

Spring 2020

PSYC 86200: Psychology of Confession Evidence

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Course Description

In the criminal justice system, confession is so potent that it closes police investigations, triggers prosecutions, convicts defendants, and inspires resistance to exoneration upon appeal even in the face of DNA and other exculpatory evidence. This seminar probes the underlying psychology of confession evidence: How suspects are identified for investigation during pre-interrogation interviews; what methods of interrogation then are used; why people confess to crimes they did (and sometimes did not) commit; how prosecutors, judges, juries, and appeals courts react to these statements; how innocents are legally protected and yet at risk; and what policy implications, if any, follow from the errors that are made. Drawing both on basic principles of psychology and actual cases, recent research will be examined on the processes of interviewing and interrogation, truth and lie detection, the impact of *Miranda*, false confessions, confirmation biases in the crime lab, and jury decision-making. This seminar is designed to get students to think critically—and empirically—about the causes, consequences, and remedies for false confessions.

Readings will consist of research articles, law review articles, policy papers, materials from actual cases, and court opinions. The list of readings (only some of which are required) appears within the body of the syllabus and will be posted in a class Dropbox folder.

Evaluation

Grades will be based on two components, each comprising 50% of the total: (1) General class participation, which requires regular *attendance*, *reading*, and insightful *discussion*; and (2) a 5,000-word paper, excluding references, accompanied by an in-class oral presentation. A choice of three types of paper can be written: (a) an *amicus brief* using research to advocate for an important matter of law or policy; (b) a *grant proposal* on a fundable series of relevant studies; (c) an expert *consultant's report* based on your analysis of an individual case file.

I. Confessions in context

Munsterberg, H. (1908). *On the witness stand*. NY: Doubleday. [Chapter 6].

Brown v. Mississippi, 297 U.S. 278 (1936).

Miranda v. Arizona, 284 U.S. 436 (1966).

Arizona v. Fulminante, 111 S. Ct. 1246 (1991).

II. Pre-interrogation interview: Processes and lie detection

Buckley, J. (2006). The Reid technique of interviewing and interrogation. In T. Williamson (Ed.), *Investigative interviewing: Rights, research, regulation* (pp. 190-206). Devon, UK: Willan Publishing.

Horvath, F., Jayne, B., & Buckley, J. (1994). Differentiation of truthful and deceptive criminal suspects in behavior analysis interviews. *Journal of Forensic Sciences*, 39, 793-807.

Kassin, S., & Fong, C. (1999). "I'm innocent!" Effects of training on judgments of truth and deception in the interrogation room. *Law and Human Behavior*, 23, 499-516.

Hartwig, M., Granhag, P., Stromwall, L., & Vrij, A. (2005). Detecting deception via strategic disclosure of evidence. *Law and Human Behavior*, 29, 469-484.

Weinberger, S. (2010). Intent to deceive? *Nature*, 465, 412-415.

Vrij, A., Hartwig, M., & Granhag, P. A. (2019). Reading lies: Nonverbal communication and deception. *Annual Review of Psychology*, 70, 295-337.

III. Interrogation: Techniques, processes, objectives, and risks

Leo, R. (1996). Inside interrogation room. *Journal of Criminal Law & Criminology*, 86, 266-303.

Kassin, S., Leo, R., Meissner, C., Richman, K., Colwell, L., Leach, A-M., & La Fon, D. (2007). Police interviewing and interrogation: A Self-report survey of police practices and beliefs. *Law and Human Behavior*, 31, 381-400.

Cleary, H. (2014). Police interviewing and interrogation of juvenile suspects: A descriptive examination of actual cases. *Law and Human Behavior*, 38, 271-282.

Kassin, S., Goldstein, C., & Savitsky, K. (2003). Behavioral confirmation in the interrogation room: On the dangers of presuming guilt. *Law and Human Behavior*, 27, 187-203.

Starr, D. (2013). The interview. *The New Yorker*, December 9, 2013, 42-49.

IV. False confessions: Taxonomy, prevalence, and scope

The Innocence Project. <http://www.innocenceproject.org/>

National Registry of Exonerations. <https://www.law.umich.edu/special/exoneration/Pages/about>

- Kassin, S. (1997). The psychology of confession evidence. *American Psychologist*, 52, 221-233.
- Leo, R., & Ofshe, R. (1998). The consequences of false confessions: Deprivations of liberty and miscarriages of justice in the age of psychological interrogation. *Journal of Criminal Law and Criminology*, 88, 429-496.
- Cassell, P. (1999). The guilty and the “innocent”: An examination of alleged cases of wrongful conviction from false confessions. *Harvard Journal of Law and Public Policy*, 22, 523.
- Drizin, S., & Leo, A. (2004). The problem of false confessions in the post-DNA world. *North Carolina Law Review*, 82, 891-1007.
- Kassin, S. M. (2017). The killing of Kitty Genovese: What *else* does this case tell us? *Perspectives on Psychological Science*, 12, 374–381.
- Elbein, S. (2014). When employees confess, sometimes falsely. *The New York Times*, March 8.

