Confessions and Jury Reactions[1]

Research shows that confessions have a greater impact on jury decisions then do witness statements, or even hard evidence (e.g. Appleby et al., 2013, Kassin & Neumann, 1997). (p.187)

Former U.S. Supreme Court Justice William Brennan once observed that "no other class of evidence is so profoundly prejudicial" as a confession (Colorado v. Connelly, 1986, p. 182): a proposition that has since been supported by an ever growing body of research (see Kassin, 2012; Leo & Davis, 2009; Nirider et al., in press). A confession sets in motion a strong presumption of guilt, and a set of confirmation biases making other evidence seem more incriminating (Kassin et al., 2013), and prompting prosecutors, judges and jurors (and even defense attorneys) to view the suspect as definitively guilty (Leo & Davis, 2009). If innocent suspects recant their confessions, 78-85% nevertheless end up pleading guilty or being convicted at trial (Drizin & Leo, 2004; Leo & Ofshe, 1998). Such rates of wrongful pleas or conviction reflect the inability of all involved to distinguish true from false confessions (Kassin & Fong, 1999; Kassin et al., 2005; Meissner & Kassin, 2002).

In part, these effects of confession on the outcomes of even innocent confessors reflect widespread misconceptions concerning whether, why, and among whom and under what conditions false confessions might occur. Surveys have shown, for example, that as many as one third of survey respondents deny the possibility of false confession, others believe that they result only from torture, and many believe that only the mentally defective will falsely confess.

These and other documented misconceptions compromise the ability to recognize false confessions. (see Vrij et al., 2017; Nirider et al., in press for reviews). Research examining the effects of judicial instructions or expert testimony regarding causes of false confession has revealed disappointing and inconsistent effects, with a minority of studies showing "sensitivity" effects: that is, when appropriate instructions or expert testimony are present conviction rates
vary more appropriately according to the presence of factors in the case and interrogation known to increase risk of false confession (see Nirider et al., in press for review).

The study of the impact of admissions made in pretext calls . . . is in its infancy. However, some evidence suggests that jurors might be more willing to discount admissions made in this context than in the context of police interrogations. Davis and colleagues (Davis, Livingston, et al., 2019; Davis, Rerick, et al., 2019) presented mock jurors with either a recorded pretext call or a long account of a pretext call. The latter included quotes from the caller and suspect and prosecution and defense arguments concerning how the suspect's statements should be interpreted. Two studies varied the type of apology offered by the suspect (none versus three levels of explicitness), and one varied the tactics used by the caller (such as references to involving police, threats to end the marital relationship or access to suspect's children, etc.). In the latter study, the suspect always explicitly apologized for touching his daughter's genitals, but the caller's tactics were varied. Participants in all studies were asked if the suspect said anything to admit guilt, and if so why.

Across all studies, participants rated other motives as important reasons for admissions: such as soothing the victim's or mother's feelings or maintaining relationships. Importantly, some (such as preventing the caller from involving police) were rated as or more important than the suspect's guilt. Moreover, whereas caller tactics did not directly affect ratings of guilt, they did affect perceptions of the pressure exerted on the suspect, which in turn did affect perceptions of guilt. While much more research is needed to explore juror reactions to admissions made in pretext calls, these preliminary findings suggest that admissions in this context may not have as strong and pervasively incriminating effects as those to police interrogators.

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[1] Deborah Davis, Richard A. Leo, Tyler Livingston, and Peter Retrick. *Interrogation and the Sexual Assault Suspect: On the Synergy between Pretext Caller and Police Interrogator*. Univ. of San Francisco Law Research Paper No. 2021-07. Last revised: 30 Jun 2021. pp.17-19.

Potential causes of racial disparities in wrongful convictions based on mistaken identifications: Own-race bias and differences in evidence-based suspicion.

Katzman, Jacqueline and Kovera, Margaret Bull.

Law and Human Behavior, Vol 47(1), Feb, 2023. Special Issue: Racial Justice in the Criminal Justice and Legal Systems. pp. 23-35.

