

Police Interrogation, Psychological Coercion and False Confessions

- Richard A. Leo, Ph.D, J.D.
Hamill Family Professor of
Law and Psychology
- University of San
Francisco School of Law
(415) 661-0162
- Email: rleo@usfca.edu



Outline

- I. The Phenomenon of False Confession
- II. The Impact of Confession Evidence
- III. The Causes of False Confession
- IV. Litigating Coerced and False Confessions

The Data on False Confessions

Real World Data

- Individual Case Studies
- Aggregated Case Studies
- The DNA Exonerations
- The National Registry of Exonerations

Laboratory Data

- Experimental Induction of False Statements and Confessions

DNA Exonerations



Photographs and Interviews by Taryn Simon
Commentary by Peter Neufeld and Barry Scheck

The Innocents

- $N > 365$ DNA Exonerations since 1989
- 15-25% = False Confessions

DNA and Non-DNA Exonerations

The National Registry *of* **EXONERATIONS**

- 2,496 Exonerations
Since 1989
- 303 False
Confessions



Laboratory Studies



Survey Studies of Real, Potential and Mock Jurors

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What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?[†]

Richard A. Leo, Ph.D., J.D.* and
Brittany Liu, B.A.[†]

Psychological police interrogation methods in America inevitably involve some level of pressure and persuasion to achieve their goal of eliciting confessions of guilt from custodial suspects. In this article, we surveyed potential jurors about their perceptions of a range of psychological interrogation techniques, the likelihood that such techniques would elicit a true confession from guilty suspects, and the likelihood that such techniques could elicit a false confession from innocent suspects. Participants recognized that these interrogation techniques may be psychologically coercive and may elicit true confessions, but believed that psychologically coercive interrogation techniques are not likely to elicit false confessions. The findings from this survey study indicate that potential jurors believe that false confessions are both counter-intuitive and unlikely, even in response to psychologically coercive interrogation techniques that have been shown to lead to false confessions from the innocent. This study provides empirical support for the idea that expert witnesses may helpfully inform jurors about the social science research on psychologically coercive interrogation methods and how and why such interrogation techniques can lead to false confessions. Copyright © 2009 John Wiley & Sons, Ltd.

INTRODUCTION

Confessions are one of the most important types of evidence for solving crimes (Greenwood & Petersilia, 1975). Because criminal suspects rarely spontaneously confess, however, police detectives regularly employ interrogation techniques to overcome denials and elicit confessions (Feld, 2006a,b; Leo, 1996; Wald, Ayres,

*Correspondence to: Richard A. Leo, Ph.D., J.D., School of Law, University of San Francisco, 2130 Fulton Street, San Francisco, CA 94117, U.S.A. E-mail: rleo@usfca.edu

[†]University of California, Irvine.

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Juror Beliefs About Police Interrogations, False Confessions, and Expert Testimony

Mark Costanzo, Netta Shaked-Schroer, and Katherine Vinson*

Although there has been a rapid expansion in research on police interrogations and false confessions, little is known about the beliefs of potential jurors as to these issues. In collaboration with a trial research firm, we recruited 661 jury-eligible men and women who matched the demographic characteristics of jury pools in several states. Surrogate jurors responded to questions and statements in five areas: likely rates of false confessions for different crimes, the ability to discern true from false confessions, beliefs about false confessions, beliefs about permissible interrogation tactics, and beliefs about expert testimony on police interrogations. Results indicated that jurors believed that police interrogators are better than ordinary people at identifying lies and that this ability improves with experience. Jurors believed that they would be able to differentiate a true confession from a false confession by watching a videotape, but were less confident about making such a differentiation from an audio recording. A large majority of the sample reported that it would be helpful to hear expert testimony about interrogation techniques and reasons why a defendant might falsely confess to a crime. There were no significant gender differences. Compared to whites, nonwhite jurors had significantly less confidence in the abilities of the police and gave significantly higher estimates of false confession rates. Results are discussed in light of prior research and implications for jury decision making and expert testimony.

I. INTRODUCTION

False confessions are a significant cause of wrongful convictions (Drizin & Leo 2004; Scheck et al. 2000). Particularly during the past two decades, researchers have used a variety of research methods to deepen our understanding of the interrogation process and the social influence techniques that sometimes lead to false confessions and wrongful convictions (Davis & O'Donohue 2003; Gudjonsson 2003; Kassin & Gudjonsson 2004; Leo et al. 2008).

A series of laboratory experiments by Kassin and his colleagues illustrate the power of confessions. For example, Kassin and Neumann (1997) systematically compared eyewitness character, and confession evidence, and found that confessions produced the highest conviction rate among mock jurors. Extending this basic finding, Kassin and Sukel (1997)

*Address correspondence to: Mark Costanzo, Claremont McKenna College, 850 Columbia Ave., Claremont, CA 91731; email: mark.costanzo@cmckc.edu. Costanzo is Professor of Psychology & Co-Director, Center for Applied Psychological Research at Claremont McKenna College; Shaked-Schroer and Vinson are at the Claremont Graduate University.