V. False confessions: Laboratory paradigms indicating situational risk factors

- Kassin, S., & Kiechel, K. (1996). The social psychology of false confessions: Compliance, internalization, and confabulation. *Psychological Science*, 7, 125-128.
- Russano, M., Meissner, C., Narchet, F., & Kassin, S. (2005). Investigating true and false confessions within a novel experimental paradigm. *Psychological Science*, 16, 481-486.
- Nash, R., & Wade, K. (2009). Innocent but proven guilty: Using false video evidence to elicit false confessions and create false beliefs. *Applied Cognitive Psychology*, 23, 624-637.
- Madon, S., Gyll, M., Scherr, K., Greathouse, S., & Wells, G. (2012). Temporal discounting: The differential effect of proximal and distal consequences on confession decisions. *Law and Human Behavior*, 36, 13-20.
- Shaw, J., & Porter, S. (2015). Constructing rich false memories of committing crime. *Psychological Science*, 26, 291-301.

VI. The Juvenile twist: When and why adolescents are vulnerable

- Kassin, S. (2002). False confessions and the jogger case. *The New York Times OP-ED*, November 1, 2002, p. A31.
- New York v. Wise et al. (December 5, 2002), Affirmation in Response to Motion to Vacate Judgment of Conviction, Indictment No. 4762/89.
- Kassin, S. (2018). Why SCOTUS should examine the case of "Making a Murderer's" Brendan Dassey. APA online June 12, 2018. <https://www.apa.org/news/press/op-eds/scotus-brendan-dassey>
- Owen-Kostelnik, J., Reppucci, D., & Meyer, J. (2006). Testimony and interrogation of minors: Assumptions about maturity and morality. *American Psychologist*, 61, 286-304.

Malloy, L., Shulman, E., & Cauffman, E. (2014). Interrogations, confessions, and guilty pleas among serious adolescent offenders. *Law and Human Behavior, 38*, 181-193.

Haney-Caron, E., Goldstein, N., & Mesiarik, C. (2018). Self-perceived likelihood of false confession: A comparison of justice-involved juveniles and adults. *Criminal Justice and Behavior, 45*, 1955-1976.

VII. Safeguard *Miranda*, the right to remain silent.

Miranda v. Arizona, 284 U.S. 436 (1966).

Leo, R. (1996). Miranda's revenge: Police interrogation as a confidence game. *Law and Society Review, 30*, 259-288.

Rogers, R., et al. (2007). An analysis of Miranda warnings and waivers: Comprehension and coverage. *Law and Human Behavior, 31*, 177-192.

Zelle, H., Romaine, C., & Goldstein, N. (2015). Juveniles' Miranda comprehension: Understanding, appreciation, and totality of circumstances factors. *Law and Human Behavior, 39*, 281-293.

Scherr, K., & Madon, S. (2012). You have the right to understand: The deleterious effect of stress on suspects' ability to comprehend Miranda. *Law and Human Behavior, 36*, 275-282.

Kassin, S., & Norwick, R. (2004). Why people waive their Miranda rights: The power of innocence. *Law and Human Behavior, 28*, 211-221.

Smalarz, L., Scherr, K., & Kassin, S. (2016). Miranda at 50: A psychological analysis. *Current Directions in Psychological Science, 25*, 455-460.

Duane, J. (2016). *You have the right to remain innocent*. New York: Little A. (also see https://www.youtube.com/watch?v=irfdP6_FJHs)

Alceste, F., Luke, T., & Kassin, S. (2018). Holding yourself captive: Perceptions of custody during interviews and interrogations. *Journal of Applied Research in Memory and Cognition, 7*, 387-397.

VIII. The phenomenology of innocence

Kassin, S. (2005). On the psychology of confessions: Does *innocence* put *innocents* at risk? *American Psychologist, 60*, 215-228.

Guyll, M., Madon, S., et al. (2013). Innocence and resisting confession during interrogation: Effects on physiologic activity. *Law and Human Behavior, 37*, 366-375.

Perillo, J., & Kassin, S. (2011). Inside interrogation: The lie, the bluff, and false confessions. *Law and Human Behavior, 35*, 327-337.

Scherr, K., & Franks, A. (2015). The world is not fair: An examination of innocent and guilty suspects' waiver decisions. *Law and Human Behavior, 39*, 142-151.

