

One Confession, Two Confessors
A forensic linguistic analysis of confessions
submitted in the High Court cases of
Nallaratnam Singarasa and
Sellapulle Mahendran

by
Visakesa Chandrasekaram

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Abstract

Nallaratnam Singarasa, a 20-year-old Tamil man from Navakadu, Batticaloa, was indicted on four counts of counter-terrorism offences at the Colombo High Court and convicted in 1995 and sentenced to 40 years' rigorous imprisonment. Similarly, 19-year-old Sellapulle Mahendran from Vandaramullei, Batticaloa, was convicted around the same time. What is peculiar about these two cases is that both men were convicted based on confessionary evidence recorded by the same police officers. This document analyses the two alleged confessions using a methodology consisting of newly developed analytical tools and several existing tools used by scholars and practitioners in the discipline of forensic linguistics. This analysis finds that the confessions of Nallaratnam and Sellapulle were fabricated by the police officers. Further, the comparison of the two confessions reveals that a single template was used to fabricate them.

A forensic linguistic analysis of the confessions of Nallaratnam Singarasa and Sellapulle Mahendran

Introduction

This forensic linguistic analysis examines the confessions of two suspected members of the Liberation Tigers of Tamil Eelam (Tamil Tigers or LTTE) – Nallaratnam Singarasa (case: 6824/94) and Sellapulle Mahendran (case: 6894/94) – who have been convicted by the High Court of Sri Lanka under counter-terrorism laws. This analysis is conducted using a methodology consisting of newly developed analytical tools and several existing tools used by scholars and practitioners in the discipline of forensic linguistics. The methodology of this analysis involves a comparison of two confessions to obtain a reliable conclusion. **Based on this linguistic analysis, I conclude that the confessions of both Nallaratnam and Sellapulle were fabricated by police officers.** The grounds for this conclusion are based in the fact that the narratives of both confessions contain: (a) illogical syntactical structures and style that could not have been constructed by the suspects; (b) spatial and time disparities – certain events that supposedly took place could not have occurred in the time stated in the confessions; (c) repeated phrases, which are sometimes identical and which could not be repeated by the suspects in the course of giving a confession; (d) unusual and sometimes improbable remarks that could not have been uttered by the suspect or the police officers; (e) the absence of demonstrated criminal knowledge of the suspect; and (f) empirical impossibilities. Further, the comparison of the two confessions reveals that a single template was used to fabricate both. The findings of this analysis can be used by the two suspects to support any review application or appeal in the Sri Lankan courts.

There are three approaches by which the truthfulness of a confession may be assessed: (a) internal analysis of the narratives, (b) consideration of external evidence that is directly related to the narratives of the confession (such as weapons recovered from the crime scene), and (c) consideration of external evidence that is not directly related to the narratives of the confession (such as medical reports on the suspect's physical or mental health condition at the time the confession was recorded)¹. This linguistic analysis seeks to identify the truthfulness of the confessions by examining the internal elements (as presented in the written text) of the narratives. In the

¹ See Hill, MD 2003, 'Identifying the source of critical details in confessions', *Forensic Linguistics*, vol. 10, no. 1, pp. 39–40.

context of this document, verifying ‘truthfulness’ means establishing whether, if at all, the written narratives presented in the confessions reflect actual events (said to have occurred as presented in the confessions).² The scope of this analysis does not extend to commenting on the suspects’ guilt or innocence; rather, it simply focuses on the authenticity (whether the suspects and police officers uttered the statements written in the confessions) of the document, and plausibility (whether it is plausible for the suspects or the police officers to do or say the things that have been written in the confessions) of the narratives from a forensic linguistic point of view. During the course of this analysis, I will not draw on evidence from outside the confessions; however, I will occasionally refer to the first statement (the initial investigation report)³ and news archives. Further, this analysis does not refer to the law of evidence as a criterion for assessing the truthfulness of the confessions as such references need to be considered by a court of law, if this document to be considered for the purpose of assessing the evidential credibility of the two confessions.⁴

This document comprises five parts. The first part provides a background, literature review and an outline of the methodology. The second part presents the two confessions for close reading. The third and fourth parts focus on deconstructing and further analysing the two confessions. The final part of the analysis is dedicated to comparing the two confessions and submitting the final conclusions.

Background

Nallaratnam Singarasa was arrested on 16 July 1993 when he was 20 years old at Navakadu, Batticaloa, by the army of the Government of Sri Lanka. He was indicted on four counts of counter-terrorism offences on 1 June 1994 at the Colombo High Court, and tried without a jury. He was convicted on 4 October 1995 for all four counts and sentenced to 10 years’ rigorous imprisonment for each count, to be served separately. Nallaratnam appealed to the Court of Appeal and then to the Supreme Court, where the High Court’s decision was affirmed. Nallaratnam then petitioned

² The events referred to in the confessions relate to two temporal layers: the act of recording the confession by the police officers, and acts or offences allegedly committed by the suspect before the recording of the confession.

³ The first statement is usually given to the accused with a copy of the indictment and the confession.

⁴ If this document is to be considered as a piece of evidence in court, to disprove the voluntariness of the confessions, the court will assess the document on the standard of balance of probability.

the United Nation's Human Rights Committee. The committee recommended⁵ that the High Court's decision be reviewed on the ground that the court's decision violated international human rights law; however, the Supreme Court denied the committee's jurisdiction on domestic matters.⁶ On 23 September 1993, at the age of 19, Sellapulle Mahendran was arrested by the army at Vandaramullei. He was indicted on 1 July 1994 at the Colombo High Court and tried without a jury. He was convicted on 4 August 1995. Sellapulle appealed to the Court of Appeal and then to the Supreme Court, which affirmed the High Court's decision. His sentence was, however, reduced in the appeal. Both suspects were convicted solely on the basis of confessionary evidence.

The alleged confessions of Nallaratnam Singarasa and Sellapulle Mahendran were recorded under Sri Lanka's counter-terrorism legislation. The legislation includes the *Prevention of Terrorism (Temporary Provisions) Act 1979* (PTA) and the *Emergency Regulations* issued by the President under the *Public Security Ordinance 1956*. The counter-terrorism laws introduced two significant alterations to the law of evidence in Sri Lanka. First, these laws allowed a confession given to a police officer of or above the rank of an Assistant Superintendent of Police (ASP) to be submitted as a substantial piece of evidence (section 16 (1) of the PTA and the equivalent provisions in the *Emergency Regulations*)⁷. These laws, however, do require the element of voluntariness and prohibit the admission of confessions that are recorded under inducement, threat or promise, as provided by section 24 of the *Evidence Ordinance*. The second alteration made to the law of evidence by counter-terrorism laws was the provision related to the burden of proof. Section 16 (2) of the PTA provides that the burden of proving that any statement is irrelevant under section 24 of the *Evidence Ordinance* shall be on the person (the suspect who allegedly gave the confession) asserting it to be irrelevant.

Forensic linguistic analysis of confessions formed a significant part of my doctoral research (undertaken at the Australian National University, 2012) on the use of

⁵ Human Rights Committee's adoption on 5-30 July 2004 on the Communication (CCPR/C/81/D/1033/2001).

⁶ *Nallaratnam Singarasa v Attorney-General* (S.C. SrL [LA] No 182/99) judgement date: 15/09/2006 unreported.

⁷ This is an exception to section 110 (3) of the *Criminal Procedure Code* which prohibits the use of a statement given to a police officer as a substantive piece of evidence.

confessionary evidence under the counter-terrorism laws of Sri Lanka.⁸ In this research, the confessions recorded under these laws were analysed in the broader interdisciplinary context exploring the polysemic aspects of the law, truth and justice. The research was conducted within an interdisciplinary framework, encompassing multiple fields: jurisprudence, human rights, criminology, history, ethnic studies, terrorism studies and narrative analysis. For the narrative analysis component of the doctoral research, I devised *triple criteria*, which include legal, semantic and semiotic analytical tools. The three perspectives provided the criteria for assessing the text-based confessionary narratives: (a) legal criteria based on the concept of ‘legal admissibility’ under the law of evidence; (b) semantic criteria based on the concepts of ‘plausibility’ and ‘probability’, which establish whether the stories in the confession could have taken place in reality; and (c) semiotic criteria based on the syntactical, spatial and temporal unity of the narratives, determined by investigating the linguistic elements using forensic linguistic techniques.⁹ The methodology adopted in this document to analyse Nallaratham’s and Sellapulle’s confessions refers to the semiotic criteria.

A significant proportion of my doctoral research was based on empirical research which included a field study conducted between 2007 and 2008 in Sri Lanka. The fieldwork component included observations of court proceedings and interviews with convicted prisoners, former detainees, lawyers, judicial medical officers and other government officers in Colombo and the northern and eastern provinces. Further, I referred to 28 case files, including the confessions of Nallaratham and Sellapulle, to identify common structural features such as templates. This doctoral research established that the Government of Sri Lanka used confessions as evidence to prosecute thousands of suspected terrorists and most of these confessions were recorded by special police units.¹⁰ It was also established that officers attached to

⁸ Also see Chandrasekaram, V 2016, *The use of confessionary evidence under the counter-terrorism laws of Sri Lanka; An interdisciplinary study*, Amsterdam University Press, Amsterdam.

⁹ This does not mean to suggest that these three criteria of truth are unequivocal and independent. The boundaries of legal, semantic or semiotic truth could blend and merge on some occasions

¹⁰ The investigation units include Special Investigation Units (SIUs), Terrorist Investigation Divisions (TIDs), and military intelligence units attached to various brigades. There are no statistics available on the exact number of Tamils who have been arrested since the adoption of the PTA or on the number of suspects who have been prosecuted on the basis of confessionary evidence. During the field observations, it was noted that approximately 1000 LTTE suspects were held in detention (Kalutara prison, Colombo remand prison, Colombo Magazine prison, Boosa detention centre) while being prosecuted or pending prosecution at any given time, except during long-term ceasefire agreements. This calculation was affirmed by the Tamil newspapers, which from time to time have reported that

these special police units routinely arrested and interrogated suspects, and presented confessions at court that they claimed were given voluntarily by these suspects. At court, the majority of suspects claimed that they had not given the alleged confessions, while a minority of pleaded guilty without challenging the confessionary evidence. Almost all of the suspects who challenged the admissibility of the confessionary evidence at court claimed that they had been tortured by the police officers during the investigations, and in some cases the courts have accepted the medical evidence presented by the suspects as proof of torture. Nallaratnam and Sellapulle represent the minority who have been convicted based on confessionary evidence.

The doctoral research established that the recording of a typical confession involves several police officers: a senior police officer (rank of ASP or higher), a typist, an interpreter and a custody officer. It was also established that the confessions were co-authored (both police officers and suspects having input into the statements)¹¹, and written using a single template that included three parts: (a) pre-confessionary introduction, (b) free confessionary narratives, and (c) post-confessionary certification. The pre-confessionary introduction is narrated in the first person voice of the police officers to introduce the process of recording the confession. The free confessionary narrative is presented in the first person voice of the suspect, admitting guilt for the offences they have committed. The post-confessionary certification includes the certification and signatures of the police officers and suspect (this part is narrated in the first person voices of the suspect, the ASP, the interpreter and the typist). The ‘institutional voice’ of the police (the content, structure and style including the vocabulary of police writing) was dominant in the confessionary narratives, while the voice of the suspect (the individuals’ speech styles, vocabularies and idiosyncrasies) was less noticeable.

During the course of my doctoral research, I discovered numerous linguistic irregularities in the narratives of the confessions of Nallaratnam and Sellapulle. By

around 1000 suspects were officially held in detention pending trials. This calculation was further affirmed in a study conducted by the Movement for International Racial Justice and Equity in Sri Lanka. See Bastiampillai, B, Edirisinghe, R, Kandasamy, N (eds), *Prevention of Terrorism Act: A Critical Analysis*, CHR, Sri Lanka, p. 291.

¹¹ John Gibbons says that co-authorship includes conscious or subconscious editing and summarising which causes omissions or loss of information from the original account: Gibbons, J 2003, *Forensic Linguistics: An Introduction to Language in the Justice System*, Blackwell USA, p. 30.

using the term ‘linguistic irregularity’, I refer to linguistic elements that could potentially challenge the authenticity of the confession. First, the narratives of these confessions include sophisticated vocabulary, and a structure and style, with which it is implausible that laypersons like the suspects would be familiar. In particular, at the time of his arrest, Nallaratnam claimed that he was illiterate and used his thumb impression to sign his confession. Second, neither confession is unique; the content, structure and style of each resembles other confessions of Tamil Tiger suspects, thus lacking iconicity (exploring the concept of ‘iconicity’ in legal semiotics, Scott notes that ‘sameness’ appears when the original property is reproduced in a way that appears similar, compatible, replicated, duplicated or copied, and that such ‘sameness’ often suggests some sort of ‘deceit’¹²). Third, striking similarities were found between the two confessions of Nallaratnam and Sellapulle, while some paragraphs are almost identical. Such linguistic irregularities could be the result of one or more of the following:

- The police officers who recorded the confession made bona fide errors.
- The suspect fully or partly fabricated the confession.
- The police officers forced the suspect to give an incriminating statement.
- The police officers fully or partly fabricated the confession.

These linguistic irregularities posed serious questions about the evidential credibility of the two confessions, demanding an inquiry in my doctoral research, thus providing an opportunity to conduct a forensic linguistic analysis. While I focus on the linguistic irregularities of the confessionary statements in this exercise, it is important to note several other factors that question the prima facie evidential credibility of these statements. In terms of assessing the evidential credibility of a confession, we should not overlook the importance of questioning how plausible it is for a suspect to voluntarily confess after receiving a proper caution that his confession can be used against him as a piece of evidence. To elaborate on this, we might introduce a hypothetical third person from the suspect’s community who is placed in a similar situation and ask whether that hypothetical person would be likely

¹² Scott, WT 1988, ‘In search of the truly fake, aspects of iconicity and deceit’ in R Kevelson (ed), *Law and Semiotics*, vol. 2, Plenum Press, New York, p. 311.

to give an incriminating statement, disregarding the caution.¹³ According to these documents both suspects were in the custody of military police before and after the recording of their confessions. In similar circumstances a suspect can be subjected to the influence of their custody officers, and the suspect may not feel confident or safe to complain about the officers who will continue to hold them in custody. Moreover, as presented in the next section of this analysis, suspects are routinely subjected to ill-treatment in police custody and police use torture to extract confessions from suspects.¹⁴

Before reviewing the literature on the use of confessionary evidence, I should comment on the polysemic aspects of truth as perceived by various parties in order to clarify the notion of *truth* relevant to this linguistic analysis. It is important to distinguish *truth* from *voluntariness* and *admissibility* as per the rules of evidence. A suspect may give a confession due to an inducement, promise or threat. A suspect may also give a confession due to genuine remorse, or a desire for recognition or fame. In either case, they may provide fully or partially correct or incorrect accounts depending on their circumstances; therefore, the mere existence of a confessionary statement does not prove that the content of the confession is true. Suspects may dispute the voluntariness of their confessions (and challenge the admissibility of their confessionary statements) at the trial stage¹⁵, regardless of whether the confessions were true or false. In other words, mere denial of giving a confession has little or no relevance in determining the truth of the confession. Courts may reject confessions as inadmissible evidence yet this does not necessarily mean that the ‘inadmissibility’ of a confession renders it semantically untrue.¹⁶ The confessions could be semantically true accounts that do not pass the test of evidential ‘admissibility’ under the rules of evidence. Conversely, semantically untrue confessions may pass the test of evidential admissibility depending on the strength of the narratives, which may convince the court of the guilt of the accused. Thus, innocent people may be convicted on false confessionary evidence.¹⁷ As noted earlier, I am narrowing down

¹³ I will use the term ‘average person’ in this document when I elaborate on the response or reaction of a hypothetical third person of the suspect’s community.