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Jurors believe interrogation tactics are not likely to elicit false confessions: will expert witness testimony inform them otherwise?

Iris Blandón-Gitlin*, Kathryn Sperry^b and Richard Leo^c

^aCalifornia State University, Fullerton, Psychology, PO Box 34080, Fullerton, 92834-9480 USA; ^bClaremont Graduate University, Claremont, USA; ^cUniversity of San Francisco, San Francisco, USA

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Situational factors – in the form of interrogation tactics – have been reported to unduly influence innocent suspects to confess. This study assessed jurors' perceptions of these factors and tested whether expert witness testimony on confessions informs jury decision making. In Study 1, jurors rated interrogation tactics on their level of coerciveness and likelihood that each would elicit true and false confessions. Most jurors perceived interrogation tactics to be coercive and likely to elicit confessions from guilty, but not from innocent suspects. This result motivated Study 2 in which an actual case involving a disputed confession was used to assess the influence of expert testimony on jurors' perceptions and evaluations of interrogations and confession evidence. The results revealed an important influence of expert testimony on mock-jurors decisions.

Keywords: interrogations; confessions; jury; decision making; expert testimony

Introduction

In a court of law, a confession is one of the most powerful pieces of evidence against a defendant (Davis & O'Donohue, 2004; Kassin, 2008a; Leo, 2008). Despite this significant influence, confession evidence is not always reliable; empirical research as well as high-profile DNA exoneration cases, have conclusively demonstrated that suspects can be led to confess to crimes they did not commit (Drizin & Leo, 2004; Kassin, 2008a; Leo & Ofshe, 1998). These false confessions may arise from a combination of factors, including powerful interrogation tactics strategically designed to psychologically manipulate suspects into admitting guilt (Ofshe & Leo, 1997). Unfortunately, false confessions are not easily discriminated from true confessions (Kassin, Meissner, & Norwick, 2005) and are routinely believed by jurors (Kassin & Sukel, 1997). The weighty influence of confession evidence on jurors may be due in part to a lack of knowledge or misconceptions about the contextual factors involved in obtaining confessions (Chojnacki, Cicchini, & White, 2008; Leo, 2008; Leo & Liu, 2009). If this is so, then educating jurors through expert witness testimony may render this type of evidence less prejudicial. The goal of the present study was to examine these questions.

Concerns over false confessions have escalated during the last two decades as DNA evidence has proven beyond doubt the innocence of individuals wrongfully

*Corresponding author. Email: iblandon-gitlin@fullerton.edu

Judicial Bias and Ignorance



- Judges are just as susceptible to assumptions that an individual would not admit culpability, take responsibility for actions they didn't commit

U.S. Supreme Court in *Colorado v. Connelly* (1986)

- “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.”

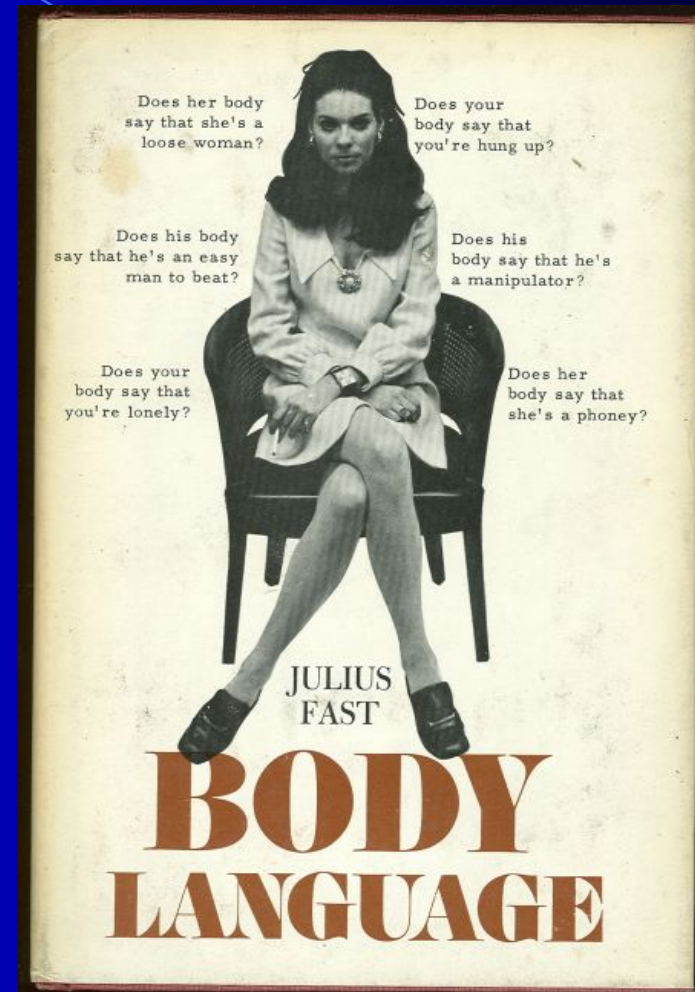
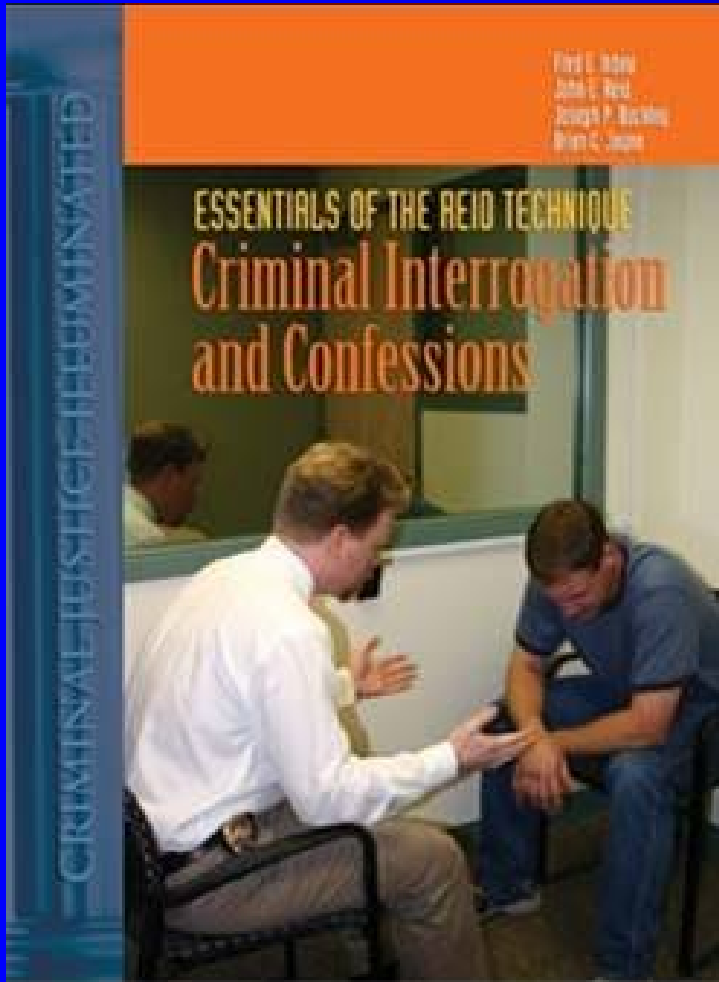


