent, which means that either no crime was committed or that another person committed that crime. Influenced by the innocence movement, several states have taken wrongful conviction prevention measures into their jurisdiction. North Carolina created an Actual Innocence Commission to advocate reform to reduce the risk of wrongful convictions in the future (Roach, 2009). This innocence commission pushed the state to require all law enforcement officials to be trained by the set of best practices (Garrett, 2011). These practices included lineups that were independent, blind, and sequential (Garrett, 2011). Several lines of instruction were also added, which dealt with informing the

eyewitness that the offender may not be present in the lineup and that it is important to exclude innocent individuals (Garrett, 2011). The commission pushed for interrogations involving homicide to be fully recorded (Garrett, 2011). In addition, they advocated for the preservation of evidence, access to DNA testing, and expansion of post exoneration support for the wrongfully convicted (Garrett, 2011). In 2006, a second commission was created, the North Carolina Innocence Inquiry Commission, to review cases of possible innocence (Mumma, 2014). This Innocence Commission has members that serve three-year terms and include a judge, prosecutor, criminal defense lawyer, sheriff, victim's advocate, and members of the public (Garrett, 2011). Ten other states followed by creating different types of reform Commissions (Garrett, 2011). Illinois, for instance, created the Illinois Commission on Capital Punishment that recommended 85 different reforms to help "bullet proof" the death penalty (Garrett, 2011). This commission and others similar are called blue-ribbon commissions (Scheck & Neufeld, 2002). Blue-ribbon Commissions are formed to examine an issue in the criminal justice system that may need reform (Scheck & Neufeld, 2002). These Commissions are important because they promote the reform of policy to prevent wrongful convictions and assist individuals when a miscarriage of justice occurs. In the next chapter, policy reform will be discussed further in the context of false confessions.

CHAPTER 3: Policy Implications to Reduce False Confessions

Policy change is vital when the goal is to reduce and prevent the amount of wrongful convictions. This change was influenced by the innocence movement and follows the public policy reform model (Zalman & Marion, 2014). After the innocence movement became well-known by the public through DNA exonerations, pressure was put on legislatures to find ways to decrease the number of wrongful convictions. In order to study policy process, policy development must be taken into consideration. Policy development includes: identifying the problem, setting the agenda, formulating and budgeting policies, implementing policies, evaluating policies, and adjusting or terminating policies. Policy development is important and complex since steps of this process are often done at the same time or out of order; this development also serves as both a human and political process (Zalman & Marion, 2014). This chapter will discuss the policy process in regard to one of the contributing factors of wrongful convictions (i.e., false confessions). Research has identified audiovisual recording of interrogations as a remedy to false confessions and will be discussed later in the chapter.

Public Policy

The first step in the public policy process is problem identification. This is an important step, “for conditions not seen as problematic by a significant public are unlikely to impel uncorrupt, official decision makers to enact laws, establish judicial doctrines, or modify agency procedures” (Zalman & Marion, 2014, p. 26). For example, a single highly publicized event or a mass movement can produce a governmental policy response. In 2000:

the innocence movement has coalesced around innocence projects, not because of a mass movement of indignant and altruistic citizens, nor by the efforts of the likely thousands of

wrongfully convicted defendants who received lesser sentences, but by the actions of astute and motivated elites. (Zalman & Marion, 2014, p. 28)

The actions and policies taken and proposed by this “innocence elite” generated public awareness, which spread through the media by widespread news stories (Zalman, Larson, & Smith, 2012; Zalman & Marion, 2014). Baumgartner and Jones (1991) note:

Strategic policymakers can have tremendous success and even up-end powerful subgovernments made up of cohesive groups of executive branch officials and strong economic interests, through the strategic manipulation of images and venues of local and national governments. They are not limited to appealing directly to the mass public in their efforts to expand conflicts beyond their original bounds. (p. 1068)

There does not always need to be a “mass movement” to identify a problem in the criminal justice system and start the policy development process.

Agenda setting and policy formation is the next step in policy development. This stage is critical as issues need to be perceived as important by the political community. Fortunately, wrongful convictions are an active policy issue due to recent legislation and agencies’ policies (Zalman & Marion, 2014). Formulating policy is also critical. Policy could be produced “as a result of exhaustive and high-quality research or be cobbled together by policy entrepreneurs.... by people inside government, networks of people,” (p. 29) or groups in similar agenda setting positions (Zalman & Marion, 2014). Innocence reform is unique because it focuses on multiple issues and actors in the criminal justice system including, “police, forensic examiners, prosecutors, defense attorneys, juries, judges, and experts in psychology and other specializations” (Zalman & Marion, 2014, p. 30). Factors that contribute to wrongful convictions (i.e., mistaken eyewitness identification, faulty forensic evidence, tunnel vision, false confessions, inadequate counsel, and prosecutorial misconduct) create the innocence movement’s policy agenda (Zalman & Marion, 2014). Zalman and Marion (2014) explain an:

important factor mentioned in wrongful conviction scholarship is the cascading effect in which one error influences other parts of the process, as where a mistaken eyewitness identification leads police to more aggressive interrogation, compounding the original error with a psychologically coerced confession. (p. 30-31)

Due to the influence that contributing wrongful convictions factors have on one another, the innocence movement as a whole is processed under one policy agenda.

The next step in the policy development process is legitimation and budgeting.

Legitimation of a policy denotes “choosing among competing policy formations to establish a policy that will then be implemented to address the problem” (Zalman & Marion, 2014, p. 32). One example of policy legitimation is legislation. For instance, the state of Illinois implemented recommendations by Governor Ryan’s commission, which set out to examine capital punishment and reduce the number of innocent individuals sent to death row (Garrett, 2011). Zalman and Marion (2014) emphasize that legitimation of policy involves not simply passing an act through legislation, but to create an awareness of issues “central to the existence of a political state” (Zalman & Marion, 2014, p. 32). Budgeting is also important to policy implementation, since nothing can get accomplished without proper funding. During the Bush Administration, this was outlined in regard to the Innocence Protection Act of 2004, when opposition in the Justice Department halted funding for post-conviction DNA testing (Zalman & Marion, 2014).