¹⁴ See the literature review.

¹⁵ Gudjonsson, GH 2003, *The Psychology of Interrogations and Confessions: A Handbook*, John Wiley & Sons, UK, p. P181

¹⁶ See previous note on ‘semantic criteria’.

¹⁷ See Kassin, S 2004, ‘True or false: “I’d know a false confession if I saw one”’ in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK. Also discussed further in the literature review.

the notion of truth in this analysis to verify whether the written narratives accurately represent the events (as written in the confessional statements) said to have occurred, thus disengaging from a discussion on the rules of evidence.

Literature review

International scholarship on the use of confessional evidence in criminal justice systems covers many disciplines including law, psychology, criminology and linguistics. In most of this work, confessions have been viewed sceptically and their credibility as evidence has been questioned. McConville and Baldwin submit that ‘confessions are one of the most common causes for wrongful imprisonment’.¹⁸ Dixon and Travis add, ‘false confessions have emerged as a significant source of miscarriage of justice which have been disclosed by the use of DNA analysis’.¹⁹ A great volume of research materials presents evidence of the miscarriage of justice due to confessional evidence in Australia, America and Britain, and particularly in relation to Northern Ireland’s counter-terrorism laws.²⁰ According to these studies, confessions can lead to the miscarriage of justice because of a number of factors: (a) confessions are seen as narratives that can be ‘constructed’ (for example, co-authored by police) rather than recorded in the original voice of a suspect; (b) confessions can entrench illusions and reinforce the versions of the crime preferred by the police; and (c) confessions can come into existence as a result of police malpractice. Gudjonsson adds that police investigators believe that a certain degree of pressure, deception, persuasion and manipulation is essential to reveal the ‘truth’.²¹ To support these assertions, authors often refer to the interrogation manual of Inbau et al., which instructs that the suspect should be aided in their attempts to recall ‘the truth’ by introducing a hypothetical third person who engaged in the alleged crime and providing descriptions in graphic detail of the victims’ and/or perpetrators’ actions.²²

¹⁸ McConville, M & Baldwin, J 1981, *Courts, Prosecution, and Conviction*, Clarendon Press, Oxford. P.160.

¹⁹ Dixon, D & Travis, G 2007, *Interrogating Images: Audio-visually Recorded Police Questioning of Suspects*, Sydney Institute of Criminology, Australia, p. 1.

²⁰ See Greer, S 1995, *Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland*, Clarendon Press, London; Lutz, BJ, Lutz JM, Ulmschneider, GW 2001, ‘British trials of Irish nationalist defendants: The quality of justice strained’ *Studies in Conflict and Terrorism*, vol. 25, no. 4, pp. 227–44; and Bronitt, S 2005, ‘Law enforcement immunities’ in S Corcoran and S Bottomley (eds), *Interpreting Statutes*, Federation Press, Australia, p. 225.

²¹ Gudjonsson, GH 2003, *The Psychology of Interrogations and Confessions: A Handbook*, John Wiley & Sons, UK, p. 7.

²² Henkel, LA & Coffman, KJ 2004, ‘Memory distortions in coerced false confessions: a source monitoring framework analysis’, *Applied Cognitive Psychology*, vol. 18, no. 5, pp. 567–88, summarising Inbau’s instructions to investigating officers (Inbau, FE, Reid, JE, Buckley, JP & Jayne,

There is a substantial body of research conducted in Sri Lanka on police malpractice that demonstrates the endemic nature of torture and ill-treatment of suspects in police custody, regardless of whether they have been arrested on suspicion of terrorist acts or minor crimes.²³ Fernando notes: ‘Even if they [the police] are unable to extract any information, most victims are willing to confess to any crime and sign any statement after their brutal torture. The police proudly produce them before courts as suspects of unresolved crimes in the vicinity’.²⁴ According to Manderson, torture not only produces ‘exceptionally unreliable information’, but is also ‘largely useless’.²⁵

Scholars have attempted to lay down an exhaustive list of types of false confessions. Saul Kassin, a prominent researcher in forensic psychology, provides three categories of false confession.²⁶ ‘Voluntary false confessions’ include confessions given by suspects who know that the content of their statement is false, but may be provided, for example, to protect a friend, to satisfy a pathological need for fame, or for acceptance, recognition or self-punishment. The second category, ‘coerced-complaint false confessions’, refers to confessions usually given in order to escape an aversive investigation. The third type, ‘coerced-internalised false confessions’, are made by innocent people who are anxious, tired, confused and/or subjected to aggressive interrogation methods that make them believe that they have committed a crime.²⁷ McConville et al. add a fourth category – the ‘coerced-passive confession’ – which includes ‘confessions when the process of questioning induces suspects to adopt the *confession form* without necessarily adopting or even *understanding* the substance of what has been accepted or adopted’.²⁸ In these kinds of confessions, the

BC 2001, *Criminal Interrogations and Confessions*, 4th edn, MD Gaithersburg, Aspen, USA) and Gordon, NJ & Fleisher, WL 2002, *Effective Interviewing and Interrogating Techniques*, San Diego Academic Press, USA, p. 573.

²³ See Alles, AC 1979, *Insurgency – 1971*, Trade Exchange Ceylon, Sri Lanka, p 213; Somasundaram, D 1998, *Scarred Minds: The Psychological Impact of War on Sri Lankan Tamils*, Vijitha Yapa, Sri Lanka, p. 92; and Somasundaram, D 2011, ‘Torture in Sri Lanka: a method of physical, psychological and socio-political terror’ in B Bastiampillai, R Edirisinghe, N Kandasamy (eds), *Prevention of Terrorism Act: A Critical Analysis*, CHR, Sri Lanka, p. 111; Sumanatilake, SP 2007, *Torture: A Sri Lankan Perspective*, Stamford, Sri Lanka, p. 96.

²⁴ Fernando, B & Puvimanasinghe, S 2005, *An X-ray of the Sri Lankan Policing System and Torture of the Poor*, Asian Human Rights Commission, Hong Kong, p. 7.

²⁵ Manderson says that the ‘turning point of many Al-Qaida operatives was their imprisonment and torture in Middle Eastern prisons’. Manderson, D 2008, ‘Another modest proposal: in defence of the prohibition of torture’, in M Gani & P Mathew (eds), *Fresh Perspectives on the ‘War on Terror’*, ANU Press, Australia, p. 33.

²⁶ Kassin, S 2004, ‘True or false: “I’d know a false confession if I saw one”’ in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK, p. 178.

²⁷ Ibid.

²⁸ McConville, M, Sanders, A & Leng, R 1991, *The Case for the Prosecution*, Routledge, USA, pp. 67–8.

suspect may internalise the confession or ‘adopt words which amount to a confession without even appreciating that they have made an admission’.²⁹

In developing an appropriate methodology to linguistically analyse the confessions, I have referred to previous research undertaken by forensic linguists on deception detection in the criminal justice system. My primary materials were gathered from the *International Journal for the Semiotics of Law*, the *Forensic Linguistics Journal* and the published work of experts in this field such as John Gibbons, Gisli Gudjonsson, Saul Kassin, Malcolm Coulthard, William Twining and Janet Cotterill. Gudjonsson has identified seven means of discovering false confessions, including the introduction of new forensic evidence or new alibi evidence, and the submission of a second confession from the offender³⁰ (in this regard, this document could be identified as a piece of ‘new forensic evidence’). In the United States, United Kingdom and Australia, forensic linguistic evidence is sometimes used, particularly in appeals based on challenging incriminating texts.³¹ Kassin, a prominent scholar who has undertaken voluminous research on confessionary evidence and the miscarriage of justice, has introduced a three-step process for evaluating confessions, by questioning: (a) the conditions under which a confession was made (including relevant factors like the age, intelligence and state of mind of the suspect) and the extent to which coercive techniques were used; (b) whether the confession contains details that are accurate and consistent in relation to the verifiable facts of the crime/s; and (c) whether adequate details of the source are contained in the narratives of the confession (‘a confession has diagnostic value if it contains information knowable only to a perpetrator that was not derivable from such second-hand sources’ like newspapers or photographs used in the investigations).³²

The key principle behind forensic linguistic science is to explore the connection between the source (author) and the outcome (the end result or the actual document

²⁹ Ibid.

³⁰ Gudjonsson, GH 2003, *The Psychology of Interrogations and Confessions: A Handbook*, John Wiley & Sons, UK, pp. 180–1.

³¹ See Coulthard, M 2002, ‘Whose voice is it? Invented and concealed dialogue in written records of verbal evidence produced by the police’ in J Cotterill (ed), *Language in the Legal Process*, Palgrave Macmillan, New York, p. 22.

³² Kassin, S 2004, ‘True or false: “I’d know a false confession if I saw one”’, in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK, p. 187.

in question) to determine whether it is genuine or authentic.³³ The methodologies of forensic sciences are built on the premise that the features of the outcomes vary according to the inherent characteristics of the source. When undertaking a forensic linguistic analysis, it is important to identify whether the traces, marks or features of the outcome align with their purported origin or whether they could have come from a different source altogether. For example, these features could be associated with distinct groups or communities, so the resultant narratives might include ‘class features’ such as the particular vocabulary or dialect used by a group of people. In addition, there could be ‘individual features’ and ‘idiosyncratic features’³⁴ – for example, specific words commonly spoken by an individual. These features can assist in the identification of the author.

Forensic linguistic methodologies draw upon the field of linguistics and deception detection techniques, and are aimed at locating the narratives within a document on a scale ranging between truth and deception. One of the definitions of *deception* most favoured among forensic linguists is a ‘successful or unsuccessful deliberate attempt, without forewarning, to create ... [a] belief which the communicator considers to be untrue’.³⁵ Hence, lying requires deceptive intention, awareness (or knowledge) of untruth (what is not true), and a deliberate act or attempt on the part of the subject (who is lying). Linguists also try to establish distinctions among *falsehoods*, which are considered to be outright lies; *distortions*, which are more or less altered or exaggerated versions of the truth; and *concealments*, which hide some information.³⁶ Indicators of deception are not always unique, and true and fabricated statements can have many elements in common. A poorly written true statement could be unconvincing in comparison to a cleverly fabricated false statement. Further, as a result of feeling guilt or discomfort, liars may appear ‘nervous, project an unpleasant demeanour’ and seem ‘uncooperative’; however, not all liars feel or behave as such.³⁷ While it has been suggested that liars are often tripped up by their own lies

³³ See Rose, P 2002, *Forensic Speaker Identification*, Taylor & Francis, London, p. 49 and Hilton, O 1993, *Scientific Examination of Questioned Documents*, CRS Press, USA, p. 8.

³⁴ Gibbons, J 2003, *Forensic Linguistics: An Introduction to Language in the Justice System*, Blackwell USA, pp. 302–3.

³⁵ Granhag, PA & Stromwall, LA 2004, ‘Research on deception detection: past and present’ in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK, p. 5 cited in A Vrij, A 2000, *Detecting Lies and Deceit*, John Wiley, Chichester, p. 6.

³⁶ Granhag, PA & Stromwall, LA 2004, ‘Research on deception detection: past and present’ in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK, p. 5.

³⁷ *Ibid*, p. 17.

because they have to work harder at concocting them, this is not necessarily a burden for all who seek to deceive. Clever liars may describe what they were doing at a different time, and anticipate and prepare for certain questions.³⁸ Although the stories of liars are considered to be less complete, insensible, illogical and less plausible compared to true stories, deceptive statements are ‘not necessarily ... any less consistent’ than truthful ones.³⁹ This is why many attempts at developing or using deception detection tools can be influenced by the subjectivity of the person who uses the tool. Scholars agree that the science of document analysis includes a degree of uncertainty, and that precise determinations cannot be made on whether two pieces of writing have come from the one source; hence, a level of subjectivity always influences the outcome of such research.⁴⁰ However, an increasing number of attempts have been made to refine forensic linguistic analysis techniques, specifically to apply such techniques to the analysis of confessions recorded by the police. Forensic linguistic techniques have also been applied in interdisciplinary contexts, such as considering psychological determinants in the analysis of a text by applying psychometric tests.⁴¹

Various scholars have sought to develop methodologies that distinguish the truth from deception. Some of these methodologies are as simple as having the subject (e.g. the suspect who confessed) answer a questionnaire, while others are elaborate and include a combination of document analysis and detailed interviews. Twining⁴² has introduced a simple test to identify a truthful testimony, which involves asking four main questions: (a) How confident is the witness in relation to the truth of the fact deposed to? (b) How conformable is the fact to general experience? (c) Are there any grounds to doubt the trustworthiness of the witness? and (d) Is the fact supported or doubted by any other special or particular evidence? Twining adds that ‘coherence’ is a criterion for checking ‘reliability’ and can be used as a ‘factor in assessing [the] plausibility’ of the testimony.⁴³ Elaborating on this criterion of

³⁸ Ibid, p. 18.

³⁹ Ibid, pp. 22–5.

⁴⁰ Ellen, D 1989, *The Scientific Examination of Documents: Methods and Techniques*, Ellis Horwood Ltd, UK.

⁴¹ See Hill, MD 2003, ‘Identifying the source of critical details in confessions’, *Forensic Linguistics*, vol. 10, no. 1, p. 23.

⁴² William Twining cited in Jackson, BS 1998, *Law, Fact and Narrative Coherence*, Deborah Charles Publications, UK, p. 22.

⁴³ William Twining cited in Jackson, BS 1998, *Law, Fact and Narrative Coherence*, Deborah Charles Publications, UK, p. 22.

coherence, he proposes a number of questions to test the credibility and consistency of a piece of evidence: (a) Does the story make sense as a whole? (b) Does a particular testimonial statement or line of argument ‘fit’ well within the broader picture of the event? and (c) Which of two competing versions of the event, taken as a whole, seems more credible? Although Twining’s truth assessment strategy appears to be logical, it offers few objective criteria to enable a comprehensive analysis. It is possible for the defence counsel and prosecution counsel to arrive at contrasting conclusions by adopting Twining’s truth assessment framework, and such conclusions could be significantly influenced by biases and prejudices against either the accused or the police.

