

Guilty until Proven Innocent: A Comparative Study on False Confessions in the Netherlands and the United States



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Introduction

A person is considered innocent until proven guilty. This is stated in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), of which both the Netherlands and the United States (U.S.) are state party. This presumption of innocence is incorporated in the Dutch as well as the U.S. legal system. Yet, injustice within these legal systems is not uncommon and has affected people in both countries. When an innocent citizen is misidentified for interrogations and is judged deceptive in interviews, there is a risk that this innocent person is induced into making a false confession (Kassin, et al., 2010). This false confession can be used to convict the person, resulting in a wrongful conviction. A wrongful conviction can be defined as a case in which an innocent person is convicted of a crime that he or she has not committed (Roach, 2010).

Multiple studies from the U.S. have gathered evidence on false confessions in particular. The number of false confessions range from 14 to 25% of the total miscarriages of justices. This establishes the problem of false confessions as a leading cause of wrongful convictions of innocent people in the U.S. Other causes of wrongful convictions include eyewitness misidentification and flaws in various forensic sciences (Kassin, et al., 2010).

With regard to the Dutch system, there has been an unwillingness to admit that the Dutch system is prone to wrongful convictions. This could possibly explain the small amount of research on the topic. Yet, several cases are known that involve wrongfully convicted suspects as the result of a false confession, and researchers like Brants (2013), van Koppen (2003, 2007) and Verhoeven (2018) have researched causes and consequences of false confessions.

False confessions are a reoccurring and pressing issue in the Netherlands and the United States (Brants, 2013). However, the legal systems in these two countries are fundamentally

different. The Dutch system is often considered the most inquisitorial in Western Europe. The United States has a legal system that is strongly characterized as adversarial (Crombag, 2003).

The Dutch legal system is characterized by mainly inquisitorial traits: the state aims at truth-finding but is subject to written rules of law that protect individual rights and freedoms. The police, who is subordinate to the prosecutor, takes the first steps towards finding and establishing this truth. The trial is predominantly led and determined by the file that is compiled by the police and the prosecution. Once the case goes to court, the role of the defense is limited to attempting to cast doubt on the case of the prosecution by asking the judge relevant questions (Brants, 2013).

The U.S. legal system functions differently: individuals define their relationship to the state as a set of concrete rights and freedoms from particular forms of state intrusion. In court, a two-sided presentation of the evidence found is given and multiple attempts by both the prosecution and the defense are done to falsify the other's case. Both parties examine each other's witnesses and search for their own evidence, for example through interrogations executed by the police. The clash of opinions between the prosecution and defense about what has occurred, aims at finding the truth (Brants, 2013).

Despite the fundamental differences between the legal systems in the Netherlands and in the U.S., false confessions occur in both legal systems (Brants, 2013). This leads us to the main issues that will be researched: *which elements of the Dutch and U.S. legal system mostly affect false confessions and which elements of the Dutch and U.S. legal system have the greatest effect on a false confession leading to a wrongful conviction?*

To answer these questions, multiple topics have to be addressed. Firstly, a general theoretical framework will illustrate the distinction between an adversarial and inquisitorial legal system. This framework, as well as their interrogation techniques and handling of evidence, will be the content of the first chapter. The second chapter will cover the definition

of false confessions and how they come about. The third and fourth chapter are similar in structure: the U.S. and Dutch legal systems will be analyzed with regard to the problem of false confessions related to wrongful convictions. Firstly, the police interrogation rules and regulations have to be studied to give insight into the way police interrogations are executed and which methods are employed during the interrogations. Secondly, the legal rules that determine admission of evidence, especially the admission of a false confession, have to be evaluated. A crucial question like “Is a confession enough to convict a suspect?” will be posed. Moreover, the effect of the presence of a lawyer will be considered and it will hopefully become clear which elements mostly affect wrongful convictions as a result of false confessions.

For each country, three cases will be analyzed in light of these rules, regulations and interrogation methods, in order to provide real-life examples. The cases are only used as examples and thus cannot serve to generalize to all false confession cases in the specific countries. The three Dutch cases are Ina Post (1986), the Villa murder (1998) and the Schiedammer Park murder (2000). The cases are mainly selected because in all three cases, an innocent person made a false confession and was wrongfully convicted (almost solely) on the basis of this confession. In addition to this, there is a sufficient amount of information available about these cases for a thorough analysis. It should also be mentioned, however, that the three cases date back at least nineteen years. Therefore, the development of new rules and regulations after the year 2000 will be kept into consideration.

The three U.S. cases are the Central Park Jogger case (1989), the murder of Stephanie Crowe (1998) and the more widely known Brendan Dassey case¹ (2005). These cases are selected for mainly the same reasons as the Dutch cases. In all cases, an innocent person (or persons) made a false confession and was wrongfully convicted on the basis of this confession. All three cases have been researched and documented on, especially the Brendan Dassey case.

¹ The Brendan Dassey case and the Dutch Villa murder case have not been reopened and revoked yet.

The U.S. cases are slightly more recent than the Dutch cases, but any changes in the legal system will be taken into consideration.

In order to answer the main questions posed, a comparison will be made in chapter five, between the Dutch and U.S. legal systems. This comparison will cover the link between police interrogations and false confessions and the link between false confessions and wrongful convictions. The comparison will be made based on the findings set out in chapters one to four.

To answer the main and sub-questions, a wide variety of scientific literature will be used. For studying the adversarial and inquisitorial legal systems, a combination of sociolegal and socio-psychological literature will form the basis. To study the structure of the systems, socio-legal sources will be used and to study the interrogation techniques, sociopsychological literature will be necessary in order to understand the psychology of interrogations, for example. For the research on false confessions, socio-psychological literature will form the foundation for chapter two. This will be used to fully analyze the different types of false confessions that occur and to understand how other factors, like the presence of a lawyer, could influence the decisions and statements made by a suspect who is being interrogated. Chapters three and four, covering the Dutch and U.S. legal system, both start with a study of the relevant law. For the Netherlands, this means studying the Code of Criminal Procedure and for the U.S. this consists mainly of case law. This is followed up by reviewing literature that explains how these laws and case law can and might be interpreted, and how the laws has determine the rules as to what is, and what is not allowed regarding interrogations and the admission of evidence in court. For the case studies, literature on the specific cases will be used, including official documents like the decisions of the judge. This will be done by first providing a short description of the case, followed by an analysis of how the false confession came about.

By bringing together the law and socio-legal and socio-psychological literature, this research will attempt to contribute to better understand false confessions as a phenomenon in

the legal system, rather than merely as a psychological concept. Whenever false confessions are better comprehended, society can aim at keeping innocent people out of prison. As is famously stated by the English jurist William Blackstone: “It is better that ten guilty persons escape than that one innocent suffer” (Reiman & Haag, 1990). In addition to this, the underlying goal of eradicating false confessions is to counter the injustice that is experienced by wrongfully convicted individuals.

Through thorough research on the topic of false confessions, more and more will be known about the conditions that facilitate false confessions, and as a result, society can become more aware of how, why and amongst which groups of people false confessions come about. By analyzing two legally distinctive countries, research on both the U.S. and the Dutch legal systems can hopefully provide a deeper understanding of false confessions as the cause of a wrongful conviction.

Chapter 1: Adversarial versus Inquisitorial Legal Systems

Before diving into the topic of false confessions, a distinction between the adversarial and inquisitorial legal system is necessary. Before making this distinction, it is important to clarify that a clear-cut distinction between the two systems is not always possible and that the systems are frequently subject to debate. The majority of countries has a system that can be characterized as a more or less mixed or hybrid system (van Koppen & Penrod, 2003).

1.1 Adversarial System

The adversarial system is mainly characterized by its legal proceedings being a contest between equivalent rivals, with truth-finding as the aimed result. This contest has to be played fairly and to achieve this, formal equality of contestants is necessary. Both the prosecutor and the defense have the opportunity to present the facts that they deem relevant (van Koppen, 2007). The defense in the adversarial system is in charge of finding evidence that can establish the truth and exonerate the defendant, actively developing and presenting the case to the best of their abilities (Pakes, 2019).

This contest is then judged upon by one's peers (the jury) and there is an important emphasis on the oral presentation of evidence during the legal proceeding. The trial judge serves the role of gatekeeper for evidence: he or she determines which evidence is admissible in trial and which evidence the jury may consider (van Koppen & Penrod, 2003). During the presentation of evidence, the judge has a neutral role. He or she is the referee whenever there is any conflict while the parties are discussing their case (van Koppen, 2007). There is a heavy emphasis on the development of rules of evidence. This is done to keep a reliable flow of evidence to jurors (van Koppen & Penrod, 2003). Within the adversarial system, it is assumed that justice is done if both parties are treated equally in presenting their case (Crombag, 2003).

1.2 Inquisitorial System

The inquisitorial system is defined by a legal procedure that can be considered an inquest: it is a thorough inquiry aimed at establishing the true facts. This means that once a case is brought before court, the court takes its own responsibility in finding the truth. This limits the role of the defense, since they are not responsible for the collection of evidence in a legal case (Pakes, 2019). Inquisitorial systems have a large preference for documenting evidence on paper. The inquisitorial system is a system of “free proof”: the judge is trusted in giving weight to any evidence that reaches him or her, in a manner that is appropriate to how reliable the evidence is (van Koppen & Penrod, 2003). The judge is also in charge of doing the investigation and has the authority to question witnesses during the trial (van Koppen, 2007). Similar to the adversarial model, the aim of the investigation and trial is to find the truth (Crombag, 2003).

Thus, there are two models of legal systems that have different characteristics and that have a distinct way of handling criminal cases. As mentioned before, most countries’ legal systems do not fit completely into either one of the descriptions.

1.3 Interrogation Techniques

Adversarial and inquisitorial legal systems function differently with regard to a wide range of aspects. One of these elements is the interrogation of suspects. It can be considered difficult to link certain interrogation techniques to these systems, since the phrase “adversary system”, for example, is primarily used to describe the pretrial and trial processes that occur *after* police interrogation and confession-taking (Leo, 2009b). Yet, it can be stated that interrogators in adversarial systems are often committed to the goal of incriminating the accused in order to assist the state in its prosecution (Leo, 2009b), whereas the interrogators’ main approach in inquisitorial systems is to learn the truth (Miller, Redlich, & Kelly, 2018).

