



## The Inside Information Checklist (IIC)

*Gregory DeClue, PhD, ABPP (Forensic), Independent Psychology Practice, Sarasota, Florida, and Charles "Skip" Rogers, Owner and Lead Instructor, The Interviews and Interrogations Institute*

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"When ... the probative force of evidence depends on the circumstances in which it was obtained ... indications of conscientious police work will enhance probative force ..."

—*Kyles v. Whitley*, 514 U.S. 419, 446 n. 15 (1995).

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**O**n September 2, 2014, North Carolina Superior Court Judge Douglas Sasser vacated the sentences of Henry Lee McCollum and Leon Brown, who had been convicted for the 1983 rape and murder of an 11-year-old girl. Evidence leading to McCollum's and Brown's releases included a DNA match to a man who had been convicted for a similar rape and murder in the same town. At the time of their release, McCollum had been on death row for 30 years, and Brown was serving a life sentence.<sup>1</sup>

Both McCollum and Brown told confession stories to police during lengthy interrogations. Police records and testimony convinced juries and appellate courts, including the U.S. Supreme Court, that both men were guilty. The police's records and testimony were so convincing that, years later, U.S. Supreme Court Justice Scalia invoked the McCollum case as a reason to continue to impose the death penalty in future cases.<sup>2</sup> Now that it is known what was done incorrectly in McCollum's and Brown's cases and what police interrogators can do to prevent wrongful convictions in the future, it is imperative that police agencies understand the lessons learned from wrongful convictions and revise their policies and practices accordingly.

## False Confession Stories among DNA Exonerees

In an October 2012 *Police Chief* article, the authors described Professor Brandon Garrett's analysis of the 40 false confession cases within the first 250 DNA exonerations.<sup>3</sup> Since that time, Garrett has continued to analyze known cases of false confessions, and the results continue to demonstrate the problem of contamination

during police interrogation: "In just the last five years [2009 to 2014], there has been a new surge in false confessions—a set of 23 more false confessions among DNA exonerations."<sup>4</sup> All but two of these new cases of wrongful conviction show evidence of contamination during police interrogation. Again, police said that these innocent people gave rich, detailed, and accurate information about the crime, including what police described as "inside information" that only the true culprit could have known. The influence of contamination during interrogations is illustrated in Table 1.

**Table 1: The Frequency of Contamination In False Confessions**

	Contaminated with Inside Information	
	Number	Percent (%)
40 False Confessions (1989–2009)	38	95
26 False Confessions (2009–2014)	24	91
66 False Confessions (Total)	62	94

Garrett recommends a number of policy and procedure changes regarding confession evidence. One approach currently being taught by interrogation trainers and employed by conscientious police interrogators involves use of a [Holdback List](#) and the [Inside Information Checklist](#) (IIC).

## Safeguards

Now that there is evidence of police contamination in over 90 percent of the DNA exonerations following false confessions, how can investigators avoid making the same mistakes in current and future cases? The short answer is to use a written Holdback List, record the entire interaction with the suspect, avoid telling or showing crime details to the suspect, get a detailed statement from the suspect if he or she confesses, and independently compare the details of the suspect's statement to other evidence in the case.

The following three questions can guide police, prosecutors, defense attorneys, judges, and juries as they consider confession evidence:

1. What's on the Holdback List?
2. What's on the Recording?
3. What's on the IIC?

## The Holdback List

The importance of a Holdback List is well recognized by police interrogation trainers. For example, the following statements are drawn from highly regarded law enforcement publications and books:

- "Prior to an interview, and preferably before any contact with the suspect, the investigator should attempt to become thoroughly familiar with all the known facts and circumstances of the offense."<sup>5</sup>

- "Upon arriving at a crime scene, the lead investigator should decide and document on the case folder what information will be kept secret."<sup>6</sup>
- "After a suspect has related a general acknowledgment of guilt, the investigator should return to the beginning of the crime and attempt to develop information that can be corroborated by further investigation. He should seek from the suspect full details of the crime and also information about his subsequent activities. What should be sought particularly are facts that would only be known by the guilty person (for example, information regarding the location of the murder weapon or the stolen goods, the means of entry into the building, the type of accelerant used to start the fire, and the type of clothing on the victim, etc.)."<sup>7</sup>

[Appendix 1](#) presents a Holdback List with two parts.<sup>8</sup> The lead investigator is responsible for completing both parts of the Holdback List prior to the start of the interview or interrogation of a suspect. The first section, Known Details of the Crime/Allegation, includes details known to police prior to the interview or interrogation. These details may come from witness statements, crime scene photos, direct observations by police officers of the crime scene, and so forth. For example, a Holdback List may include information such as the following:

- HB1. Victim was shot in the back of the head with a small-caliber weapon.
- HB2. Victim's hands were bound behind the victim's back.
- HB3. The binding was done with duct tape.
- HB4. The victim had a small superficial laceration to the left side of the throat.
- HB5. The victim had defensive wounds on both hands.

