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True and False Confessions under Interrogation

Around eighty percent of the work of a police detective consists of conducting interrogations, one of the aims of which is to obtain a confession. But are such confessions actually true, or are they unconsciously or deliberately false? With reference made to previous studies, this paper looks at the extent to which there are indications of the existence and the frequency of false confessions in Germany. Nearly 800 sets of interrogation records at a criminal investigation office in the federal state of Baden-Württemberg were analysed. The findings did not reveal any specific indications of false confessions. Interesting correlations could, however, be observed between age, gender, type of crime, detention and the willingness to confess. The paper also presents the causes of false confessions using several real cases. It is rounded off by a discussion of factors influencing the willingness to talk and to confess during an interrogation.



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1. INTRODUCTION

“Trust those who seek the truth but doubt those who say they have found it”, Andre Gide (1869–1950).

False confessions are a serious concern during investigations and trials. That has been shown by the Ansbach trials, the Worms child abuse trials, the Montessori trial, and the Pascal case from Saarbrücken, all of which provide examples of false confessions and their consequences. In the Pascal case, for instance, nine false confessions were made and then retracted before the start of the trial (Friedrichsen 2008). The cases referred to above all illustrate the central problem: Suggestive questioning and false confessions are features of all these high-profile cases involving suspicion of the sexual abuse of children. Criticism is chiefly directed at the interrogation practices of detectives. The

level of training and expertise, as well as the interrogation techniques of detectives, have frequently been found lacking in the past, including by Hermanutz and Litzcke (Hermanutz/Litzcke 2006, 67 et seq.). Although interrogations are among the standard tasks performed by detectives, besides deficiencies in training and skills, the absence of a uniform quality standard in the sense of an interrogation theory has also been bemoaned (Füllgrabe 2000, 23).

As a basic principle, all inculpatory and exculpatory evidence should be identified and studied during the investigation. Confessions, like all other evidence, may be freely evaluated in a hearing pursuant to Section 261 of the German Code of Criminal Procedure. In other words, the judge is not bound by statements contained in the confession. Confessions need to be checked against available evidence, and in particu-

lar real evidence. During an investigation or trial, a confession is understood as the admission of facts by a suspect or the defendant that may bear upon the decision on the merits regarding the charge (Möllers 2001, 687). In the *Constitutio Criminalis Carolina* (Procedure for the judgment of capital crimes) of Charles V, Holy Roman Emperor, confessions were crucial to the process of taking evidence. Nobody could be condemned without a confession, and torture was used in order to obtain them. In criminology research, confessions are often described as the “crowning proof” or the “queen of proof”, and as an act of submission that may occur for reasons of rational calculation (to obtain a more lenient punishment), resignation (in view of the evidence against the given person) or for psychological reasons (relief), and hence as one of the chief objectives of the investigation process. (Habschick 2006, 131). This view is disputed since even if a confession is obtained using constitutional and legally permissible interrogation techniques, it constitutes a desirable outcome of police interrogations, and as such cannot be the “queen of proof” (Ackermann et al. 2008, 557). The aim is always to get to the truth. Generally no confession is made without overwhelming evidence (Reichertz/Schneider 2007, 14).

So-called false confessions are a serious problem with weighty consequences for those concerned. We speak of a false confession when a person falsely admits to having committed or abetted a crime, or falsely incriminate others. In his work on false confessions, Kassin (Kassin 2005) points to the risks and the consequences of wrongly classing innocent people as guilty. In the USA numerous cases have surfaced where more recent methods of scientific investigation, including DNA analysis, have enabled the innocence of those wrongly detained, so-called false

positives, to be established; false confessions have been found to have been made in around of quarter of such cases (Kassin/Kiechel 1996).

2. FACTORS INFLUENCING THE WILLINGNESS TO TALK AND TO CONFESS

Interrogation is not a run-of-the-mill communications process. In a sense it is a one-sided communications process coerced by the state (Ackermann et al. 2000, 431).

In criminal proceedings making a confession usually significantly mitigates the punishment. Those who confess receive a considerably more lenient punishment than those who do not confess under the same circumstances, but are nevertheless found guilty. And vice-versa: those who do not confess receive a more severe punishment than those who confess under the same circumstances (Möller 2005, 314).