Abstract (English):

Objective: We explored whether racial disparities in evidence-based suspicion (i.e., evidence of guilt prior to placement in a lineup) provide a better explanation of racial disparities in exonerations based on eyewitness misidentification than the own-race bias in eyewitness identifications. Hypotheses: We predicted that the own-race bias in identification accuracy would be insufficiently large to fully explain the racial disparities in wrongful convictions in cases with mistaken identification. We also predicted that possible racial disparities in the prior probability of suspect guilt before subjecting suspects to the risk of misidentification might better explain racial disparities in wrongful convictions. Method: We conducted a meta-analysis on 54 effect sizes extracted from 16 studies (1,503 individual participants) that tested whether there was an own-race bias in eyewitness identifications using a design that varied the race of both the witnesses and the target faces (Black vs. White). We also constructed two curves that plotted the prior probability of suspect guilt against the posterior probability of guilt: one if an identification were to be obtained for a Black suspect and one if an identification were to be obtained for a White suspect. Results: Participants, irrespective of their race, were better able to discriminate among previously seen White than Black targets. However, the differential accuracy rates for identifications of White versus Black suspects were too small to explain racial disparities in exoneration data on their own. However, racial disparities in evidence that police have against suspects before placing them in an identification procedure would likely explain more of the variance in racial disparities in mistaken identifications that lead to wrongful convictions. Conclusion: Memory errors caused by the own-race bias are likely not the sole or even primary cause of racial disparities in misidentifications; rather, systemic bias in the amount of evidence that police have before placing a suspect at risk of misidentification likely explains more of the variance of racial disparities in wrongful convictions based on mistaken identifications. Requirements for evidence-based suspicion before placing suspects in an identification procedure are needed to prevent systemic racism in mistaken identifications.

An attribution theory–based content analysis of mock jurors' deliberations regarding coerced confessions.

Stevenson, Margaret C., et al.

Law and Human Behavior, Vol 47(2), Apr, 2023. pp. 348-366.

Abstract (English):

Objective: Because confessions are sometimes unreliable, it is important to understand how jurors evaluate confession evidence. We conducted a content analysis testing an attribution theory model for mock jurors' discussion of coerced confession evidence in determining verdicts. Hypotheses: We tested exploratory hypotheses regarding mock jurors' discussion of attributions and elements of the confession. We expected that jurors' prodefense statements, external attributions (attributing the confession to coercion), and uncontrollable attributions (attributing the confession to defendant naivety) would predict more prodefense than proprosecution case judgments. We also expected that being male, politically conservative, and in support of the death penalty would predict proprosecution statements and internal attributions, which in turn would predict guilty verdicts. Method: Mock jurors (N = 253, Mage = 47 years; 65% women; 88% White, 10% Black, 1% Hispanic, 1% listed 'other') read a murder trial synopsis, watched an actual coerced false confession, completed case judgments, and deliberated in juries of up to 12 members. We videotaped, transcribed, and reliably coded deliberations. Results: Most mock jurors (53%) rendered a guilty verdict. Participants made

more prodefense than proprosecution statements, more external than internal attributions, and more internal than uncontrollable attributions. Participants infrequently mentioned various elements of the interrogation (police coercion, contamination, promises of leniency, interrogation length) and psychological consequences for the defendant. Proprosecution statements and internal attributions predicted proprosecution case judgments. Women made more prodefense and external attribution statements than men, which in turn predicted diminished guilt. Political conservatives and death penalty proponents made more proprosecution statements and internal attributions than their counterparts, respectively, which in turn predicted greater guilt. Conclusions: Some jurors identified coercive elements of a false confession and rendered external attributions for a defendant's false confession (attributing the confession to the coercive interrogation) during deliberation. However, many jurors made internal attributions, attributing a defendant's false confession to his guilt—attributions that predicted juror and jury inclinations to convict an innocent defendant.