The second part of the Holdback List, Unknown Details of the Crime/Allegation, is a list of details that a true perpetrator would likely know, but are not known to the police at the time of the interview or interrogation. Examples could include the location of a weapon used in the crime, the location of stolen goods that were stored or sold, or when and where the suspect purchased items that were used in the commission of the crime.

After the investigator completes the Holdback List, he or she signs it, noting the date and the time, and has a witness do the same. This shows that the Holdback List was actually completed prior to the beginning of the interview or interrogation. In custodial interviews, that fact can also be preserved on the recording itself. When the lights are turned on in the interview room and the recording is started, prior to bringing the suspect into the room, the investigator can hold the Holdback List up to the room's camera for a few seconds and read the Holdback List aloud.

### ***The Recording***

Increasingly, police interrogation trainers recommend that interviews or interrogations of suspects be electronically recorded in their entirety. In a memorandum dated May 12, 2014, the U.S. Department of Justice announced a new policy that establishes a presumption that the Federal Bureau of Investigation; the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; and the U.S. Marshals Service will electronically record statements made by individuals in their custody. The policy also encourages agents and prosecutors to consider electronic recording where the presumption does not apply.<sup>9</sup> Remarkably, only 1 of the 66 exonerees in Garrett's combined studies had an interrogation recorded in its entirety (and that person was unable to say anything about the crime beyond, "I guess I did it").<sup>10</sup>

Garrett notes that, in order to prevent future wrongful convictions due to false confession stories, "recording entire interrogations is an important first step."<sup>11</sup> Garrett's careful analysis of the case files shows why this is an essential step.



- Of 66 false confessions by DNA exonerees to date, 59 were contaminated with crime scene details that innocent suspects learned from law enforcement.
- Detectives denied having disclosed any such information to the exonerees in all but 1 of the 14 cases that went to trial. The leading manual on police interrogations is quite emphatic that officers are to withhold from the public key facts and then ask nonleading questions to solicit that information, without disclosing them to the suspect.
- In these most recent 23 cases, 19 of the cases included facts inconsistent with crime scene information. Complete recordings of the interrogations might have shown that these innocent people volunteered incorrect information, and that they could offer correct information only when prompted. However, without a recording, prosecutors could and did argue that these people were intentionally lying about some aspects, but their knowledge of "inside information" proved their guilt.<sup>12</sup>

Only by carefully examining the contents of a complete recording of police contact with a suspect can it be known which, if any, "inside" details were first mentioned by the suspect instead of the interrogator. This is particularly effective when a written Holdback List appears on camera near the beginning of the recording and the investigator reads the Holdback List aloud; then the suspect enters the room and is continuously recorded (including at least audio recordings of restroom breaks or other times out of the interview room); the police never mention items on the Holdback List; and the suspect accurately reports details consistent with the Holdback List in response to nonleading questions or the suspect provides details unknown to the police prior to the interview or interrogation, but corroborated by subsequent investigation.

### ***The Inside Information Checklist***

Imagine that, in a particular case, a preinterrogation investigation allowed an officer to develop both parts of a Holdback List, listing some known details that would be kept secret from the public, witnesses, persons of interest, and suspects, and some unknown details that the true perpetrator would likely know. After completing the Holdback List, a detective engaged the suspect in an interview, and the suspect eventually made an admission. The detective continued the interview, asking nonleading questions to elicit a detailed post-admission narrative. That is, the detective encouraged the suspect to tell the complete story in his own words. The entire interaction between the suspect and police was electronically recorded. Now what?

A review of the recording should answer important questions about the validity of the confession. Did the suspect provide inside information regarding the details of the crime? Did the suspect include some or all of the known details that were included on the Holdback List? If so, which of those details were never mentioned by the police during their interaction with the suspect?

Did the suspect provide the details in response to open-ended questions or only in response to leading questions? For each detail provided by the suspect, was the detail an accurate match to independently collected evidence? Did the suspect provide information regarding details not known by the police prior to the interview or interrogation? If so, has subsequent investigation corroborated the suspect's story? Does each detail provided by the suspect accurately match independent evidence, or not?