Scherr, K., Normile, C., Bierstetel, S., Franks, A., & Hawkins, I. (2018). Knowingly but naively: The overpowering influence of innocence on interrogation rights decision-making. *Law and Human Behavior, 42*, 26-36.

IX. Juries: Commonsense of confessions and decision-making

Kassin, S., & Sukel, H. (1997). Coerced confessions and the jury: An experimental test of the "harmless error" rule. *Law and Human Behavior, 21*, 27-46.

Wallace, D., & Kassin S. (2012). Harmless error analysis: How do judges respond to confession errors? *Law and Human Behavior, 36*, 151-157.

Wetmore, S. A., Neuschatz, J. S., & Gronlund, S. D. (2014). On the power of secondary confession evidence. *Psychology, Crime & Law, 20*, 339-357.

Appleby, S., & Kassin, S. (2016). When self-report trumps science: Effects of confessions, DNA, and prosecutorial theories. *Psychology, Public Policy, and Law, 22*, 127-140.

Blandon-Gitlin, I., Sperry, K., & Leo, R. (2010). Jurors believe interrogation tactics are not likely to elicit false confessions: Will expert witness testimony inform them otherwise? *Psychology, Crime, & Law, 17*, 239-260.

Mindthoff, A., et al. (2018). A survey of potential jurors' perceptions of interrogations and confessions. *Psychology, Public Policy, and Law, 24*, 430-448.

X. Consequences of confession evidence

Garrett, B. (2010). The substance of false confessions. *Stanford Law Review, 62*, 1051-1119.

Martin, A. (2011). The prosecution's case against DNA. *The New York Times Magazine*, November 27, 2011, p. MM44.

Hasel, L., & Kassin, S. (2009). On the presumption of evidentiary independence: Can confessions corrupt eyewitness identifications? *Psychological Science, 20*, 122-126.

Marion, S., Kukucka, J., Collins, C., Kassin, S., & Burke, T. (2016). Lost proof of innocence: The impact of confessions on alibi witnesses. *Law and Human Behavior, 40*, 65-71.

Redlich, A., Bibas, S., Edkins, V., & Madon, S. (2017). The psychology of defendant plea decision making. *American Psychologist, 72*, 339-352.

Redlich, A., Yan, S., Norris, R., & Bushway, S. (2018). The influence of confessions on guilty pleas and plea discounts. *Psychology, Public Policy, and Law, 24*, 147-157.

XI. Consequences, cont'd: Forensic Confirmation Biases

- Dror, I., & Cole, S. (2010). The vision in "blind" justice: Expert perception, judgment and visual cognition in forensic pattern recognition. *Psychonomic Bulletin & Review*, *17*, 161-167.
- Kassin, S. (2012). Why confessions trump innocence. *American Psychologist*, *67*, 431-445.
- Kassin, S., Dror, I., & Kukucka, J. (2013). The forensic confirmation bias: Problems, perspectives, and proposed solutions. *Journal of Applied Research in Memory and Cognition*, *2*, 42-52.
- Kukucka, J., Kassin, S., Zapf, P., & Dror, I. (2017). Cognitive bias and blindness: A global survey of forensic science examiners. *Journal of Applied Research in Memory and Cognition*, *6*, 452-459.

XII. Remedies - Expert testimony, questions of admissibility and impact

- Fulero, S. (2004). Expert psychological testimony on the psychology of interrogations and confessions. In G.D. Lassiter (Ed.), *Interrogations, confessions, and entrapment* (pp. 247-263). New York: Kluwer Academic.
- Cutler, B., Findley, K., & Loney, D. (2014). Expert testimony on interrogation and false confession. *UMKC Law Review*, *82*, 589-622.
- Henderson, K., & Levett, L. (2016). Can expert testimony sensitize jurors to variations in confession evidence? *Law and Human Behavior*, *40*, 638-649.
- Kassin, S., Redlich, A., Alceste, F., & Luke, T. (2018). On the general acceptance of confessions research: Opinions of the scientific community. *American Psychologist*, *73*, 63-80.

XIII. Remedies - Videotaping interrogations, arguments for and against, and status quo

- Kassin, S., & Thompson, D. (2019). Videotape all police interrogations – Justice demands it. *The New York Times* OP-ED, August 1, 2019.
- Sullivan, T., Vail, A., & Anderson, H. (2008). The case for recording police interrogations. *Litigation*, *34* (3), 1-8.
- Lassiter, D., et al. (2002). Videotaped interrogations and confessions: A simple change in camera perspective alters verdicts in simulated trials. *Journal of Applied Psychology*, *87*, 867-74.
- Kassin, S., Kukucka, J., Lawson, V., & DeCarlo, J. (2014). Does video recording alter the behavior of police during interrogation?: A Mock crime-and-investigation study. *Law and Human Behavior*, *38*, 73-83.
- Kassin, S., Kukucka, J., Lawson, V., & DeCarlo, J. (2017). On the accuracy of and perceptions elicited by police reports of interrogations. *Law and Human Behavior*, *41*, 230–243.
- Kassin, S., Russano, M., Amrom, A., Hellgren, J., Kukucka, J., & Lawson, V. (2019). Does video recording inhibit crime suspects?: Evidence from a fully randomized field experiment. *Law and Human Behavior*, *43*, 44-55.