However, there are also constitutional considerations that speak against general mitigation of sentences. If the accused must expect a more severe punishment if they do not make a confession during criminal proceedings, then innocent people may be prompted to make false confessions. For example, an innocent defendant may accept a more lenient punishment in order to avoid the risk of a harsh punishment or having the offence entered on their criminal record (Möller 2005, 319 et seq.). Confessions are recognised as having a mitigating effect on the punishment. That, however, carries the risk of a false confession. The question arises as to why people are willing to talk at all to the police and make a confession.

Confessions remain a puzzle in this regard. Several theories for the willingness to confess can be found in criminology literature: the motives may be related to the personality type of the person (Hallenberger/Wagner 2003, 10), cost-benefit calcula-

tions and the compulsion to confess (Niehaus 2000), catharsis (Niehaus/Schröer 2006, 211), rational and social/cultural reasons (Niehaus/Schröer 2004, 129), as well as pressure under questioning (Kassin 2005) and minimisation and maximisation of the seriousness of the charges, including in the event of further denial (Klaver et al. 2008). The decision to confess can therefore depend on various subjective assessments of the situation. In addition, an innocent person may confess under the erroneous assumption that they will then not be prosecuted or convicted (Kassin/Gudjonsson 2004, 45).

Based on these assumptions, factors influencing the willingness to talk and to confess are categorised broadly as negative or positive below.

2.1 NEGATIVE INFLUENCE FACTORS

In addition to the selection of certain methods of interrogation, including cross-examination and the Reid[®] technique¹ (Reid 1992), suggestive questions can also lead to false findings and false confessions.

The questions and behaviour of the person being interrogated can be dependent on the interrogator's subjective beliefs, the circumstances of the case and how these may have occurred. If somebody is interrogated as a suspect, there are reasons to assume that the suspect is the perpetrator; the interrogator therefore necessarily goes into the interrogation with a certain preconception (Volbert/Böhm 2008, 253). The interrogator's preconceptions can have a confirmatory effect on the testing of the hypothesis, if a starting hypothesis such as an assumption is confirmed under certain circumstances, even if it is false (Köhnken 2008).

Using the example of sexual abuse of children, the following process occurs according to Köhnken (Köhnken 2008):

After making an assumption based on evidence (evidence rules) the investigator looks for information (to support that assumption), evaluates it and draws a conclusion.

There are two mechanisms that have a confirmatory effect on a hypothesis to be established:

- ▶ Positive test strategy (confirmation strategy): There are three types of questioning: neutral, neutral and suggestive, and confirmatory questions.
- ▶ Pseudo-diagnostic testing: The reliability of the information is selectively ignored and alternative explanations for the facts of the case are not sought.

The positive test strategy has a doubly suggestive effect:

- a) It has a suggestive, confirmatory effect on the person being questioned,
- b) Persons using this test strategy are more likely to expect to receive a confirmatory answer. Since a positive test strategy has a suggestive effect on those concerned, they also in fact frequently receive confirmatory responses.

In contrast to that approach, a negative test strategy would be applied, if for example an alibi or other explanations for certain circumstances are sought (von Schemm et al. 2008, 23 et seq.).

According to Füllgrabe (Füllgrabe 2000, 23), the suspect is automatically regarded as guilty and that determines the focus of the investigation, evidently because detectives are unaware of the "Othello error", based on which an overly suspicious observer will not believe even an innocent person.

Detectives are often under pressure to solve cases, especially if it involves persuading a suspect to reveal where a body or kidnapped person is hidden (cf. the case of Jakob von Metzler²), and to prove the

suspect's guilt. Real evidence is not always available. In the case of capital offences, testimonial evidence is often the only way to solve the crime. Schicht (Schicht 2007, 39) believes that zeal and lack of adherence to the law can lead detectives to go beyond the limits of the permissible questioning techniques and to use threats and violence; so-called "Dirty Harry behaviour" is also imputed, according to which detectives believe that the person being questioned has deserved to be hit or insulted owing to their conduct.

2.2 POSITIVE INFLUENCE FACTORS

A good, trusting atmosphere is only achieved if there is rapport between the interrogator and the suspect. The suspect only becomes trusting when that feeling is reinforced; such rapport can even "outshine" the perception of the whole person, i.e. some characteristics are not perceived because one characteristic biases the interrogator according to the halo effect³ (Hallenberger/Wagner 2003, 13).