The interrogators in both systems try to achieve this goal through certain methods. As for the legal systems, there is a similar continuum for interrogation methods: the accusatorial method in the adversarial legal systems is at one end of the continuum and the information-gathering method in the inquisitorial legal systems is on the other end (Miller, Redlich, & Kelly, 2018).

1.3.1 Accusatorial Interrogation Method

The accusatorial interrogation method is confrontational and guilt-presumptive. Accusatorial methods are often used when the interrogator believes the suspect is guilty. It has several distinguishing characteristics: (1) it establishes control of the suspect and uses psychological manipulation to get a confession; (2) it employs close-ended confirmatory approaches and questions; (3) its main aim is to obtain a confession; and (4) it focuses on anxiety cues of deception (Meissner, et al., 2014). The accusatorial police interrogation consists of two phases: first, the investigator conducts a non-accusatorial interview to determine whether the person of interest is indeed the “suspect”. When there is a determination of “guilt”, the investigator moves on to the second part of the interrogation, which consists of three components (Meissner, et al., 2014). Firstly, custody and isolation: the suspect is detained in a small room and experiences the anxiety, insecurity and uncertainty of the police interrogation. Secondly, the confrontation: the suspect is presumed guilty. The police sometimes use (false) evidence against the suspect and the suspect is warned of the consequences associated with their guilt. Lastly, minimization: a sympathetic interrogator attempts to gain trust by offering the suspect excuses or justifications for the crime, implying more lenient consequences if the suspect confesses (Kassin & Gudjonsson, 2004).

1.3.2 Information-gathering method

The information-gathering interrogation method aims at truth-seeking, which investigators do by taking on a neutral role. They probe the suspects by using open-ended questions and with this, develop conversational rapport (Evans, et al., 2013). This method also has several distinguishing characteristics: (1) it seeks to establish rapport with interview; (2) it uses direct and positive confrontation of the suspect to elicit confessions or other self-incriminating statements; (3) it employs open-ended, exploratory approaches; (4) its primary goal is elicitation, opposed to a confession; and (5) it focuses on cognitive cues of deception. The information-gathering method focuses on developing a rapport, explaining the allegation and seriousness of the offense, emphasizing the importance of honesty and truth-seeking, and requesting the suspect's version of events (Meissner, et al., 2014). Another important element of the information-gathering method is videotaping the police-suspect interrogation (Miller, Redlich, & Kelly, 2018).

1.4 Evidence in Court

The adversarial and inquisitorial systems have their own way of handling evidence of criminal cases in court. Most rules and regulations on handling evidence can be linked back to the main characteristics of the two systems.

1.4.1 Adversarial System

In the adversarial system, the prosecutor formulates the criminal charge against the defendant which has to be proven with the use of evidence. (Keulen & Knigge, 2016). Since the adversarial system is characterized by the contest between two equivalent parties to search for the truth, both the prosecutor and the defense have the task to look for either inculpatory evidence (prosecutor) or exculpatory evidence (defense). Inculpatory evidence aims at proving

the guilt of a suspect, whereas exculpatory evidence tries to show the innocence of a suspect. Once the evidence is collected, it is presented to the jury (Nagorcka, Stanton, & Wilson, 2005). The case is presented to the judge, who acts as a referee ensuring that the contest is executed fairly by both parties (Keulen & Knigge, 2016).

With regard to false confessions, certain elements of the system can implicate a fair and truth-seeking trial. Both the prosecutor and defense carefully select the evidence they want to present to the jury. The police investigative reports that are made during police interrogations can potentially include less information than actually came up during the interrogation, because the police did not report everything that was said. The prosecutor and defense rely on such reports and as a result, will not always be aware of all the information that was available during the police interrogation. Jurors encounter the same problem of limited information: they are only presented with the evidence that is selected by the prosecutor and the defense (Leo & Davis, 2010).

1.4.2 Inquisitorial System

In the inquisitorial system, the legal authorities base their decision of guilt or innocence on their inquiry for the truth. An impartial investigator has the duty to objectively discover the facts of the case (Nagorcka, Stanton, & Wilson, 2005). The authorities in this case include both the prosecutor and the judge, who investigate whether the suspect is guilty (Keulen & Knigge, 2016).

The findings of the investigative judge are summarized in a written report, which is added to the overall case file. When the facts of the case have been established, the case is transmitted to court. Investigations for evidence that are carried out in an inquisitorial system rely fully on the prosecution, making the defense dependent on the prosecution (Vuille, 2013).

A problem for the inquisitorial system, especially with regard to false confessions, is the power of the prosecutor. Initially, prosecutors are in charge of an objective inquiry for the facts of the case, aiming to find incriminating, as well as, exculpatory evidence. However, the role of the prosecutor has slowly developed into finding a way to prove guilt. Competing personal, institutional and external sources create pressures to solve a crime quickly and efficiently, especially in high-profile cases. Prosecutors rarely consider the possibility that an innocent suspect has falsely confessed (Leo & Davis, 2010). Once this happens, the confession tends to become a centerpiece of the case, because of the high value that is attached to a confession as evidence (Keulen & Knigge, 2016).

In this chapter, a general international framework of the adversarial and inquisitorial systems has been sketched and notable differences were found that run through to the interrogation techniques and the handling of evidence in court. These main characteristics shape the way in which interrogations are held in the adversarial and inquisitorial systems. In the next chapter, the topic of false confessions is thoroughly analyzed, looking at what false confessions are and how it is possible that people confess to crimes they did not commit.

Chapter 2: False Confessions

A false confession is the admission of guilt by a person to a crime that they did not commit. A false confession often includes a postadmission narrative, which is a description of how and why the crime occurred. A misconception about false confessions is the idea that an innocent person will never falsely confess to the police (Leo, 2009a).

There are four ways to prove that a confession is false, as described by Kassin et al. (2010). A confession is false: (1) when it is discovered that no crime was committed; (2) when additional evidence shows that it was physically impossible for the confessor to have committed the crime; (3) when the real perpetrator is found and can be held accountable for the crime that was committed because of a true confession; and (4) when scientific evidence can establish the confessor's innocence.

There are three kinds of false confessions, as firstly defined by Kassin and Wrightsman (1985) in their book *The Psychology of Evidence and Trial Procedure*. Firstly, the voluntary false confession: this is a confession that is made, for example, to protect another individual. This type of confession comes about without prompting from the police. A coerced-compliant false confession, the second type, is often the result of the process through which interrogators try to persuade a suspect into confessing to a crime he or she did not commit. The interrogators demand a confession and a suspect can adhere to this by admitting guilt, knowing he or she is innocent. The temporary benefits of confessing often seem to outweigh the long-term costs of making a confession (Leo, 2009a). The last type of false confession is the coerced-internalized false confession, which is a result of manipulative interrogations methods. Suspects plead guilty to a crime because they have actually come to believe that they committed the crime. The suspect internalizes a belief of guilt (Paton, Bain, & Gozna, 2018).

2.1 How does a false confession come about?

False confessions are not caused by one single factor. Voluntary false confessions can often be explained by the internal psychological state or needs of the confessor. A possible reason for a person to voluntarily confess is to protect the real criminal, but it can also be the result of a desire for fame or a need for self-acceptance or self-punishment. Thus, voluntary false confessions do not come about through any external form of psychological pressure or coercion (Leo, 2009a).

Coerced and coerced-internalized confessions are the result of a long process of influence, persuasion and psychological coercion. To get a better understanding of how these police-elicited false confessions come about, there are three common errors which increase the risk of retrieving a coerced false confession, which can ultimately lead to a wrongful conviction.

Firstly, an innocent person is misclassified as guilty. As a result, this person can become subject to an interrogation of accusatorial or information-gathering nature, depending on the method that is used. During this interrogation, a wide variety of techniques is used, which can involve the use of false evidence, or implicit and explicit promises and threats. After the innocent person has confessed, they are often forced to provide a narrative including all the details of the crime. These three errors are referred to as the misclassification error, the coercion error and the contamination error (Leo, 2009a).

2.1.1 Misclassification Error

A misclassification error is made when an innocent person is taken to a police station for interrogation. An innocent person may, for example, be mistakenly targeted because he or she was the most readily noticeable person who fit the eyewitness description (Davis & Follette, 2002). As a result of the presumption of guilt by the interrogators, confirmation bias

can occur, which develops when preexisting beliefs, expectations, motives and situational context about a person influence the collection, perception and interpretation of evidence (Kassin, Dror, & Kukucka, 2013). Denial by the innocent person during interrogation can be perceived as a lie, crying can be interpreted as overwhelming guilt and whenever a lawyer is requested, this could raise suspicion, as if the person wishes to hide something (Leo, 2009a).

2.1.2 Coercion Error

After a person is misclassified, they can be subjected to an interrogation. During such an interrogation, the interrogator can create an intense pressure which makes it seem to the suspect like the only option available is to confess. This is known as a coercion error. There are two ways in which psychological coercion can occur: the police uses interrogation techniques that are inherently coercive or the police uses interrogation techniques that cause a suspect to feel like they have no choice but to adhere to confess (Leo & Drizin, 2010). Interrogators can induce a confession by using negative incentives and positive inducements. When interrogators confront the suspect with accusations of guilt, a suspect's defense slowly breaks down. They lower their resistance and feel powerless. Threats of harsher treatment can introduce a form of physical coercion, for example when the interrogator threatens to use physical violence on the suspect if he or she does not confess (Kassin, et al., 2010). On the "positive" side, interrogators offer sympathy, moral justification and they tend to normalize the crime. These techniques motivate the suspect to believe that confessing would be in their best interest. Such techniques combined with a deprivation of food, sleep, water or a lack of access to a bathroom can quickly lead to a false confession (Kassin, et al., 2010).

2.1.3 Contamination Error

Once a suspect has confessed to a crime, the interrogators need a narrative that confirms the presence of the suspect at the crime scene. This is when a contamination error can occur.

The interrogators are not supposed to feed the suspect any details of the crime that he or she could not have known, in order to safeguard the reliability of a confession. Yet, it can occur that interrogators, (un)intentionally, leak exclusive details about the crime (Garrett, 2010). Especially in interrogations of accusatorial nature as described in chapter one, the goal of an interrogator is to extract a persuasive account that leads to the conviction of the suspect (Leo, 2009a). In these cases, the interrogator can use leading questions to suggest specific facts about the crime to the suspect. These facts are then parroted back in the form of a confession by the suspect. A scenario-based inducement can also be employed to attribute a motive to the suspect. Scenario-based inducements minimize the culpability of the suspect, which will make the suspect more likely to agree with the scenario and even repeat it (Nirider, Tepfer, & Drizin, 2012).

