False Confession Science

Can trial lawyers and advocacy teachers learn from a book about false confessions, moving beyond that specific problem to more general lessons about jurors, belief systems, and persuasion? The answer, at least if one reads DUPED, is a resounding "yes." Let me take you to that book, the scary phenomenon of false confessions as they occur in criminal *and workplace* investigations, and then to some of the more generally-applicable lessons it offers.

First, some context. In 1992, Willie Veasy confessed to a murder, a confession a jury accepted despite a time card showing him to have been at work as a dishwasher 8 miles away. In 2001, Jermel Lewis signed a confession admitting to participating in Philadelphia's worst mass killing – the seven homicides in what was known as the "Lex Street massacre." In 2007, Steven Lazar confessed to the killing of Dario Gutierrez.

None was tortured, although the argument could be made regarding Lazar who was held for 30 hours while in methadone withdrawal. Each confession was false. Each was this author's client at some stage of their cases.

Three *known* false confessions across one lawyer's career. Yet not an uncommon phenomenon, nor one without an explanation grounded in decades of scientific research. The proof? Saul Kassin's extraordinary new book DUPED – WHY INNOCENT PEOPLE CONFESS, AND WHY WE BELIEVE THEIR CONFESSIONS (Prometheus Books 2022). And in that book – itself a remarkable reader-friendly journey through history lessons tracing false confessions back to the Salem witch trial and across history since then, compelling psychological research, a devastating indictment of poor and persistent police interrogation practices (in particular the "Reid" technique" [1]), a focused analysis on the failure of constitutional law decisions to preclude use of false confession evidence, and prescriptions for detecting and reducing the likelihood of false admissions of guilt – are lessons for those who teach or practice trial advocacy, regardless of whether the case is criminal and a police-secured confession is at issue.

Before I turn to advocacy lessons, don't be 'duped' into thinking that false confessions are a recent phenomenon. The fear of such errors is at the root of the

[1] https://reid.com/ The Reid technique is a commonly used format for police interrogations.

corpus delicti rule; and the history of proved wrongful convictions may begin with the false confession case of brothers Jesse and Stephen Broom in 1819 – convicted of the murder of one Russell Colvin, they faced a sentence of death *until Colvin showed up in another state.*

What are the advocacy lessons? The biggest is the power of an admission of responsibility, whether in a civil or criminal context. Kassin shows from jury studies the power of a confession deemed to be involuntary (not as a matter of law but based on jury assessment) – the vote for a guilty verdict increases substantially over the no-confession-at-all condition. In other words, even when jurors agree that the confession was forced out of the person's mouth, they take the accused at their word – if they say they did it, it must have happened. So advocacy based on showing involuntariness is no advocacy at all.

Perhaps more compelling and more useful is Kassin's review of whether limiting instructions work. He reports a study where mock jurors received a summary of a murder case, one where the accused is alleged to have killed their spouse and the spouse's lover. The evidence provided is deliberately kept weak and circumstantial. One quarter of the study subjects received only those facts, setting a baseline assessment of the strength of the proof - only 24% voted "guilty."

For the other study subjects, the summary had an added data point – a detective described an audiotaped conversation in which the suspect confessed to a friend minutes after the crime. Three variations of the scenario then occurred, one for each quarter of the study subjects:

- The Judge ruled the confession admissible.
- The Judge ruled it inadmissible, telling the jury it must be disregarded because it was obtained illegally.
- The Judge ruled in inadmissible, telling the jurors they must disregard it because "it was unreliable, barely audible, and difficult to determine what was said."

How did the mock jurors vote?

- Condition admissible? **79% voted guilty.**
- Condition inadmissible, explanation inaudible? **24% voted guilty.**

- Condition inadmissible, illegally obtained? **65% voted guilty.**

The vote should have been the same in the final two conditions - no confession, hence a 24% conviction rate. Kassin's lesson? "[C]onfession evidence is too potent for jurors to ignore because of a mere technicality." DUPED, 264. Our broader lesson? "Forget about it" will not suffice in many circumstances as a cure to erroneous proof – *how* a Judge explains the need to disregard is essential.

For a review of the book, this author asked Professor Kassin a series of questions about false confessions. His responses offer further lessons for advocates and advocacy teachers.