Successfully motivating the suspect to make a confession, which is by no means a matter of course, almost always involves the interrogator successfully building a relationship with the suspect in a way that goes beyond creating an atmosphere of trust (Schröer 2004, 523). In their research paper Niehaus and Schröer (Niehaus/Schröer 2006) come to the conclusion that the relationship established between the interrogator and the suspect using educational patterns must go so far as to have the suspect see the confession as an "asset" (Niehaus/Schröer 2006, 222). The fact that good rapport with the suspect can have a positive effect on willingness to confess is demonstrated by the cases of Alexandra N. (Filderstadt), Ulrike E. and Christina N. from Cloppenburg (perpetrator Ronny R.) and the kidnapping and murder of Matthias H.

(Geltow, Potsdam district). In all of these cases the suspects led the detectives to where the body had been hidden. It can be seen that good rapport and personal trust and the lack of pressure and unsettledness in these cases contributed to true statements and to finding the victims.

3. FALSE CONFESSIONS

With around a fifth of all police officers regarding the purpose of an interrogation of a suspect as being that of obtaining a confession, the police evidently has considerable success here, since 61 % of suspects are willing to talk. Just 7 % refuse to give a statement, while the remainder are not available for interrogation (Bender et al. 2007, 254). However, willingness to talk is not necessarily equivalent to a confession. A person willing to talk may also deny committing the offence.

Kassin et al. (Kassin et al. 2007, 383), address the question of why the "Miranda warning"⁴ of 1966, which informs custodial suspects of their right to remain silent, in the USA is not properly applied; according to the research, 80 % of suspects waive their Miranda rights.

A research project at the University of Villingen-Schwenningen (Mantel et al. 2003) looked at how police investigations are led. Analysis of interrogation of suspects found that over half of the suspects (53 %) did not make a confession.

While no data is available for 8 %, around two-thirds of the 39 % who did make a confession did so without the police conducting its own investigation. Ten percent confessed after police investigation played a contributory role (Mantel et al. 2003, 30). The data were collected by means of file analysis at all criminal investigation offices in the German federal state of Baden-Württemberg.

The false confession phenomenon reveals worrying aspects of the tendency to

confess (Gerstenfeld 2000, 284). There have been several English-language investigations and empirical and experimental studies on false confessions, including those of Drizin and Leo (Drizin/Leo 2004), Gudjonsson (Gudjonsson 2002), Kassin and Gudjonsson (Kassin/Gudjonsson 2004) and Lassiter et al. (Lassiter et al. 2006).

3.1 FREQUENCY

Subsequent DNA testing has revealed that false confessions were made in 25 % of 100 cases of wrongful convictions investigated in the USA (Kassin et al. 2007; Drizin/Leo 2004).

In Iceland Gudjonsson and Sigurdsson (Gudjonsson/Sigurdsson 1994) surveyed prison inmates on the same day: 12 % reported having made a false confession, and two-thirds of these had not retracted their confession. In their study they surveyed 62 prison inmates who had declared that they have made a false confession during police questioning, and compared them with other prison inmates. The findings show that subjects that had made a false confession had anti-social personality traits and were more emotionally unstable than the other prison inmates. They had low self-esteem and different goals. Fifty-one percent cited police pressure under questioning, while 48 % said that they wanted to protect somebody else. Fifty-eight percent of the false confessions related to property crime. The study also identified a subgroup of subjects who reported having made a coerced and internalised false confession and were particular suggestible and inclined to confabulation (Gudjonsson/Sigurdsson 1994).

Gudjonsson et al. (Gudjonsson et al. 2006) interviewed 10,472 pupils and students aged between 16 and 24 in Iceland. Of those around 2,000 (18.6 %) had been interrogated by the police in the past, and 7.3 % of those (corresponding to 1.6 % of all

those surveyed) had made a false confession in the past. Among those interrogated more than once, the false confession rate was 12 %. The study also found that 80 % of the subjects had made false confessions to parents or teachers.

In Denmark Steingrimsdottir et al. surveyed (Steingrimsdottir et al. 2007) 715 students in further education. Ten percent of the participants said they had been interrogated by the police, of whom 51 % said they had committed the offence and 5 % said they had given a false confession to police.

Lau (Lau 2008) investigated subjects with psychological disorders in a number of psychiatric hospitals in Berlin and the surrounding federal states who were detained there under a hospital order pursuant to Sections 63 and 64 of the German Criminal Code. Out of a total of 274 subjects, 53 patients (19 %) participated. The rest were not willing to take part. Of those 53, 13 reported having made a false confession at least once in their life, while two reported having made more than one false confession.