2.2 Additional factors influencing false confessions

Knowing the three types of false confessions and how they come about, there is a range of additional factors that can influence whether a false confession will be made by a suspect. The following section will describe to what extent these factors increase or decrease the risk of a false confession.

2.2.1 Presence of a Lawyer

During an interrogation, there are often two parties present: the suspect and the interrogator(s). Whether the presence of a lawyer changes the likelihood of the suspect giving a false confession has been studied. Beijer (2010, p. 324) states: “With a lawyer present, the likelihood that the police will use coercion is reduced”. In this way, the chance of a false confession is reduced: a lawyer can step in if the questioning takes too long, is too harsh, or if underhand tricks are used (Beijer, 2010). Additionally, when lawyers are present during

interrogation, criminal investigators might be inclined to use certain interrogation techniques less or more. Suspects might use their right to silence more often and lawyers could interrupt the interview, depending whether they are allowed to do so (Verhoeven, 2018). Thus, the presence of lawyer decreases the use of coercive methods, which reduces the risk of the suspect giving a false confession.

2.2.2 Vulnerable suspects

The presence of a lawyer can be especially relevant in cases of vulnerable suspects. There are certain groups of people that are more susceptible than others to coercive methods used by interrogators. Youth run a significantly greater risk to falsely confess, as they are more easily influenced than others, due to their heightened responsiveness to immediate rewards and punishments (Kassin, 2017a). People with a mental disability also run a higher risk of falsely confessing. In a sample of wrongful convictions, Gross et al. (2005) found that in the U.S., 69% of exonerated persons with mental disabilities were wrongly convicted because of false confessions.

2.2.3 False confessions: counterintuitive

A question that often arises when discussing the topic of false confessions, is why a false confession increases perceptions of guilt by judges and juries (Kassin, 2017a)? False confessions can be considered counterintuitive, since people in general do not believe that a person can confess to something they did not do. When someone voluntarily admits to wrongdoing, in light of the consequences that will follow, people tend to trust that confession (Kassin, 2017b). Research on this topic done by Kassin & Sukel (1997) indicates that although the participants in an experiment judged high-pressure interrogations to be involuntary, they stated that a false confession obtained under these conditions would not affect their decisions.

Indeed, such a confession significantly boosted the conviction rate. This shows that false confessions are so counterintuitive, that people have a hard time neglecting the confession, even in an involuntary situation.

2.2.4 *Exclusive Knowledge*

In addition to possible factors that might influence false confessions, it can also be challenging to determine whether the narrative the suspect provides to prove its involvement in the crime originates from the suspect him- or herself. An essential element in determining this is the amount and quality of exclusive knowledge a suspect provides (Israëls & van Koppen, 2006).

Exclusive knowledge can be defined as everything the perpetrator knows about the crime *minus* what an innocent person could know (Crombag, van Koppen, & Wagenaar, 2005). Testing whether a confession includes exclusive knowledge can only be done when the crucial information about a crime is not yet known before the interrogation. Exclusive knowledge should originate from the suspect himself or herself. One method to identify whether exclusive knowledge is introduced by the suspect is when a change is made between the first and second time a suspect confesses. When a suspect confesses the first time and changes this confession the second time he or she is interrogated, this can be compared to the chronological order of information retrieved by the investigators in the forensic investigation. Whenever the change in confession resembles or is comparable to a change in the forensic investigation, one could suspect that the interrogators provided this information to the suspect (Israëls & van Koppen, 2006).

This chapter provides an overview of what is known about false confessions. The different kinds of false confessions are deliberated upon, followed by an explanation of how a

false confession can come about. The misclassification error, the coercion error and the contamination errors can increase the risk of eliciting a false confession once an innocent person is questioned by law enforcement officers. The presence of a lawyer could potentially lower the risk of suspects confessing to a crime they did not commit, especially with regard to vulnerable populations like youth and people with a mental disability.

The next two chapters will analyze the legal systems of the Netherlands and the U.S., researching their interrogation techniques and admission of evidence rules, and how these take effect on false confessions. The information in chapter one and two has provided the general framework, enabling a thorough inquiry of the legal systems of these two countries.

Chapter 3: The Netherlands

The Netherlands is often considered the country with possibly the most inquisitorial legal system in Western Europe (Crombag, 2003). This chapter will set out the Dutch laws on the interrogation procedure and will explore its main interrogation technique. Subsequently, the rules on handling evidence in court will be studied, focusing on statements of a suspect in the form of a confession. The chapter will end with the analysis of three case studies, to illustrate how the law is applied in criminal cases.

3.1 The Dutch police interrogation procedure

Studying the Dutch police interrogation rules and procedures, the focus will be on how these rules and procedures can affect false confessions. Interrogation techniques, pressure during interrogations and the presence of a lawyer will be the main focus points. The interrogation of the suspect is regulated through the Code of Criminal Procedure (Wetboek van Strafvordering). Article 29 to 29d covers the right of the suspect to remain silent. Article 28 to 28e covers the presence of a lawyer before and during the interrogation.

The first paragraph of Article 29 states: “In all cases in which a suspect is interrogated, the judge will refrain from any statement that is not declared in liberty”. This indicates that the judge will not take into consideration a statement made by a suspect if this statement was not given in liberty (Duker & Stevens, 2009). This law is ensured through banning any form of illegitimate pressure during the interrogation (Stevens, 2005).

The second paragraph of Article 29 states: “The suspect is not obliged to answer. Before the start of the interrogation, the suspect will be informed that he is not obliged to answer. This announcement will be included in the case file.” This indicates the suspect’s right to remain silent (Duker & Stevens, 2009).

The second paragraph of Article 29a states: “The statements of the suspect, especially statements that include an admission of guilt, will be included in the suspect’s own words (as much as possible) in the case file.” This indicates that statements made by the suspect, focusing mostly on any admission of guilt, have to be reported as literally as possible (*ad verbatim*) (Duker & Stevens, 2009). A question-and-answer structure is the preferred form of reporting a confession in the case file (Keulen & Knigge, 2016).

In Dutch case law, both the legality and trustworthiness of interrogations and confessions is discussed. Judges have the freedom to decide which pieces of evidence they deem trustworthy enough to use in a case and they are not obligated to motivate their choices in court (Keulen & Knigge, 2016). The legality of an interrogation refers to whether a certain interrogation technique is legally acceptable: some interrogation techniques disregard the prohibition of inhuman and degrading treatment. They can also pose an unacceptable risk with regard to false confessions (Duker & Stevens, 2009). An example of this is the use of violence and threats by the interrogators (Gerritsen, 2000). The Showbizz murder case illustrates how these issues are dealt with in court.

Music producer Bart van der Laar was shot in his villa in Hilversum in 1981 and died three days later as a result of his injuries. Martien Hunnik was suspected of the murder and convicted for manslaughter mainly based on his retracted false confession (Knoops' Advocaten, 2016). The case was reopened in 2015 and the defense claimed that the confession given by the suspect had come about through the use of pressure by the interrogators. Emotional pressure was created, as described by Hunnik: “I confessed to committing murder on 17 January 1983, because I was under heavy pressure. I could not handle their way of handling me during the interrogation. In my own way, I have felt sadness surrounding the death of the victim. When I was with [interrogator 3] in the evening, he said: [suspect], you loved [victim]. At that moment, I broke down completely” (Herzienen in de Showbizzmoord, 2016).

A combination of this form of sympathizing with the suspect, but yet creating stress by subsequently stating that the interrogators will not leave the suspect alone until he confesses, led to an excessive amount of pressure during the interrogation. Thus, the questioned legality of the interrogation techniques led to the rise of doubt with regard to the trustworthiness of the confession. This, in combination with a lack of physical evidence, led the court to conclude that the suspect could not be proven guilty (Herzienen in de Showbizzmoord, 2016).

3.1.1 SVS (Standaard Verhoor Strategie)

The Dutch police uses the standard interrogation strategy (SVS), which can be found in the Guide for Interrogation (van Amelsfoort & Rispens, 2017). The standard interrogation technique should be used in cases where the suspect will not easily make a statement about the crime that was committed and is thus focused on establishing communication with a suspect. The guide for interrogation thus provides methods and strategies to enable these conversations (Duker & Stevens, 2009).

The standard interrogation consists of three consecutive interviews. The first interrogation focuses on establishing the first contact with the suspect and to get acquainted with the suspect (Stevens & Verhoeven, 2011). The second interview establishes to what extent the suspect might be making a statement and to test the level of pressure the suspect can handle (Duker & Stevens, 2009). The third interview is fully focused on uncovering the facts of the case. Evidence that was found at the crime scene, for example, can be used to extract a confession from the suspect (Stevens & Verhoeven, 2011).

3.1.1.1 Pressure

As mentioned, the SVS is mostly used in cases where the suspect will not confess immediately. Therefore, the SVS includes strategies for minimizing the suspect's resistance to

answer questions and possibly confess to a crime. The buildup of pressure is created by confronting the suspect with evidence that contradicts their statements. The buildup of an excessive amount of pressure is prohibited in the first paragraph of Article 29 of the Code of Criminal Procedure (Keulen & Knigge, 2016).

In a study by Verhoeven and Stevens (2011) conducted in the Netherlands, 168 interrogations and its interrogation techniques were observed in cases of murder or manslaughter. All interrogation techniques that were used in the 168 interviews were analyzed, after which fourteen interrogation techniques were identified. These were groups according to four dimensions of pressure: sympathizing with, intimidating, manipulating and confronting the suspect.

Sympathizing with the suspect is focused on connecting with the suspect and building a trusting relationship. An open and positive atmosphere is created, to engage the suspect in telling truthful information about the crime. Intimidating the suspect focusses on making the suspect feel uncomfortable by implying guilt, fear and distrust. The interrogator aims to get a confession from the suspect. Family and partners are often involved, for example when the interrogator emphasizes the consequences of the arrest for their family or partner. Manipulating the suspect can be done by misleading the suspect, for instance by presenting a hypothetical situation. The interrogator could suggest that the suspect might not have wanted to kill the victim with a screwdriver, but merely wanted to stop the victim from fleeing. Lastly, confronting the suspect with (indirect) evidence and identifying contradictions between the statements of the suspect and the evidence can build up pressure. The interrogator can also interrupt the suspect constantly, which can create a form of annoyance and creating even more pressure for the suspect.