Some of the groundbreaking research in the field of forensic linguistics was presented at a symposium on ‘Deception Detection in Forensic Contexts’ held in Gothenburg in 2003, at which 12 lectures were delivered.⁴⁴ This body of research has been extremely useful in explaining the deception detection techniques used by experts. Two comprehensive deception detection techniques presented at this symposium are Statement Validity Analysis (SVA) and Criteria Based Content Analysis (CBCA). SVA asks the basic questions: (a) What is the source of the statement? and (b) Does the statement describe the personal experience of a witness or does it have another source? SVA is a comprehensive deception detection tool that involves case file analysis, psychometric testing, semi-structured interviews and clinical judgement where the source of the statement and the personal experiences of the witness are analysed.⁴⁵ On the other hand, CBCA is a more self-reliant investigative tool, such that very little external information is required. CBCA is based on the hypothesis that one’s memory of one’s own experience differs in certain content features from fabricated statements. This hypothesis can be tested by investigating whether a witness could have fabricated the content and quality of a statement without having experienced the event described. The statement is examined by analysing five key elements: (a) general characteristics (logical structure and amount of detail); (b) specific content (contextual embedding, descriptions of interactions, reproduction of conversations, reporting of unexpected complications during the incident); (c) peculiarities of the content (unusual details,

⁴⁴ Granhag, PA & Stromwall, LA 2004, ‘Research on deception detection: past and present’ in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK, p. 4.

⁴⁵ Kohnken, G 2004, ‘Statement validity analysis and the “detection of the truth”’, in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK, p. 43.

superfluous details, accurately reported details that are misunderstood, related external associations, accounts of subjective mental states, and attribution of the suspect's mental state); (d) motivation-related content (spontaneous corrections, admitting a loss of memory, raising doubts about one's own testimony, self-deprecation, pardoning the perpetrator); and (e) offence-specific elements (detailed descriptions of the offence). The methodology that I am using to analyse the confessions of Nallaratnam and Sellapulle applies some of the CBCA techniques alongside narrative deconstructing tools and a comparative analysis.

Methodology

The methodology that I am using in this exercise provides a comprehensive framework for analysing the linguistic elements of the confessions of Nallaratnam and Sellapulle. This methodology can also be applied to forensically analyse other confessions recorded under counter-terrorism laws, in particular where linguistic irregularities are noticeable in confessions recorded by the same police officers of special investigation units (who were routinely engaged in recording confessions). Two written confessions are required for this exercise – one as the primary confession and the other as a secondary confession to compare with the first. Comparison of two similar confessions is likely to reveal common linguistic irregularities, helping us to narrow down the causes of such irregularities – for example, whether they are bona fide errors or fabrications. The primary confession is given priority in this analysis, and may be the confession that is submitted as evidence in court. The lawyer or linguist selects a secondary confession, preferably one that was recorded by the same officers who recorded the primary confession. However, at the end of the analysis, an opinion can be expressed in relation to both the primary and the secondary confessions.

The methodology includes the following seven steps:

- 1) Determine whether the primary confession contains linguistic irregularities (as previously discussed in the 'Background' section of this document).⁴⁶
- 2) Close-read both confessionary statements.

⁴⁶ Earlier I have noted examples of linguistic irregularities in the confessions: sophisticated vocabulary, structure and style, and the unusual similarities between the two confessions.

- 3) Deconstruct the confession by asking: *Who* is the suspect, *when* did the suspect confess, *where* was the confession recorded, *how* was it recorded and *what* is recorded in the confession?
- 4) Undertake criteria-based analysis of the narratives by conducting an in-depth analysis of general characteristics (such as structural features common to the genre of confessions), specific characteristics (contextual features, like those associated with the act of reducing oral narratives to written narratives), peculiarities of the content (idiosyncratic features such as the vocabulary used by the suspect), the motivation of the suspect, and offence-specific content.
- 5) Arrive at interim conclusions separately about whether each confession presents an accurate account of the events, and categorise the events into three types: (a) acts that have actually taken place, (b) acts that may have taken place but cannot conclusively be proven, and (c) acts that have not taken place at all.
- 6) Compare the two confessions to identify any elements of duplication.
- 7) Arrive at final conclusions.

By adopting the methodology outlined above, forensic linguists may either be able to arrive at a definitive conclusion as to whether a confession is genuine or fabricated, or to express an opinion without presenting a conclusive view.

Close-reading of confessions

The next step in this analysis is to closely read the narratives of the two confessions. To begin, I provide the Sinhalese verbatim translation of Nallaratnam Singarasa's confession below, followed by the secondary confession (Sellapulle Mahendran's). The number of sentences in the original confession has not been changed in order to maintain the original narrative structure. Certain idiosyncratic phrases, grammatical constructions and punctuation, including those that may appear as typographical errors or spelling or grammatical mistakes, have been reproduced in this verbatim translation to preserve the original sense and tone. My insertions are provided in square brackets, and signatures or handwritten notes of the confession are provided in italic font.

Confession of Nallaratnam Singarasa⁴⁷

11.12.1993 day, 16.20 hours at Criminal Investigation Department Unit of Batticaloa prison. On my advice, Nallaratnam Singarasa, who is being detained under a detention order IS/86/2/N/D/1146 has been produced before me. He says that he wants to give a confession voluntarily. At this moment, I have advised the suspect to think further about this [giving a confession]. [I am] giving time and space for this. Now the time is 16.35. The suspect informed me that he is prepared to give a confession to me voluntarily. I have informed him that I am recording his confession under the section 16 of Prevention of Terrorism Temporary Provisions Act and the section 50 of Emergency Regulations and I am recording the statement under the powers given to me by the above sections. I have explained to the suspect that the statement given by him could be used as evidence in a court case under the above-mentioned sections. Further, I have explained the charges against him such as receiving military training after becoming an LTTE member, attacking Jaffna Fort, Elephant Pass army camp, Palali army camp, Kankasanthurei security post and attacking an army patrol in Arantalawa. Further, I have informed [him] not to give his confession due to any threat, inducement or promise. The suspect informed me that he can not understand the Sinhalese language and he has no objections for recording his statement in the Sinhalese language. It appears that the suspect is in good health

⁴⁷ This is a verbatim translation of the confession originally recorded in Sinhalese.

condition to make a statement. The Tamil statement of the suspect is interpreted to Sinhalese and the statement recorded in Sinhalese is interpreted to Tamil by Constable 15596 Hasim. According to my advice the statement is typed by Hasim in Sinhalese language. I have unfolded my service identity card and explained to him [to Nallarattnam] that I am Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation Department. Now I am starting to record the suspect's statement.

Full Name: Nallarattnam Singarasa

Age: 20

Date of Birth: 1973.05.06

Ethnicity and Religion: Tamil Hindu

Occupation: Labourer

Residence: Karavadi, Navakadu, Batticaloa

Says as follows: I am the person who has been described above. The officer who is recording my confession unfolded his service identity card and informed me that he is Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation Department. I recognised this gentleman. Also I was explained that the statement I am giving is recorded by this gentleman under the powers he has been given by the Prevention of Terrorism Act and the Emergency Regulations. I was explained that my statement given according to the above sections could be submitted against me as evidence in a court hearing. I was informed that I should not be giving my statement due to any promise, threat or inducement. Because I can't understand Sinhalese language, I have no objections in recording my statement in the Sinhalese language because my statement is explained in Sinhalese. I was explained the charges against me, which are receiving military training after becoming an LTTE member, attacking Jaffna, Elephant Pass army camp, Palali army camp, Kankasanthurei security post and attacking an army patrol in Arantalawa. [I am] in good physical and mental conditions in order to give a statement. My father's name is Kanapathipille Nallarattnam. My mother's name is Thepadi Karunamma. Both of them are alive and they live in the above-mentioned address. I have included a description about my siblings of my family to the statement taken on the

earlier date. I have been doing labour works and mustering cattle since early days and I have never been to a school at all. Around 1989 when the Indian army was leaving Sri Lanka, I was living in the above-mentioned address, doing labour jobs in the village. During this time an LTTE member called 'Amchar' contacted me and asked [me] to take some goods required at the LTTE camp in Kaanda area, so I agreed and when I was taking the goods [they] asked me to join the LTTE. When I went there I was handed over to a person called Ramanan at Kaanda LTTE camp. During this period, I stayed in the camp for several days and then I was taken with another thirty young men to the camp of a person called Ruben in Berut area. Then [we were] taken to a camp of a person called Ravi in Muttur area. [They] employed myself and the others in building bunkers, cleaning the surrounding area and other small tasks. Later about 200 were given training in this camp; first physical exercises, [then] AK-47, SLR, LMG, SMG [weapons] and hand grenades and I received the training voluntarily. This training period was about three months and I was given the name 'Karan' by the LTTE organisation. Later I was called Karan by everyone in the camp. [We] remained in the camp for about 10–15 days after completing the training and a group was sent to Mullaittivu LTTE camp and I was included in this group. While staying in Mullaittivu camp for about 02-03 months doing small tasks we were taken to put into a camp in Chavakchcheri around April or March months in 1990. While [I have been] staying for about one and a half or two months a war erupted between the LTTE and security forces. That time I was given an M-70-type weapon, 02 magazines and a cyanide capsule. This day I was informed by the LTTE leader who was in charge of the camp that my membership number is 345. Later we all went to Jaffna town. After we went there we remained in the houses in which nobody lived. During this time I was under the supervision of an LTTE leader called Asokan. Later for several days [we] launched an attack at the army camp in Jaffna Fort. I also took part in this attack. While we had been attacking like this for several days, the army officers abandoned Jaffna Fort and left. Later during the second or third month of 1991, [I] went with a group of 400 to attack Palali army camp. This day the leaders Balraj, Sornam, Asokan and Banu held the leadership. After

we went there I was given the duty of cut-out⁴⁸ [and we] rounded up Palali army camp and launched the attack. Several more did the duty of cut-out with me while about 15 died and I don't know how many army officers died. I don't know who received the shots which were fired by me. Later [I] remained in Jaffna then I stayed in Kankasanthurei cement factory with a group to launch an attack at Kankasanthurei army camp. About 20 LTTE members died in this fight and I don't know how many army officers died. I returned to Asokan's camp in Jaffna again. Several days later we were advised by Asokan to prepare for a large-scale attack. Accordingly a large number of crowd left to round up the Elephant Pass camp under the leadership of Pottu Amman, Dinesh, [illegible name], Soranam and Balraj. [We] rounded up the Elephant Pass camp and continued to attack for several days and a large number of our members died. I don't know how many army officers died. After the attack our group under Asokan's leadership came to the camp in Chavakchcheri and remained there. I was involved in the activities of this Chavakchcheri camp until around June 1992. Later because I wanted to go home and I informed this to Asokan [he] made the arrangements for this but through various other ways he brought me [back] to Berut camp. Here when I informed [him] that I want to go home, the leader called Karuna gave me a new membership number instead of my previous number. That was 2931 and the [Tamil] letter Aana was written before the number. [I] was given a short holiday of 6 days [so] I came home and then I went to [illegibly typed name] LTTE camp. There, according to an order that we received we went to launch an attack against the army in Arantalawa area. There, according to an order that we received we attacked a group of army officers who were checking the roads. LTTE members Regan, Kylie, Udayan died in this attack. I learnt that 21 army officers were killed and I further learnt that there were air force, army and police officers amongst the dead. Again we returned to the camp where we were staying earlier. While living like this for a while, I contracted with typhoid. I stayed in Sumit's medical centre to receive treatment for this. At this place the weapons and the ammunition issued to me were taken away. While I was sick like this I came home without notifying anybody. I came [home] on a date in February 1992.

⁴⁸ 'Cut out' is a term used to explain guarding a convoy.

Then 02–03 days later someone call Appa came to my home, took my cyanide capsule and the membership number, assaulted me and left. Later I gave up the activities of the LTTE organisation. While I was living like this, on 1993.07.16 when I was working in the paddy field, when the Sri Lankan Army rounded up our village and checked [for suspects] I was identified by an army secret agent and first taken to Kommadurai army camp and then brought to the army camp where I am staying currently. I admit the charges of receiving the training of LTTE organisation, as a result of that training attacking places such as Jaffna Fort army camp, Palali army camp, Elephant Pass army camp and Kankasanthurei and killing army officers and attacking an army patrol who were checking the road in Arantalawa and shooting and killing army officers. That is all what I have to say. The officer who is recording my statement has explained to me that now the time is 18.00 hours. My statement was read in Sinhalese and explained to me in Tamil. Now the time is 18.15. I have placed my left thumb impression certifying all the pages of my above statement and I was well explained about the places where mistakes were corrected. [I] admit the statement was correctly recorded. Admitted and placed the left thumb impression certifying [the statement]. I, Police Superintendent H.M.D. Herath, do hereby certify that I have correctly and honestly recorded the statement of above-named Nallarathnam Singarasa. Now the time is 18.20 hours. Now I am duly handing over the suspect Nallarathnam Singarasa to Lance Corporal Vijekoon of the Military Police to be detained where he [Nallarathnam] had been detained earlier. [illegibly Signed dated 93-12-11]

I, Police Constable 15596 Hasim, do hereby certify that I have duly typed the statement of above-named Nallarathnam Singarasa and translated from Sinhalese to Tamil according to the advice of Police Superintendent H. M. D. Herath [illegibly Signed dated 11/12/93].

Confession of Sellapulle Mahendran⁴⁹

13. 12. 1993 day, 13.50 hours at Criminal Investigation Department Unit of Batticaloa prison. On my advice, Sellapulle Mahendran, who is being detained under a detention order, has been produced before me by Lance Corporal Ranasingha who works for the Military Police. This suspect volunteered to give a confession. At this moment, I have advised the suspect to think further about this [giving a confession]. [I am] giving time and space for this. Now the time is 14.10. The suspect informed me that he is prepared to give a confession to me voluntarily. I have informed him that I am recording his statement according to the powers given to me by the section 16 of the Prevention of Terrorism Temporary Provisions Act and the section 50 of the Emergency Regulations, and I have explained that the confession given by him could be used as evidence in a court case under the above-motioed sections. I have explained the charges against him such as receiving military training at an LTTE camp, attacking the Wali Oya army camp, attacking the Eravur police station and assassinating 08 police officers, attacking army convoys at Manmunathurei, Kiyankeni and Vadamunai areas and seizing their weapons and not providing information about such terrorist activities to the government security forces. I have explained to the suspect that the confession given by the suspect should not be given due to any threat, inducement or promise. The suspect informed me that he cannot understand the Sinhalese language but he has no objections for recording his statement in the Sinhalese language. It appears that the suspect is in a good health condition to make a statement. I have unfolded my service identity card and explained to him that I am Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation Department. I have received the assistance of Police Constable 15596 Hasim in order to interpret the suspect's Tamil statement to Sinhalese and in order to interpret the statement recorded in Sinhalese to Tamil. According to my advice, the statement is typed by Hasim in the Sinhalese language. Now I am starting to record the suspect's statement.