In order for policy to be properly implemented and applied, adequate funding is needed. Research on the implementation of policies should be conducted, along with an evaluation of prior policy effectiveness. Implementation is defined as “putting a formulated policy into practice” (Zalman & Marion, 2014, p. 33). Research conducted prior to new policy implementation can improve the application of policy and fix problems and issues, recognized in

past policy executions, before the new policy is implemented (Zalman & Marion, 2014). In addition, criminal justice system actors play a role and shape how policy is implemented, which creates a highly political environment (Zalman & Marion, 2014). This creates further complexities, since different system actors require “different kinds of information about the consequences of a particular policy for their institutional setting—information cast in terms of their particular incentives, goals, and constraints” (McLaughlin, 1987, p. 176). Lastly, policy evaluation, adjustment, and possible termination are among the final stages of policy development (Zalman & Marion, 2014). According to Jones (1984), policy evaluation can be aimed at the political level, the organizational level, and the substantive level (as cited in Zalman & Marion, 2014, p. 34). Many innocence reforms, like videotaping interrogations, are still somewhat new and further political, organizational and substantive level evaluations are needed. After further elevation, especially from substantive levels, possible adjustments in policy may be needed.

Remedy for False Confessions

Leo (2008) identified two serious policy problems in regard to false confession reform that will be difficult to resolve, (1) coerced and involuntary confessions, and (2) “unreliable fact-finding and erroneous verdicts” (Leo, 2008, p. 270). One suggestion to remedy this would be to “create a separate nonpolice agency within the criminal justice system (such as an independent branch of the judiciary) to interrogate suspects” (p. 271); however, this is unlikely to pass legislation because it requires a major change in the adversary system (Leo, 2008). Another, more plausible remedy is the electronic recording of interrogations. Having a recording of the interrogation helps others objectively listen and watch what actually occurred in the interrogation room as opposed to getting a biased summary. Leo (2008) explains:

If the entire interrogation is captured on audio or video recording, then it may be possible to trace, step by step, how and when the interrogator implied or suggested the corrected answers for the suspects to incorporate into his postadmission narrative. (p. 337).

Also, without factual evidence of what occurred in the interrogation room, there is no way of ensuring the goals of the adversary system, which are (1) the protection of legal rights, (2) the evaluation of state power, and (3) the promotion of truth-finding (Leo, 2008).

Leo (2008) maintains that audiovisual recordings of interrogations are not enough to rid false confessions from occurring, but additional safeguards should also be applied. These safeguards are for vulnerable populations, including the mentally ill, and juveniles (Leo, 2008). Leo (2008) suggests that vulnerable populations should not be interrogated by police, or if they have to be, limits should be placed during interrogation. He maintained that police officers should receive special training to ensure they are not coercing a suspect that is mentally ill into a false confession (Leo, 2008). Kassin et al. (2009) recommend two ways of protecting vulnerable suspects, (1) ensuring that an attorney is present at all times during interrogation, and (2) requiring special training from all law enforcement officers that deal with interviews and interrogations. This required training should not only be “on the limits of human lie detection, false confessions, and the perils of confirmation biases—but on the added risks to individuals who are young, immature, mentally retarded, psychologically disordered, or in other ways vulnerable to manipulation (Kassin et al., 2009, p. 28). These reform recommendations are not set out to work alone, but alongside the recording of interrogations.

This remedy of recording interrogations was adopted by several states. *Stephan v. State* (1985) held that in the state of Alaska, police must electronically record custodial interrogations and “explanations should be given at the beginning, the end and before and after any

interruptions in the recording, so that courts are not left to speculate about what took place” (p. 1162). Minnesota followed about 10 years after in 1994 and seven other states followed in the early 2000s to require the electronic recording of custodial interrogations (Leo, 2008). Garrett (2011) estimated that “at least 500 police departments now videotape interrogation” (p. 248). Some of these states required the recording of custodial interrogations: to be from start to finish in their entirety; to be for felonies only; or to be for violent crimes only (Leo, 2008).

Additionally, state legislatures have been passing bills to require law enforcement agencies to electronically record custodial interrogations, and, more surprisingly, agencies across the United States have begun recording interrogations voluntarily, while forming their own policies (Leo, 2008). This is unexpected since many police departments reject reforms due to cost (Gould et al., 2014).

Due to the fact that agencies are developing their own policies and practices in regard to the electronic recording of custodial interrogations, it creates a difficulty to track which agencies have certain policies or practices. Even if the state requires the electronic recording of custodial interrogations, law enforcement agencies may have varying policies or practices, especially if there is a lack of legislative oversight. In order to understand more about these, research must be conducted. Kassin, et al. (2007) sent out a questionnaire to law enforcement agencies to ask if they used electronic recording devices. Participants were recruited on a voluntary basis and included five U.S. states and two Canadian provinces. Kassin et al. (2007) found that 16% of agencies said they are required to record interrogations, while 84% maintained that they were not required to record. Interestingly, of the 16% that said their agency requires recording of interrogations, 59% used audiotape and 25% used videotape. According to Kassin et al. (2007), “When asked about the interrogation sessions in which they had been involved, participants

estimated that 8.51% were fully videotaped, 35.82% were audiotaped, 14.49% were transcribed by stenographer, and 42.38% were not recorded in any way” (Kassin et al., 2007, p. 393).