Causes: Three Errors that Lead to (Persuasive) False Confessions

- 1) Misclassification
- 2) Coercion
- 3) Contamination



1) Misclassification



Who Can Catch a Liar?

Ekman & O'Sullivan (1991)

Table 2

Deception Accuracy Means and Standard Deviations in Observer Groups

Observer group	<i>M</i>	<i>SD</i>
Secret Service	64.12	14.8
Federal polygraphers	55.67	13.3
Robbery investigators	55.79	14.9
Judges	56.73	14.7
Psychiatrists	57.61	14.5
Special interest	55.34	15.8
College students	52.82	17.3

2) Coercion: The Psychology of Police Interrogation

- **Step 1:** Convince the suspect he is caught and denial is futile
- **Step 2:** Convince the suspect that confession is beneficial and the only way out



L.A.P.D. Manual

THE CONFRONTATION INTERROGATION TECHNIQUE

INTRODUCTION

Proven to be successful in situations where the guilt of the suspect is fairly certain.

It is employed after completion of administrative and humanitarian questions, and after obtaining a Miranda waiver.

It operates on the principle of - "You did it. We know you did it. We have overwhelming evidence to prove you did it. But the reason makes a difference. So why don't you tell me about it?"

Although you can use this technique on virtually every type of suspect and psychological profile, you will not interrogate all suspects the same way.

Think of the Confrontation Interrogation Technique as an outline for an interrogation. The type of suspect and/or psychological profile will determine how you present each heading or component of the outline.

Step 1: Breaking Down Resistance

- Isolation
- Rapport-building
- Accusation
- Attack suspect's denials
- Confront with (true or false) evidence
- Treat suspect's guilt as an established fact
- Apply pressure and stress
- Repeat



Step 2: Motivating Suspect to Confess through Inducements

- Inducements (Appeals to Self-Interest)
 - Moral
 - Psychological
 - Legal
- CJS System benefits
 - Minimization
 - Offers of help
 - Promises and threats

