

# **Thought Paper 1**

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Two predominant approaches exist regarding the allowance of fabricated tangible evidence in suspect interrogation, both with advantages and disadvantages. The bright line test approach bars the utilization of fabricated documents, whereas the totality of the circumstances approach permits fabricated documents to be utilized and evaluated on a case-by-case basis.

The fabrication of tangible evidence can be an effective supplementary instrument for police in obtaining confessions of guilt during the interrogation process. Confessions are cogent indicators of guilt to a jury and, therefore, critical in a criminal case. Utilizing falsified tangible evidence as a tool presents a merit of the totality of the circumstances approach. In cases where minimal forensic evidence is available, investigators rely on confessions as evidence to charge suspects. Convictions resulting from falsified evidence benefit society by punishing a criminal and protecting the innocent, including existing victims, potential victims, and innocent people who might have otherwise been wrongfully convicted without a confession by the perpetrator.

Despite the advantages of permitting fabricated tangible evidence in interrogation, there are also some significant cons to allowing its utilization in any circumstances. One major disadvantage is that, while police deception effectuates confessions, many of them are false. False confessions are the leading cause of wrongful convictions in the United States because confessions are widely believed to be robust evidence of guilt.

Psychologically, applying fabricated evidence in interrogation presents ethical issues and institutes a greater risk of false confession. False information, especially presented through counterfeit test results, documents, and confederates, can significantly tamper with people's beliefs, emotional states, memories, and perceptions. In a recent experiment, researchers found that false evidence typically doubles or triples the number of innocent subjects who confess when interrogated. Some subjects even eventually believed their own guilt. A recent survey of

Ph.D. confession experts confirmed the results of the experiment: 94 percent endorsed that “presentations of false incriminating evidence during interrogation increase the risk that an innocent suspect would confess.” Such processes may compel a suspect to be a witness to themselves, infringing the Fifth Amendment, which bars self-incrimination. In *People v. Thomas* (2014), Adrian Thomas was interrogated as a suspect in the murder of his infant child. After two hours of interrogation, during which the police employed deceptive tactics, Thomas became suicidal. He was involuntarily hospitalized and released back into custody for an additional 8 hours of interrogation before confessing. Though the New York Court of Appeals decided Thomas’ confession was involuntary, violating the Fifth Amendment, the case underscores the dangers of false confessions caused by deception, psychological stress, and sleep deprivation.

Another evident con of the totality of the circumstances approach is that allowing the use of falsified documents may reduce the public’s trust in the police, thus compromising the criminal justice system. For instance, the Virginia Beach Police Department is criticized for forging documents in multiple interrogations to coerce confessions. Herring's Office of Civil Rights (OCR) claims that VBPD’s conduct “abused the name of the Commonwealth to try to coerce confessions.” The fabrication of documents is widely viewed as exploitative and unnecessarily deceitful, thus undermining public trust in law enforcement.

One of the most conspicuous advantages of banning documentary deception with a bright line test is that it drastically decreases the possibility of false confessions. By preventing the utilization of deceptive tangible evidence and allowing verbal falsification only, the integrity of the confession is less likely to be questioned through the enforcement of a straightforward approach. Furthermore, it may help prevent populations more susceptible to false confessions, such as young people, minorities, and low-income people, from disproportionately being affected

by wrongful convictions. Because minority and low-income populations are less likely to know their constitutional rights, such as the right to remain silent, and youth are more liable to psychological manipulation, a totality of the circumstances approach may endorse condemning specific populations to cycles of unequal punishment and incarceration.

Although banning fabricated evidence decreases the risk of false confessions, it also presents considerable disadvantages. Namely, law enforcement would lose a valuable tool in obtaining confessions. Given the difficulty of acquiring confessions from criminals and the benefits of their incarceration by protecting society, there are clear cons to barring the utilization of fabricated evidence in interrogation. Furthermore, though the bright line test proffers a straightforward method for reducing false confessions, the total ban of fabricated documents begets the disadvantage of preventing a judge and jury from evaluating potentially incriminating evidence. Such a prohibition hinders them from applying discretion to consider evidence, including evaluating the voluntariness of a confession, to serve the justice system.

Despite the benefits of fabricated tangible evidence in obtaining confessions, I believe the ethical considerations and the potential for obtaining false confessions are too great for the tactic to be allowed. Law enforcement must be held to a high ethical standard, and the dishonest employment of documentation can beget self-incrimination, negating voluntariness, and violating the Fifth Amendment. Verbal deception proffers sufficient assistance to law enforcement to obtain confessions without marring public trust and enabling potentially unconstitutional behavior. Further, relying on verbal deception decreases the risk of false confessions and thus wrongful convictions.

Ultimately, regardless of whether a bright line or totality of the circumstances approach is observed, I would recommend two reforms to improve police interrogation procedures. First, the

entire interrogation process should be recorded and monitored from a neutral point of view so that both the suspect and interrogator are visible. A recording will aid in determining the validity of confessions through the observation of potentially coercive tactics while holding law enforcement accountable for their interrogation room behavior. Secondly, limits should be placed on the duration suspects are interrogated to combat the effects of exhaustion in eliciting false confessions, as the risk of false confession increases with the time suspects are interrogated.

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