The way in which policies are interpreted by law enforcement agencies is important, since it affects the way they are carried out. For example, if one agency interprets the policy as only electronically recording interrogations, but not interviews, then it would be important to know what their definition is of an “interview” and “interrogation.” Murray, Gegner and Pelton (2014) found that some agencies had a clear definition of an interrogation and an interview; however some agencies maintained the belief that interviews and interrogations were the same thing. Other agencies said the difference between an interview and an interrogation was when questioning becomes accusatory (Murray et al., 2014). Murray et al. (2014) surveyed 17 law enforcement agencies in Nebraska. The questionnaire tried to identify the “perception of the usefulness” of policies and asked agencies about their current policies on suspect identification procedures, evidence handling, accountability, and interrogations (Murray et al., 2014, p. 134). Although more and more police departments are starting to audiovisual record interrogations, investigations are still conducted with high autonomy and limited visibility (Murray et al., 2014). The results suggested that police departments were hesitant to discuss internal policies and viewed policies as “red tape” they had to get through as opposed to viewing policies as job aids (Murray et al., 2014).

The importance of recognizing and understanding why wrongful convictions occur is vital. The electronic recording of custodial interrogations is one remedy to prevent false confessions (Gould et al., 2014). Kassin, Drizin, Grisso, Gudjonsson, Leo, and Redlich (2009), in a self-styled White Paper, recommend that “all custodial interviews and interrogations of felony suspects should be videotaped in their entirety and with a camera angle that focuses equally on

the suspect and interrogator” (p. 23). Many states have advocated and passed legislation for recording of custodial interrogations; policies, however, vary by state and law enforcement agencies.

In 2013, the state of Michigan passed a bill in regard to the recording of interrogations, which was introduced by Senator Schuitmaker. According to the Senate Bill 152 (2013):

A law enforcement official interrogating an individual in custodial detention regarding the individual’s involvement in the commission of a major felony shall make a time-stamped, audiovisual recording of the entire interrogation. A major felony recording shall include the law enforcement official’s notification to the individual of the individual’s Miranda rights. (p. 1)

The present study’s goal is to gain information on Michigan law enforcement agencies’ practices and written policies in regard to audiovisual recordings of custodial interrogations. This study also seeks to determine the various interrogation policies and practices of agencies, as well as their compliance with Senate Bill 152. The current study used a stratified random sample of law enforcement agencies across Michigan using a mail-in-survey to obtain the data. It is expected that law enforcement agencies will not be open to the new policy (i.e., electronic recording of custodial interrogation) that may help in the accuracy of investigations due to cost, time, and police culture.

CHAPTER 4: Method

Data were collected through mail-in surveys. The surveys asked about past and present law enforcement practices and policies regarding the recording of custodial interrogations. The primary focus of this study is to explore Michigan law enforcement agencies' policies and practices related to audiovisual recording during custodial interrogations. More specifically, the goal is to determine whether Michigan law enforcement agencies conduct audiovisual recordings of custodial interrogations, whether they have formal written policies related to recording of custodial interrogations, and to assess their awareness of Michigan Senate Bill 152.

Sampling

A list of all Michigan Law Enforcement Agencies was acquired from the Michigan Commission on Law Enforcement Standards (MCOLES). There were 590 law enforcement agencies in Michigan, according to the annual registration reporting for 2014, including municipal, township, village, special purpose, county, and state agencies. Given the relatively small number of county, special purpose, and state-level agencies in the state, and the distinctive nature of their role relative to the majority of local police agencies, they were excluded from the study. After excluding state, special purpose, and county agencies, 447 municipal, township and village agencies remained in the final sampling frame. The variability in size and governmental types (i.e., townships, towns, cities) of local police agencies influences their organizational structures and processes. In order to obtain a sample representing the various types of local agencies, a dual sampling technique was used. First, all law enforcement agencies with 50 or more full-time sworn officers (N=41) were surveyed. Next, the remaining 406 agencies were randomly sampled. SPSS was utilized to select a random sample of approximately 30% of cases of agencies that have 0 to 49 full-time sworn officers. The sample was drawn using SPSS, which

conducts a pseudo-random sample. This means that SPSS measures the distribution and takes about 30 percent of the population to ensure the sample is representative. The exact percentage sampled from the 406 remaining agencies was 34.24%. The final total sample size was 180. This methodology was chosen to get the most representative sample of the population (i.e. agencies of all sizes and from all geographic areas in the state).

There are 41 large agencies in Michigan with 50 or more full-time sworn officers and 41 (100%) were surveyed; 27 (65.8%) responded to the survey. Fifty-four medium agencies (i.e., 25 to 49 full-time sworn officers) exist in Michigan; 22 agencies were surveyed, and 13 (24.1%) responded to the survey. In Michigan, there are 100 small agencies that have 10 to 24 full-time sworn officers; 29 of these agencies were surveyed, and 20 (20.0%) responded to the survey. Two-hundred fifty-two very small agencies (i.e., 0 to 9 full-time sworn officers) exist, and of them 88 agencies were surveyed and 46 (18.2%) responded to the survey.

Materials

Survey packages were mailed to the sampled police agencies' chief executive. The cover letter clearly stated that all survey information was confidential. In the same packet, there was a paid return envelope included to make it as convenient as possible for the respondent. After the initial cover letter and survey, a thank you and reminder letter was sent one week later, as recommended by Dillman, Smyth, & Christian (2014). As suggested by Dillman et al. (2014), a follow-up letter and replacement questionnaire were mailed two weeks after the thank you/reminder letter to all nonrespondents. Then, two weeks later a final reminder letter was mailed. The first mailed contact was on February 22nd, 2016 and the last contact was on March 28th, 2016. A total of 108 surveys were returned with a response rate of 60%; however, one

survey was discarded due to inconsistencies. The final total was 107 surveys with a response rate of 59.4%.

