

False Confessions: Common Mis-Beliefs

- Interrogation is just a conversation between the police and the suspect
- False confessions are rare
- Innocent people will not confess to serious crimes
- People will only confess falsely if:
 - They are physically tortured
 - They are mentally ill
- False confessions rarely lead to convictions

How Do We Know That False Confessions Occur

- **INDIVIDUAL CASE STUDIES**
 - E.g., Peter Reilly, Central Park Jogger case, etc
- **DNA EXONERATIONS**
 - E.g, Innocence Project cases (44 as of 12/06)
- **COHORT STUDIES**
 - Bedau & Radelet 1987 Study (49 cases)
 - Leo and Ofshe 1998 Study (60 cases)
 - Drizin and Leo 2004 Study (125 cases)

Three Types of False Confession

- *Voluntary* False Confessions
- *Compliant* False Confessions
- *Persuaded* False Confessions

Compliant False Confessions

- *Compliant* false confessions = Person confesses to put an end to intolerable stress or to receive perceived reward or benefit
- *Compliant* False Confessions
 - Suspect made to feel hopeless & perceives confessing as only way to improve situation (e.g., receive help, avoid prosecution, minimize punishment, etc)
 - To stop interrogation, escape custody, go home
 - Failure to understand implications of confession

The Psychology of Interrogation

- Based on a Presumption of Guilt
- Goal: Move suspect from denial to admission; not necessarily to get the truth
- Specialized accusatorial interrogation techniques
- Two step process:
 - Convince suspect he is trapped, no way out
 - Convinced suspect that he is better off, or essentially has no choice but, to confess

Step 1: Shifting Suspect from Confident to Hopeless

- Accuse suspect (repeatedly) of committing crime
- Attack suspect's alibis, denials and assertions of innocence as:
 - Implausible ("no one's going to believe you")
 - Illogical ("that's not possible")
 - Inconsistent with established evidence
- Escalate pressure (e.g., "We're not here to Discuss whether you did it, but why")
- Confront suspect with (False) evidence
- Time pressure: Now or never

Step 2: Convince Suspect It Is In His Self-interest to Confess

- Through the use of inducements
- Scenarios (“themes”)
- Offers/Suggestions of Help
- Promises of leniency (implicit/explicit)
- Threats of harsher treatment (implicit/explicit)

Persuaded False Confessions

- *Persuaded* false confessions = Person confesses because they temporarily become convinced of their guilt, despite no memory of committing the crime

The Counter-Intuitive Logic of *Persuaded False Confessions*

- Interrogator attacks suspect's confidence in his memory
- Interrogator supplies amnesia-based explanation for alleged absence of memory
- Suspect becomes convinced it is more likely than not that he committed the crime
- Suspect confesses in tentative and hypothetical language
- Interrogator and suspect jointly construct narrative

False Confessions: At Risk Individuals

- Juveniles
- The Mentally Retarded/Cognitively Impaired
- The Mentally Ill
- People Who Are:
 - Highly Suggestible
 - Highly Compliant
 - Have Poor Memory
 - Have High Levels of Anxiety

Consequences of False Confessions

- Confessions are the most damning and persuasive evidence of guilt the State can bring against accused
- Usually leads to automatic presumption of guilt among police, prosecutors, defense attorneys, judges, juries and the public

Consequences of False Confessions: The System

POLICE: Close Case, Ignore Contradictory Evidence, Refuse to Admit Error	PROSECUTORS: Set Higher Bail, More and Higher Charges, Make Centerpiece of State's Case
DEFENSE ATTORNEYS: Presume Client's Guilt, Pressure Client to Plead Guilty	JURIES: More Likely to Convict, Even if Confession Was Coerced
JUDGES: Sentence Higher for Failure to Show Remorse	POST-CONVICTION: Law Almost Never Permits Appeals Based on Innocence

Drizin and Leo (2004) Study of 125 False Confessions

- 81% (30/37) False Confessors Who Went to Trial Were Convicted
- 14 Other False Confessors Took Plea Bargains (11% of Sample)
- Thus, 85% (44/51) of the False Confessors Whose Cases Were Not Dismissed Pre-trial Were Convicted