If the investigation has been conducted in a conscientious manner, these are very straightforward questions. The Inside Information Checklist (IIC), as shown in [Appendix 2](#), provides a way to organize the details of an investigation, including the details of the suspect's statement, to see if the suspect provided accurate, independently verified details that demonstrate knowledge of inside information about a crime to which he or she has confessed.

Generally, it is expected that when a suspect gives a voluntary, true confession during police interrogation, the suspect should be able to provide accurate inside information. If a suspect cannot provide accurate details, that inability raises serious doubts about the reliability of his or her statement. If a suspect will not provide accurate details, that may raise questions as to whether the confession is voluntary.

### Conscientious Police Work

As discussed, there are three questions that can guide police, prosecutors, defense attorneys, judges, and juries as they consider confession evidence.

1. What's on the Holdback List?
2. What's on the Recording?
3. What's on the IIC?

In focusing on these questions, it is helpful to expand the quote from *Kyles v. Whitley* that opened this discussion to include the next six words in the U.S. Supreme Court's decision: "When... the probative force of evidence depends on the circumstances in which it was obtained... indications of conscientious police work will enhance probative force and slovenly work will diminish it [emphasis added]."<sup>13</sup> Among DNA exonerees, as shown by Garrett's analysis, nearly every wrongful conviction stemming from a false confession has been due in part to contamination during the suspect's interview or interrogation.<sup>14</sup> As police learn about the problem and effective solutions, it becomes clear that, broadly speaking, the approach described in this article—using a Holdback List, recording the interview, and using the IIC to analyze the content of the confession statement—constitutes conscientious police work. When police follow these procedures, they enhance the probative value of the evidence generated, and their work is unlikely to contribute to a wrongful conviction.

### Recommendations

Police interrogation trainers should tell trainees that "slovenly" police work, such as not using conscientious interrogation techniques like those discussed herein, will diminish the probative force of confession evidence. If police fail to take a clearly conscientious approach in a criminal case, expert testimony should point out that failure and explain its significance, both at pretrial motions and at trial.<sup>15</sup> Jury instructions should help jurors understand the importance of a recording showing a suspect revealing uncontaminated, inside information, in order to assist them in deciding how much weight to give to confession evidence.

What else can police agencies do to prevent future wrongful convictions stemming from false confessions? As mentioned above, police interrogators should be properly trained, not just to try to obtain a confession from a guilty suspect, but also to follow a procedure that will protect innocent suspects from being wrongfully convicted. To that end, every police agency should designate persons to study and fully understand Garrett's work regarding wrongful convictions.<sup>16</sup> Those persons should revisit the agencies' formal policies and procedures regarding interviews and interrogations to make sure that formal, written procedures are in place to prevent future wrongful convictions from false confessions. On an ongoing basis, police interrogators and their supervisors should be fully trained and monitored, and they should follow the agency's new interview and interrogation procedures.

Consider the following: "The ultimate test of the trustworthiness of a confession is its corroboration. The admissions, 'I shot and killed Mr. Johnson' or, 'I forced Susie Adams to have sex with me' may be elicited from an innocent juvenile or adult suspect. These admissions only become useful as evidence if they are corroborated by (1) information about the crime the suspect provides which was purposefully withheld from the suspect, and/or, (2) information not known by the police until after the confession which is subsequently verified."<sup>17</sup>



With this in mind, police interrogation trainers should help trainees develop the habit of experiencing their internal victory dance or touchdown celebration not at the moment when the suspect says, "I did it," but at moments when the full investigation reveals whether or not this suspect shows knowledge of inside information. Those are the moments when a conscientious police interrogator will experience the feeling of a job well done. ♦

**Notes:**

<sup>1</sup>Dahlia Lithwik, "A Horrifying Miscarriage of Justice in North Carolina," *Slate*, September 3, 2014, [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2014/09/henry\\_lee\\_mccollum\\_cleared\\_by\\_dna\\_evidence\\_in\\_north\\_carolina\\_after\\_spending.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2014/09/henry_lee_mccollum_cleared_by_dna_evidence_in_north_carolina_after_spending.html) (accessed June 4, 2015).

<sup>2</sup>*Ibid.*

<sup>3</sup>Gregory DeClue and Charles "Skip" Rogers, "Interrogations 2013: Safeguarding against False Confessions." *The Police Chief* 79, no. 10 (October 2012): 42, 44, 46.

<sup>4</sup>Brandon L. Garrett, "Contaminated Confessions Revisited," *Virginia Law Review* 101, (forthcoming). Quotes are from the August 21, 2014 draft, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2485536](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2485536) (accessed September 16, 2014).

<sup>5</sup>Fred E. Inbau et al., *Criminal Interrogation and Confessions*, Fifth Edition (Burlington, MA: Jones & Bartlett Learning, 2011), 10.