Measures

The 22-item survey asked about law enforcement agencies' policies and practices in regard to audiovisual recordings of custodial interrogations. Many survey questions were taken from a survey created by Dr. James Frank and Mark Godsey to study implementation and compliance with Ohio Senate Bill 77 concerning interrogations and lineups. Questions asked about audio and video recordings of custodial interrogation, agencies' policies on audiovisual recordings, Michigan Senate Bill 152, as well as funding and training associated with the senate bill. The survey also asked about camera angles for agencies that have audiovisual recording.

The way these variables were measured is described below.

Demographics. There were two demographic items used, (1) the number of sworn full time officers, and (2) the total number of officers in the agency (i.e., part-time and full-time sworn officers). These data were obtained through MCOLES.

Law Enforcement Policy and Practice. In order to gauge audio and video recording practices and policies in regard to custodial interrogations, respondents were asked eight survey questions. If they indicated their agency does record custodial interrogations, they were asked when their agency began recording. Next, respondents were asked if their agency adopted a written policy regarding the electronic recording of custodial interrogations, and if they indicated "yes," to provide the date it was made effective. Then, the survey asked: "If your agency does have a written policy regarding electronic recording of custodial interrogations, does it include the following elements: (a) interrogations are to be recorded from start to finish in their entirety, (b) video recording is required, and (c) audio recording is required. Then, the survey asked if

agencies recorded interrogations in every crime or only in major felonies (i.e., an offense punishable for a maximum of 20 years to life). If respondents indicated that their agency video recorded custodial interrogations, they were asked if video cameras captured only the interviewing officer, only the suspect, or both. Respondents were also asked, "If your agency does not have a written policy regarding electronic recording of custodial interrogations, does it follow any particular custom or practice in doing so?" The answers provided were "no" or "yes," if "yes" then respondents were encouraged to "please describe any applicable custom or practice." The survey also asked respondents if their agencies' catalogued and labeled all recordings of interrogation.

Michigan Senate Bill 152. To better understand the influence of Senate Bill 152, eight questions on the survey were utilized. First, agencies were asked if they were aware Senate Bill 152 was implemented in 2013. If agencies were aware, then they were asked if Senate Bill 152 motivated their agency to start audiovisual recordings of custodial interrogation. Respondents were also asked if their agencies' were supportive, neutral, or opposed to Senate Bill 152. Subsequently, respondents were asked: "Since 2013, has your agency received training on the recording of interrogations?" If the respondent specified "yes," then they were asked who provided/ sponsored it: (a) your own department, (b) state of Michigan, (c) prosecutor's office, or (d) other. Next, it was asked: "Since Senate Bill 152 was passed, has your agency received information about quality standards for the audiovisual recording of statements from MCOLES?" Agencies were also asked, "Since 2013 has your agency received any supplemental funding for the implementation of interrogation video recording?" If the respondent indicated that their agency has received funding they were asked to provide the funding source.

CHAPTER 5: Results

Custodial Interrogations

Of the 107 responding agencies, 99 (92.52%) indicated that they engaged in casework involving custodial interrogation. The 8 agencies that did not engage in such casework and the single agency for which we lacked information on the number of personnel were excluded from analysis. Ninety-eight cases were used in the final analysis. Tables 2 through 7 present agencies' practices and policies regarding the recording of custodial interrogation, whereas Table 1 presents the number of agencies that record custodial interrogation by agency size (i.e., the number of sworn full time officers). Agency size is categorized by the number of full-time officers in a given agency: 0 to 9 officers are classified as very small, 10 to 24 officers are classified small, 25 to 49 officers are classified as medium, and 50 or more officers are labeled large agencies. Of the 98 agencies whose responses are analyzed, 27 (27.6%) are large agencies, 13 (13.3%) are medium agencies, 20 (20.4%) are small agencies, and 38 (38.8%) are very small agencies.

Table 1. *Frequency of law enforcement agencies by size*

Agency Size*	Frequency	
	n	%
Very Small (0-9)	38	38.8
Small (10-24)	20	20.4
Medium (25-49)	13	13.3
Large (50 plus)	27	27.6
Total	98	100.1

*Number of sworn, full-time officers.

Table 2. *Does your agency record custodial interrogations?*

Agency Size*	No		Yes		Total	
	n	%	n	%	n	%
Very Small (0-9)	4	10.5	34	89.5	38	100
Small (10-24)	3	15.0	17	85.0	20	100
Medium (25-49)	0	0.0	13	100.0	13	100
Large (50 plus)	0	0.0	27	100.0	27	100
Total	7	7.1	91	92.8	98	100

* Number of sworn, full-time officers.

Table 2 shows that 91 agencies record custodial interrogations. Interestingly, all medium and large agencies record interrogations; this could be the result of greater resources in these agencies. Some smaller agencies, however, may not have enough funding to obtain the equipment for recording interrogations. In survey question 3, respondents in police departments that recorded custodial interrogations were asked separately if their agency engages in (a) “video recording” and if their agency utilizes (b) “audio recording.” This yielded an ambiguous interpretation of answers. If agencies indicate that they have both audio and video recording, it could be interpreted as their agency: (1) has audiovisual recording and separate audio recording for certain interrogations or (2) has audiovisual recording only. The purpose of this question was to ask if agencies used “video recording” (i.e., audiovisual recording) and separately used audio recording. From this question, five very small and small agencies identified that they only audio record custodial interrogations. If agencies indicated that they do “audio recording” but not “video recording” of custodial interrogations, then we can accurately present this information with no ambiguity. Agencies that chose video and audio recording in Question 3 are presented, but the possible interpretations above should be taken into account. In fact, 89% of all agencies that record custodial interrogations reported that they video and audio record custodial interrogations. Of the agencies that record interrogations, eighty-one agencies indicated that they

use video and audio recording, indicating that the majority video and audio record interrogations, compliant with Michigan law.