Stevens and Verhoeven (2011) describe sympathizing with the suspect as a soft form of pressure, whereas intimidating, manipulating and confronting are described as harder forms

of pressure. During the first two interviews, the harder forms of pressure are more often used than expected. Confronting and manipulating are often used in the longer interrogations. This suggests that these types of interrogations are the ones where interrogators push through and mislead the suspect to extract a confession. Even though this form of pressure is not allowed according to the interrogation guide, research shows that it does still occur (Stevens & Verhoeven, 2011).

The infamous ‘Zaanse verhoormethode’, often used in the 1990s, marked the first form of interrogation that was prohibited by the Supreme Court due to its intense methods that could last for days, for example by making use of pictures of the crime to extract a confession (Keulen & Knigge, 2016). A more recent piece of case law that regulates excessive pressure was concluded by the Court in Alkmaar in 2003. It is prohibited to mislead someone into confessing by promising their freedom in return. The suspect in this case had confessed as a result of an illegitimate promise by the interrogators, which the court ruled inadmissible. It is thus not allowed to manipulate the suspect in such a way that they confess to the crime (ECLI:NL:RBALK:2003:AF8363, 2003).

3.1.1.2 Risks SVS

There are two risks in using the SVS interrogation technique. The first one involves two forms of bias: guilty bias and confirmation bias. When a suspect is assumed guilty, evidence found at the crime scene can be interpreted in light of existing hypotheses and expectations. The SVS works towards the goal of minimizing the resistance of the suspect, in order for the interrogator to confront the suspect and steer them towards verifying the evidence the interrogators present during the interview (Geijsen & De Ruiter, 2017). By assuming the guilt of the suspect, the police might (un)consciously steer the suspect to confirming the evidence they present.

The second risk is the buildup of pressure during the interrogation, as we have seen in the previous section. In addition, it is good to note that there are two forms of pressure to be taken into account. External pressure is the creation of pressure through promises, misleading and threatening the suspect. Interrogators are not allowed to promise the suspect that he or she can leave, once they have confessed (Keulen & Knigge, 2016). Internal pressure is the pressure suspects feel as a result of contradictions and the confrontation with certain facts about the case, resulting in stress (Geijsen & De Ruiter, 2017).

In addition to this, the SVS has been described as an accusatorial interrogation technique. Because of the guilty bias and confirmation bias that occurs during interrogations, interrogators tend to steer the suspect towards making a statement that fits the evidence (Kassin & Gudjonsson, 2004). This can be done through the minimization strategies and the buildup of pressure. These methods can lead to a situation in which the suspect adapts their initial statements and changes them to fit the interrogators' version of events. Thus, guilt is assumed from the start due to the guilty bias and confirmation bias, and this combined with certain techniques increases the risk that a person might falsely confess. The SVS can therefore be considered as an accusatorial method of interrogation, rather than an information-gathering method (Geijsen & De Ruiter, 2017).

So, the SVS interrogation technique employs several techniques to elicit statements from suspects. Yet, the buildup of pressure and the guilty and confirmation bias are two risks that should be taken into account (Meissner, et al., 2014). A way in which these risks could possibly be diminished is by allowing legal assistance before and during the interrogation.

3.1.2 Presence of a lawyer

In the Dutch legal system, the presence of a lawyer is covered in Article 28 to 28e in the Code of Criminal Procedure since 2016, when the rules regarding the presence of a lawyer

before and during the interrogation where amended as a result of a European Court case (Klein Haarhuis, 2018). Article 6 of the European Convention of Human Rights states the right of a suspect to a fair trial. This article was referred to in the case of *Salduz v. Turkey* (Salduz v. Turkey, 2008), in which a suspect was questioned by the police without having the right to consultation with a lawyer. Due to unclarity about the exact moment of consultation (before and/or during interrogation), Dutch law was at first only amended with regard to consultation prior to the interrogation. Yet, when Directive 2013/48/EU was enacted by the European Union, it was clarified that the consultation also includes the participation of lawyers during police questioning (LEAP & Fair Trials, 2016). As a result of this Directive, this was transposed in Dutch law as well (Klein Haarhuis, 2018).

The first paragraph of Article 28d specifies the following: “Upon the request of the suspect [...], a lawyer can attend the interrogation and participate.” The second paragraph, in addition, states: “Whenever the suspect is interrogated without the presence of a lawyer, they can request the interrogation to be interrupted for consultation with a lawyer.” This article was introduced to establish the right of a suspect to receive legal assistance from a lawyer. The first paragraph of article 28c specifies the right to consult a lawyer prior to the interrogation.

The lawyer is thus allowed to participate in the interrogation. “Participate” is defined in ‘het Besluit inrichting en orde politieverhoor’, which regulates the police interrogation and the power of the lawyer during interrogations. The lawyer is allowed to be seated next to the suspect and he is allowed to comment on the methods of interrogation, but he can only ask the suspect questions about the content of the case before and after the interrogation (Keulen & Knigge, 2016).

3.1.2.1 Waiving consultation rights

The Code of Criminal Procedure also includes laws on the waiving of consultation rights. Article 28a, paragraph 1 states: “A suspect can voluntarily and explicitly waive his right to consultation of a lawyer”. Additionally, paragraph 2 states that the suspect has to be informed by the judge or criminal investigator of the consequences of the waiving of consultations rights. Art. 489 regulates the waiving of consultation rights for minors. Paragraph 2 of this article states that a minor cannot waive their consultation rights, even if it would be voluntarily and explicitly. This is similar to suspects with a mental disability, who might not be able to act according to their needs. Thus, only adults without a mental disability have the right to waive any form of consultation from a lawyer (Keulen & Knigge, 2016).

Research done after the implementation of the right to legal counsel has shown that during the first two interrogations, approximately 75% of the suspects waive their right to legal counsel. This increases during the third interrogation, when 80% of the suspects waives their right to counsel (Klein Haarhuis, 2018). This research was done based on a total of approximately four hundred suspects.

3.1.2.2 ‘Raadsman bij Verhoor’

During the time that Dutch legislature was contemplating how to deal with the *Salduz* case (2008 to 2010), an experiment (‘Raadsman bij verhoor’) was conducted in the Netherlands to “examine the added value of the presence of a legal adviser in improving the transparency and verifiability of the interrogation and the prevention of improper coercion by interrogators” (Verhoeven & Stevens, 2013). The attendance of a lawyer during the police interrogation and the opportunity of the suspect to confer with his lawyer in private prior to the interrogation were examined.

The research concluded that interrogators were less likely to use intimidating coercion when a lawyer is present during the interrogation. The research also found that the presence of a lawyer did not affect the number of times the right to remain silent was invoked. Lastly, the findings showed that prior consultation with a lawyer had a greater effect on the suspect invoking its right to remain silent, than when having the lawyer present during the interrogation itself. From this, a possible conclusion might be that the presence of a lawyer and prior consultation with a lawyer can serve as a safeguard to prevent an interrogation from getting out of hand (Verhoeven & Stevens, 2013).

In 2016, a study on the implementation of the new law was initiated: Langetermijnmonitor 'Raadsman bij verhoor', which examined how the new law has been applied in practice over the time period of one year. Results showed that a lawyer was consulted before the start of 62% of all interrogations. According to police and lawyer respondents, lawyers influence interrogations actively and passively. Results showed that almost 75% respondents from the police claimed that suspects talk 'less' to 'much less' in the presence of a lawyer (Klein Haarhuis, 2018).

The results of the Langetermijnmonitor are in line with the initial research before the law was implemented: results show that lawyers have a significant influence during the interrogation. This influence seems to be beneficial for the suspect, as less intimidating coercion is used by interrogators, preventing any excessive pressure buildup.

3.1.3 Audio- and videotaping interrogations

The audio- and videotaping of interrogations is not regulated in the Code of Criminal Procedure. There have been discussions about the benefits of recording interrogations, mainly focusing on the ability to check whether statements included in the report are identical to statements made by the suspect. Recordings can also help in determining whether

interrogations were completed in such a way that the statements or confessions made during the interrogation can be valued as trustworthy (Duker & Stevens, 2009).

The most recent development with regard to legislating audio- and videotaping is a directive² initiated by the Public Prosecution Service, that regulates in which cases the audio- and videotaping of interrogations is mandatory. Videotaping is, for example, mandatory when the suspect being interrogated is vulnerable, which is the case for minors and individuals with a mental disability. The directive was first implemented in 2013 and renewed in 2018 (Procureurs-Generaal, 2018).

3.2 Confessions as evidence in court

After the investigation has been completed, a case goes to court. How a confession is handled in court is not explicitly included in the Code of Criminal Procedure, however, any statements, not including a confession, given by the suspect are covered. In practice, Article 341 will mostly cover confessions given by suspects as well.

Article 338 of the Code of Criminal Procedure states: “The evidence that the suspect has committed the criminal act can only be accepted by the judge if he has retrieved this information from a legal means of evidence”. Article 339 states the five means of evidence that are included in Dutch law: (1) the own observation of the judge; (2) statements of the suspect; (3) statements of a witness; (4) statements of an expert; and (5) written records. The first paragraph of article 341 defines statements of the suspect as the following: “A statement from the suspect are facts recorded during the interrogation that the suspect retrieved from their own knowledge.” A suspect’s statement can thus only contain a suspect’s own knowledge. Whenever a statement is extracted from a suspect by illegitimate means of interrogation, the statement cannot be used as evidence in the case (Keulen & Knigge, 2016). Any form of

² A directive is not a formal law, yet the Public Prosecution Service binds itself by it.

physical torture or violence is strongly prohibited. The use of deceptive interrogation techniques is another illegitimate means of interrogation. An example would be when a suspect confessed as the result of a lie told by the police that his companion has already provided a complete confession (Keulen & Knigge, 2016).

The fourth paragraph of Article 341 clarifies that the judge always needs two separate sources of evidence, just a confession is not enough (de Wilde, 2008). However, the definition of two separate sources is highly debatable, as will become clear in the cases described in the following section.

3.3 Cases

The last part of this chapter consists of an analysis of three cases in which suspects were wrongfully convicted. The cases are illustrative of the errors that (can) occur in the Dutch legal system that can lead to false confessions and cause wrongful convictions.