It can be seen that is difficult to make a dichotomy between false and true confessions. Until now, only voluntary or coerced false confessions have been established; internalised false confessions, on the other hand, are and have remained inaccessible. False confessions also seem to occur in the German-speaking world; according to the findings of Lau to date, they are more common in the case of less severe crimes. Police pressure during interrogation combined with the given method of questioning seems to be a major cause of false confessions.

3.2 TYPOLOGIES

Kassin and Gudjonsson (Kassin/Gudjonsson 2004, 44) distinguish between true and

false confessions, as well as between true and false denials, if the suspect denies committing the offense.

Kassin and Wrightsmann (Kassin/Wrightsmann 1985) divide false confessions into the following categories:

- ▶ voluntary (made without elicitation by the police),
- ▶ coerced-compliant – induced by the police during interrogation
- ▶ coerced-internalised – innocent, but vulnerable suspects not only capitulate in the face of highly suggestive questioning techniques, but also come to believe that they have committed the offence.

There is a great risk in this last case in particular since such subjects really believe that they have committed the crime. The question is what influences subjects to make internalised confessions. The “memory distrust syndrome” is hypothesised to be the cause; the person being interrogated ceases to trust their own memory (Kassin/Gudjonsson 2004, 50).

Some researchers (Horselenberg 2008 with reference to Horselenberg et al. 2008) add “coerced externalised” to the “coerced internalised” taxonomy based on where the pressure comes from, i.e. whether or not the false confession is made under external pressure.

3.3 CASE DESCRIPTIONS

Globally there are numerous case descriptions of false confessions:

USA: The “Central Park Jogger Case” (Kassin/Gudjonsson 2004, 34): In 1989 a jogger was savagely beaten, raped and left for dead in Central Park in New York. She suffered multiple fractures, and her skull was shattered in the area of her eye socket. Despite severe loss of blood, the victim survived, but could no longer recall the attack. Within 48 hours five Afro-Americans and Hispanic Americans aged between

14 and 16 were arrested as suspects. All were brought to trial and given jail sentences. Although much blood and other traces of violent assault were found at the scene of the crime, the suspects did not have any signs of injury. The detectives used aggressive interrogation techniques to question the juveniles, since some of them had been “wilding” in the park on that evening. As a result, the juveniles were prosecuted and convicted. Four of their confessions were videotaped and played before the court. The tapes contained incriminating statements, in many cases with confusingly vivid details as to where, how and by whom the jogger was attacked and who played which role.

One of the accused stood up during the trial and demonstrated how he had removed the jogging pants of the jogger. Another said that he had felt under peer pressure to take part in his first rape. He expressed remorse and vowed never to commit such a crime again. The videotapes of the confessions convinced the police, the prosecutors, the jury, the city and the nation.

Thirteen years later, Matias Reyes, who was serving time in prison for three rapes and a murder, came forward and confessed to the assault on the jogger. He declared that he had raped the jogger and acted alone. The investigation revealed that Reyes had detailed knowledge of the crime and crime scene. DNA evidence also tied Reyes to the crime, while it was conclusive that the samples collected did not match the DNA of any of the five suspects. The prosecutors had argued in court that the police had presumably not caught all the offenders involved in the rape. The convictions were vacated in December 2002. This case contained five false confessions in a single investigation.

In Great Britain Gudjonsson (Gudjonsson 2002) investigated 23 murder cases where

the convictions rested on a confession. In half of the cases, the false confessions were caused by the psychological state of the suspects, extorted statements and pressure applied during interrogation, including the case of the “Guildford Four” and the proceedings against the “Birmingham Six”.

In Germany there have also been cases of false confessions, though no conclusion can be drawn about how frequent they are.

The riding stable murder:

In 1984 the 12-year-old schoolgirl Bianca M. was lured to the hayloft of a stable in Großbottwar, Ludwigsburg district, sexually abused and then strangled. A young labourer was accused, who had confessed to committing the murder to the police and then retracted his confession. The detectives concerned were convinced of the guilt of the original suspect. He was acquitted on appeal by the Heilbronn Regional Court in 1985. The real perpetrator was brought to trial exactly 20 years after the murder. It was not until 2002 that new methods of DNA investigation had allowed for more precise analysis of the traces secured at the time, leading to identification of the perpetrator, a former court official.