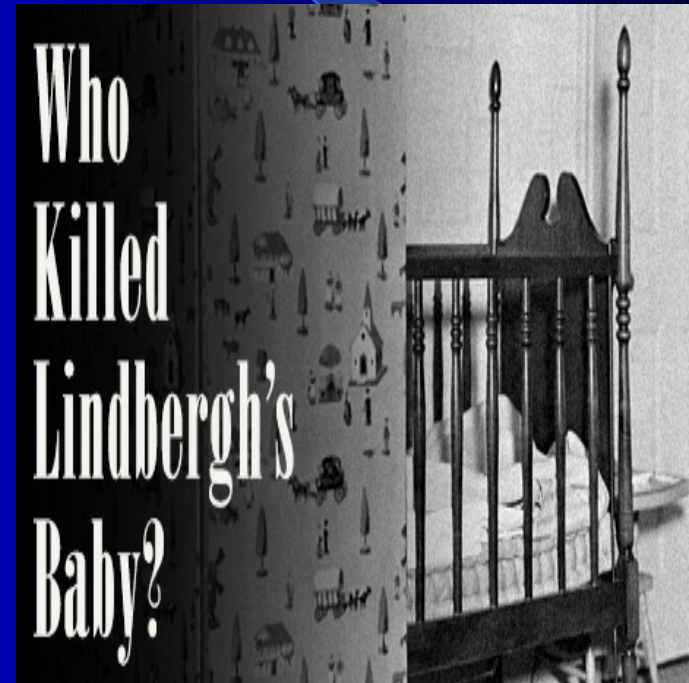


Types of False Confessions

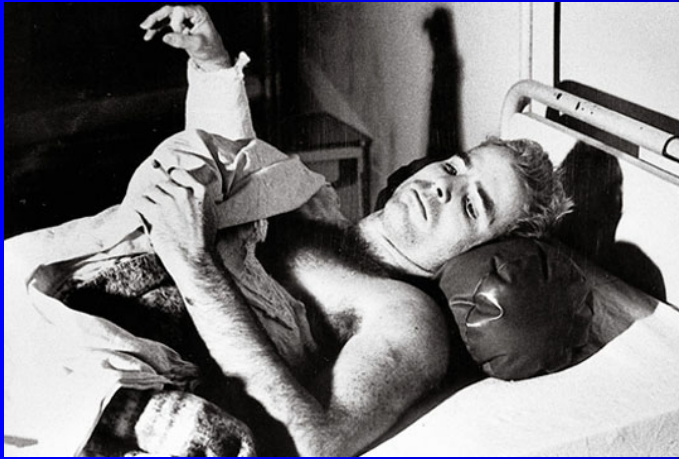
- *Voluntary*
- *Compliant*
- *Persuaded*



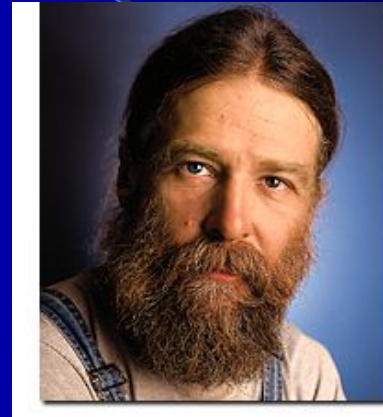
Voluntary False Confessions



Compliant False Confessions

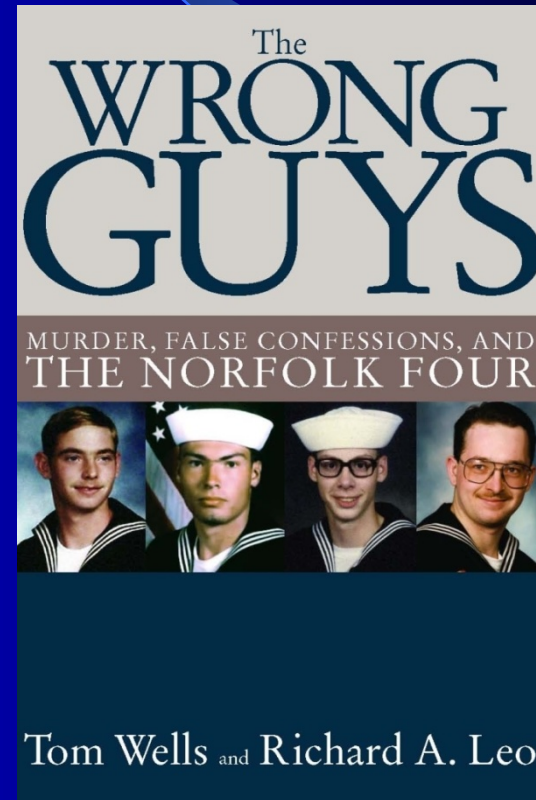


Persuaded False Confessions



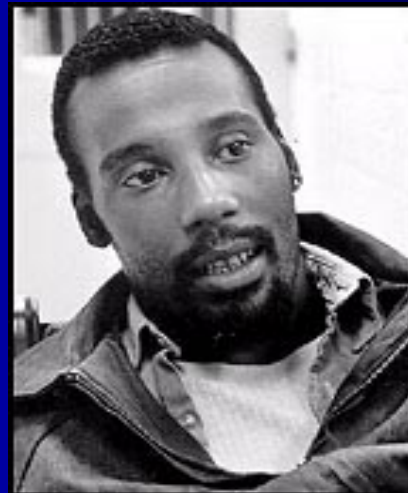
Situational Risk Factors for False Confession

- Lengthy Interrogation
- False Evidence Ploys
- Minimization
- Implied Promises and Threats



Individual Risk Factors for False Confession

- Juveniles
 - Especially Under 15
- Mentally handicapped or impaired
- Some personalities
 - Highly suggestible
 - Highly compliant
- Mental Illness