Table 3. *Does your agency have a written policy regarding electronic recording of interrogations?*

Agency Size*	No		Yes		Total	
	n	%	n	%	n	%
Very Small (0-9)	20	58.8	14	41.2	34	100
Small (10-24)	3	17.6	14	82.4	17	100
Medium (25-49)	4	30.8	9	69.2	13	100
Large (50 plus)	7	25.9	20	74.1	27	100
Total	34	37.4	57	62.6	91	100

* Number of sworn, full-time officers.

Table 3 presents the breakdown of the agencies by size that record custodial interrogations and that either have or do not have a formal written policy on the recording of custodial interrogations. Of the 91 agencies that record custodial interrogations, 57 agencies (62.64%) maintained that they have a policy on the recording of custodial interrogations. Table 3 also reveals that 74.1% of large agencies have a written policy, whereas 41.2% of very small agencies have a policy. This finding may be due to the differences in resources, training, and funding.

Of the 91 responding agencies that record, 34 (37.4%) indicated that they did not have a policy regarding the recording of custodial interrogations. However, 31 of these agencies (not reported in Table 3) claimed they have a particular custom or practice to deal with the recording of custodial interrogations. Of the 31 agencies that responded they had a custom, 8 maintained that they audiovisually recorded every custodial interrogation, 1 maintained that they audio recorded, and 6 agencies maintained that they audiovisually recorded every major felony. One of the six agencies' that record every major felony explained that custodial interrogations for simple misdemeanors are only audio recorded. Another agency noted that they record interrogations

from start to finish in their entirety and several others noted that they record “when possible.” More information on the type of cases recorded during interrogations can be found in Table 5.

Table 4. *Of the agencies that have policies, does it include interrogations being recorded from start to finish in its entirety?*

Agency Size*	No		Yes		Missing		Total	
	n	%	n	%	n	%	n	%
Very Small (0-9)	1	7.1	12	36.8	1	7.1	14	100
Small (10-24)	0	15.0	14	100.0	0	0.0	14	100
Medium (25-49)	0	30.8	9	100.0	0	0.0	9	100
Large (50 plus)	2	10.0	18	90.0	0	0.0	20	100
Total	3	5.3	53	93.0	1	1.8	57	100

* Number of sworn, full-time officers.

Table 4 asks of the agencies that have a formal written policy regarding the electronic recording of custodial interrogations what their policies entail. A total of 53 of these agencies (93%) have policies that indicate custodial interrogation recordings must be recorded from start to finish in their entirety, and a total of 52 agencies’ policies require both audio and video recording (not reported in Table 4). Of the 57 agencies that have a formal policy, approximately 91.2% are in compliance with Senate Bill 152 as they video and audio record custodial interrogations from start to finish in their entirety (not reported in Table 4). In fact, the majority of agencies that audio and video record are medium and large agencies with 25 or more sworn, full-time officers (no table). Respondents were asked separately if “video recording is required” and if “audio recording is required” in agencies’ policies regarding electronic recording of custodial interrogations. Respondents’ interpretation of these questions varied, just as discussed previously. We cannot be sure if agencies that chose both video and audio meant that their agency: (1) has audiovisual recording and separate audio recording for certain interrogations or (2) has audiovisual recording only that captures sound.

Question 6 on the law enforcement survey (no table) was “Please estimate the percentage of custodial interrogations that are videotaped.” Of the 83 agencies that answered, responses

ranged from 0% to 100%. It is our estimate that assessing the percentage of custodial interrogations that are videotaped may be better assessed by observation or specific agency catalogue information. Some respondents indicated that the percentage they attributed to question 6 was merely a “guess.” This is a limitation of survey data. Intelligent discussion of why this question is unsatisfactory does not give us an accurate reading of the responses; however, it does tell us how these questions should be addressed in the future.

Table 5. *Does your agency record interrogations in every crime or only in major felonies?*

Agency Size*	Every Crime		Major Felonies		Unable to determine		Total	
	n	%	n	%	n	%	n	%
Very Small (0-9)	9	26.5	24	70.6	1	2.9	34	100
Small (10-24)	10	58.8	7	41.2	0	0.0	17	100
Medium (25-49)	8	61.5	5	38.5	0	0.0	13	100
Large (50 plus)	9	33.3	17	63.0	1	3.7	27	100
Total	36	39.6	53	58.2	2	2.2	91	100

* Number of sworn, full-time officers.

In an attempt to better understand when agencies’ record custodial interrogations and if they are compliant with Senate Bill 152, respondents were asked if agencies recorded in every crime or only in major felonies (i.e., defined as an offense punishable for a maximum of 20 years to life). In Table 5, the majority of agencies appear to be compliant with Senate Bill 152 as the bill states that custodial interrogations of all major felonies should be audiovisually recorded. The Bill defines a major felony as “a felony punishable by imprisonment for life, or any terms of years, or for a statutory maximum of 20 years or more” (Senate Bill 152, 2013, p. 2). Agencies’ responses varied when it came to this question, as there seems to be diversity in how different agencies deal with choosing custodial interrogations to record. There are 53 agencies in our sample that only record interrogations in major felony cases, as required by law, and 36 agencies that go beyond the minimal legal requirements and record interrogations for every crime.

Table 6. *Of agencies that record, Video cameras capture:*

Agency Size*	Suspect Only		Both		Audio or N/A		Total	
	n	%	n	%	n	%	n	%
Very Small (0-9)	6	17.6	25	73.5	3	8.8	34	100
Small (10-24)	1	5.9	16	94.1	0	0.0	17	100
Medium (25-49)	0	0.0	13	100.0	0	0.0	13	100
Large (50 plus)	2	7.4	25	92.6	0	0.0	27	100
Total	9	9.9	79	86.8	3	3.3	91	100

* Number of sworn, full-time officers.