The Tobias case:

On 30 October 2000, around 10 p.m., 11-year-old Tobias was found dead in a small pond near Weil in Schönbuch, Böblingen district: he was lying contorted on his back, with his legs twisted and damp foliage between his fingers. Tobias had been stabbed 37 times and his penis had been severed. The murder seemed to have been quickly solved, when a suspect was arrested just a few days later. A 16-year-old youth from the village aroused suspicion when he gave details about the scene of the crime in front of television cameras

on the very day after the murder. The suspect lived in primitive social housing on the edge of a quiet village. He came from a family of heavy drinkers, and was terrified of his father, who also hit his mother. The special needs pupil was found to have a significantly below-average IQ of 64. After being questioned on 9 November 2000, the suspect was taken into custody. He initially confessed to the murder, but a little later retracted his confession. Six weeks later he was released. Foreign blood remnants were found on Tobias’ anorak and underpants that did not come from the 16-year-old (Roth et al. 2007, 194). Note: The real perpetrator could only be captured following another sexual offence in 2011 in Baden-Württemberg.

3.4 MULTIPLE FALSE CONFESSIONS

Kassin et al. (Kassin et al. 2005) have written papers on false confessions, as well as other researchers, including Russano et al. (Russano et al. 2005), Hartwig et al. (Hartwig et al. 2004), Galow (Galow 2008) and Meyer and Repucci (Meyer/Repucci 2007), who addressed the question of the recognition of deceptive behavior and, consequently, false confessions.

Kassin et al. (Kassin et al. 2005) conclude from their research on confessions that a confession tends to overshadow all other evidence or counter evidence to guilt. They conclude that it is therefore necessary to check confessions very carefully before the case comes to trial. The study demonstrates that the number of false confessions rises with the application of interrogation strategies such as “deals” and minimization, with a combination of these leading most frequently to false confessions. It is most likely that a range of techniques are used in everyday police work. It can be suspected, however, that detectives are largely not aware of these effects.

A paper by Meyer and Reppucci (Meyer/ Reppucci 2007) points to cases where young suspects were erroneously accused because they made false confessions induced by questioning. They criticise the police practice of using the same psychological tactics of coercion and deception for juveniles and adults even though juveniles may be more susceptible to suggestion and more easily influenced by authority figures than adults.

4. EMPIRICAL INVESTIGATION

In view of the findings to date of Mantel et al. (Mantel et al. 2003) as well as Kassin et al. (Kassin et al. 2005) a quantitative analysis of police investigation files should provide insight into the distribution of true

and the criminal investigation files were assessed. The various offences were placed in different categories for better comparison, including offences against life (murder/manslaughter), offences against sexual self-determination (sexual offences), violent crime, theft, property and counterfeiting offences, offences pursuant to supplementary penal law and other offences. The data collected were recorded in an Excel file and then transferred to the SPSS statistical programme via an interface.

4.1 FINDINGS

Only 743 of the 778 investigation files of the random sample could be analysed, because 35 files were in circulation. Not all data were complete. In some cases, data on given variables were lacking, so the total number in the given variables may vary.

It should be noted generally that the suspects could not be interrogated in every case, partly because they were on the run or did not obey the police summons, or because they informed the police via their attorney that they would only present their position to the public prosecution service after the conclusion of the police investigation. That position, however, is not included in the police investigation files, and could not be included in the analysis for that reason. Those areas which were particularly striking were selected from the overall findings and are described below.

In terms of motives for a confession, no other motive apart from “overwhelming evidence” comprising testimonial and/or real evidence could be established, so no further differentiation was possible in that regard.

It was found that half of the suspects (50.1 %) were not willing to talk, 14.5 % were willing to talk, but denied committing the offence, and around a third (35.4 %) made a confession.

Source: Kroll

		Frequency	Percent	Valid percentages	Cumulative percentages
Valid	Unwilling to talk	372	47.8	50.1	50.1
	Confession	263	33.8	35.4	85.5
	Willing to talk, denial of offence	108	13.9	14.5	100.0
	Total	743	95.5	100.0	
Data missing	System	35	4.5		
Total		778	100.0		

Table 1: Frequency of willingness to talk (in numbers/as a percentage)

and false confessions, allowing indices such as the rate of confession and rate of refusal to talk, and their relationship with other factors to be presented.