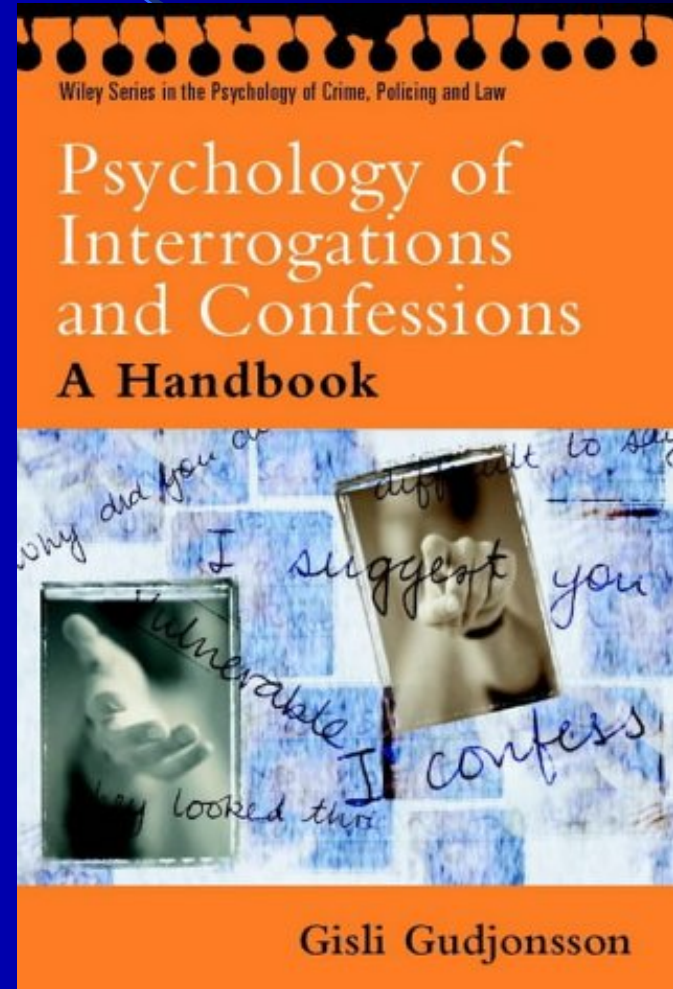
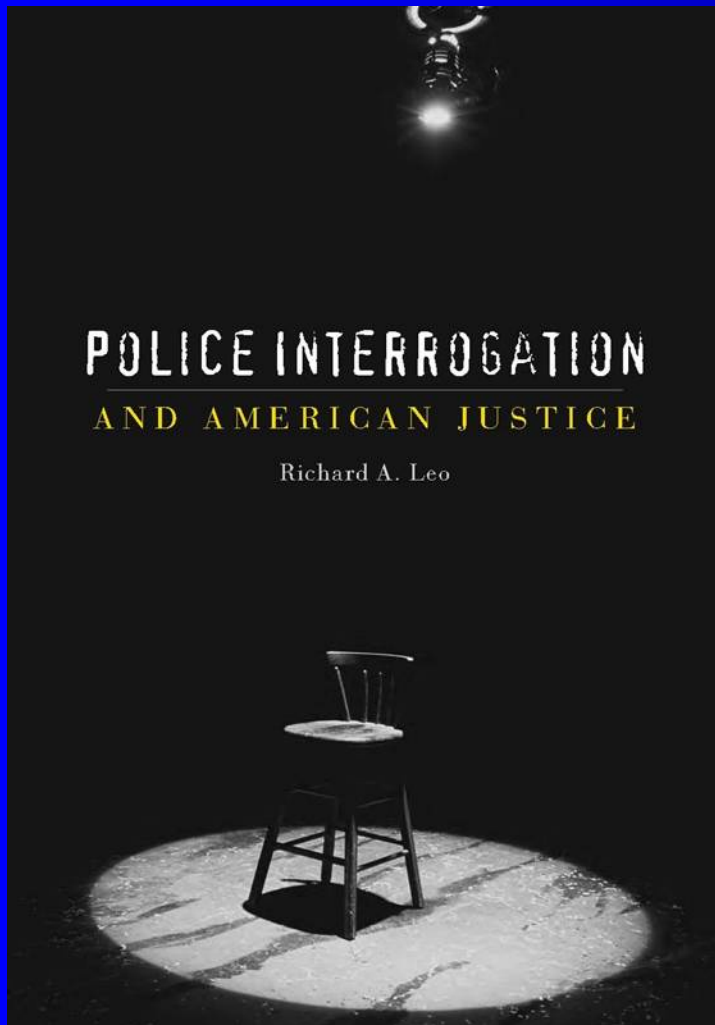
3) Contamination and Scripting

- Leaking/Disclosing suspects non-public crime facts
- Scripting confession narrative
- False confessions appear authentic