Full Name: Sellapulle Mahendran

⁴⁹ This is a verbatim translation of the confession originally recorded in Sinhalese language.

Age: 19 years

Date of Birth: [He] says it is unknown [underlined text is handwritten]

Ethnicity and Religion: Tamil Hindu

Occupation: Toddy tapping

Residence: Becas Road, Vandaramullai

Says as follows: I am the person who has been described above. The officer who is recording my confession unfolded his service identity card and informed me that he is Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation Department. Because of this I recognised this gentleman very well. I was informed that the statement I am giving is recorded by this gentleman under the powers he has been given by the Prevention of Terrorism Act and the Emergency Regulations. I was explained that my confession given according to the above sections could be submitted against me as evidence in a court hearing and I should not be giving my statement due to any promise, threat or inducement. I have no objections in recording my statement in the Sinhalese language. I was explained the charges against me, which are as a member of LTTE receiving military training at a camp, receiving military technique training and arms training, attacking the Jaffna Fort's army camp and Wali Oya army camp, attacking Eravur police station and assassinating eight police officers in June 1990, attacking army convoys at Manmunathurei, Kiyankeni and Vadamunai Areas, assassinating army soldiers and seizing their weapons and not providing information about such terrorists to the government military forces. I am in a good physical and mental condition in order to give a confession. I haven't had a school education. I have been toddy tapping since my childhood. I have given a statement about three weeks ago at this office. In that statement, I have included information about my family members. While living like this the LTTE was recruiting members from my village and other adjacent villages. Later, I went to the LTTE office at Vandaramullai to join the LTTE. I met Vengan, the local leader, and gave my personal information to him. I stayed there and later went for training at Pondukalchenai camp. There were about 250 young men receiving training. First I received physical training and then training in arms and battle tactics. There, I also received training in using SLR, SMG, G3, M-70 weapons and hand grenades. At the end of this

training, I was given the nickname Sujee and I was told that my membership number is 514. Also all those who have received our training were called Batticaloa 12. First of all five of us including myself were sent to the camp in Kiran village. A person called Ruban held the leadership there. Here I received an M-70 type weapon, a magazine with ammunition and a cyanide capsule. Meanwhile, in 1990 the LTTE movement captured several police stations in Batticaloa. I too participated in that event. First [I] went to Eravur police station, captured 75 police officers and brought them with their weapons to a place called Vandaramullai. These police officers were detained in a house in Vandaramullai and then they were taken to a school in Pundandakal and detained again. It happened because the area we were staying was invaded by the army. 40 police officers who were there ran away from us. They ran with the weapons of our people who were guarding them. There were about 35 Sinhalese and Muslim police officers. The 08 Sinhalese police officers amongst them were killed by [LTTE] leaders Kalil and Ganga. The other Tamil and Muslim officers were set free. The bodies of the officers who have been shot dead were taken to an area in Periyawattuwan forest and buried. Even today, I can show that place properly. During that time of burial, I was on sentry duties guarding. We had received orders from our leaders [that we were] to be sent to Jaffna for punishment because the group of police officers escaped from us. [I was] put into a retraining session at the camp of the person called Nirodan in Sambukottam near Chavakachcheri. Meanwhile, one of our groups launched an attack at the army camp in Jaffna Fort. I too joined this attack with others who were being trained in Sambukottam. I heard that there were about 300 people of LTTE took part in this attack. This attack lasted for about a month. Later [they] went to launch an attack at Manalar army camp and I also joined this attack. Several of our members died in this attack and I can't say exactly how many of them died. Then a few weeks later [we] went to attack Elephant Pass army camp. While I was going to this attack, I suffered from bronchitis, so I was admitted to Chavakachcheri hospital. After my illness I undertook certain tasks such as assisting with cooking and watching the sentry. Later because I have been trained to use 50 calibre weapons, I came to Batticaloa with a group which was headed by a leader called Joy and went to a camp of Karuna alias Amman in Thoppigala. After engaging in the duties of this camp for several days a group was

organised and [we] went and attacked the army camps in Kalladi and Vadumunei. During this attack several army soldiers were killed and a few of our members were also killed. Later [we] went to Kokadeicholi and Manmunai areas and launched a similar attack. Several army soldiers were killed in this attack. We took over the army's weapons. None of us were injured. After this we came to Tharati camp. Later as we received orders to attack another army camp, we came to the sixth post of Batticaloa Colombo road and attacked a group who were on road-checking duties. After this attack I became sick again and I received treatment. Several days later I took part in an attack against an army patrol who were on road-checking duties from Valachchenai to Welikanda. Several army soldiers were killed in this attack and we could take their weapons. I heard that our members also died. After this attack while I was running away, giving up LTTE and handing over my weapons to the person called Kopu, [they] captured me at Kadavali and I was sent to the base of Rudra master. I was kept in a bunker for 2 ½ months as a punishment. Later when I told them that I wanted to go home I was put into a bunker for 7 months. Later I was employed in security duties of LTTE camps in Karavai area. While I was there, I was advised to go home by Rudra master. I returned to my village and continued toddy tapping, and about eight months ago, I married the woman called Rathi who is the daughter of one Samiar in our village. While I was living like this, on 23 September 1993 I was arrested in an operation launched by the army and brought here where I am now. Before I was brought here I was taken to a place called Mavadiwembu and then I was brought here. I have taken part in a several attacks against the army before I was arrested by the army officers and I am unable to tell those exact days of the attacks at this moment. Accordingly I admit guilt for receiving training as a member of the LTTE and attacking the army camps of Jaffna Fort and Elephant Pass, attacking officers of Eravur police station, killing 08 officers and seizing their weapons, laying an ambush at the sixth post of Colombo Batticaloa road, attacking army officers and killing them, and attacking the army at Manmunai, Kalladi, Vadamunai and Manalaru areas. I took part in all these activities in my own will. That is all what [I] have to say. The officer who is recording my statement explained to me that now the time is 16.00 hours. My statement was read in Sinhalese and explained to me in Tamil. [I] admit the statement was correctly recorded. I

have placed my left thumb impression certifying all the pages of my statement. I, Police Superintendent H.M.D. Herath, do hereby certify that I correctly and honestly recorded the statement of above-named Sellapulle Mahendran. Now the time is 16.15 hours. Now I am duly handing over the suspect Sellapulle Mahendran alias Sujee to Lance Corporal Ranasingha of the Military Police to be detained where he [Sellapulle] had been detained earlier. [illegibly *Signed* dated 93-12-13]

I, Police Constable 15596 Hasim, do hereby certify that I duly typed the statement of above-named Sellapulle Mahendran and translated from Sinhalese to Tamil according to the advice of Police Superintendent H. M. D. Herath. [illegibly *Signed* dated 13/12/93]

Deconstruction and criteria-based analysis of the primary confession

Deconstruction of the text of the primary confession

In this section I will deconstruct the primary confession in order to establish the connections between the source and the outcome, by asking five key questions aimed at determining authenticity, based on the who, when, where, how and what. These questions and their answers are discussed in greater detail below.

- (a) *Who* is the author? The age, gender, education, occupation and language skills of the supposed author (the suspect) may or may not align with the nature of the narratives of the confession. If the confession were co-authored, as in the confessions analysed here, the co-authoring police officer's characteristics also need to be considered. In this exercise, it is crucial to identify who (the suspect or police officer) presented any original pieces of information during the recording of the confession, and who would have had the knowledge or capability to utter this information. It is by evincing the knowledge that is 'specific, relevant, verifiable and known *only* to the perpetrator [or the suspect, that] one could validate the confession'.⁵⁰

At the time of the confession, the suspect Nallaratanam was a 20-year-old labourer from a village in the eastern province. His ethnicity was Tamil and he spoke only the Tamil language. He could not read or write in any language. The co-author of this confession, Police Superintendent H.M.D. Herath, was supported by the typist/interpreter Police Constable Hasim. Lance Corporal Vijekoon, who was working for the Military Police at the time, was remotely involved in the recording of the confession in that he produced the suspect to the Police Superintendent.

- (b) *When* was the confession authored? The sequence of events described in the testimony may differ from the sequence said to have occurred in reality; therefore, temporal and spatial elements need to be assessed against the scenario described in the confession. The date and time, the period of time between the arrest and the confession, the time given to the author (suspect) to think further, the time spent on a medical examination of the suspect, the

⁵⁰ Hill, MD 2003, 'Identifying the source of critical details in confessions', *Forensic Linguistics*, vol. 10, no. 1, p. 26.

time spent typing each part of the confession (the introduction, free narratives of the suspect, and the certification), the time spent explaining the content of the confession (after the recording of the free confessional narratives was completed) and the time at which the suspect left the venue – all these details need to be calculated and assessed in order to establish whether the chain of events presented in the confession could plausibly have occurred in the time given, thereby to establish whether the narratives are credible.

Nallarattnam was arrested on 16 July 1993, about three months prior to the recording of his confession on 11 December 1993. The initial notes of the confession began at 16:20 hours. The Police Superintendent certified the confession at around 18:15 hours. The total time spent recording the confession, including the time given to the suspect to think further about his decision, was approximately 130 minutes. The suspect was not produced before a medical practitioner to assess his physical or mental status and determine his capacity to give a voluntary incriminating statement.

- (c) *Where* was the confession authored? The geographical location of the venue at which the confession was given, as well as the distance between this venue and the detention centre at which the suspect was being held, needs to be considered. In addition, the nature of the setting (the venue where the confession was recorded) must be examined, including details such as: the table setting; the seating arrangements; the presence of a typist, interpreter or any other persons; and the number and location of windows and doors, and what the suspect might have been able to see through them. These details need to be assessed to establish whether the occurrence of the events or acts described in the confession was probable.

Nallarattnam's confession was said to have been recorded at an office of the Criminal Investigation Department Unit inside Batticaloa prison. The suspect was under the detention and supervision of the Military Police. The details of the room in which the confession was recorded were not provided in the confession.

- (d) *How* was the confession authored? It is important to examine the process of recording to assess whether the process explained in the narratives could plausibly have taken place. The questions to ask in relation to this are: What was the role played by each party involved in the recording of the confession? Was the suspect freely narrating or responding to questions posed by the police officers? Was the confession of the author directly recorded or were the free narratives paraphrased? Did the typist record the words of the interpreter or the paraphrased words of the senior police officer? Was the completed confession removed from the typewriter for signing once or more than once? Was the typed confession read out or explained to the suspect?

Nallarattnam's confession was typed using Sinhalese scripts. The initial introduction was dictated by the Police Superintendent. The conversation between the suspect and the Police Superintendent was interpreted by the interpreter. This conversation was then summarised and dictated by the Police Superintendent to be typed by the interpreter/typist. The actual confession or free narratives of the suspect were translated into Sinhalese by the interpreter/typist, and it is not clarified in the confessionary statement whether the Police Superintendent paraphrased these free narratives. Once the suspect finished communicating his free confessionary narratives, the paper was removed from the typewriter and the interpreter/typist read the content of the confession in Tamil language. According to the post-confessionary certification, the suspect signed the confession, and then the last page was reinserted into the typewriter to type the certification of the Police Superintendent. It is not clear from the narratives whether the document was removed from the typewriter for the Police Superintendent to sign prior to completion of the entire document, or whether the Superintendent signed once the whole document was typed.

- (e) *What* was confessed by the author? In this part, the suspect's free narratives need to be examined to compare the characteristics of the suspect with the narratives of the confessionary statement in order to make an assessment of whether the suspect could have uttered such narratives. In addition, the crimes that the suspect admitted to carrying out must be compared with

independent sources such as news archives to determine whether such crimes actually took place. The length (word count) of the confession needs to be considered when seeking to determine the probability of the confession being recorded in the alleged time.

The offences admitted by Nallaratnam included receiving military training from the LTTE; and attacking Jaffna Fort army camp, Palali army camp, Elephant Pass army camp, a base in Kankasanthurei and an army patrol in Arantalawa; and shooting and killing army officers.

The confession was typed on four 'legal size' pages (which are slightly taller than A4 size paper), which are numbered between 857690 and 857693, and include a letterhead of the Criminal Investigation Department, printed in Sinhalese. The confession contains approximately 1645 words. At many points in the document two Sinhalese words are typed as one word with no space in between; however, I have counted these combined words as two words to more accurately represent the Sinhalese language. As the suspect was unable to sign (because he was illiterate), he included his thumb print after his certification at the end of his free confessional narrative on a rectangular space of 3 cm x 6 cm at the top of the fourth page. The interpreter/typist signed his signature three times: at the top right-hand side of the first page and the fourth page, and then at the end of the statement. The signature of the Police Superintendent appears only once, after his certification. There may be more signatures in the margins of the document which were not captured by the A4-size photocopies that I have examined.

The pre-confessional introduction (recorded when the suspect was initially brought before the Superintendent) contains 72 words. Fifteen minutes were spent on this introduction, which included the time given to the suspect to further consider his decision to confess. The text describing the preparation for the confession (when the suspect was produced for the second time, after considering his decision to give a confession) was dictated by the Police Superintendent, and amounted to 271 words. The free narratives of the suspect comprise 1174 words. Approximately 75 minutes were spent on recording these narratives, which amounted to 1445 words. Although

theoretically the typist maintained a speed of approximately 20 words per minute, the typist needed to be at least twice as fast because each sentence uttered by the suspect in Tamil had to be interpreted (that is, spoken by the interpreter out loud, so that the Superintendent was aware of what was being typed) before being typed. More time would need to be included to allow for this interpreting/typing if the Superintendent paraphrased the narratives before they were typed. At the end of the confession, in the post-confessionary certification, the Police Superintendent and the interpreter/typist described and certified their involvement in recording the confession in 128 words. The actual time at which the last word was typed was not provided.

Criteria-based analysis of the primary confession

The next step in this exercise is to analyse the deconstructed information to identify the links between the source (the suspect or police officers) and the outcome (the confessionary statement). The intention here is to determine whether these links between source and outcome are plausible by assessing them against the following criteria: general characteristics, specific content, peculiarities of content, motivation-related content and offence-specific elements. Upon completion of this analysis, I hope to establish adequate grounds to arrive at interim conclusions.

(a) General characteristics:

The structure of the confession flows logically, from a clear beginning that includes an introduction, to free confessionary narratives in the middle of the confession, and certification at the end. The confession was typed on the letterhead of the Criminal Investigation Department and each page of the statement includes a sequential page number, so that the iconicity of the document is evidenced to a certain degree. All three participants involved in co-authoring the confession signed their signatures on the confession; hence, their involvement has been established. The participants' signatures on the confession imbue the confession with a certain degree of authenticity; however, the existence of these signatures does not prove that all three individuals were present at the same time. The signatures may have been obtained on another occasion or even three separate occasions.