Findings Consistent with Other Types of Research

- Experimental Research Using Mock Jurors. Kassin and Sukel (1997) Found That Confessions Increased the Confession Rate Even When:
 - Confession Seen as Coerced
 - Confession Was Ruled Inadmissible
 - Jurors Claimed It Did not Affect Their Verdicts

Findings Consistent with Other Types of Research

- Survey Research: In a Recent Unpublished Survey (2003) of One-thousand Potential Jurors in the District of Columbia:
 - 68% Reported that they believed a Defendant Would Confess Falsely
 - 40% reported “Not Very Often”
 - 28% reported “Almost Never”

S.Ct. Justice William Brennan (1986) in *Colorado v. Connelly*

- “No other class of evidence is so profoundly prejudicial...Triers of fact accord confessions such heavy weight in their determinations that the introduction of a confession makes the other aspects of trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained.”

Why Confession Evidence Is So Highly Prejudicial

- False confessions are contrary to common sense; seen as irrational & self-destructive
- False confessions appear persuasive
- The State usually wins the “pre-admission” AND post-admission swearing contest

The Problem of Post-Admission Interrogation

- In theory, the detective's questioning should no longer be leading or suggestive
- In practice, however, detectives try to shape narrative of suspect's culpability
- Detective's goals:
 - Incrimination and case-building
 - Confirmation of pre-existing theory of suspect's culpability

Post-Admission Interrogation Techniques

- Detectives use many of the same techniques they did at the pre-admission stage
- They may suggest or imply correct answers, perhaps even format the suspect's narrative
- They may build a particular motive into the suspect's post-admission narrative
- They may seek to include or exclude certain types of information (e.g., capital cases)

Post-Admission Interrogation

- Detectives want to create the appearance that the suspect's post-admission narrative is voluntary, reliable and self-corroborating
 - They will have suspect state that he confessed “to get it off his chest” or that he “feels better”
 - They will ask suspect whether he was coerced
 - They will ask suspect to write apology note
 - They will use the error insertion trick

L.A.P.D. Manual

E. Intentional errors for correction by suspect.

1. When a detective writes the confession, include two errors per page.
2. When reading the completed confession with the suspect, have the suspect correct the errors and initial.

Summary

- Interrogation is NOT merely an interview or a conversation; there is a psychology and logic to it
- Interrogation = manipulative, deceptive & sometimes coercive; rational for suspect to confess
- Interrogation not necessarily about getting the truth; police try to script the confession
- Police interrogation methods have led to numerous documented false confessions
- Confession evidence is highly prejudicial
- Police are poorly trained about coercion, false confessions, and the risks of psychological interrogation

Summary: Challenging Confession Evidence

- Police methods can & do lead to unreliable confessions
- Confession evidence is highly prejudicial
- Police are poorly trained about coercion, false confessions, and the risks of psychological interrogation
- The failure to record is poor police practice

Academic Articles

- Richard Leo et al (2006). “Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century.” *Wisconsin Law Review*
- Steve Drizin and Richard Leo (2004). “The Problem of False Confessions in the Post-DNA World.” *North Carolina Law Review*.
- Saul Kassin and Gisli Gudjonsson “The Psychology of Confessions: A Review of the Literature and Issues.” *Psychological Science in the Public Interest*.
- Richard Leo and Richard Ofshe (1998). “The Consequences of False Confessions.” *Journal of Criminal Law & Criminology*.
- Richard Ofshe & Richard Leo (1997). “The Decision to Confess Falsely” *Denver University Law Review*.

Academic Books

- Richard Leo (2007). *Police Interrogation and American Justice* (Forthcoming, Harvard University Press)
- Gisli Gudjonsson (2003). *The Psychology of Interrogation and Confessions: A Handbook.*
- David Lykken (1998). *A Tremor in the Blood: Uses and Abuses of the Lie Detector.*