1. **A concern of yours is that the Reid technique can lead to false confessions. I went to the Reid website and found this statement. "[T]he Reid Technique teaches that the denial should be evaluated to identify whether the denial is typical of an innocent or guilty suspect." https://reid.com/resources/investigator-tips/what-exactly-is-the-reid-technique-of-interrogation (last visited June 29, 2023). Are there indeed "typical" denials that reflect innocence or guilt?**

   There is no empirical basis for the claim that some denials—in terms of the words used, tone, or behavior, are more typical of guilty than innocent suspects. For example, the Reid technique manual states that guilty suspects often preface their denials with a "permission phrase" like "But sir, may I say one thing?" There is no empirical basis for this claim. All I can say is, God help those suspects who are polite by nature, respectful of authority, and/or anxious not to offend a detective accusing them of a crime.

   Just to be clear: Research has shown that people—including trained and experienced police officers—cannot tell the difference between true and false denials, or even between true and false confessions. Training increases self-confidence but not accuracy. That's why new science-based approaches to suspect interviewing have shed these myths.

2. **What do jurors need to know about assessing confession evidence, and what is the best way to communicate that?**

With regard to confession evidence, juries need to shed two commonsense myths about human nature before they will think critically about confession evidence.

Myth #1: I would never confess to a crime I did not commit. Yes, you would. And so would others.

Myth #2: I'd know a false confession if I saw one. No, you wouldn't. And every wrongful conviction that hinged on a false confession proves it.

Only when juries release themselves from these myths can they begin to think critically about (1) whether the interrogators used tactics used were psychologically coercive, even if they seemed benign at first glance; (2) whether the suspect was particularly vulnerable to manipulation, because of youth or disability; and (3) whether the confession contained accurate details about the crime that are unequivocally attributable to the suspect—details that police did not already know, or which led to evidence they did not already have.

3. **Finally, if there were one lesson you would want readers to take from DUPED, what would that be?**

If you find yourself on a jury, standing in judgment of a defendant who had confessed and then recanted that confession, take your mind off auto-pilot and use your critical thinking skills. That defendant may well be innocent.

What are the broad advocacy lessons, then? First, science confirms the power of a confession as repeatedly expressed by the United States Supreme Court:

> A voluntary confession has "always ranked high in the scale of incriminating evidence," *Bram v. United States*, 168 U.S. 532, 544, 18 S. Ct. 183, 42 L. Ed. 568 (1897), and is "among the most effectual proofs in the law." *Hopt v. Utah*, 110 U.S. 574, 584-85, 4 S. Ct. 202, 28 L. Ed. 262 (1884). A defendant's voluntary confession has a "profound impact on the jury" and "is probably the most probative and damaging evidence that can be admitted against

him." *Arizona v. Fulminante*, 499 U.S. 279, 296, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991) (citations omitted).[2]

Second, we all need to do better than rely on the tropes of what behaviors do and don't show deception. And if an opponent seeks to argue them, it is time to raise science-based objections as we ought not tolerate folk-tale myths as the basis for a verdict.

Finally, Kassin's last observation that jurors need to "take [their] mind off auto-pilot and use…critical thinking skills[]" puts the ball squarely in the advocate's court. This is THINKING FAST AND SLOW[3] time – when science confirms that common beliefs [heuristics] are flawed, we need to push the jury to think slow – to take that step back and say "hey, wait a minute, maybe I need to look at this differently." Kassin links this to attribution theory[4], where we tend to assume others' actions arose from their personal factors rather than situational ones.

DUPED does precisely what its title promises – teaching us why innocent people confess and the science of how we can do better. It is compelling reading and essential reading. It is also an important source for lessons all advocates need.[5]

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[2] Lazar v. AG of Pennsylvania, 2023 U.S. Dist. LEXIS 36483, *28.

[3] Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux, LLC., 2011). The first chapter can be read online at https://www.scientificamerican.com/article/kahneman-excerpt-thinking-fast-and-slow/

[4] This is detailed in https://law.temple.edu/aer/2022/09/01/a-fundamental-flaw-its-never-my-fault-its-always-theirs/

[5] A full review of DUPED, with a lengthier interview with Professor Kassin, can be found at https://law.temple.edu/aer/publication_type/book/