The confession includes three key parts: the pre-confessionary introduction, which includes a caution; the free confessionary narratives; and the post-confessionary certification. The structure of each of these parts seems heavily weighted towards adducing incriminating facts, and summarising and chronologically ordering the events leading to the crimes that the suspect allegedly committed. Although it is understandable that the narratives dictated by the Police Superintendent are heavily structured, the logical flow and clever structuring of the suspect's free or spontaneous narratives suggest that they were not authentic. Given the suspect's educational and social background, it is implausible that he could have structured his free narratives according to such a logical sequence, which includes a rather formal introduction ('I am the person who has been described above...'), followed by statements on the caution, the laws and the offences with which he was charged. One explanation for this structure is that the Police Superintendent posed specific questions in a logical order, yet such questions were omitted from the confession.⁵¹ It should also be noted that posing questions would require additional time, because more time is needed to ask a question, interpret the question and perhaps paraphrase the answer to fit into the structure of the confession.

One of the key observations about these narratives is that they only include facts that are incriminating or that relate to the identification of the suspect. These narratives do not include any facts or materials that are irrelevant to the offences. In other words, the confession includes purely incriminating material but no additional material that one would reasonably expect a person to utter in the course of a spontaneous conversation. It is implausible that the uneducated suspect possessed the necessary skills to structure his free narratives in such a way as to provide incriminating facts without mentioning other information of no evidentiary value (indeed, research indicates that suspects' statements frequently contain complete or partial denials of any knowledge concerning a crime⁵²). In addition, there are gaps in the suspect's story concerning important events in his life: for example, gaps in relation to how he recommenced his life as an ordinary villager after leaving the Tamil Tigers.

⁵¹ As Coulthard argues, by omitting such questions, the interrogator can 'reconstruct the narratives of the confession', so they can misrepresent the narratives as free and self-initiated narratives. See Coulthard, M 2002, 'Whose voice is it? Invented and concealed dialogue in written records of verbal evidence produced by the police' in J Cotterill (ed), *Language in the Legal Process*, Palgrave Macmillan, New York, p 32.

⁵² Kaufman, F 1979, *The Admissibility of Confessions*, The Carswell Company Ltd, Canada, p. 5.

(b) Specific content:

This section of the analysis focuses on contextual embedding, descriptions of interactions, reproduction of conversations and the reporting of unexpected complications during the recording of the confession.

The Police Superintendent took steps to report the sequence of events that took place from when the suspect was first brought to the Superintendent to when he supposedly provided his free confessionary account. While one could argue that the account of these interactions between the suspect and the police officers as running smoothly and without complication seems implausible, this is not sufficient reason to question the truthfulness of the confession. There could have been complications or interruptions (such as a telephone ringing or other officers entering the venue) in the process of recording the confession that were omitted from the narratives in good faith because such information was seen to have no evidentiary value by the police. Although some parts of the narratives may appear overly formal or unlikely to have been uttered by the suspect, this is also not adequate reason alone to identify these segments as fabricated because they could represent contextual embedding of a typical police document. For example, when a statement is concluded by a witness, the police officer co-narrates, adding the sentence, 'That is all I have to say' as a matter of formality to affirm that the witness has been given the opportunity to say all that he wants to say. It is possible that the suspect actually did not utter the words 'That is all I have to say'; yet this should not be automatically read as an attempt at fabrication because it may be the result of a mere formality. However, there are a number of other elements that suggest that this confession does not reflect an accurate account of events.

The Police Superintendent met the suspect at 16:20 hours and discussed the recording of the confession. The Superintendent then gave the suspect time to further consider his decision to confess. At 16:35 hours the Superintendent started recording the confession. However, the 15 minutes between 16:20 and 16:35 is not sufficient time for all these events to have taken place, and the suspect would virtually have had no time in this scenario to contemplate his decision. According to the scenario outlined in the confession, 72 words were typed during this 15-minute period. If this 15-minute period supposedly included the time needed for the suspect to speak, the

interpreter to interpret, the Superintendent to paraphrase and dictate, and then for the typist to type, there would hardly have been adequate time for the suspect to contemplate his decision to confess. The only way that this might have been possible within 15 minutes is if the Superintendent were sitting with the interpreter/typist in the office, ready to type the statement, when the suspect was produced by the Military Police – yet this setting would suggest that the confession were premeditated or already agreed upon and arranged. Yet no such pre-arrangement was outlined in the introduction of the confession.

At the end of the confession the suspect says, ‘My statement was read in Sinhalese and explained to me in Tamil’ between 18:00 and 18:15 hours. By that time, approximately 1517 words had reportedly been typed, so it is implausible that the interpreter could have read 1517 words in 15 minutes. If we were to assume that ‘statement’ here refers only to the free confessional narrative (1174 words) being explained to Nallaratnam, the interpreter would have had to read at least 78 words per minute ($1174 \div 15 = 78$). The period of time that I have estimated would be required to clearly read out loud the confession in Sinhalese and explain the content in Tamil would necessitate a rate of more than 78 words per minute. When I read this confession in Sinhalese at a reasonable speed, while maintaining the clarity of my speech, I was able to read approximately 100–110 words per minute. If the confession were explained in Tamil, the number of words uttered by the interpreter would have needed to be double, equating to approximately 2348 words. With a speed of 110 words per minute, a minimum of 20 minutes would be required to read even the free confessional narrative (the middle part of the statement, which includes the suspect’s own words) and translate it into Tamil. These generous calculations are provided under the assumption that the interpreter was extremely knowledgeable in both Sinhalese and Tamil, and that he was uttering the words at the maximum speed possible while still ensuring a certain level of clarity. These calculations demonstrate that the content of the confession was not in fact read in Sinhalese and explained in Tamil.

According to the confession, between 18.15 and 18.20, a number of tasks were completed: (a) explaining certain mistakes and typographical errors within the text to the suspect; (b) correcting the errors in the narrative that was typed up until 18:15 (approximately 60 typographical errors were corrected using a pen); (c) typing 69

additional words ('I have placed my left thumb signature ... I correctly and honestly recorded the statement of above-named Nallarattnam Singarasa', requiring at least three minutes if the typist typed faster than 20 words per minute); (d) removing the paper from the typewriter to include the thumb print of the suspect; and (e) reinserting the paper into the typewriter to continue the typing. It is simply not possible that all of these tasks could have been completed within five minutes.

There is a significant discrepancy in relation to the involvement of the interpreter/typist. The Police Superintendent mentions the interpreter for the first time only after approximately 260 words have already been typed: 'The Tamil statement of the suspect is interpreted to Sinhalese and the statement recorded in Sinhalese is interpreted to Tamil by Constable 15596 Hasim'. It was imperative that the Superintendent have an interpreter present from the very beginning of his conversation with the suspect; yet the interpreter's involvement was not recorded at the beginning. Because the period of time for which the interpreter was involved in the conversation between the suspect and the Police Superintendent is unclear, questions arise around how the most crucial information, such as the caution, was conveyed to the suspect, who could neither speak nor understand Sinhalese.

(c) Peculiarities of content:

In relation to the peculiarities of the content, there are several elements that strengthen the credibility of the confession. Certain pieces of information presented about the life of the suspect appear convincing because plausible, logical connections between events in the story explain these peculiarities. For example, the fact that the suspect contracted typhoid accounts for him feeling unmotivated during the later stages of his involvement with the Tamil Tigers. Further, distinct information about the names of some of the local Tiger leaders, the names of the army camps, and the timelines described in the confession appears to be accurate according to the news archives. For example, the admissions in the confession are consistent with the attack against the army camp in Jaffna Fort launched by the Tigers in 1990. Further, some of the leaders' names provided by the suspect were mentioned in news archives and military reports; for example, Balraj was mentioned, who was a provincial LTTE leader who died in 2008. Conversely, one could argue that real names and timelines could be easily incorporated into a fabricated confession. It could also be argued that the police officers who fabricated this confession came to know about the suspect's

illness so included this information in their fabricated story in order to create a more convincing account.

However, the following peculiarities found in Nallaratnam's confession strongly support the assertion that the confession does not present an accurate account of the events. The suspect stated, 'I am the person who has been described above'. This is a very unusual and unlikely remark for Nallaratnam to utter. The only explanation for the inclusion of this peculiar remark is that the narrative was authored by someone who is familiar with the standard writing style required for police statements. A layperson would say, 'My name is Nallaratnam' rather than 'I am the person described above'. In the early part of the free confessionary narratives, the suspect made another peculiar remark: 'I have no objections in recording my statement in Sinhalese language'. He used the term 'have no objection', which is a rather formal, legalistic term, and he spelled out a feature of the procedure that is important to prove his voluntariness in court, without being prompted. Further, this sentence breaks the flow of the storytelling, and therefore looks suspiciously like an insertion made by someone else. Further, several other formal phrases appear in the confession, which are sometimes repeated, suggesting that they were not the real words of the suspect but the words of the police officers. The suspect apparently said, 'I have included a description about my siblings of my family to the statement taken on the earlier date'. The use of formal phrases such as 'included a description' and 'statement taken' is not at all congruent with the language common to free-style narratives, and would not plausibly be uttered by a layperson like the suspect. Moreover, the utterances about a previous statement not only abruptly deviate from the natural flow of the narratives, but also provide no logical reason for the suspect to mention the 'inclusion' of family details in this previous statement. Further, the suspect used the phrase 'above-mentioned address' twice, which sounds overly formal and improbable for a layperson to use when freely and spontaneously narrating a confession.

The suspect reportedly said, 'I was informed that the statement I am giving is recorded by this gentleman under the powers he has been given by the Prevention of Terrorism Act and the Emergency Regulations. I was explained that my statement given according to the above sections could be submitted against me as evidence in a court hearing. I was informed that [I] should not be giving my statement due to any

threat, inducement or promise'. It is simply not credible that these long sentences, constructed in the passive voice, could have been uttered by the suspect, who is unable to read or write. The construction of these sentences is highly sophisticated and the flow of the sentences is logical. Furthermore, it is questionable whether the suspect could name the counter-terrorism legislation with such accuracy. The suspect purportedly said, 'I was explained the charges against me, which are receiving military training after becoming an LTTE member, attacking Jaffna Fort, Elephant Pass army camp, Palali army camp, Kankasanthurei security post, and attacking an army patrol in Arantalawa'. Similar to the previous point, it is highly unlikely that an uneducated layperson like the suspect would utter such sophisticated and logical sentence constructions. This can only be explained by the fact that these narratives were authored by someone who is very familiar with the writing style common to police documentation.

There are also several instances of the inclusion of repeated phrases or legalistic jargon in the confession. The long list of charges against the suspect was repeated three times in almost identical order: 'receiving military training after becoming an LTTE member, attacking Jaffna Fort, Elephant Pass army camp, Palali army camp, Kankasanthurei security post, and attacking an army patrol in Arantalawa'. First, the Police Superintendent says, 'I explained the charges...'; next the suspect says, 'I was explained the charges...'; and finally the suspect says, 'I admit the charges...'. These repetitive phrases are best explained by the confession being a poorly fabricated narrative.⁵³ Further, the phrase 'threat, inducement or promise' is first uttered by the Police Superintendent and later repeated in the same order by the suspect. It is not plausible that the suspect would have repeated these words in the same order as part of a free confession.

According to forensic linguists, one of the important ways to identify a false confession is a careful analysis of the post-admission statement.⁵⁴ At the end of the free confessional narrative, Nallarathnam concludes: 'The officer who is recording

⁵³ Forensic linguists argue that liars are more likely to repeat words and phrases. See DePaulo, BM & Morris, WL 2004, 'Discerning lies from truth: behavioural cues to deception and the indirect pathway of intuition' in PA Granhag and LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, Cambridge, pp. 22–5.

⁵⁴ 'A careful analysis of the post-admission statement ... reveals striking errors and omissions, rendering the confession unconvincing and inherently improbable'. See Gudjonsson, GH 2003, *The Psychology of Interrogations and Confessions: A Handbook*, John Wiley & Sons, UK, p. 180–1.

my statement explained to me that now the time is 18.00 hours'. Repetition of the police officer's statement by the suspect in this manner is highly improbable. According to forensic linguists, truthful written statements usually do not include the quoted verbatim speech of others.⁵⁵ Further, the average person⁵⁶ speaking in terms of 24-hour time (e.g. 18:00 hours instead of 6 pm) is highly improbable. Finally, the suspect apparently said, '[I am] in good physical and mental conditions in order to give a confession'; yet there is no identifiable reason for the suspect to utter such a statement.

(d) Motivation-related content:

Motivation-related content can be explored in two regards: the motivation to commit the offences, and the motivation to confess voluntarily about the offences. Certain information in Nallaratnam's confession does explain the suspect's motivations for engaging in acts of terrorism. The suspect reportedly lived in an area frequently visited by the Tamil Tigers and there could have been many potential reasons for the suspect wanting to join the Tigers and engage in war against the government troops. According to Nallaratnam's story, he appeared to have lost his motivation at a later stage, when he attempted to leave the Tamil Tigers. This indicates a certain level of remorse about his involvement with the organisation and a desire to detach himself from the Tigers, which could account for him volunteering to confess. It should be noted that the above suggestions are only presented in the story itself and not corroborated by the linguistic elements of the confession, such as a remorseful admission. For example, he does not say anything along the lines of, 'I had had enough' or 'I didn't want to do it anymore', which would indicate that he was remorseful and therefore wanted to confess voluntarily. Conversely, the suspect does not display any desire to claim responsibility for the crimes or to be recognised for his perceived bravery as such.

The suspect's guilt is revealed in his statement that: 'I admit the charges of receiving the training of LTTE organisation, as a result of that training attacking places such as Jaffna Fort army camp, Palali army camp, Elephant Pass army camp and Kankasanthurei and killing army officers and attacking an army patrol who were

⁵⁵ Adams, SH and Jarvis, JP 2006, 'Indicators of veracity and deception: an analysis of written statement made to police', *Forensic Linguistics*, vol. 13, no. 1, p. 9–10.

⁵⁶ See previous definition of the hypothetical third person.

checking the road in Arantalawa and shooting and killing army officers'. However, this statement does not express any motivation that could have led him to want to make a self-incriminating statement. A certain degree of engagement and emotional attachment would be expected in a free confession, particularly in the case of terrorism offences, because, from the viewpoint of the terrorist, an act of terrorism is associated with altruism and sacrifice for a political cause.⁵⁷ Such engagement and attachment should therefore be evident in Nallarattnam's narrative; however, his confession does not include a single statement that demonstrates this. For example, the suspect never says something along the lines of, 'I honestly believed that we were going to have a better life', or 'I found no meaning in our fight so I decided to leave the movement'. In this regard, forensic linguists argue that fabricated stories are 'distant, impersonal', 'evasive', 'less engaging', 'less involved' and 'less immediate'.⁵⁸ They also claim that emotional references tend to be omitted altogether in fabricated accounts.⁵⁹ And in Nallarattnam's statement, such emotional references are omitted altogether.