XIV. PEACE...and other alternatives to the Reid Technique

Kassin, S., Drizin, S., Grisso, T., Gudjonsson, G., Leo, R., & Redlich, A. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*, 3-38. [Official White Paper of AP-LS]

American Psychological Association. (2014). Resolution on interrogations of criminal suspects. Retrieved from <http://www.apa.org/about/policy/interrogations.aspx>

Oleszkiewicz, S., Granhag, P., & Cancino Montecinos, S. (2014). The Scharff technique: Eliciting intelligence from human sources. *Law and Human Behavior, 38*, 478–489.

Tekin, S., Granhag, P., Strömwall, L., Giolla, E., Vrij, A., & Hartwig, M. (2015). Interviewing strategically to elicit admissions from guilty suspects. *Law and Human Behavior, 39*, 244-252.

Vallano, J., & Schreiber Compo, N. (2015). Rapport-building with cooperative witnesses and criminal suspects: A theoretical and empirical review. *Psychology, Public Policy, and Law, 21*, 85-99.

Meissner, C., Surmon-Böhr, F., Oleszkiewicz, S., & Alison, L. (2017). Developing an evidence-based perspective on interrogation: A review of U.S. government's high-value detainee interrogation group research program. *Psychology, Public Policy, and Law, 23*, 438–457.

Dickinson, J., et al. (2019) (Eds.). *Evidence-based investigative interviewing: Applying cognitive principles*. New York: Taylor & Francis.

XV. Student Presentations

General “Background” Resources

- Dickinson, J., et al. (2019) (Eds.). *Evidence-based investigative interviewing: Applying cognitive principles*. New York: Taylor & Francis.
- Garrett, B. (2011). *Convicting the innocent*. Cambridge, MA: Harvard University Press.
- Granhag, P., & Stromwall, L. (Eds.) (2004). *The detection of deception in forensic contexts*. Cambridge, England: Cambridge University Press.
- Granhag, P., Vrij, A., & Verschuere, B. (Eds.). (2015). *Detecting deception: Current challenges and cognitive approaches*. London: Wiley-Blackwell.
- Gudjonsson, G. (2003). *The psychology of interrogations and confessions: A handbook*. Chichester, England: John Wiley & Sons.
- Gudjonsson, G. (2018). *The Psychology of false confessions: Forty years of science and practice*. Chichester, England: John Wiley & Sons.
- Inbau, F., Reid, J., Buckley, J., & Jayne, B. (2013). *Criminal interrogation and confessions* (5th ed.). Burlington, MA: Jones & Bartlett. [The most recent edition of the Reid technique]
- Inbau, F., Reid, J., Buckley, J., & Jayne, B. (2015). *Essentials of the Reid technique: Criminal interrogation and confessions* (2e). Sudbury, MA: Jones & Bartlett.
- Kassin, S., Drizin, S., Grisso, T., Gudjonsson, G., Leo, R., & Redlich, A. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior, 34*, 3-38. [Official White Paper of AP-LS]
- Lassiter, D. (Ed.) (2004). *Interrogations, confessions, and entrapment*. NY: Kluwer Academic.
- Lassiter, D., & Meissner, C. (Eds.) (2010). *Interrogations and confessions: Research, practice, and policy*. Washington, DC: American Psychological Association.
- Leo, R. (2008). *Police Interrogation and American Justice*. Cambridge, MA: Harvard University Press. [Book on the history and practices of police interrogations in the U.S.]
- Münsterberg, H. (1908). *On the witness stand*. Garden City, NY: Doubleday.
- Shepherd, E., & Griffiths, A. (2013). *Investigative interviewing: The conversation management approach* (2e). Oxford, UK: Oxford University Press.
- Trainum, J. (2016). *How the police generate false confessions. An inside look at the interrogation room*. Landham, MD: Rowman & Littlefield.
- Williamson, T. (Ed.) (2006). *Investigative interviewing: Rights, research, regulation*. Devon, UK: Willan Publishing.
- Wrightsmann, L., & Kassin, S. (1993). *Confessions in the courtroom*. Newbury Park, CA: Sage Publications.