The solved cases from 2007 at a selected criminal investigation office were analysed

Source: Kroll

		Frequency	Percent	Valid percentages	Cumulative percentages
Valid	male	667	85.7	90.0	90.0
	female	74	9.5	10.0	100.0
	Total	741	95.2	100.0	
Data missing	System	37	4.8		
Total		778	100.0		

Table 2: Gender frequency

In the files analysed, 90 % of the suspects were male, and just 10 % were female. The willingness to confess within the given groups did not deviate significantly from expected; gender does not have an influence on willingness to talk.

Distribution by age:

Age in the three categories of willingness to talk/confess does not follow a normal distribution and the variances are not homogeneous, so the differences between the three categories have been calculated using a non-parametric procedure.

The test for statistical significance, the Kruskal Wallis test ($\chi^2(2)=56.64$; $p=0.00$) shows that there is a significant difference in age between the three categories. Those who make a confession are significantly younger than those in the other two categories. The oldest subjects tend not to be willing to talk.

Source: Kroll

Willing to talk (in numbers)	Mean	N	Standard deviation
Unwilling to talk	34.44	372	13.582
Confession	27.11	263	10.965
Willing to talk, denial of offence	30.56	108	12.109
Total	31.28	743	12.927

Table 3: Age in relation to willingness to talk

Distribution by previous offences:

Around 75 % of the subjects had already been interrogated by the police as suspects, ranging from one other previous offence to 79 previous offences; 22.8 % were first-time offenders. A contingency table was used to examine the relationship between previous offences and “willingness to confess”, “not willing to talk” and “denial of offence”. Of the suspects who were willing to talk, but denied committing the offence, 32 were first-time offenders, while 76 had previous offences. While 75 first-time of-

fenders made a confession, 188 subjects with previous offences also confessed. Seventy-three first-time offenders refused to talk. It is significant that 299 subjects with previous offences were likewise unwilling to talk. That seems to confirm that previous offences, i.e. criminal experience, and experience of being a suspect influence the rate of refusing to talk.

Distribution by detainment:

664 subjects were not detained, while 75 subjects were detained (either in custody pending trial or in prison).

Below are contingency tables to show to what extent being detained or not detained affects the willingness to talk (see Table 4).

Chi-squared tests⁵ were performed to enable conclusions to be drawn about the differences in frequency of willingness to talk depending on whether subjects are detained or not. Significant differences cannot be observed here ($p>0.05$).

Mean values of age were calculated for detained subjects in relation to willingness to talk and confess. Here it can be seen that younger subjects are more inclined to make a confession; as age increases, the tendency to deny committing the offence or refuse to talk increases. This re-

Source: Kroll

			Currently detained or not		Total
			Not detained	Detained	
Willing to talk (in numbers)	Unwilling to talk	Number and % willing to talk (in numbers)	338 91.1%	33 8.9%	371 100.0%
	Confession	Number and % willing to talk (in numbers)	237 90.5%	25 9.5%	262 100.0%
	Willing to talk, denial of offence	Number and % willing to talk (in numbers)	89 84.0%	17 16.0%	106 100.0%
Total		Number and % willing to talk (in numbers)	664 89.9%	75 10.1%	739 100.0%

Table 4: Willingness to talk in relation to detained/not detained

Source: Kroll

		Frequency	Percent	Valid percentages
Valid	Offences against life (murder/manslaughter)	2	0.3	0.3
	Offences against sexual self-determination (sexual offences)	57	7.3	7.7
	Violent crime (robbery, blackmail with use of force or threats against life or limb, bodily harm)	82	10.5	11.0
	Theft (simple and aggravated, including gang theft)	55	7.1	7.4
	Offences against property, counterfeiting	80	10.3	10.8
	Other offences (resistance against state authority, misleading the authorities about the commission of an offence, causing bodily harm while exercising a public office, environmental offences)	101	13.0	13.6
	Offences pursuant to supplementary penal law (German Narcotics Act, Weapons Act, Copyright Act)	366	47.0	49.3
	Total	743	95.5	100.0
Data missing	System	35	4.5	
Total		778	100.0	

Table 5: Frequency of the types of crime

sult corresponds to the findings for age for subjects not in detention.

A contingency table was used to examine the frequency of willingness to confess and refusal to talk in the given offence categories (the various offences studied are distributed among the seven groups of offences as follows, cf. Table 5). For reasons of brevity, the results are described below, rather than being shown in tabular form. High confession rates can be found in percentage terms for violent crime (42.7 %), in particular bodily harm; in absolute terms the highest number of confessions were made relating to offences pursuant to supplementary penal law, in particular violations of the Narcotics Act (144 = 14.2 %).