(e) Offence-specific elements:

These elements include the detailed description of the offences, including the names of LTTE leaders, the times when and the places where the offences were committed. This is the most convincing aspect of Nallarattnam's confession. The suspect's alleged narratives demonstrate his knowledge of weapons and military strategies. He described the weapons he had been trained to handle: AK-47, SLR, LMG, SMG guns and hand grenades. The suspect mentioned some names of army bases and police stations that were attacked: Jaffna Fort army camp, Palali army camp, Elephant Pass army camp and Kankasanthurei security post. The suspect also stated that he met various Tamil Tiger leaders, such as Pottu Amman who was the chief of the Intelligence Wing of the LTTE. Some of the suspect's descriptions of assaults against government security forces and the timelines align with those reported by the media and the military. For example, the Tamil Tigers attack against the camp in Jaffna Fort described in the confession is corroborated by the Sri Lankan

⁵⁷ Whittaker, DJ (ed) 2001, *The Terrorism Reader*, Routledge, London, p. 9.

⁵⁸ DePaulo, BM & Morris, WL 2004, 'Discerning lies from truth: behavioural cues to deception and the indirect pathway of intuition' in PA Granhag and LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, Cambridge, pp. 22–5.

⁵⁹ Adams, SH and Javis, JP 2006, 'Indicators of veracity and deception: an analysis of written statement made to police', *Forensic Linguistics*, vol. 13, no. 1, p 8.

Government's official records.⁶⁰ Yet it is worth bearing in mind that the offences described in this confession are associated with well-reported assaults launched by the Tamil Tigers, and therefore have become common knowledge among Sri Lankans, including, no doubt, the police officers involved in the recording of this confession. So these officers could have incorporated their knowledge of these crimes into a fabricated confession. The most important fact in relation to the descriptions of offences in Nallaratnam's confession is that the suspect did not demonstrate any knowledge that *only* he could have possessed. The information provided by the suspect on certain offences and the related events was also known to many other people at the time, such as journalists, politicians, police officers and local residents. According to forensic linguists, the 'presence of guilty knowledge' needs to be established by the 'originality' of the details and the 'degree' of detail provided about the crime.⁶¹ In Nallaratnam's confession, his knowledge about the offences is only established by 'repeating' existing or known information, and therefore the suspect did not demonstrate that he alone was in possession of this knowledge.

⁶⁰ See Sri Lanka's Ministry of Defence, <www.defence.lk> viewed on 28 March 2010.

⁶¹ Hill, MD 2003, 'Identifying the source of critical details in confessions', *Forensic Linguistics*, vol. 10, no. 1, pp. 24–6.

Interim conclusions on the primary confession

According to the findings of the above analysis, the acts described in Nallaratnam's confession can be categorised into three types: (a) acts that have actually taken place, (b) acts that may have taken place but cannot conclusively be proven, and (c) acts that have not taken place. Based on this forensic linguistic analysis, the only act related to the actual recording of the confession for which there is convincing evidence that it took place is that the suspect and the two police officers signed the confession, whether at the same time or at different times. All of the other acts described in the confession may not have happened at all, such as: the suspect being given time to think further before giving his confession, and the suspect saying, 'The officer who is recording my statement explained to me that now the time is 16:00 hours'. Moreover, the following two acts described in the confession are empirical impossibilities: (a) reading the complete confession in Sinhalese and then translating it into Tamil between 18:00 and 18:15 hours, and (b) correcting all the typographical errors between 18:15 and 18:20 hours.

Based on these findings, I have arrived at the interim conclusions that the recording of Nallaratnam's confession did not take place as described in the confession. The content and structure of the narratives of Nallaratnam's confession do not represent a genuine statement. It is my opinion that the confession was authored by the police officer/s, incorporating certain information such as Nallaratnam's address, and certain details about his village and family, into what is essentially a list of crimes committed by the Tamil Tigers. Based on this analysis, there is no solid linguistic evidence to prove that the act of Nallaratnam coming forward to confess voluntarily or the act of two police officers recording the confession and explaining its content to Nallaratnam took place in reality. Rather, the analysis of linguistic evidence demonstrates that Nallaratnam never confessed as described in this statement, and that therefore his confession is fabricated.⁶² The theoretical grounds for this conclusion can be summarised by stating that the narratives contain: (a) illogical syntactical structures and a style that could not have been constructed by the suspect; (b) spatial and time disparities – that is, certain events that supposedly occurred

⁶² Linguists claim that it is possible for an adult witness with good cognitive and verbal abilities, creativity and general knowledge to fabricate a detailed report with rich contextual embedding and complications. See Kohnken, G 2004, 'Statement validity analysis and the "detection of the truth"', in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK, p. 52.

could not have occurred in the time stated in the confession; (c) the repetition of highly similar or identical phrases, which it seems implausible would be repeated by an average person giving a confession; (d) unusual and sometimes improbable remarks that it is very unlikely would have been uttered by the suspect; (e) the absence of demonstrated criminal knowledge of the suspect; and (f) empirical impossibilities.

Deconstruction and criteria-based analysis of the secondary confession

Deconstruction of the text of the secondary confession

(a) Who is the author?

At the time that the confession was recorded, the suspect Sellapulle was a 19-year-old toddy tapper from a village in the Eastern province. His ethnicity was Tamil and he spoke only the Tamil language. He could not read or write in any language. The co-author of this confession is Police Superintendent H.M.D. Herath, who was supported by the typist/interpreter Police Constable Hasim. Herath is attached to the Colombo Criminal Investigation Department but had travelled to Batticaloa, as he mentioned in Nallaratnam's confession. According to the first statement, Constable Hasim had interrogated the suspect before the confession was recorded. Lance Corporal Ranasingha, who was working for the Military Police, was remotely involved in the recording of the confession by producing the suspect to the Police Superintendent.

(b) When was the confession authored?

Sellapulle was arrested on 23 September 1993, about three months prior to the confession being recorded on 13 December 1993. The initial notes of the confession begin at 13:50 hours. The Police Superintendent certified the confession at around 16:15 hours. The total time spent recording the confession, including the time given to the suspect to further consider his decision to confess, was approximately 155 minutes.

(c) Where was the confession authored?

The confession was recorded at an office of the Criminal Investigation Department Unit located inside Batticaloa prison. The suspect was in detention under the supervision of the Military Police. The details of the room in which the confession was recorded were not provided.

(d) How was the confession authored?

The confession was typed using a Sinhalese typewriter. The initial introduction was dictated by the Police Superintendent. The conversation between the suspect and the Police Superintendent was interpreted by the interpreter/typist, and then dictated by the Police Superintendent to be typed by the interpreter/typist. The actual confession or the free confessionary

narrative of the suspect was translated into the Sinhalese language by the interpreter/typist before being typed. There was no mention of whether the Police Superintendent paraphrased the free narratives within the confession. Once the suspect had finished providing the free narratives, the document was removed from the typewriter and the contents of what had been typed was read to the suspect in the Tamil language. It is uncertain whether the last page of the confession was removed for certification and signing by the Superintendent prior to the interpreter/typist's certification.

(e) *What was confessed by the author?*

The offences admitted by the suspect included being a member of the LTTE, receiving military training, attacking the Jaffna Fort army camp and Wali Oya army camps, attacking Eravur police station and assassinating eight police officers in June 1990, attacking army convoys in the Manmunathurei, Kiyankeni and Vadamunai areas, assassinating army soldiers and seizing their weapons, and not providing information about these terrorist activities to the government security forces.

The confession was typed on four 'legal size' pages, numbered 890740–890743, which include the Criminal Investigation Department letterhead, printed in Sinhalese. It contains approximately 1709 words. As the suspect was unable to sign the document, he placed his thumb print after his certification at the end of the section detailing his free narrative on a rectangular space of 3 x 6 cm at the bottom of the third page. The interpreter/typist signed the document three times: at the top right-hand side of the first page and the fourth page, and then at the end of the statement. The signature of the Police Superintendent appears only once, after his certification.

The introduction of the confession (recorded when the suspect was initially produced before the Superintendent) contains 68 words. Twenty minutes were spent on recording this introduction, including the time given to the suspect to further consider his decision. The text describing the preparation for the confession (recorded after the suspect's 'thinking time') was dictated by the Police Superintendent and amounted to 292 words. The free narratives

include 1209 words. Approximately 110 minutes were spent on recording all the narratives, which totalled 1509 words. Although theoretically the typist maintained a speed of approximately 14 words per minute, in reality the typist would have needed to be at least twice as fast because each sentence the suspect uttered in Tamil had to be interpreted (i.e. spoken out loud, so that the Superintendent was aware of what was being typed) before being typed. The post-confessionary certification at the end of the confession includes 140 words and the time at which the last word was typed was not provided.

Criteria-based analysis of the secondary confession

(a) General characteristics:

The structure of the confession appears to flow logically, from a clear beginning that includes an introduction, to free confessionary narratives in the middle of the confession, and certification at the end. All three participants involved in co-authoring the confession signed the confession; hence, their involvement has been established. The confession was typed onto the letterhead of the Criminal Investigation Department and each page of the statement includes a sequential page number, so that the iconicity of the document is evidenced to a certain degree. However, the existence of the signatures of the three participants involved in recording the confession does not necessarily prove that all three were present at the same time. The document could have been typed to allow for spaces for the signatures which could have been obtained on another occasion or even three separate occasions.

The three key parts of the confession (the pre-confessionary introduction including the caution, the free confessionary narrative, and the post-confessionary certification) seem heavily weighted towards adducing incriminating facts. As was the case with the primary confession, Sellapulle's confession only included incriminating materials, and no additional content that one would reasonably expect a person to utter in the course of a spontaneous conversation. Based on the evidence of the suspect's educational and social background, it is implausible that he could have structured his free narratives according to such a logical sequence, which includes a rather formal introduction, followed by an intricately summarised criminal history. As in the analysis of the primary confession, one explanation for this could be that the police officers posed questions to extract specific answers from the suspect, and

then removed these questions from the text. However, if this did occur, the recording of the confession would have required more time (to pose questions and to translate them from Sinhalese into Tamil) than the police officers claimed was spent. In addition, there are gaps in the suspect's story concerning important events in his life: for example, how he met his wife after leaving the Tamil Tigers.

(b) Specific content:

Similar to the primary confession, the secondary confession also includes irregularities concerning the time spent on certain activities. The Police Superintendent met the suspect at 13:50 hours and discussed whether the suspect wanted to give a confession. The Superintendent then gave the suspect time to think further about his decision to confess. At 14:10 hours the Superintendent started recording the confession. It is my opinion that this 20-minute period would not have been adequate for all these events to take place. According to the scenario outlined in the confession, within the 20 minutes between 13:50 and 14:10 hours, the following tasks were completed: the interpreter was summoned, the typewriter was organised, the suspect spoke, the interpreter interpreted, the Superintendent paraphrased the answers and 68 words were typed.

The suspect allegedly said, 'I have no objections in recording my statement in the Sinhalese language because my statement is explained in Sinhalese'. This statement could only have come into existence under two scenarios. One scenario is that the police officer stated that he was recording the confession in Sinhalese and asked whether the suspect had any objections, and Sellapulle's negative answer was then paraphrased. The second scenario or explanation is that this is a fabricated sentence as there is no reason for the suspect to utter such a statement. The suspect reportedly said, 'My statement was read in Sinhalese and explained to me in Tamil' some time between 16:00 and 16:15 hours. Approximately five out of these 15 minutes might have been spent on: (a) typing the 57 additional words ('My statement was read in Sinhalese ... I correctly and honestly recorded the statement of above-named Sellapulle Mahendran'); (b) removing the document from the typewriter to place the suspect's thumb print on every page; and (c) reinserting the document into the typewriter to continue the typing. In my opinion, the interpreter/typist could not have read the whole confession (including the introduction that the Police Superintendent started to dictate at 13:50 hours) between 16:00 and 16:15. Within the 10 minutes

(less the five minutes required to type the 57 words, obtain the thumb print and insert/remove the document), the typist/interpreter could have read only the suspect's free narratives (1209 words) starting with the sentence, 'Says as follow'. The 10 minutes spent by the typist/interpreter on reading the content of the confession to the suspect would only have been adequate if the statement were uttered at a speed of 120 words per minute, which appears to be an achievable speed of speech albeit requiring certain compromises to the clarity of speech. (It is worth noting that this is a higher speech rate compared to the 100–110 Sinhalese words per minute discussed in the analysis of the primary confession). However, the crucial issue here for both confessions is that the suspect says, 'My statement was read in Sinhalese and explained to me in Tamil'. This proposition presents an impossible scenario: 1209 words could not possibly have been read out loud in Sinhalese and interpreted into Tamil with sufficient clarity within 10 minutes. In other words, the interpreter/typist would not have had enough time to both read out loud the Sinhalese narratives and interpret them into Tamil.

Similar to the primary confession, there is a significant discrepancy in relation to the involvement of the interpreter/typist. The Police Superintendent mentions the interpreter for the first time only after approximately 280 words have already been typed: 'I have received the assistance of Police Constable 15596 Hasim in order to interpret the suspect's Tamil statement to Sinhalese...'. Because of this irregularity, it is not clear how the crucial part of the conversation between the suspect and the Superintendent was communicated without an interpreter. It is also unclear how the early part of the confession was typed without a typist.

(c) Peculiarities of content:

The peculiar information presented about the life of the suspect appears somewhat convincing because plausible, logical connections between events in the story explain these peculiarities. For example, the suspect described a time when he was sick and received medical treatment in hospital, and later was punished for wanting to leave the Tamil Tiger movement. Such distinct pieces of information paint a more convincing picture of an ordinary person with strengths and weaknesses, and of the ups and downs of life. Distinguishing information about the names of local Tiger leaders, the names of certain army camps, and the timelines described in Sellapulle's confession appears to be accurate, or at least to not necessarily contradict the existing

evidence. For example, the admissions in his confession are consistent with the June 1990 incident in which the Tamil Tigers rounded up police stations in the eastern province, taking police officers hostage and later executing them. Sellapulle's account of the Tamil Tigers's regional leader Karuna, alias Amman, appearing at Thoppigala camp is also a likely scenario and similar events have been documented in news archives and military reports.⁶³ However, as discussed in the analysis of the primary confession, one could argue that the police officers may have gained knowledge of the names of the LTTE provincial leaders and of army camps through their intelligence services, and included this information themselves into the confession.