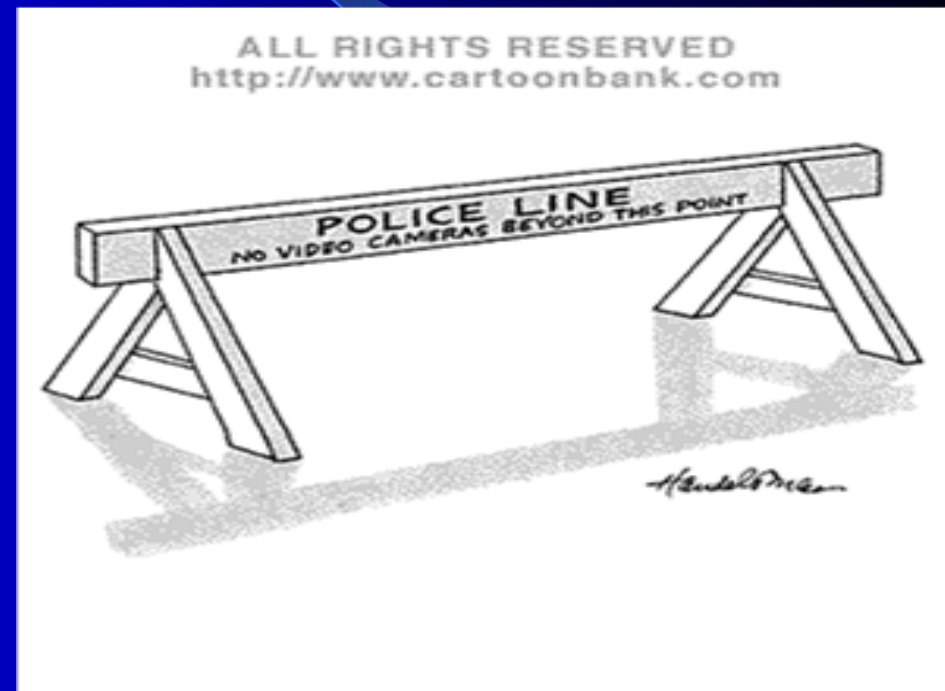
! WARNING
**Avoid
Contamination.**

Litigating Confessions: Read The Social Science Research



Unrecorded Interrogations

- Have client write detailed, narrative “Time-Line”
- Need to do right away, not superficially; buy client a special notebook if necessary
- Then debrief client about “Time-Line”
- Time-line will be invaluable for:
 - Reconstructing interrogation
 - Learning new information
 - Structuring cross-X



Recorded Interrogations



- Have independent transcript made immediately
- Listen to the tape – All of it
- Play the tape for our client, and if possible go over it with them in their presence

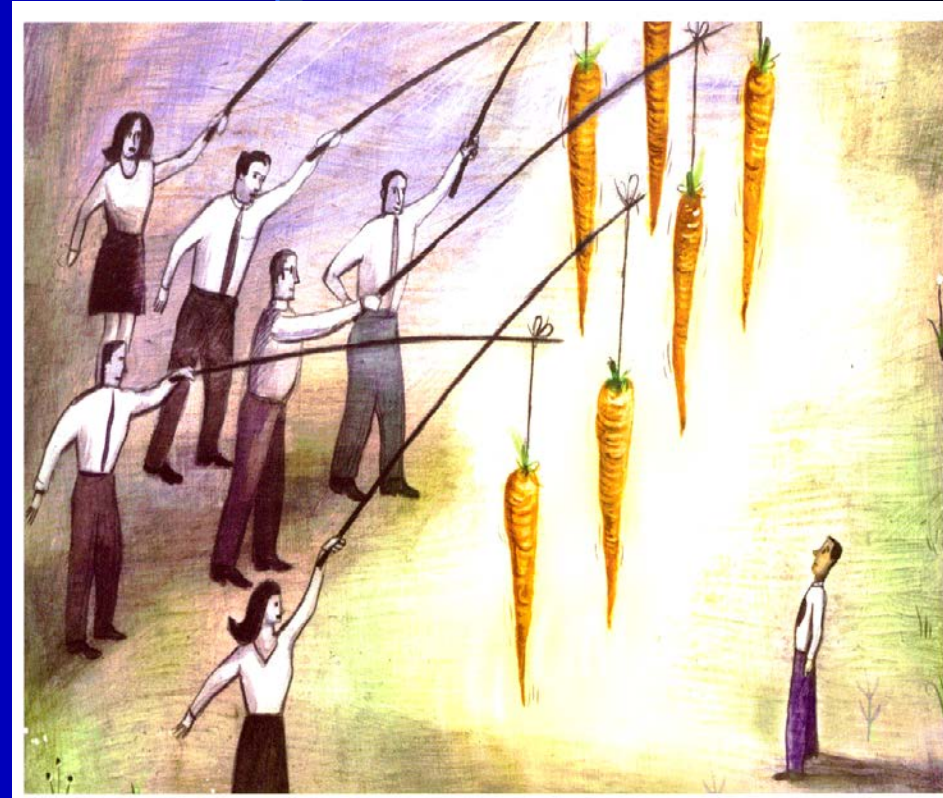
Recorded Interrogations



- Identify specific interrogation techniques and strategies
- Identify coercive factors
- Demonstrate
 - Repetition of techniques
 - Sequencing of techniques
 - Cumulative coercion
 - Effect on suspect