Case 1: Ina Post

In 1986, the 89-year-old Mrs. Sijtsma was strangled in her apartment. Several cheques were stolen and later cashed by the perpetrator. The police used these cheques to conduct a graphology test of the handwriting of the victim's caregivers. One of these caregivers was Ina Post. According to the police, her signature resembled that of the presumed murderer. She acted "nervous" according to the police. During police interrogation, she confessed twice to committing the murder (Brants, 2013). Ina Post confessed that after work, she went back to Mrs. Sijtsma apartment to steal the money and cheques. In her confessions, Ina Post explains how she was caught after which she hit Mrs. Sijtsma and strangled her with an electrical wire. She confessed to cashing the cheques the next morning. Even though Ina Post confessed in detail, she retracted her confession the next day. In December 1986, Ina Post was found guilty based on her confession and on the expert's opinion that the signature on the cheques resembled

Ina Post's signature. Ina Post received a prison sentence of six years. She was found guilty again on appeal, on the basis of her retracted confessions (Israëls, 2004).

In his book *De bekentenissen van Ina Post*, Israëls describes an interview with one of the interrogators that conducted the interviews with Ina Post, Mr. Schumacher. Quotes from Mr. Schumacher about the techniques used during the interrogation are included: "At one point, you start saying very mean things, like, if you confess, you can talk to your husband", "Firstly, you are very soft and sweet to her, you agree with her, and tell her you understand her, but the next time, you are very harsh, especially on a psychological level", "At one point, she did not know what had or had not happened, what was true and what was not. At the end, she was mentally completely wiped out and done" (Israëls, 2004) These statements indicate that Ina Post was pressured into confessing by false promises and mental tricks like the change of attitudes of the interrogators. This also indicates that her confession was coerced: there was no motive for her to protect the real perpetrator and the retraction of her confessions could indicate that she did not believe in her own guilt.

There were also several situations in which the police fed Ina Post information about the crime, of which one example concerns the money that was stolen. After interviews with a relative of the victim, the police initially believed that 200 guilders had been stolen, since the relative stated that he had collected a thousand guilders for the victim before the crime and 800 guilders were still in the apartment. Thus, Ina Post confessed that she stole 200 guilders. However, after a more thorough investigation of the crime scene, no cash money was found in the apartment. So, the information initially available to the police was reflected in Ina Post's confession, even though this did not seem to match the facts (Israëls & van Koppen, 2006). This example, together with other examples of the case, indicates that the exclusive knowledge Ina Post provided did not originate from her own knowledge.

In 2009, the Maastricht innocence project referred the case of Ina Post to the CEAS-commission (Commissie Evaluatie Afgesloten Strafzaken), who revised the case. As a result of their findings, the CEAS-commission recommended that the case be reopened. In 2009, the Supreme Court granted the request to revise the case of Ina Post. In October 2010, Ina Post was finally acquitted (Brants, 2013).

Case 2: Arnhemse Villamoord

In 1998, a 63-year-old woman was robbed and shot in her own home in Arnhem. Another woman, who entered the house at the time of the robbery, was also shot but survived her injuries. During the robbery, bankcards and money were stolen. The woman that survived the attack stated that she saw the perpetrator when they were guided to the bedroom, where both women were shot. The woman also stated that the perpetrator's Dutch was good and that he could be either Turkish, Moroccan or Moluccan. After investigations and interrogations, nine men were arrested and convicted. They received prison sentences ranging from five to twelve years (Huibers, 2019).

Forms of minimalization and maximization were used during the interrogations. For example, the interrogators repeatedly minimized the role of two of the suspects in the crime, stating that they were mainly on the lookout. The interrogators suggested that this would lead to a lower sentence if they confessed. The interrogators employed a form of maximization when they told the same two suspects that if they did not confess, this could lead to the accusation from other suspects that they were the ones who actually shot the women.

The nine men were convicted based on their confessions and some circumstantial evidence. No fingerprints or blood were found at the crime scene that could place any of the suspects at the crime scene. However, one of the pieces of evidence that the judges used to

convict the suspects was the use of a specific car that was spotted by witnesses, which will be discussed below (Adviescommissie Afgesloten Strafzaken, 2018).

A report for revision of this case has only recently been published, as a result of video recordings of the interrogations. Paul Acda, lawyer of one of the nine convicted men, visited Ömar A., who claimed to have falsely confessed in the Villamoord case. One part of the interrogation concerns the type of car that was used to drive to the villa of the victim. Ömar A. is being asked specific information about the car. Throughout the interrogation, Ömar has only mentioned a Mercedes. However, witnesses spotted a Volkswagen Golf blue that night, which is the information the police is looking for. This is a small part of the script of the interrogation³ (Andringa, 2018):

Interrogator: Did you drive to the villa with your car? What kind of car? What kind of car? Be honest for once. How many cars?

Ömar: Two cars, I think. One is a Mercedes 190. And one is a Peugeot 205.

Interrogator: And what else?

Ömar: That was it, I think. Kemal had one car, the Mitsubishi. The white one, one car.

Interrogator: Who enters the driveway?

Ömar: Kemal enters the driveway.

Interrogator: With what kind of car? Think very carefully. Because you know it. I know what it is. And you do too.

This part of the interview is included in the case file as follows: “I was there, that night, on the 2nd of September, in Arnhem, at the villa, in a blue Volkswagen Golf.” Comparing the video recording to the case file, it is clear that the suspect did not easily state the color and type of

³ Translated from Dutch to English.

car, but that it took lots of questioning from the police to finally get to the “right” piece of information (Andringa, 2018).

One of the suspects committed suicide after eight years of imprisonment. The Advocate-General at the Supreme Court has given the Dutch Forensic Institute the task to do DNA investigation, after the rapport from the ACAS⁴ (Adviescommissie Afgesloten Strafzaken) that evaluated the case. The result of the investigation will decide whether the case will be reopened (Huibers, 2019).

Case 3: Schiedammer Parkmoord

In the year 2000, a ten-year-old girl Nienke Kleiss was sexually abused and murdered in a park in Schiedam. Her eleven-year-old friend Maikel was stabbed in his neck and played dead to survive the attack. Once he escaped, he ran into Cees B., who was a passer-by and immediately called the emergency number. A few weeks earlier, Cees B. had been a suspect in another sexual offence case. As a result, Cees B. became a suspect of the murder and assault on Nienke and Maikel. Cees B. was arrested and confessed the murder during one of the first interrogations.

The confessions of Cees B. were not in violation with the prohibition on pressure during interrogations. However, there were some instances that show forms of psychological coercion and a guilty bias. A clear example is the following statement made by one of the interrogators: “Cees ... we just know that you did it ... as a result ... of what you have told us ... we know you did it. The fact that you were there ... everything fits exactly ... it is a puzzle that we are puzzling with” (Posthumus, 2005, p. 114). This quote indicates that the interrogator assumes Cees is the perpetrator because of his presence in the park. In addition to this, the interrogators also repeatedly stated that the sooner he confessed, the quicker they could start helping him

⁴ Formally known as CEAS.

and solving his problems. It was also noted that the interrogators used their voices softly but also raised them, they cursed and hit the table. Yet, this was not judged as inadmissible (Posthumus, 2005).

After Cees confessed, he retracted his confession the next day and denied the crime during the remainder of interrogations (Van Koppen, 2003). Forensic investigation could not confirm Cees B.'s guilt, since DNA samples found at the crime scene did not match his DNA profile. Cees B. was sentenced to 18 years imprisonment, based on his confessions and some additional evidence. Firstly, a timeline was produced, from which the investigators concluded that Cees B. was in the park at the time of the crime. Secondly, three witnesses stated that they saw a bike in the grass near the crime scene. They gave a description that led to the conclusion that the bike was very likely Cees' bike (Posthumus, 2005).

In the years after the Schiedammer Parkmoord, it became clear that the police had made mistakes during the investigation due to guilty bias and confirmation bias (Van Koppen, 2009). Exculpatory evidence was disregarded: the description given by Maikel on the physical appearance of the perpetrator was ruled inadmissible and no attention was paid to the unidentified DNA found at the crime scene, on Nienke's body and on the murder weapon (Brants, 2013).

The police also fed Cees B. with exclusive knowledge. Cees B.'s confessions were compared to the facts of the case, which clarified that the exclusive information did not originate from Cees. An example of this is the way the children were approached by the perpetrator. According to Maikel, the perpetrator held on to his knife while directing the children towards the bushes. Cees B. confessed to putting the knife back into his pocket when they walked towards the bushes (Van Koppen, 2003). This is a clear example of how Cees B. was fed information by the police during interrogation, since Cees' statement contradicted the victim's statement.

Four years after Cees B. was convicted and imprisoned, a DNA sample of a suspect of another crime was matched to the DNA sample found on Nienke. This led to the conviction of the actual perpetrator and Cees B. was soon released (Van Koppen, 2009). This specific case led to the establishment of the CEAS. This organization initiates investigations to check whether the evidence in a case was rightfully judged. The CEAS can request the Supreme Court to revise a certain case if they found any reason for a retrial (Posthumus, 2005).

Changes in the law

The three cases described above occurred in 1986, 1998 and 2000. The legislation concerning the presence of a lawyer was only amended in 2016. In all the cases described, no lawyer was present during the interrogation. Since a lawyer can advise his or her clients on the right to remain silent, having a lawyer present during the interrogation could possibly have an effect on how easily the suspects talk, and ultimately confess, to the police.

Chapter 4: The United States of America

The U.S. legal system is strongly characterized as adversarial (Crombag, 2003). Both the prosecution and defense try to falsify the other's case, aiming at finding the truth (Brants, 2013). This chapter will analyze U.S. laws and case law on the interrogation procedure and will explain the main interrogation technique. After an analysis of the legislation on how to handle a confession as evidence, three cases will be covered to illustrate the application of the law in criminal cases.

4.1 The U.S. Interrogation Procedure

Throughout the 20th century, multiple court cases formulated the rules and regulations on what is and is not allowed during police interrogations. In these cases, it is discussed what rights a suspect has during the interrogation and which techniques interrogations are allowed and prohibited. It is important to note the distinction between regulation through state and federal laws, but the focus in this section will be on case law on federal level, mainly researching decisions made by the Supreme Court.

The first case is *Bram v. United States* (Bram v. United States, 1897), which covers what tactics are allowed during an interrogation. In *Bram*, the authorities induced the defendant to confess by using elements of maximization and minimization. Maximization was used when the interrogator stated certainty in the suspect's guilt and minimization was used when the interrogators suggested that he would be punished less severely if he confessed and named his accomplice. Initially, the defendant was convicted, yet this decision was later overturned by the Supreme Court, stating that "a confession must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight" (Kassin, et al., 2010). Thus, according to U.S. case law, it is prohibited to extract a confession by using any (implicit) threats or violence.