Sellapulle's confession also includes a number of linguistic features that strongly demonstrate that his confession does not present an accurate account of events. The suspect supposedly said, 'I am the person who has been described above', which seems a rather unusual and implausible remark in this context. The only explanation for the inclusion of this remark is that the narrative was authored by someone familiar with the formalised writing style common to police statements. The suspect allegedly said, 'I have given a statement about three weeks ago at this office. In that statement, I have included information about my family members'. Here, the use of the word 'included' also suggests that this sentence was written by a police officer. Not only does this insertion abruptly deviate from the natural flow of the narratives, but it also provides no logical reason for the suspect having 'included' family details in his previous statement. The suspect allegedly said, 'I am in a good physical and mental condition in order to give a confession'. One explanation for this statement appearing is that it was an affirmative answer to a question posed by the police officer, such as: 'Are you in a good physical and mental condition in order to give a confession?' The other explanation is that this is a poorly fabricated confession in which the author wanted to fulfil all of the legal requirements of an admissible confession. At the end of the free confessional narrative, Sellapulle says: 'The officer who is recording my statement explained to me that now the time is 16.00 hours'. This remark is identical (except for the time) to one found in the primary confession, and that the suspect would have repeated the police officer's statement about the time is (again) implausible. Further, it is highly improbable that the

⁶³ Sri Lanka's Ministry of Defence, viewed on 27 March 2010, <www.defence.lk>

average person would speak in terms of 24-hour time (e.g. 18:00 hours instead of 6 pm).

Similar to the primary confession, the suspect is reported to have said, 'I was informed that the statement I am giving is recorded by this gentleman under the powers he has been given by the Prevention of Terrorism Act and the Emergency Regulations. I was explained that my confession given according to the above sections could be submitted against me as evidence in a court hearing and I should not be giving my statement due to any threat, inducement or promise'. It is simply not credible that these long sentences, constructed in the passive voice, would have been uttered by the suspect, who is unable to read or write. Furthermore, it is also unlikely that the suspect could name the counter-terrorism legislation with such accuracy, without prompting or influence. The suspect purportedly said, 'I was explained the charges against me, which are as a member of LTTE receiving military training at a camp, receiving military technique training and arms training, attacking the Jaffna Fort's army camp and Wali Oya army camp, attacking Eravur police station and assassinating eight police officers in June 1990, attacking army convoys at Manmunathurei, Kiyankeni and Vadamunai Areas, assassinating army soldiers and seizing their weapons and not providing information about such terrorists to the government military forces'. These sophisticated sentence constructions appear to be repetitions of the utterances of the Superintendent, which could only be explained by the fact that these narratives were in fact direct reproductions of the words of the police officer.

Similar to the primary confession, Sellapulle's confession includes several instances of repeated phrases or legal jargon. The long list of charges against the suspect was repeated three times in almost identical order: 'receiving training as a member of LTTE and attacking the army camps of Jaffna Fort and Elephant Pass, attacking officers of Eravur police station, killing eight officers and seizing their weapons, laying an ambush at the sixth post of Colombo Batticaloa road, attacking army officers and killing them, and attacking the army at Manmunai, Kalladi, Vadamunai'. First the Police Superintendent states, 'I have explained the charges'; next the suspect says, 'I was explained the charges'; and finally the suspect says, 'I admit the guilt for the charges'. Further, the phrase 'threat, inducement or promise' is first uttered by the Police Superintendent and then repeated in the same order later by the

suspect. These unusual patterns of repetition could only reasonably be explained as elements of a poorly fabricated statement.

Sellapulle's confession does not include any unique sensory detail. When the average person provides such a statement, the narrative resembles a process of playing back the memory of a particular incident by recounting sensory details rather than providing an impersonal, factual account in a logical order.⁶⁴ Such a formalised, fact-based account suggests the narrative style commonly used by the police or legal practitioners, rather than the confession of a layperson admitting his/her guilt.

Next to the birth date of the suspect on the confession appears a handwritten note saying, 'unknown'. Although it is easy to understand why an uneducated man from a lower socioeconomic background was not aware of the date of his birthday, no reason is given to explain why a handwritten note was inserted here (this note could have simply been typed, like the rest of the text). One explanation is that the confession was pre-typed, away from the suspect, so the typist (who was unaware of the suspect's birth date) had to leave a gap that was later filled in by someone who had no access to a typewriter.

(d) Motivation-related content:

The profile of Sellapulle is almost identical to that of Nallaratnam provided in the primary confession, and the issues raised in relation to the suspect's motivation or desire to confess were very similar in both cases. It appears that the suspect lived in an area frequently visited by the Tamil Tigers and there could have been many motivations for the suspect wanting to join the Tigers and engage in war against the government troops. Similar to Nallaratnam, Sellapulle lost his motivation and left the Tamil Tigers. It is possible that he repented in relation to his involvement with the Tigers because of the punishment he had to endure when trying to leave the organisation. The suspect's self-deprecation is presented as follows: 'Accordingly I admit guilt ... [the list of offences] I took part in all these activities in my own will'. However, similar to the primary confession, the narratives of Sellapulle's confession

⁶⁴ See Adams, SH and Jarvis, JP 2006, 'Indicators of veracity and deception: an analysis of written statements made to police', *Forensic Linguistics*, vol. 13, no. 1, p. 7. Also see Cortazzi, M 1993, *Narrative Analysis*, The Falmer Press, UK, pp. 25-7, 45-7.

do not reflect remorse or any other motivation that could have led him to want to make a self-incriminating statement.

(e) Offence-specific elements:

Some of offence-specific elements within Sellapulle's confession provide a convincing account. In the confessional narratives, the suspect demonstrated his knowledge of weapons and military strategies by categorically describing them. The Tiger leaders that the suspect had met included Karuna Amman, who became a key figure later when he broke away from the LTTE. The suspect's account of the assaults in which he claimed to have taken part and the timing of these assaults is confirmed by the reports in the media and the military. The massacre of police officers at Eravur police station in June 1990 and the siege of Jaffna Fort army base are both common knowledge and can be corroborated by media reports. University Teachers for Human Rights reported that the Chavakachcheri hospital, where Sellapulle supposedly received treatment, has indeed been used by the LTTE to treat their wounded members.⁶⁵ The suspect also stated that he could take the authorities to the location where the bodies of the police officers were buried, thus revealing a certain degree of specific knowledge of the crime. However, it should be noted that because this is a publicly known event (the execution of police officers), the suspect's reported exclusive knowledge of the burial site could only be established by exhuming the bodies, which never happened according to the confession.

It should be noted that none of the information revealed in Sellapulle's confession was known to him exclusively. Most of the offences described are associated with well-reported assaults launched by the Tamil Tigers, and have thus become common knowledge among Sri Lankans, including no doubt the police officers involved in the recording of Sellapulle's confession. The police officers could have incorporated their knowledge of these crimes into the fabricated confession. One piece of information regarding the assaults launched by the Tigers appears to be incorrect. The suspect apparently said that the attack on Jaffna fort lasted for a month, but according to news reports the siege lasted for more than three months.⁶⁶ As was the case with the primary confession, Sellapulle did not reveal any knowledge that was exclusively known to him.

⁶⁵ UTHR, viewed 27 March 2010, <www.uthr.org/bulletins/bul8.htm>

⁶⁶ Lakdiva, viewed 14 October 2009, <<http://lakdiva.org/coins/ltte/>>

Interim conclusions on the secondary confession

The forensic linguistic analysis of the primary and secondary confessions leads to identical findings. My interim conclusion is that this confession was not a result of the chain of events described in the confession. Based on this analysis, it is my opinion that the recording of Sellapulle's confession did not take place as described in his statement and that Sellapulle's confession was either fully or partly fabricated. At least one of the events outlined in the confession could be described as an empirical impossibility: the interpreter reading the confession out loud in Sinhalese and reading the content in Tamil to the suspect in the time alleged.

Comparison of primary and secondary confessions

Comparison of confessions

The last step in this exercise is to compare the primary confession with the secondary confession. In this part of the forensic linguistic analysis, I will examine the similarities and differences among the three parts (pre-confessionary introduction, free confessionary narratives and post-confessionary certification) of the two confessions. Although duplication of some of the generic information such as the cautions is to be expected, any other similarities in the wording, order and style of these narratives can be understood as supporting the interim conclusions. The rationale for this comparison is to examine whether each confession is unique and whether its narratives have iconic significance, in light of the fact that the iconicity of a piece of evidence can be damaged by the duplication of material. When iconicity is damaged, the credibility of a material of evidence ‘falls apart’; thus, evidence becomes ‘infidel’ and ‘imperfect’.⁶⁷ Therefore, the duplication of peculiar or idiosyncratic elements of a text, in particular within the free confessionary narratives, strongly suggests deception.

The first row of the table below provides a summarised comparison of the two confessions, which is followed by a detailed comparison of the: (a) pre-confessionary introductions, (b) free confessionary narratives, and (c) post-confessionary certifications. The text that is identical in the two confessions appears in regular font while the text that is *not* identical is underlined – thus, the regular text in the following narratives is identical verbatim repetitions of each other. In the second and fourth rows of the table, the amount of regular text is greater than the amount of underlined text, meaning that there are more similarities than differences between these parts of the confessions.

⁶⁷ Scott, WT 1988, ‘In search of the truly fake, aspects of iconicity and deceit’ in R Kevelson (ed), *Law and Semiotics*, vol. 2, Plenum Press, New York, pp. 311–2.

(1) Summary	
<p>Primary confession (Nallarattnam)</p> <p>Date: 11/12/93</p> <p>Page Numbers: 857690–857693</p> <p>Total number of words in the text: 1645</p> <p>Total time spent recording the confession: approximately 130 minutes</p> <p>Word/time breakdown: The introduction dictated by the Police Superintendent comprises 72 words which were recorded over a period of 15 minutes, including the time provided for the suspect to further consider his decision to confess. The narratives dictated by the Superintendent when the suspect was produced for the second time include 271 words, and the suspect’s own words add up to 1174; 100 minutes were spent on recording these two parts. The certification includes 128 words.</p>	<p>Secondary confession (Sellapulle)</p> <p>Date: 13/12/93</p> <p>Page Numbers: 890740–890743</p> <p>Total number of words in the text: 1709</p> <p>Total time spent recording the confession: approximately 155 minutes</p> <p>Word/time breakdown: The introduction dictated by the Superintendent includes 68 words recorded over a period of 20 minutes, which also includes the time provided for the suspect to further consider his decision to confess. When the suspect was produced before the police officer for the second time, the Superintendent dictated 292 words describing the situation, and then the suspect uttered 1209 words; 110 minutes were spent on recording these two segments. The certification includes 140 words.</p>
(2) Pre-confessionary introduction dictated by the Police Superintendent	
<p><u>11.12.1993</u> day, <u>16.20</u> hours at Criminal Investigation Department Unit of Batticaloa prison. On my advice, <u>Nalarattnam Singarasa</u>, who is being detained under a detention order <u>IS/86/2/N/D/1146</u> has been produced before me. <u>He says that he wants to give a confession voluntarily.</u> At this moment, I have advised the suspect to think</p>	<p><u>13. 12. 1993</u> day, <u>13.50</u> hours at Criminal Investigation Department Unit of Batticaloa prison. On my advice, <u>Sellapulle Mahendran</u>, who is being detained under a detention order, has been produced before me <u>by Lance Corporal Ranasingha who works for the Military Police.</u> <u>This suspect volunteered to give a confession.</u> At this moment, I</p>

further about this [giving a confession]. [I am] giving time and space for this. Now the time is 16.35. The suspect informed me that he is prepared to give a confession to me voluntarily. I have informed him that I am recording his confession under the section 16 of Prevention of Terrorism Temporary Provision Act and the section 50 of Emergency Regulations and I am recording the statement under the powers given to me by the above sections. I have explained to the suspect that the statement given by him could be used as evidence in a court case under the above-mentioned sections. Further I have explained the charges against him such as receiving military training after becoming an LTTE member, attacking Jaffna Fort, Elephant Pass army camp, Palali army camp, Kankasanthurei security post and attacking an army patrol in Arantalawa. Further, I have informed [him] not to give his confession due to any threat, inducement or promise. The suspect informed me that he cannot understand the Sinhalese language and he has no objections for recording his statement in the Sinhalese language. It appears that the suspect is in good health condition to make a statement. The Tamil statement of the suspect is interpreted to Sinhalese and the statement recorded in Sinhalese is

have advised the suspect to think further about this [giving a confession]. [I am] giving time and space for this. Now the time is 14.10. The suspect informed me that he is prepared to give a confession to me voluntarily. I have informed him that I am recording his statement according to the powers given to me by the section 16 of the Prevention of Terrorism Temporary Provisions Act and the section 50 of the Emergency Regulations, and I have explained that the confession given by him could be used as evidence in a court case under the above-mentioned sections. I have explained the charges against him such as receiving military training at an LTTE camp, attacking the Wali Oya army camp, attacking the Eravur police station and assassinating 08 police officers, attacking army convoys at Manmunathurei, Kiyankeni and Vadamunai areas and seizing their weapons and not providing information about such terrorist activities to the government security forces. I have explained to the suspect that the confession given by the suspect should not be given due to any threat, inducement or promise. The suspect informed me that he cannot understand the Sinhalese language but he has no objections for recording his statement in the Sinhalese language. It appears that

<p><u>interpreted</u> to Tamil by Constable 15596 Hasim. According to my advice the statement is typed by Hasim in the Sinhalese language. I have unfolded my service identity card and explained to him that I am Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation Department. Now I am starting to record the suspect's statement.</p> <p>Full Name: <u>Nallaratnam Singarasa</u> Age: <u>20</u> Date of Birth: <u>1973.05.06</u> Ethnicity and Religion: Tamil Hindu Occupation: <u>Labourer</u> Residence: <u>Karavadi, Navakadu, Batticaloa</u></p> <p>Says as follows:</p>	<p>the suspect is in a good health condition to make a statement. I have unfolded my service identity card and explained to him that I am Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation Department. <u>I have received assistance of Police Constable 15596 Hasim in order to</u> interpret the suspect's Tamil statement to Sinhalese and in order to interpret the statement recorded in Sinhalese to Tamil. According to my advice the statement is typed by Hasim in the Sinhalese language. Now I am starting to record the suspect's statement.</p> <p>Full Name: <u>Sellapulle Mahendran</u> Age: <u>19 years</u> Date of Birth: [he] <u>says it is unknown</u> [underlined text is handwritten] Ethnicity and Religion: Tamil Hindu Occupation: <u>Toddy tapping</u> Residence: <u>Becas Road, Vandaramullai</u></p> <p>Says as follows:</p>
<p>(3) The suspects' free-style narratives</p>	
<p>I am the person who has been described above. The officer who is recording my confession unfolded his service identity card and informed me that he is Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation</p>	<p>I am the person who has been described above. The officer who is recording my confession unfolded his service identity card and informed me that he is Police Superintendent H.M.D. Herath from the Colombo Criminal Investigation</p>

<p>Department. I recognised this gentleman. <u>Also</u> I was explained that the statement I am giving is recorded by this gentleman under the powers he has been given by the Prevention of Terrorism Act and the Emergency Regulations. I was explained that my statement given according to the above sections could be submitted against me as evidence in a court hearing. <u>I was informed that</u> I should not be giving my statement due to any threat, inducement or promise. <u>Because I can't understand the Sinhalese language</u>, I have no objections in recording my statement in the Sinhalese language because my statement is explained in Sinhalese. I was explained the charges against me, which are <u>receiving military training after becoming an LTTE member, attacking Jaffna, Elephant Pass army camp, Palali army camp, Kankasanthurei security post and attacking an army patrol in Arantalawa.</u> [I am] in good physical and mental conditions in order to give a <u>statement...</u></p>	<p>Department. <u>Because of this</u> I recognised this gentleman <u>very well</u>. I was informed that the statement I am giving is recorded by this gentleman under the powers he has been given by the Prevention of Terrorism Act and the Emergency Regulations. I was explained that my confession given according to the above sections could be submitted against me as evidence in a court hearing <u>and</u> I should not be giving my statement due to any threat, inducement or promise. I have no objections in recording my statement in the Sinhalese language. I was explained the charges against me, which are <u>as a member of the LTTE receiving military training at a camp, receiving military technique training and arms training, attacking the Jaffna Fort's army camp and Wali Oya army camp, attacking Eravur police station and assassinating eight police officers in June 1990, attacking army convoys at Manmunathurei, Kiyankeni and Vadamunai areas, assassinating army soldiers and seizing their weapons and not providing information about such terrorists to the government military forces.</u> I am in a good physical and mental condition in order to give a <u>confession...</u></p>
<p>Nallarathnam begins talking about his family, occupation and becoming an LTTE member. Sellapulle also begins by providing information on his education,</p>	

occupation and the circumstances in which he became an LTTE member. Then both suspects mention the names of the LTTE leaders under whom they had served and that they had been trained with other ‘young men’.