<sup>6</sup>*Ibid.*, 355.

<sup>7</sup>*Ibid.*, 306.

<sup>8</sup>The forms in these appendices are currently being used by The Interviews & Interrogations Institute, <http://www.getconfessions.com> (accessed June 2, 2014).

<sup>9</sup>Memorandum, Monty Wilkins, "New Department Policy Concerning Electronic Recording of Statements," May 12, 2014, <http://archive.azcentral.com/ic/pdf/DOJ-policy-electronic-recording.pdf> (accessed June 4, 2015).

<sup>10</sup>Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Cambridge, MA: Harvard University Press, 2011), 18–19; Brandon L. Garrett, "The Substance of False Confessions," *Stanford Law Review* 62, no. 4 (2010): 1051–1119, <http://www.stanfordlawreview.org/sites/default/files/articles/Garrett.pdf> (accessed June 4, 2015).

<sup>11</sup>Garrett, "Contaminated Confessions Revisited."

<sup>12</sup>*Ibid.*, 13–15.

<sup>13</sup>*Kyles v. Whitley*, 514 U.S. 419, 446 & n. 15 (1995).

<sup>14</sup>Garrett, *Convicting the Innocent*; Garrett, "The Substance of False Confessions."

<sup>15</sup>At pretrial hearings, expert testimony regarding police procedures is relevant to the issue of voluntariness and to issues of fairness (due process). At trial, similar expert testimony can assist the jury in deciding how much weight to give to confession evidence.

<sup>16</sup>See Brandon L. Garrett, "Convicting the Innocent": Data and Materials," University of Virginia School of Law, [http://www.law.virginia.edu/html/librarysite/garrett\\_innocent.htm](http://www.law.virginia.edu/html/librarysite/garrett_innocent.htm) (accessed June 4, 2015).

<sup>17</sup>Inbau et al., *Criminal Interrogation and Confessions*.

Please cite as

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Appendix 1: Holdback List (This is prepared *prior to* the interview/interrogation.)

Agency Case No. \_\_\_\_\_

Known Details of the Crime/Allegation	
A. "Holdback" Details (Prepare a written list prior to the interview/interrogation, and do not reveal the contents to the public, witnesses, persons of interest, suspects, etc. If the suspect makes admissions, get a detailed statement from him or her without using leading questions.)	
HB1.	
HB2.	
HB3.	
HB4.	
HB5.	
HB6.	
HB7.	
HB8.	
HB9.	
HB10.	
HB11.	
HB12.	
HB13.	
HB14.	
HB15.	
HB17.	
HB18.	
HB19.	

Prepared by

Witness

Print Name

Sign Name

Date Time

Print Name

Sign Name

Date Time

Unknown Details of the Crime/Allegation

B. Unknown Details: Likely known by the perpetrator, but *not* known by police prior to this interview/interrogation (If the suspect makes admissions, ask nonleading questions about these details – location of a weapon, where stolen goods were stored or sold, etc.)

UK1.
UK2.
UK3.
UK4.
UK5.
UK6.
UK7.
UK8.
UK9.
UK10.
UK11.
UK12.
UK13.
UK14.
UK15.
UK16.
UK17.
UK18.
UK19.

Prepared by

Witness

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Print Name                      Sign Name                      Date    Time                      Print Name                      Sign Name                      Date    Time



Appendix 2: Inside Information Checklist (IIC)

Agency Case No. \_\_\_\_\_

The IIC can be completed after a recorded interview/interrogation, based on a transcript of the recorded interview/interrogation, plus other case evidence. Although the IIC can be filled out by the prosecutor, defense attorney, or an expert witness, it is the investigator who gathers evidence and creates the records that make this analysis possible. A completed IIC helps to show whether the suspect's statement includes inside information that was not provided to him or her during the interview/interrogation.

Details mentioned by the suspect during interview/interrogation	Time	Page	Line	HB?	UK?	A?	P?	Time	Page	Line
1.										
2.										
3.										
4.										
5.										
6.										
7.										
8.										
9.										
10.										
11.										
12.										
13.										
14.										
15.										
16.										
17.										
18.										
19.										

HB: Detail is related to an item on the written Holdback List. (If yes, list item number; e.g., HB1, HB2)

UK: Detail is unknown to police prior to interrogation, but related to evidence revealed in subsequent investigation

A = Accuracy: Hit / Miss / Partial / N/A (compare detail to objective evidence in the case)

P: Was this detail mentioned or suggested by the police during the interview/interrogation? (Yes/No) (If yes, list time, page, and line)