The second case *Stein v. New York* (Stein v. New York, 1953), which covers the buildup of pressure during interrogation. The judge ruled that the limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the defendant. The argument supporting this ruling was that the amount of pressure needed to overpower a weaker defendant might be ineffective against an experienced criminal.

The third case is *Lynumn v. Illinois* (Lynumn v. Illinois, 1963), which established that police officers should avoid telling lies that could coerce the defendant into confessing. The ruling established a prohibition of the use of explicit promises of leniency as well (Kassin, et al., 2010).

The last case is *Frazier v. Cupp* (Frazier v. Cupp, 1969), which covers the use of deceptive tactics during an interrogation. In the case, the police officers told Frazier that another man, whom he and the victim had been seen with on the night of the crime, had already provided a confession. Despite the use of this deceptive tactic, the Supreme Court ruled that Frazier's confession was voluntary. The ruling established that police deception is not sufficient to judge a confession involuntary, providing a precedent for the use of deceptive tactics in future interrogations (Kassin, et al., 2010).

4.1.1 *Miranda rights*

In the landmark case *Miranda v. Arizona* (Miranda v. Arizona, 1966), the U.S. Supreme Court established the Fifth Amendment as the basis for determining the admissibility of confessions. The Fifth Amendment's right against compelled self-incrimination is the right to remain silent. The Court addressed in-custody interrogations and judged them to contain "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely". To avoid such situations, suspects must be appropriately informed of their rights and they should be able to exercise

these rights. These procedural safeguards later became known as the Miranda warning (Ma, 2007).

The U.S. Supreme Court formulated the following rules: prior to initiating an interrogation, the police must inform custodial suspects of their right to remain silent and their right to appointed council. The police must also state that anything they say can be used against them. The Court also held that suspects must voluntarily, knowingly and intelligently waive those rights, in order for their statements to be admissible in the following legal trial (Kassin, et al., 2007). If the police fail to issue the Miranda warning, this will lead to the exclusion of the confession regardless of how it was obtained. The Miranda warning also requires the police to issue the warnings only when a suspect is taken into police custody and when the police interrogate the suspect (Ma, 2007).

After having covered the case law regulating the U.S. interrogation procedure and the landmark case *Miranda v. Arizona* that led to the formulation of the Miranda warning, the most common interrogation method in the United States will be analyzed: the Reid Technique.

4.1.2 The Reid technique

The Reid technique is an interrogation technique developed by consultant and polygraph expert John Reid and it is widely used by law-enforcement agencies in the United States (Gallini, 2010). The Reid technique consists of three distinct phases: the factual analysis, the Behavioral Analysis Interview and the interrogation. The factual analysis aims at analyzing available evidence and eliminating improbable suspects. It also develops possible suspects or leads. The factual analysis also aims at establishing an initial expectancy of a suspects' guilt or innocence. By doing this, the confidence and accuracy in rendering an opinion of the suspect's possible involvement of the crime is created (Kozinski, 2017).

The second phase in the Reid interrogation technique is the Behavioral Analysis Interview. The investigator attempts to evaluate the suspect's "normal" verbal and non-verbal

behavior (Kozinski, 2017). It aims at assessing the guilt or extent to which the suspect is telling the truth or lying. Practitioners of the Reid technique are trained to read behavioral cues to detect deception (Verhoeven, 2018).

The interrogation is a nine-step process, based on three main elements. Firstly, the interrogators will tell the suspect that they are convinced of his guilt. The suspect is cut off from any attempts to deny this (Kozinski, 2017). This is combined with the suspect being in custody, isolated from the outside world, which can create anxiety, nervousness and insecurity (Verhoeven, 2018). The Reid manual describes this first part as a positive confrontation, followed by theme development and the handling of denials (Reid, 2019).

Secondly, the suspect is accused of the crime and offered one or more scenarios for how he committed the crime. The interrogators suggest that his conduct was likely the least culpable, perhaps even morally justifiable. This can also be characterized as minimization. Occasionally, (manufactured) evidence is used to emphasize the certainty of the accusation (Kozinski, 2017).

Third and lastly, the interrogators overstate the strength of the evidence that can prove the culpability of the suspect. This also aims at getting the suspect to orally relate various details to the offence. The interrogators will assure the suspect that he will be convicted, regardless of whether he talks (Kozinski, 2017). The last official step in the nine-step process is the conversion of an oral confession to a written confession (Reid, 2019).

The Reid technique has been criticized over the last two decades. One of its major problems is the focus on extracting a confession, rather than figuring out the facts of a case (Kozinski, 2017). Law enforcement and case law regulating interrogation techniques were designed to prohibit Third Degree tactics, which became familiar around the 1930s. The techniques employed in the Third Degree method were mainly physical, whereas techniques employed in the Reid technique are mainly psychological. So, even though there is case law

regulating what is and what is not allowed, the Reid technique seems to stay just within the borders of law enforcement because of the implicit psychological interrogation methods, which are not prohibited in the case law mentioned above (Kozinski, 2017).

4.1.2.1 Risks Reid technique

There are several risks that can impact the result of an interrogation when the Reid technique is employed. One of the false assumptions underlying the Reid technique is the idea that innocent suspects can be distinguished from guilty suspects by studying behavioral cues that are displayed during the interview. Indicators like facial expressions, posture, eye contact, particular phrases and hand gestures are used to indicate guilt (Schatz, 2018).

Another risk is the buildup of pressure through the use of confrontation and minimization strategies (Kassin, 2005). Confrontational strategies include forceful accusations, interruptions whenever the suspect attempts to deny their guilt, and the presentation of either real or manufactured evidence. Minimization strategies involve the sympathetic presentation of moral justifications and rationalizations for the crime that was committed. The implication that a confession will result in a lower sentence is also often included (Moore & Fitzsimmons, 2011). These strategies combined with being isolated and deprived of sleep can create situations in which the suspect feels the pressure to confess. The decision to confess is additionally influenced by the presentation of false evidence by the police: people tend to give in when they believe that the police have strong evidence against them (Kassin, 2005).

Laboratory simulations have demonstrated that innocent research participants plead guilty to misdeeds that they did not commit, after being interrogated using the Reid technique tactics. The results showed that 46% of guilty suspects confessed versus only 6% of innocent suspects when no Reid techniques were employed (Moore & Fitzsimmons, 2011). Moore and Fitzsimmons (2011) found that when Reid strategies were used, true confessions increased by 35%, but false confessions showed a seven-fold increase.

4.1.3 Presence of lawyer

The right to counsel was first established in a federal case in 1964 (*Escobedo v. Illinois*, 1964). Criminal suspects have the right to counsel during police interrogations, which has been included in the Sixth Amendment. This became one of the main clauses of the Miranda warning, which obligates the police to inform the suspect of their right to appointed counsel (*Miranda v. Arizona*, 1966). Thus, the presence of a lawyer is a longstanding concept in U.S. criminal procedure.

4.1.4 Waiving the right to counsel

Suspects also have the right to waive their right to counsel. A valid waiver of this right requires that police officers provide an understandable description of their rights and that suspects understand the warnings. To waive their right, a suspect must do so voluntarily, knowingly and intelligently (Kassin, et al., 2010). Ever since the Miranda warning and waiver have been implemented, questions have been raised about its practical effects, on both police and suspects. Research has shown that roughly four out of five people waive their rights. This has been confirmed in multiple studies by Leo (1996b) and Cassell and Hayman (1996) (Kassin, et al., 2007).

Adults with mental disabilities, as well as youth are allowed to waive their rights, if done voluntarily, knowingly and intelligently. However, these groups of people are at risk when it comes to understanding the meaning of Miranda warnings and waiving their rights. They often lack the capacity to weigh the consequences of waiving their rights, and they are more likely to waive their rights as a result of compliance with authority (Kassin, et al., 2010).

4.1.5 Audio- and videotaping interrogations

Audio- and videotaping confessions is required for custodial interrogations in 27 states throughout the U.S. The first state to obligate the recording of police interrogations was Alaska in 1985. Since technological advancement has enabled the recording of interrogations, a trend has developed towards making recordings of interrogations mandatory (Bang, Stanton, Hemmens, & Stohr, 2018).

There are several advantages to audio- and videotaping police interrogations. Firstly, the presence of a camera makes interrogators more aware of their behavior. As a result, they are less likely to use various high-pressure methods to get to a confession. Secondly, a videotaped interrogation can provide an objective and accurate version of the interrogation, which can be used by judges to determine whether a confession can be deemed reliable (Kassin, 2017a).

Although audio- and videotaping interrogations is not a guarantee for preventing false confessions, it is a step towards more fairness, transparency and accuracy in the criminal justice system (Bang, Stanton, Hemmens, & Stohr, 2018).

4.2 Confessions as evidence in court

The first case that covered the admissibility of confessions as evidence was *Brown v. Mississippi* (Brown v. Mississippi, 1936). The Court ruled that a defendant's involuntary confession that is extracted by the police is not admissible as evidence. It violates the Due Process Clause of the Fourteenth Amendment, which ensures the fair treatment of citizens in the criminal justice system and regulates the balance of power between the government and the individual.

4.2.1 Voluntariness

In 1968, Congress enacted 18 United States Code § 3501, attempting to reinstate the totality of the circumstances test for determining whether a confession was voluntary. This law was enacted through the United States Code, which is the codification of the general and permanent law of the U.S. (U.S. Government Publishing Office, 2019). Section 3501 covers the admissibility of confessions (Title 18. Crimes and Criminal Procedure). Paragraph (a) of section 3501 states: “A confession [...] shall be admissible in evidence if it is voluntarily given. [...] If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence.” So, this article regulates that a confession may only be admitted as evidence when no pressure has been used that could implicate the voluntariness of the confession.

4.2.2 Corroboration

Whether a confession alone is enough to convict a suspect is regulated on state level rather than federal level (Crisera, 1990). The ‘corpus delicti rule’ is a long-standing rule in almost all jurisdictions across the United States. It bars admission in evidence of a defendant’s confession unless the prosecution can show, by evidence independent of the confession, that the crime charged was committed by someone. The rule requires the prosecution to prove the corpus delicti (the “body of a crime”) through evidence that is not the defendant’s confession (Mullen, 1993). This rule focuses mostly on proving that a crime actually happened. If a person would confess to a crime that has not happened, the person cannot be convicted. This rule, however, does not protect someone that falsely confesses to a crime that did actually occur.