In the case of drugs offence, there was often suspicion of a false confession.

In many cases it was noticeable that fellow passengers pronounced themselves guilty and claimed that drugs found during

vehicle checks belonged to them. Unless testimonial or real evidence to the contrary was available, that could not be refuted. Such persons primarily wanted to prevent the driver from having their driving licence withdrawn.

4.2 DISCUSSION OF THE FINDINGS

It can be established that the analysis and the figures, with the exception of some drugs offences, do not give any indication of false confessions and, therefore, do not reveal anything about their frequency; the truth of the given confessions has to fundamentally be assumed. There are, however, interesting findings and correlations regarding age, gender, type of crime, detention and willingness to confess.

The findings, according to which 50.1 % of suspects do not talk, 14.5 % talk, but deny the offence and 35.4 % make a confession roughly corresponds to the findings of the study by Mantel et al. (Mantel et al. 2003, 30) and the rate of confession that Mertn et al. (Mertn et al. 1998) found in their analysis of the suspect identification/recognition procedure. The assumption of Bender et al. (Bender et al. 2007) that 61 % of suspects are willing to talk to the police, on the other hand, cannot be corroborated. The low number of confessions, however, is not surprising. Overwhelming testimonial and/or real evidence was always the reason for confessing. The converse argument also means that caution is advised in the case of a confession without overwhelming evidence since it could be false. It is an interesting finding of the study that in rare cases suspects did not make a confession despite or precisely because of overwhelming evidence.

Compared to the USA, where Kassin et al. (Kassin et al. 2007) have suggested that the confession rate ranges between 46 % and 68 %, the rate found by our study

was only approximately half as high. The high rate in the USA is related, among other things, to the fact that approx. 80 % of suspects waive their “Miranda” rights; applied to this study, that suggests that in Germany suspects have been informed of their rights and are aware of these, since two-thirds did not make a confession.

While gender does not play a role in terms of the willingness to confess or refusal to talk, age makes a clear difference. That suggests that the willingness to talk decreases with increased life and career experience, as well as criminal experience. The results for detained subjects corroborate that: as age and criminal experience (of detention) increase, the willingness to confess decreases.

The markedly high number of confessions in the case of drug offences can also be explained:

- ▶ denial is not usually possible if drugs are found on somebody’s person;
- ▶ in the case of drug trafficking there is typically overwhelming evidence consisting of several witness statements, observation reports and findings from telecommunications surveillance;
- ▶ the leniency notice in Section 31 of the German Narcotics Act expressly provides for a mitigation of the punishment if the offender makes a confession and assists in uncovering offences.

5. CONCLUSIONS FOR POLICE WORK IN PRACTICE

The Master’s thesis was aimed, in addition to checking the findings of Kassin (Kassin 2005) at shedding light on the particular issue of false confessions in terms of their occurrence, frequency and cause, and to bring false confessions to the attention of detectives, psychologists and lawyers.

Effective and efficient crime control is only possible if, among other things, crimes are solved and the offenders are sentenced. That requires that the correct perpetrator is found and convicted. False confessions, however, do not contribute to the general and specific preventive effects of punishment (deterrence and prevention of re-offending).

Typical sources of error lie in the erroneous perception of the case by the detective, as well as in prematurely limiting the scope of the investigation, mostly for reasons of procedural economy based on agreements of the public prosecutors and the court with the defence; in addition, insufficient analysis and consideration of the person and personal environment of the suspect, as well as frequently suggestive and confirmatory hypothesis-driven questions with the unnecessary divulging of information by the interrogator lead to the false conclusion that the suspect revealed privileged knowledge of the crime and crime scene in their confession. Further, third parties may also influence whether a false confession is made, in particular attorneys, whose prognosis of the trial may be liable to influence subjects and lead them to make a false confession to obtain a more lenient punishment; the tactical repertoire of the defenders of suspects/the accused has expanded in the recent past, with there being a tendency to have a suspect/accused retract their confession if they have already made one.