Table 6 shows the different camera angles captured during audiovisual recordings of custodial interrogations. Audiovisual recordings of interrogations capture the officer and the suspect in 86.8% of agencies responding. Research indicates that video recording both the suspect and officer equally allows for more transparency and a higher likelihood of detecting false confessions (Kassin et al., 2009).

Table 7. *Does your agency catalogue recordings?*

Agency Size*	No		Yes		Missing		Total	
	n	%	n	%	n	%	n	%
Very Small (0-9)	5	14.7	29	85.3	0	0.0	34	100
Small (10-24)	6	35.3	10	58.8	1	5.9	17	100
Medium (25-49)	4	30.8	9	69.2	0	0.0	13	100
Large (50 plus)	3	11.1	24	88.9	0	0.0	27	100
Total	18	19.8	72	79.1	1	1.1	91	100

* Number of sworn, full-time officers.

Table 7 reports on the number of agencies that label and catalogue all recorded interrogations. The majority of agencies' (79.1%) that do record custodial interrogations also catalogue and label all recordings, which is in compliance with Senate Bill 152. Eight percent of agencies do not catalogue, and are not compliant with the law. We speculate that they are not directly audited for this element of the Act. Therefore, the lack of full compliance may be influenced by low administrative control and a lack of legislative oversight.

General Confessions. Respondents were asked "Approximately how often do interrogated suspects waive Miranda rights?" (Question 11) and 84 agencies responded;

however, responses ranged from “1%” to “6 out of 10” to “95%” to “most of the time.” The vagueness of responses did not allow us to draw a meaningful conclusion other than that waiver seems commonplace. The following question, “Approximately how often is your agency successful in obtaining a confession” (Question 12) received similar vague answers with 83 agencies responding. No conclusions can be drawn from these questions due to the unclear wording and wide range of respondents’ interpretation. These data were not entered into any result tables. In the future, these types of questions should be asked differently. The last survey question in this section asked: “How frequently do cases remain open after a confession is obtained?” The answers respondents could choose from were “never,” “sometimes,” “often,” or “frequently.” Interestingly, 22 agencies reported that cases never remain open after a confession is obtained and 59 agencies maintain that cases sometimes remain opened after a confession. Referring to the research literature on false confessions in Chapter 2, confessions can be faulty and to close an entire case based on a confession alone could lead to a wrongful conviction.

Senate Bill 152

Table 8. *Agency awareness of Senate Bill 152*

Agency Size*	No		Yes		Missing		Total	
	n	%	n	%	n	%	n	%
Very Small (0-9)	2	5.3	34	89.5	2	5.3	38	100
Small (10-24)	1	5.0	19	95.0	0	0.0	20	100
Medium (25-49)	1	7.7	12	92.3	0	0.0	13	100
Large (50 plus)	1	3.7	26	96.3	0	0.0	27	100
Total	5	5.1	91	92.9	2	2.0	98	100

* Number of sworn, full-time officers.

Table 9. *Of the agencies that were aware of Senate Bill 152, were agencies supportive, neutral or opposed?*

Agency Size*	Supportive		Neutral		Opposed		Missing		Total	
	n	%	n	%	n	%	n	%	n	%
Very Small (0-9)	11	32.4	22	64.7	1	2.9	0	0.0	34	100
Small (10-24)	8	42.1	11	57.9	0	0.0	0	0.0	19	100
Medium (25-49)	9	75.0	2	16.7	0	0.0	1	8.3	12	100
Large (50 plus)	14	53.8	11	42.3	0	0.0	1	3.8	26	100
Total	42	46.2	46	50.5	1	1.1	2	2.2	91	100

* Number of sworn, full-time officers.

Table 10. *Did Senate Bill 152 motivate your agency to start audiovisual recordings of custodial interrogations?*

Agency Size*	No		Yes		Missing		Total	
	n	%	n	%	n	%	n	%
Very Small (0-9)	21	61.8	13	38.2	0	0.0	34	100
Small (10-24)	12	63.2	6	31.6	1	5.3	19	100
Medium (25-49)	10	83.3	1	8.3	1	8.3	12	100
Large (50 plus)	21	80.8	4	15.4	1	3.8	26	100
Total	64	70.3	24	26.4	3	3.3	91	100

* Number of sworn, full-time officers.

Tables 8 through 10 present law enforcement agencies' knowledge regarding Senate Bill 152. Table 8 shows the majority of agencies (92.9%) were aware of Senate Bill 152. Table 9 presents the stance agencies took on Senate Bill 152, "supportive," "neutral," or "opposed." Interestingly, 50.5% of agencies took a neutral stance on the Senate Bill, while 46.2% took a supportive stance, and one very small agency opposed the bill. These findings are inconsistent with preceding research studies. Prior literature suggests that law enforcement agencies may oppose new laws similar to Senate Bill 152 due to police culture (Murray et al., 2014). Next, Table 10 shows the number of agencies that were motivated by Senate Bill 152 to start audiovisual recordings of custodial interrogations. In fact, 26.4% maintained that their agency was motivated by Senate Bill 152 to start audiovisual recording of custodial interrogations. Prior to 2013, it should be noted that 17 agencies already had a policy in place in regard to the electronic recording of custodial interrogations.

Table 11. *Has your agency received information about quality standards for the audiovisual recording of statements from MCOLES?*

Agency Size*	No		Yes		Unknown		Missing		Total	
	n	%	n	%	n	%	n	%	n	%
Very Small (0-9)	14	36.8	18	47.4	1	2.6	5	13.2	38	100
Small (10-24)	2	10.0	16	80.0	0	0.0	2	10.0	20	100
Medium (25-49)	4	30.8	9	69.2	0	0.0	0	0.0	13	100
Large (50 plus)	8	29.6	17	63.0	1	3.7	1	3.7	27	100
Total	28	28.6	60	61.2	2	2.0	8	8.2	98	100

* Number of sworn, full-time officers.