In 1954, the Supreme Court issued a new rule of corroboration on federal level: the trustworthiness standard. This new standard requires corroboration of the confession itself, rather than corroboration that a crime was committed. Thus, the new standard focusses on the reliability of the defendant’s confession, which can be determined by independent evidence.

When there is substantial independent evidence of a crime, a confession may be judged trustworthy if it demonstrates that the individual has specific knowledge about the crime (earlier described as exclusive knowledge). Yet, criticism has been given on the trustworthiness standards: the judge will be able to determine what constitutes sufficient independent corroborative evidence, instead of having a fixed standard of sufficiency (Leo, Drizin, Neufeld, & Hall, 2006).

4.3 Cases

The last part of this chapter provides an analysis of three U.S. cases in which suspects were wrongfully convicted. The cases cannot be generalized to all wrongful convictions in the United States, yet they are illustrative of the errors that can occur in the U.S. legal system that can lead to false confessions and cause wrongful convictions.

Case 1: Central Park Jogger case

In 1989, Trisha Meili was attacked while jogging in Central Park in Manhattan. The 28-year-old victim was assaulted and raped by the perpetrator, which left her in a coma for twelve days. Her body was covered with bruises and scratches and her injuries made her unrecognizable, even to her close relatives (Davies, 2006).

After the incident, the police was unable to talk to the victim due to her being in coma, so they questioned a number of Black and Latino male teenagers who had been in the park at the time of the attack. After forty-eight hours, five teenage suspects had confessed to being involved in the crime. They each admitted their involvement in the jogger's case and they supplied details about their own and the others' role. Some of the boys admitted that they had engaged in the other violent assaults that had happened that night in the park (Sullivan, 1992). During the interrogations, the Reid technique was employed in the form of minimization. Each

boy stated afterward that they thought they would return home after confessing, as they were promised by the police during their interrogations (Kassin, et al., 2010). It is debatable as to whether this would be prohibited by the *Lynumn v. Illinois* case, which prohibits explicit promises of leniency and telling lies to the suspect.

All the suspects had been told their Miranda rights, yet they all agreed to speak to the police without counsel present. Despite being warned, it has been questioned whether the boys fully understood the gravity of their confessions at the time. They all admitted some involvement, but they all minimized their own role, and none actually claimed that they had had intercourse with the victim. All boys were charged with attempted murder, rape, sodomy and assault of the female jogger (Davies, 2006).

From the start of the investigation, the prosecution needed the suspects' confessions to build the case. There were also no eyewitnesses who could place the suspects at the scene. The only forensic evidence that could connect some of the defendants to the crime were hairs that were found on two of the defendants' clothing. The hairs were analyzed and found to be "consistent with" the jogger's hair, based upon a microscopic analysis (Morgenthau, 2002).

The difficulty in this case was the lack of proof that the confessions were coerced. The videotaped interview sessions did not show any signs of physical abuse by the police interrogators. Several defendants were accompanied by adult family members when they waived their Miranda rights. It is difficult to identify the confessions from the teenagers as voluntary, coerced or coerced-internalized false confession. It is most likely that the boys admitted to being involved in the other violent assaults, unknowingly being tricked into confessing to the assault on the jogger as well (Davies, 2006).

New York's corroboration rule, which applied in this case, provides that "a person may not be convicted of any offense solely upon evidence of a confession or admission made by him without additional proof that the offense charged has been committed". However, this did

not prevent the five teenagers from being wrongfully convicted: the discovery of the victim's body and the condition of her body were enough to prove that the crime had actually happened, thus meeting the corroboration standard (Leo, Drizin, Neufeld, & Hall, 2006).

Thirteen years after the teenagers were convicted, Matias Reyes confessed to the rape and beating of the Central Park jogger. DNA analysis of the semen found on the scene matched Reyes' DNA profile (Davies, 2006). Only after Reyes was found guilty, an examination of the five confessions revealed the inconsistencies that the prosecution had reasoned away during the first trial. The accounts given by the five defendants differed with regard to almost all elements of the crime – who initiated the attack, when in the sequence of events the attack took place, and who had raped the victim. (Morgenthau, 2002).

Case 2: The murder of Stephanie Crowe

On the night of January 20, 1998, twelve-year-old Stephanie Crowe was stabbed to death in her bedroom. She was found by her grandmother the next morning. During the first investigation, no signs of forced entry were found, but not all doors and windows had been locked that night. All members of the Crowe household were questioned, but only Stephanie's brother Michael was advised of his Miranda rights. Michael had been interrogated on four occasions, in which he kept repeating the same narrative: he had woken up around 4:30 a.m., had gone to the kitchen for some Tylenol and had thought the other doors to the hallway were closed (Crowe v. County of San Diego, 2010).

After several interrogations, the interrogators introduced the idea that Michael killed Stephanie, but did not remember it. The interrogators made up false evidence that could prove Michael's guilt, for example that they had found blood in his room. Another idea that was introduced by the interrogators was that there were 'two Michaels': a good and a bad Michael.

The interrogators eventually latched on to Michael's story as if it was a confession. They filled up some of the holes of the narrative about where he got the knife, for example.

Michael, together with two of his schoolmates, of which one confessed to helping Crowe murder Stephanie, were charged. While awaiting their trial in prison, their attorney convinced the prosecution to do DNA testing on Tuite's clothing. Tuite was questioned in the first phases of the investigation, since he was spotted in the neighborhood on the night of the murder but was released quickly after. Through the DNA testing, Stephanie's blood was found on Tuite's sweater. In May 2004, Tuite was convicted of murder (Scott-Hayward, 2007).

Even though Michael repeatedly stated that he was lying, the interrogators used parts of the interview to show that Michael was guilty. This is a Reid technique that is often used to retrieve information about the crime from the suspect. This is illustrated in the following part of the interview:

Michael: Okay. Here is the part where I'll start lying. That night I thought about her. I couldn't take it anymore. Okay. So, I got a knife, went into her room and I stabbed her. I left her on her bed, picked her up off the bed, dropped her.

Interrogator: How many times did you stab her?

Michael: It's going to be a lie. Three times.

Interrogator: Tell me what the truth is.

Michael: The only reason I'm trying to lie here is because you presented me with two paths. I'd rather die than go to jail.

Through this form of interrogation, the interrogators tried to get a confession from Michael. Just before this part of the interview, the interviewers promised Michael that he would get help rather than go to jail. This seemed to be the most "effective" method to get incriminating statements from Michael (Crowe v. County of San Diego, 2010). Even though the interrogators tricked Michael into providing a narrative, deceptive tactics are allowed to be used according

to *Frazier v. Cupp*. It is also very apparent that Michael did not believe in his own guilt and that his coerced confession came about through the interrogation techniques employed by the interrogators.

Case 3: Brendan Dassey

In 2006, the sixteen-year-old special-education student Brendan Dassey was accused of assisting his uncle Steven Avery in sexually assaulting and murdering Teresa Halbach (Dassey v. Dittmann, 2017). Teresa Halbach had visited Avery on his property on the 31st of October to take pictures of a van Avery's sister hoped to sell. That visit, together with three phone calls from Avery to Halbach on the day she disappeared, led to Steven Avery as the prime suspect in the case. When Steven Avery's case went cold, Brendan Dassey was involved, after he had mentioned to investigators that he went over to his uncle's house for a bonfire the night Teresa went missing (Drizin, Nirider, & Tepfer, 2012). This is when the interrogations of Dassey started, ending on the first of March 2006, when Dassey made a confession and was convicted for participating in Halbach's murder for which he received a life sentence.

Dassey's confession can be identified as a coerced confession. Dassey did not voluntarily confess to protect someone else and he also did not believe himself he was guilty. His confession came about after several interrogations in which officers used the Reid technique to prove Dassey's involvement in the crime.

During one of the first interrogations, the detectives initiated the Reid technique of direct confrontation, stating: "I'm looking at you Brendan and I know you saw something and that's what killing you more than anything else, knowing that Steven did this, it hurts" (Gallini, 2010). In this statement, the detectives directly confront Dassey with his involvement in the crime. They additionally used the Reid technique minimization, when one of the interrogators states: "It's not your fault. Remember that." This technique minimizes Dassey's culpability,

and this was also the first time that Dassey placed himself at or near the scene of Halbach's death (Gallini, 2010). Minimization techniques like these indirectly communicated to Dassey that he would receive a more favorable treatment. This is prohibited by *Lynumn v. Illinois*, but possibly not viewed as convincingly promising leniency.

During the last interrogation, Dassey admitted to being present at the scene and that his uncle had stabbed Halbach. The interrogations were videotaped and a script of this videotape shows that the interrogators did not support Dassey's statement that Halbach was stabbed, and were aiming at different information:

Officer: What else? [pause]What else?... What did he make you do to her? [pause]

What did he make you do Brendan? It's OK, what did he make you do?

Brendan: Cut her.

Officer: Cut her where?

Brendan: On her throat....

Officer: What else happens to her in her head? It's extremely, extremely important you tell us this, for us to believe you. Come on Brendan, what else? [pause] We know, we just need you to tell us.

Brendan: That's all I can remember.

Officer: All right, I'm just gonna come out and ask you. Who shot her in the head?

Brendan: He did.

Officer: Then why didn't you tell us that?

Brendan: Cuz I couldn't think of it.

In this part of the script, the officer introduces new information when stating "Who shot her in the head?". It is only from this moment onwards, that Dassey has the information that Halbach was shot, instead of stabbed, as stated previously. This is a clear example of how the

interrogator introduced information about the crime. Dassey did not have exclusive knowledge about the way Halbach was murdered (Drizin, Nirider, & Tepfer, 2012).

Dassey's conviction was mostly based on his confession, since no DNA evidence was found connecting Dassey to the murder (Dassey v. Dittmann, 2017). Dassey's confession was not judged as untrustworthy during the trial. Police are often prone to suggest and incorporate corroborating evidence into a suspect's confession, exactly as has happened in Dassey's case. Since the minimum proof of corroboration in most jurisdictions is rather low, unreliable confessions can still be considered trustworthy and can thus be considered by the jury. Even with a lack of DNA evidence, Dassey's confession was still admitted and used to convict him (Leo, Drizin, Neufeld, & Hall, 2006).