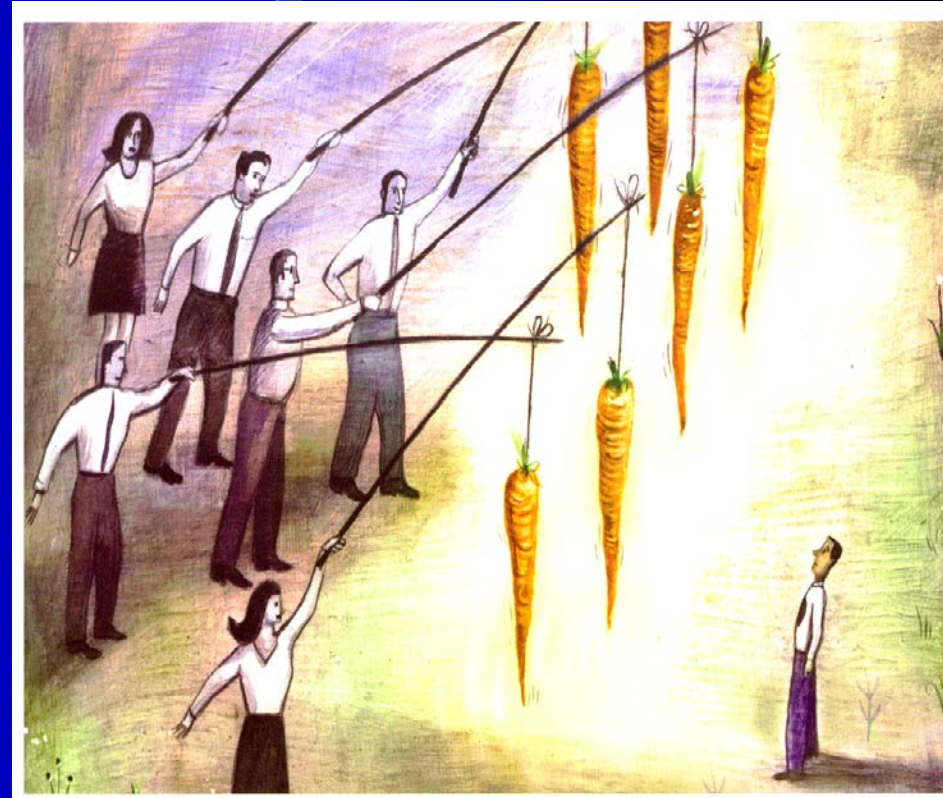
Do You Have a Coerced Confession?

- What inducements did the interrogators use?
- Did they implicitly convey a deal or minimization of consequences?
- Did they implicitly threaten worse consequences if your client continued to deny?



Do You Have a Coerced Confession?

- What other interrogation techniques were used?
- How were they developed over the course of the interrogation?
- How long was the interrogation?

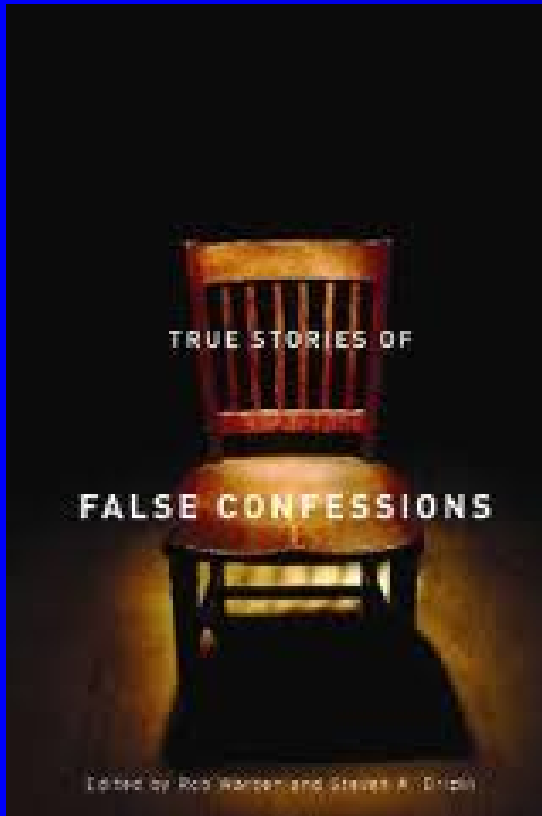


Practical Suggestions: Suppression Hearing

- Cross-X cops on:
 - Assumptions and goals of interrogation
 - Specific interrogation techniques and strategies
 - Training on psychological coercion
 - Training on proper and improper inducements
 - Training on false confessions
 - Understanding why they occur
 - Recognizing them
 - Preventing them



Putting on a False Confession Defense



- Two Questions that Must Be Answered:
- 1) Why Did Your Client Confess Falsely?
- 2) How Do We Know It Is a False Confession?

Types of Possible Experts

- Social/Cognitive Psychologist
- Clinical Psychologist
- Neuro-Psychologist
- Intoxication Expert
- Culture Expert
- Gang Expert

Confession Cases Are Never Easy...