The findings of Kassin (Kassin 2005) could not be, or could only to some extent be corroborated by the empirical study. It cannot be clearly concluded from the data that the majority of confessions are true; representative inferences could not be drawn, especially as the court records and the assessment of the real evidence by the courts were not available. That certainly does not mean, however, that there

have not been false confessions in Germany in the past or that there will not be any in the future. A number of researchers are even convinced that false confessions often occur in legal proceedings (Beneke 1990, 25). Nevertheless, it can be concluded in summary that every confession can be regarded ultimately as a product of the personality, intelligence and current psychological state of the person being interrogated and of all the circumstances of the interrogation. The research of Kassin (Kassin 2005) and Kassin et al. (Kassin et al. 2007) and as well as the experiments of other researchers have clearly shown that in particular personal factors such as age,

intelligence, psychological makeup, illness and situational conditions, especially the pressure exerted by certain methods of interrogation, and plea deals increase the risk of false confessions.

When considering whether a confession is true, particular attention should be paid to the fact that the psychological characteristics of the confession should be consistent, with the confession being clearly motivated, made for a clear reason at a reasonable time and in a suitable form, and corroborated at least partially by further testimonial and real evidence. Generally a suspect will not make a confession unless there is overwhelming evidence (Reichertz/Schneider 2007, 14).

¹ *The Reid technique (the copyright of John E. Reid and Associates comprises both the structure of the behavioral analysis interview and the nine steps of interrogation, which will be referred to hereinafter simply as the Reis technique) was developed as early as 1948 by John E. Reid, a Chicago police officer, after whom it is named. Reid was first taught the polygraph technique by the attorney and law professor Fred Inbau. This technique first attracted the attention of police circles in Europe in its revised versions (1986 and amended in 2001) in the mid-1990s. The technique is designed to draw conclusions about the possible involvement of the suspect in a crime and their credibility based on noticeable physical reactions to certain questions, and to obtain a confession in a subsequent interrogation.*

Many of the criticisms made by social scientists (including Hermanutz 2002; Volbert/Böhm 2008) of the Reid technique regarding its scientific evaluation of signs of lying and the strong degree to which the subject of the interrogation is influenced seem to be justified. As yet there is a lack of experimental or empirical evidence confirming that the Reid technique leads to better results than standard police questioning.

The Reid technique of interrogation, given its weaknesses mentioned above, both in legal and psychological terms, is a procedure that it is not permitted in its entirety in Germany and should not be used in police practice.

² *The eleven-year-old Jakob von Metzler, son of the German banker Friedrich von Metzler, was kidnapped on 27 September 2002 on the way home from his school, the Carl Schurz School, near his home in Frankfurt-Sachsenhausen by law student Magnus Gäfgen and shortly after murdered. The case attracted particular attention across Germany because, in the hope of finding the kidnapped boy alive, the deputy police chief in Frankfurt, Wolfgang Daschner, induced Gäfgen to talk during interrogation by a detective under threat of direct force, implying physical pain. Under this threat, Gäfgen declared himself willing to lead the detectives to Jakob von Metzler's body.*

³ *The effect is understood as the tendency to erroneously perceive properties of persons or things that are actually independent or only moderately correlated as being highly correlated. Various traits of a person (e.g. attractiveness, disability, social status) make a positive or negative impression that "outshines" their other traits and disproportionately influences further perception of the given person. The halo effect was first observed by Frederic L. Wells in 1907.*

⁴ *"In its ruling of 13 June 1966, the Supreme Court of the United States held that suspects taken into custody must be made aware of their specific rights before being interrogated. The Supreme Court also established a series of requirements for police interrogations. Due to the coercive nature of interrogation by police, no confession is permissible unless the custodial suspect has been previously made aware of their rights under the Fifth and Sixth Amendments to the Constitution of the United States and has expressly waived these." The Miranda warning is therefore to be seen both as a right and as protection against forbidden methods of police interrogation such as intimidation or force. The Miranda rule means that the custodial suspect must, prior to interrogation, be clearly informed that they have the right to remain silent, and that anything they say or do can and will be used against them in a court of law, that they have the right to speak to an attorney and to have the attorney present during any questioning, and that, if they cannot afford an attorney, one will be appointed for them at government expense.*

The ruling itself was based on a case in which a suspect (Ernesto Miranda) was accused of offences such as robbery, kidnapping and rape. He confessed to the crimes during police interrogation.

The conviction was later set aside because of the allegedly intimidating methods of interrogation used by the police.

⁵ *A chi-squared test is a statistical test used to analyse frequency data, for example when comparing two frequencies.*

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