Dassey and his attorneys have done multiple attempts at overturning his conviction by claiming that his confession was coerced. When the case was taken to the Court of Appeals for the Seventh Circuit, the majority still upheld the initial conviction, finding that the police had properly obtained Dassey's confession (Stolworthy, 2018).

Chapter 5: Comparison

After a thorough analysis of the Dutch and U.S. legal systems in relation to false confessions, this chapter will provide a comparison of the two systems. The countries' legal systems will be analyzed in light of the adversarial and inquisitorial models and their elements will be compared, aiming to identify the way in which false confessions are elicited.

The adversarial and inquisitorial system are merely legal models. The United States and the Netherlands are countries that each developed a legal system based on these two models. The U.S. has an adversarial system and the Netherlands has an inquisitorial system with adversarial traces, as described by Keulen & Knigge (2016). Yet, it should be kept in mind that these legal systems do not exactly mirror all elements from the models.

In this comparison, the characteristics and development of the U.S. legal system and Dutch legal system will be compared, focusing on five major aspects: the main interrogation technique, the right to legal counsel, the waiver of legal counsel, the audio- and videotaping of interrogations and confessions as evidence in court.

5.1 Reid vs. SVS

The Reid technique and the SVS interrogation method both have characteristics that match an accusatorial method of interrogation rather than an information-gathering method of interrogation. It could be assumed that the Dutch SVS method of interrogation would be one with an information-gathering aim. However, as research has established, it is difficult to directly relate the inquisitorial model to the information-gathering method of interrogation. The interrogators' main approach in inquisitorial systems is to establish the facts of the case. After a literature analysis, it can be concluded that the SVS is more accusatorial than information-gathering. Thus, there are multiple similarities between the two techniques, except for one significant difference.

Firstly, the Reid technique and the SVS interrogation method both assume the guilt of a suspect. In the Reid technique, this is more apparent, as they break up their technique into different steps, most importantly aiming to establish guilt. For the SVS interrogation method, assuming guilt is one of its biggest risks. The guilty bias and confirmation bias can create a situation in which interrogators interpret found evidence in light of the guilt of the suspect. This can lead to a steering interview, in which the interrogator leads the suspect towards admitting guilt.

Secondly, both methods risk the buildup of pressure that could lead to a confession. In the Reid technique, this is done by the use of confrontation and minimization techniques. In the SVS interrogation method, this is done through manipulating and confronting the suspect. In the U.S., as well as in the Netherlands, what is deemed “excessive” and “illegitimate” pressure is not clearly defined in legislation but can be found on a case-to-case basis. This makes the legality of pressure in both countries difficult to determine.

One major difference, however, between these two interrogation techniques is the use of false evidence. When using the Reid technique, interrogators are allowed to use false evidence and deception during the interrogation. Whenever the suspect is presented with false evidence that implies their guilt, they are even more at risk of falsely confessing. This is, for example, clearly illustrated in the case of Stephanie Crowe: when Michael was interrogated, he was presented with “evidence” that Stephanie’s blood was found in his bedroom. Even though this was not true, it played a role in the development of the interrogators’ scenario that Michael had killed his sister Stephanie. The SVS method, however, does not allow the use of false evidence. Since the use of false evidence could make a suspect more likely to confirm the interrogators’ accusations, prohibiting this could reduce the risk of false confessions during interrogations.

5.2 The right to legal counsel

Currently, the right to legal counsel in the U.S. and Dutch legal system is fairly similar. In the U.S., the right to legal counsel was introduced when the Supreme Court established the Fifth Amendment in 1966 and has not changed ever since. In contrast, the Dutch Code of Criminal Procedure was amended in 2016, when the right to legal counsel prior to and during the interrogation was introduced. Before 2016, legal counsel was permitted yet it was not specified when and where the legal counsel was allowed. Thus, ever since this major change in the Dutch legal system, the right to legal counsel in the U.S. and the Netherlands is fairly the same.

In the three Dutch cases described in chapter three, no legal counsel was available to the suspects. New research has shown that the presence of lawyers has a significant influence during the interrogation, as less intimidating coercion is used which prevents any excessive pressure buildup (Klein Haarhuis, 2018) and which could substantially decrease the risk for a suspect to give a false confession. Thus, for future suspects in future cases, the presence of a lawyer during the interrogation can have a positive impact with regard to false confessions.

5.3 Waiving legal counsel

The waiving of legal counsel is significantly different in the U.S. and the Netherlands. In the U.S., suspects are allowed to waive their right to legal counsel if done voluntarily, knowingly and intelligently. Minors and individuals with a mental disability are also allowed to waive their rights, even though these groups are more vulnerable to deceptive interrogation techniques than adults without a mental disability. As mentioned in chapter two, a sample of wrongful convictions found that in the U.S., 69% of exonerated persons with mental disabilities were wrongly convicted because of false confessions. As illustrated in the Central Park Jogger

case, the five suspects were minors and yet were allowed to waive their Miranda rights, which evidently led to their false confessions.

In the Netherlands, however, minors and individuals with a mental disability are under no conditions allowed to waive the right to counsel. Since these groups are more vulnerable to deceptive interrogation techniques, they are in extra need of legal counsel, possibly preventing them from falsely confessing.

Thus, the waiver of the right to legal counsel can evidently lead to an increase in false confessions, because in the absence of a lawyer, pressure can more easily influence the suspect into making a false confession.

5.4 Audio- and videotaping of confessions

In the U.S., the audio- and videotaping of interrogations was first mandated in 1985 in Alaska. Currently, this has expanded to 27 states in total. It is to be expected that audio- and video recordings prevent a person from being convicted based on a false confession, since the built up of pressure and other psychological manipulative interrogation techniques can be observed. However, this has not always proven to be the case. The Brendan Dassey case is a recent high-profile illustration of how even in the case of audio- and videotaping there still seems to be room for conflicting interpretations. Although The Innocence Project team seems to present convincing and valid reasons to consider Dassey's confession as being coerced and false (Innocence Project, 2019), and although Brendan Dassey's interrogations (and confession) were audio- and videotaped, Dassey was still convicted based on the recordings, as the judges concluded that his confession was not elicited by illegitimate interrogation methods and was thus not rendered false.

In the Netherlands, the audio- and videotaping of interrogations has recently been regulated through a directive initiated by the Public Prosecution Service in 2013. This increases

the number of interrogations being recorded, which could possibly help in detecting any illegitimate methods of interrogation. However, as we have seen in the Brendan Dassey case, this is not always a guarantee. The same occurred in the case of the Arnhemse Villamoord. The interrogations were audio- and videotaped, which in theory, could be checked and compared to the police report of the interrogations to detect a false confession. However, this did not happen and as a result, nine innocent men were convicted of murder.

Thus, it has been a major improvement in both the U.S. and the Netherlands that there has been an increase in the number of interrogations being audio- and videotaped. Implementing mandatory recording of *all* interrogations could increase the possibilities for observing police interrogations, in order to uncover any false confessions. However, as we have seen in the Brendan Dassey case, as well as the Arnhemse Villamoord, the audio- and videotaping of interrogations cannot serve as a guarantee for decreasing false confessions.

5.5 Confessions as evidence in court

How a confession is handled in court is surprisingly similar in the U.S. and the Netherlands. In the U.S., the most important element is the voluntariness of the confession. If the confession is not made voluntarily, it is not admissible in court. Confessions in the U.S. are judged on their reliability. The reliability can and must be established and increased by the admission of independent evidence. Thus, just a confession may not be reliable and convincing enough to convict a person. However, the more detailed rules regarding this topic vary from state to state.

In the Netherlands, a confession is also only admissible if it is elicited by legitimate means. In addition to this, the confession is made stronger when it contains exclusive knowledge about the crime. With regard to convictions, just a confession is not enough to

convict someone. In addition to the confession, there has to be at least one other independent source of evidence.

Yet, convictions based on confessions remain a difficult and complicated topic of legal discussion. It is too complicated to compare the two countries in detail considering confessions as evidence in court, but this brief analysis and comparison suffices for the purpose of answering the research question.

Conclusion

With this analysis and comparison of the U.S. and Dutch legal systems with regard to false confessions leading to wrongful convictions, the main research question can now be answered. The Reid technique and SVS method of interrogation are both accusatorial methods of interrogations. Interrogators using these methods assume the guilt of the suspect, which creates an enormous risk for suspects providing a false confession as a result of coercive interrogation techniques. Even though there is a distinction between the U.S. and the Netherlands as to who is allowed to waive their right to legal counsel, waiving legal counsel results in a situation in which there is no third party that can observe how the suspect is being interrogated.

There are, however, also safeguards that can prevent false confessions to a large extent. The option of having a lawyer present during interrogations can significantly decrease the use of coercive interrogation methods which may prevent false confessions. Another potential safeguard for preventing false confessions is the audio- and videotaping of interrogations. This creates the availability of checking the interrogations to see if a confession was voluntary or coerced by the interrogators.

Based on all this information and with regard to the effect on false confessions, it is possible to conclude that the Dutch and U.S. legal system differ significantly in two aspects: (1) in the Netherlands, minors and people with a mental disability cannot waive their right to legal counsel as opposed to the U.S., where everyone is allowed to waive this right – even vulnerable groups of people; and (2) in the U.S., the Reid technique allows the use of false evidence during interrogations whereas the Dutch SVS method does not allow this. Even if everyone in these legal systems would adhere to the rules and regulations concerning interrogations and the handling of confessions in court, both systems still run the risk of false

confessions leading to wrongful convictions. Taking all other factors into account, this risk mainly emerges with the use of the accusatorial interrogation method.

Thus, there are several safeguards in the U.S. and the Netherlands that protect individuals from making a false confession: it is not allowed to use false evidence in the Netherlands, audio- and videotaping is becoming mandatory in both the Netherlands and the U.S., and in both countries, legal counsel prior and during the interrogation is available and allowed. However, these three elements are not a hundred percent guarantee that false confessions will never happen in the future. Possible research could be done to explore whether it could be possible to have independent, objective and trained personnel with no vested interest to execute the interrogations. Yet, many might consider this a far-reaching solution to the problem of false confessions.

A person is considered innocent until proven guilty, as stated in the ICCPR. Yet, within the U.S. and Dutch legal systems as they function today in the case of false confessions leading to wrongful convictions, it rather seems to be the other way around: a person is considered guilty until proven innocent.

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