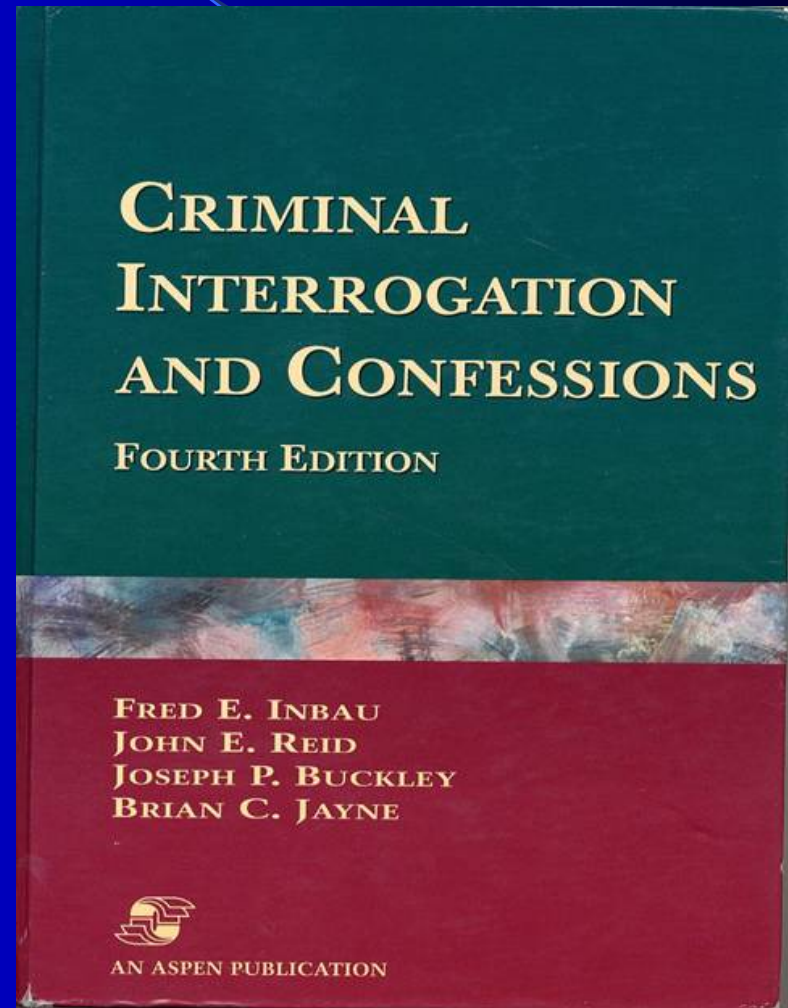
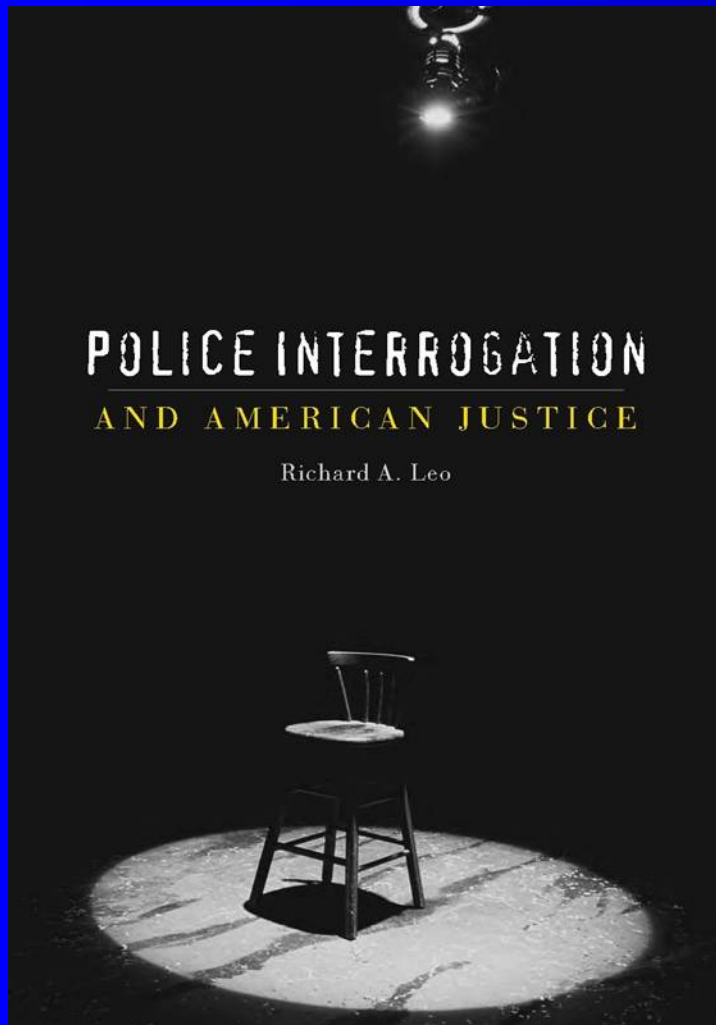


"We find the defendant guilty as sin."



"We also find the defendant's lawyer guilty by association."

But If You Do Your Homework...



You Can Win...