Since the implementation of Senate Bill 152 in 2013, a majority of agencies indicated that they have received information about quality standards for audiovisual recordings of custodial interrogations by the Michigan Commission on Law Enforcement Standards (MCOLES). In fact, of 98 responding agencies, 61.2% indicated that they received the information from MCOLES. Table 11 shows 63% of all large agencies received the information. This information is important because Senate Bill 152 maintains that all audiovisual recording practices are required to comply with MCOLES. Senate Bill 152 also maintained that “The legislature shall annually appropriate funds to the commission on law enforcement standards in the amount determined by the commission’s assessment... for distribution to law enforcement agencies throughout the state to allow the agencies to purchase audiovisual recording equipment” (Senate Bill 152, 2013, p. 5). This was not consistent with our findings. In fact, very few agencies reported receiving any supplemental funding for audiovisual recording equipment.

Table 12. *Since 2013, has your agency received training on the recording of interrogations?*

Agency Size*	No		Yes		Missing		Total	
	n	%	n	%	n	%	n	%
Very Small (0-9)	31	81.6	7	18.4	0	0.0	38	100
Small (10-24)	13	65.0	7	35.0	0	0.0	20	100
Medium (25-49)	5	38.5	7	53.8	1	7.7	13	100
Large (50 plus)	6	22.2	21	77.7	0	0.0	27	100
Total	55	56.1	42	42.8	1	1.0	98	100

* Number of sworn, full-time officers.

Table 12 presents data on law enforcement agencies' training. Interestingly, 42.8% of law enforcement agencies indicated that they received training on the recording of interrogations, whereas 56.1% indicated that they did not receive training. Respondents were also asked "If your agency has received training, who provided/ sponsored it: (a) your own department, (b) state of Michigan, (c) prosecutor's office, or (d) other." Agencies were able to choose more than one training provider or sponsor. Thirty-seven agencies indicated that their own department provided/sponsored the training, 8 agencies indicated the state of Michigan, 18 specified the prosecutor's office, and 5 agencies stated "other." The 5 agencies that responded "other" noted that trainings were provided or sponsored by: (1) a retired prosecutor, (2) an audiovisual company, (3) Law Enforcement Officers Regional Training Consort (LEORTC), (4) security outlets, and (5) the Sheriff's office. Several of these agencies' indicated that they have had multiple training outlets. There were some inconsistencies with the two training questions. Some agencies may have assumed that the question about "who provided/sponsored" the training was actually asking about general training practices.

CHAPTER 6: Conclusion

Interrogation practices throughout the United States have notably changed within the last century. Interrogation practices went from the third degree to the use of lie detectors to the Reid method. Currently, the Reid method is commonly used for interrogations, which presents a problem because it uses psychologically coercive techniques to obtain confessions. Lie detectors are still used in some interrogations, even though research has deemed them as inaccurate and they are not admissible in court. These psychologically coercive techniques put suspects at risk of giving a false confession, which is one of the contributing factors in wrongful convictions.

One remedy to reduce false confessions is to electronically record interrogations from start to finish. Recording interrogations will “lift the veil of secrecy from the interrogation process in favor of the principle of transparency” (Kassin et al., 2009, p. 23). Transparency should make it easier for a criminal justice actor to go over the recording to identify problematic aspects of interrogations, most importantly coercion. Several states across the U.S. passed legislation on the recording of custodial interrogations, and many agencies have developed policies requiring the recording of interrogations. These policies and practices vary by state and by agency, which makes it difficult to determine the extent of audiovisual recording and its compliance with state laws. The current study set out to assess whether Michigan law enforcement agencies’ practices are consistent with state law. This study provides important insight on the policies and practices related to audiovisual recordings of interrogations among law enforcement agencies across Michigan. Information obtained from this study will expand the understanding of police practices and policy implementation, which in turn will improve understanding of how law enforcement agencies make policy decisions.

One major conclusion from this study was that the vast majority of agencies are compliant with Michigan Senate Bill 152. These agencies conducted audiovisual recordings of custodial interrogations. The majority of agencies went beyond the requirements of Michigan law in recording every crime and not only major felonies. The vast majority of agencies catalogue and label all recordings of custodial interrogations, which is in compliance with Senate Bill 152. Cataloguing and time stamping every custodial interrogation recording is important if it needs to be referenced in court or reviewed by a supervisor or another criminal justice system actor.

Agency policy is important to ensure that they are being consistent with the law (i.e., audiovisual record custodial interrogations). Agency policy also may be useful in guiding law enforcement officers in everyday practices. About half of the agencies (62.6%) in the sample that record interrogations have a written policy regarding the electronic recording of custodial interrogations and a vast majority of them include interrogations being recorded from start to finish in their entirety. Specifically, a considerable number of large agencies have a policy, which may be due to increased resources and funding. Formal written policies are important and would be beneficial for more Michigan law enforcement agencies to adopt.

The majority of law enforcement agencies sampled were aware of Michigan Senate Bill 152 and about a quarter of agencies were motivated by the Senate Bill to start audiovisual recordings of custodial interrogations. The Senate Bill had a positive impact on agencies, since 26.4% began audiovisual recording of custodial interrogations because of it. Law enforcement agencies were expected to have an oppositional stance on Senate Bill 152; however, findings indicate that the majority of agencies had a supportive or neutral stance on the Senate Bill. This was a surprising finding, since police culture typically involves views that policies are equivalent

to “red tape” (Murray et al., 2014). A Detroit police chief, as reported by Garrett, explained that electronic recording of interrogation is “a protection for the citizen that’s being interrogated. But from a chief’s point of view, I think the greatest benefit is to police because what it does is provide documentation that they didn’t coerce” (as cited in Garrett, 2011, p. 248).