Nallarattnam says, ‘Later the group of 200 were given the physical training at this camp and also training on AK 47, SLRG, LMG, SMG *and* hand grenades....’.

Sellapulle says, ‘First I received physical training and then training in arms and battle tactics. There, I also received training in using SLR, SMG, G3, M70 weapons *and* [italicised in order to highlight] hand grenades’.

Not only are the weapons listed in a similar order and style, but also the use of the word ‘and’ is the same in both accounts. Upon completion of their training, both suspects were informed of their nicknames. Both statements then describe the suspects falling ill: Sellapulle from bronchitis and Nallarattnam from typhoid. They both then seek to escape the organisation, for which they are punished, and both suspects later resign from the movement.

Both Sellapulle and Nallarattnam describe their crimes in a similar manner and chronological order, listing the town’s name, the camp’s name, the leader’s name, the target’s name and then describing the damage caused to the target.

Nallarattnam says, ‘While I was living like this, on 1993.07.16 when I was working in the paddy field the army rounded up our village and searched [and] I was identified by an army agent...’.

Sellapulle says, ‘While I was living like this, on 23 September 1993 I was arrested in an operation launched by the army and brought to here where I am now’.

Before concluding their confessions, they both state, ‘I admit guilt [or charges] for the offences...’.

(4) Post-confessionary certification

That is all what I have to say. The officer who is recording my statement has explained to me that now the time is 18.00 hours. My statement was read in

That is all what [I] have to say. The officer who is recording my statement explained to me that now the time is 16.00 hours. My statement was read in

<p>Sinhalese and explained to me in Tamil. <u>Now the time is 18.15.</u> I have placed my left thumb impression certifying all the pages of my <u>above statement and I was well explained about the places where mistakes were corrected. [I] admit the statement was correctly recorded.</u> <u>Admitted and placed the left thumb impression certifying [the statement].</u> I, Police Superintendent H.M.D. Herath, do hereby certify that I have correctly and honestly recorded the statement of above-named <u>Nallaratanam Singarasa.</u> Now the time is <u>18:20</u> hours. Now I am duly handing over the suspect <u>Nallaratanam Singarasa</u> to Lance Corporal <u>Vijekoon</u> of the Military Police to be detained where he [Nallaratanam] had been detained earlier. [<i>Signed illegibly dated 93-12-11</i>]</p> <p>I, Police Constable 15596 Hasim, do hereby certify that I have duly typed the statement of above-named <u>Nallaratanam Singarasa</u> and translated from Sinhalese to Tamil according to the advice of Police Superintendent H. M. D. Herath [<i>Signed illegibly dated 11/12/93</i>].</p>	<p>Sinhalese and explained to me in Tamil. <u>[I] admit the statement was correctly recorded.</u> I have placed my left thumb impression certifying all the pages of my statement. I, Police Superintendent H.M.D. Herath, do hereby certify that I correctly and honestly recorded the statement of above-named <u>Sellapulle Mahendran.</u> Now the time is <u>16.15</u> hours. Now I am duly handing over the suspect <u>Sellapulle Mahendran alias Sujee</u> to Lance Corporal <u>Ranasingha</u> of the Military Police to be detained where he [Sellapulle] had been detained earlier. [<i>Signed illegibly dated 93-12-13</i>]</p> <p>I, Police Constable 15596 Hasim, do hereby certify that I duly typed the statement of above-named <u>Sellapulle Mahendran</u> and translated from Sinhalese to Tamil according to the advice of Police Superintendent H. M. D. Herath. [<i>Signed illegibly dated 13/12/93</i>]</p>
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There are striking similarities in the length, content, structure and style of these two confessions. Both confessions were recorded by the same police officers, both suspects were held in the Criminal Investigation Department Unit of Batticaloa prison, and on both occasions the suspects were produced before the police officers by the Military Police. As evident from this comparison, almost the entire pre-confessionary introduction and post-confessionary certification of the primary confession are replicated in the secondary confession. Further, the first part of the

free confessional narrative of Nallarathnam's confession is repeated in Sellapulle's confession: 'I am the person who has been described above ... I was explained that my confession given according to the above sections could be submitted against me as evidence in a court hearing against me'. Distinctions between the two confessions appear only in the supposedly free-style narratives in which the suspects discuss their family background and connections to the Tamil Tigers, and describe receiving training and taking part in attacks. Even within these sections, certain sentences or sentence fragments are repeated in the two confessions; for example, both suspects reportedly said, 'I am in a good physical and mental condition...'. Most importantly, there are several repeated accounts that can only be seen as empirical impossibilities, as the likelihood of them occurring in the case of *both* suspects is extremely low. Examples of such repeated statements include: 'I am the person who has been described above', and 'The officer who is recording my statement has explained to me that now the time is...'

It is clear that the extent of similarities between the two confessions is too great to be dismissed as accidental, random or the result of the use of standardised text within a template. According to Coulthard, the police submit evidential narratives with 'textual similarities' to create a 'persuasive effect' on the court by 'textual reinforcing' to establish the 'credibility' of texts.⁶⁸ He adds, 'the same phenomenon would have just the opposite effect' on linguists who are very conscious of the uniqueness of a genuine utterance and would consequently be highly suspicious of such similarities. According to this comparative analysis, neither the primary confession nor the secondary confession carries the value of iconicity or uniqueness.

Final conclusions

The analysis of these two confessions involved a detailed process of comparison of all elements of these texts. The verbatim repetition identified between the two confessions strengthens my previous interim conclusions that both Nallarathnam's and Sellapulle's confessions were fabricated by the police. In my view, this analysis demonstrates that the most likely scenario to explain the existence of these two confessions is that the police officers incorporated the existing personal details of the

⁶⁸ Coulthard, M 2002, 'Whose voice is it? Invented and concealed dialogue in written records of verbal evidence produced by the police' in J Cotterill (ed), *Language in the Legal Process*, Palgrave Macmillan, New York, pp. 25–6.

suspects into a confession template, and fabricated the remaining content by seeking to represent the profile of a 'terrorist', complemented by their (the officers') knowledge of the terrorist activities of the Tamil Tigers. Once the confession was fabricated, the suspects may have been forced to sign it, which they could neither read nor understand.

While this forensic linguistic analysis was narrowly focused on the linguistic irregularities of the confessions of Nallarattam and Sellapulle, arguably the findings will have broader implications for similar confessions recorded under the counter-terrorism laws in Sri Lanka. It should be noted that the similarities between the two confessions were discovered accidentally during my doctoral research. According to the findings of my doctoral study, when Tamil Tiger suspects were prosecuted based on confessionary evidence, the most common defence put forward by suspects was that they had not given any voluntary or involuntary confession at all, and that the confession was a complete fabrication, written in order to deceive the court and secure a conviction. However, in these cases, the defence lawyers did not seek to adduce evidence to prove that the narratives were deceptive, but instead submitted evidence to establish that the act of recording the confession did not take place at all. They proved this by finding contradictions between the testimonies of the prosecution's witnesses or proving that the suspect was subjected to torture by submitting medical evidence of such. This approach only assisted the court to reach a verdict on whether the written incriminatory narratives were voluntary or involuntary. Thus, the question of whether the narratives were *deceptive* or *truthful* remained unanswered in all of these cases. As a result, while the court refrained from making a ruling on whether any particular witnesses had lied, it did not determine whether the prosecution's witnesses ought to be punished for giving false evidence. Forensic linguistic analysis similar to that presented in this document could be useful in answering these questions on whether the police officers who were engaged in routinely arresting and prosecuting Tamil Tiger suspects in fact did fabricate confessionary statements in more systemic ways.

Bibliography

- Adams, SH and Javis, JP 2006, 'Indicators of veracity and deception: an analysis of written statement made to police', *Forensic Linguistics*, vol. 13, no. 1.
- Alles, AC 1979, *Insurgency – 1971*, Trade Exchange Ceylon, Sri Lanka.
- Bastiampillai, B, Edirisinghe, R, Kandasamy, N (eds), *Prevention of Terrorism Act: A Critical Analysis*, CHRD, Sri Lanka.
- Bronitt, S 2005, 'Law enforcement immunities' in S Corcoran and S Bottomley (eds), *Interpreting Statutes*, Federation Press, Australia.
- Chandrasekaram, V 2016, *The use of confessionary evidence under the counter-terrorism laws of Sri Lanka; An interdisciplinary study*, Amsterdam University Press, Amsterdam.
- Cortazzi, M 1993, *Narrative Analysis*, The Falmer Press, UK.
- Coulthard, M 2002, 'Whose voice is it? Invented and concealed dialogue in written records of verbal evidence produced by the police' in J Cotterill (ed), *Language in the Legal Process*, Palgrave Macmillan, New York.
- DePaulo, BM & Morris, WL 2004, 'Discerning lies from truth: behavioural cues to deception and the indirect pathway of intuition' in PA Granhag and LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, Cambridge.
- Dixon, D & Travis, G 2007, *Interrogating Images: Audio-visually Recorded Police Questioning of Suspects*, Sydney Institute of Criminology, Australia.
- Ellen, D 1989, *The Scientific Examination of Documents: Methods and Techniques*, Ellis Horwood Ltd, UK.
- Fernando, B & Puvimanasinghe, S 2005, *An X-ray of the Sri Lankan Policing System and Torture of the Poor*, Asian Human Rights Commission, Hong Kong.
- Gibbons, J 2003, *Forensic Linguistics: An Introduction to Language in the Justice System*, Blackwell USA.
- Gordon, NJ & Fleisher, WL 2002, *Effective Interviewing and Interrogating Techniques*, San Diego Academic Press, USA.
- Granhag, PA & Stromwall, LA 2004, 'Research on deception detection: past and present' in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK.
- Greer, S 1995, *Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland*, Clarendon Press, London; Lutz, BJ, Lutz JM, Ulmschneider, GW 2001, 'British trials of Irish nationalist defendants: The quality of justice strained' *Studies in Conflict and Terrorism*, vol. 25, no. 4.
- Gudjonsson, GH 2003, *The Psychology of Interrogations and Confessions: A Handbook*, John Wiley & Sons, UK.

Henkel, LA & Coffman, KJ 2004, 'Memory distortions in coerced false confessions: a source monitoring framework analysis', *Applied Cognitive Psychology*, vol. 18, no. 5.

Hill, MD 2003, 'Identifying the source of critical details in confessions', *Forensic Linguistics*, vol. 10, no. 1.

Inbau, FE, Reid, JE, Buckley, JP & Jayne, BC 2001, *Criminal Interrogations and Confessions*, 4th edn, MD Gaithersburg, Aspen, USA.

Jackson, BS 1998, *Law, Fact and Narrative Coherence*, Deborah Charles Publications, UK.

Kassin, S 2004, 'True or false: "I'd know a false confession if I saw one"' in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK.

Kohnken, G 2004, 'Statement validity analysis and the "detection of the truth"', in P Granhag, & LA Stromwall (eds), *The Detection of Deception*, Cambridge University Press, UK.

Kaufman, F 1979, *The Admissibility of Confessions*, The Carswell Company Ltd, Canada.

Lakdiva, <<http://lakdiva.org/coins/lte/>>

Manderson, D 2008, 'Another modest proposal: in defence of the prohibition of torture', in M Gani & P Mathew (eds), *Fresh Perspectives on the 'War on Terror'*, ANU Press, Australia.

McConville, M & Baldwin, J 1981, *Courts, Prosecution, and Conviction*, Clarendon Press, Oxford.

McConville, M, Sanders, A & Leng, R 1991, *The Case for the Prosecution*, Routledge, USA.

Scott, WT 1988, 'In search of the truly fake, aspects of iconicity and deceit' in R Kevelson (ed), *Law and Semiotics*, vol. 2, Plenum Press, New York.

Somasundaram, D 1998, *Scarred Minds: The Psychological Impact of War on Sri Lankan Tamils*, Vijitha Yapa, Sri Lanka.

Somasundaram, D 2011, 'Torture in Sri Lanka: a method of physical, psychological and socio-political terror' in B Bastiampillai, R Edirisinghe, N Kandasamy (eds), *Prevention of Terrorism Act: A Critical Analysis*, CHRD, Sri Lanka.

Sumanatilake, SP 2007, *Torture: A Sri Lankan Perspective*, Stamford, Sri Lanka.

Rose, P 2002, *Forensic Speaker Identification*, Taylor & Francis, London, p. 49 and Hilton, O 1993, *Scientific Examination of Questioned Documents*, CRS Press, USA, p. 8.

Sri Lanka's Ministry of Defence, <www.defence.lk>.

UTHR, <www.uthr.org/bulletins/bul8.htm>

Whittaker, DJ (ed) 2001, *The Terrorism Reader*, Routledge, London.

One Confession, Two Confessors

A forensic linguistic analysis of confessions submitted in the High Court cases of Nallaratnam Singarasa and Sellapulle Mahendran

Nallaratnam Singarasa, a 20-year-old Tamil man from Navakadu, Batticaloa, was indicted on four counts of counter-terrorism offences at the Colombo High Court and convicted in 1995 and sentenced to 40 years' rigorous imprisonment. Similarly, 19-year-old **Sellapulle Mahendran** from Vandaramullei, Batticaloa, was convicted around the same time. What is peculiar about these two cases is that both men were convicted based on confessionary evidence recorded by the same police officers. This document analyses the two alleged confessions using a methodology consisting of newly developed analytical tools and several existing tools used by scholars and practitioners in the discipline of forensic linguistics. This analysis finds that the confessions of Nallaratnam and Sellapulle were fabricated by the police officers. Further, the comparison of the two confessions reveals that a single template was used to fabricate them.



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