Future Research. Expanding the current research into a nationwide study to obtain information on current policies and practices in regard to audiovisual recording of interrogations would be beneficial. In 1992, a nationwide study on videotaping interrogations and confessions was conducted by the Police Executive Research Forum (PERF). A similar study in 2016 would be beneficial to better understand the practices and policies of agencies across the country to examine if they are compliant with their state’s laws. Also, there has been much technological advancement throughout the years and it would be interesting to investigate how it affects policy change. Audiovisual recordings of custodial interrogations are fairly new practices of law enforcement agencies, and these practices have been expanding ever since the innocence movement strengthened. Furthermore, the current study could be examined in greater depth from a qualitative standpoint to get details of why agencies follow certain electronic recording practices and not others.

APPENDIX
Interrogation Law Enforcement Survey

Please return the survey in the envelope provided. For yes/no questions please circle your answer. First, we would like to ask you to respond to questions concerning custodial interrogations.

1. In a typical year does your agency engage in case work that involves **custodial interrogations**?

No (please respond to question #2 and return the questionnaire) **Yes** (please continue to question 3)

2. If your agency refers case work involving custodial interrogations to another agency rather than handling it internally, to which agency do you refer cases?

Agency name: _____

3. Does your agency record custodial interrogations?

No (if no, skip to 11) **Yes:** When did your agency begin recording? _____

a. Video recording:

No **Yes**

b. Audio recording:

No **Yes**

4. Has your agency adopted a written policy regarding the electronic recording of custodial interrogations?

No (if no, skip to 6) **Yes:** please provide the approximate date it was made effective: _____

5. If your agency **does have** a written policy regarding electronic recording of custodial interrogations, does it include the following elements?

a. Interrogations are to be recorded from start to finish in their entirety:

No **Yes**

b. Video recording is required:

No **Yes**

c. Audio recording is required:

No **Yes**

6. Please estimate the percentage of custodial interrogations that are videotaped. ____%

7. Does your agency record interrogations in every crime or only in major felonies (i.e. an offense punishable for a maximum of 20 years to life)?

Every Crime **Major felonies**

8. For recordings of custodial interrogations, do video cameras capture:

a. Only the interviewing officer:

No **Yes**

b. Only the suspect:

No **Yes**

d. Both the interviewing officer and suspect:

No **Yes**

9. Do you catalogue and label all recordings of interrogations?

No **Yes**

10. If your agency **does not** have a written policy regarding electronic recording of custodial interrogations, does it follow any particular custom or practice in doing so?

No **Yes: Please describe any applicable custom or practice:**

This section asks several general questions about investigation and confession.

11. Approximately how often do interrogated suspects waive Miranda rights? _____

12. Approximately how often is your agency successful in obtaining a confession? _____

13. How frequently do cases remain open after a confession is obtained?

Never **Sometimes** **Often** **Frequently**

The final section of the survey asks several questions about Senate Bill 152.

14. Is your agency aware that in 2013 Senate Bill 152 was implemented, changing the law concerning the recording of custodial interrogations?

No (if no, skip to 17) **Yes**

15. If so, was your agency supportive, neutral or opposed to Senate Bill 152?

Supportive **Neutral** **Opposed**

16. Did 2013 Senate Bill 152 motivate your agency to start audiovisual recordings of custodial interrogations?

No **Yes**

17. Since 2013 has your agency received training on the recording of interrogations?

No **Yes**

18. If your agency **has received** training, who provided/sponsored it:

a. Your own department:

No **Yes**

b. State of Michigan:

No **Yes**

c. Prosecutor's Office:

No **Yes**

d. Other (please specify): _____

19. Since Senate Bill 152 was passed, has your agency received information about quality standards for the audiovisual recording of statements from MCOLES?

No **Yes**

20. Since 2013 has your agency received any supplemental funding for the implementation of interrogation video recording?

No **Yes:** What was the source of the supplemental funding?

21. Are there any specific reasons some of the provisions of Senate Bill 152 have been difficult or impossible for your agency to implement? If so please describe them:

22. Any additional comments:

Thank you for your participation!

Rank/ title of Officer Completing Survey (optional): _____

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ABSTRACT**RECORDING OF CUSTODIAL INTERROGATIONS: POLICIES AND PRACTICES**

by

LAURA RUBINO**August 2016****Advisor:** Dr. Marvin Zalman**Major:** Criminal Justice**Degree:** Master of Science

Within the last century, interrogation practices throughout the United States have notably changed. Police interrogations went from physical harm (i.e., the third degree) to psychologically suggestive techniques. These psychologically coercive techniques put suspects at risk of giving a false confession, which is one of the contributing factors in wrongful convictions. One remedy to reduce false confessions is to electronically record interrogations. Very little is known about the specific policies and practices of electronic recordings during interrogation within law enforcement agencies. Policies and practices vary by state and by agency, which makes it difficult to identify agencies that do electronically record interrogations. The current study set out to gain more information about the practices and policies of the electronic recording of interrogations in law enforcement agencies across Michigan. Mail-in survey data was obtained from a stratified random sample of law enforcement agencies across Michigan. Results indicate that the majority of the law enforcement agencies in our sample electronically record custodial interrogations. This study provides important insight on the policies and practices related to electronic recordings of interrogations among law enforcement agencies.

AUTOBIOGRAPHICAL STATEMENT

Laura Rubino graduated in 2011 with a B.A. in psychology, a B.S. in criminal justice, and a minor in Asian studies. Shortly after graduation, she left to study at Huazhong University of Science and Technology in Wuhan, China for one year. In 2013, she started her Master's degree in criminal justice at Wayne State University. After graduation, she will start her PhD program in criminal justice at the University of Cincinnati in August, 2016. She has a strong interest in wrongful convictions, confessions, correctional programs, and international corrections. Upon PhD graduation, Laura plans to pursue a research career in academia.