
CONFESSIONS IN THE COURTROOM



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Preface

Problems raised by confession evidence are just as basic to the administration of criminal justice and just as important as problems with eyewitness testimony. Yet for reasons that are unclear to us, in contrast to the massive numbers of eyewitness studies, the topic of confession evidence has been almost completely ignored by psychologists and other social scientists. This book seeks to rectify that discrepancy. Our approach builds upon the methods, theories, and concepts of psychology; whether the focus is on the police methods of interrogation, their effects on suspects, or the jury's reaction to the evidence, the approach of social psychology offers a fruitful perspective.

This is an appropriate time to examine the role that confessions play in the administration of criminal justice in the United States. The U.S. Supreme Court's decision in the case *Arizona v. Fulminante*, discussed in detail in this book, has caused a reassessment of the acceptability of confessions generated under duress. Our goals in this book are, first, to examine how the legal system has, over the last half century, evolved its concept of the proper way to treat confessions, and then to examine psychological perspectives on why people confess and how other people, especially jurors, react to confessions. In looking at the causes of confessions, we carefully examine the interrogation procedures used by police. We evaluate the process for determining whether a confession should be admitted as evidence in

a trial. We summarize our program of research on jurors' reactions to voluntary and coerced confessions. We attempt to assess the impact of the *Fulminante* decision on the future of these phenomena.

Our aim is to provide the first comprehensive multidisciplinary account of the state of criminal confessions in the United States today. The more than 170 references we cite range from reports of psychological research to appellate court decisions to descriptions of trials by journalists. Our audience is social scientists, attorneys, and members of the justice system who seek a readable and objective treatment of this topic. Our hope is that this book will contribute to the recognition that confession evidence is not only a topic of concern to our society, but also a topic worthy of increased investigation.

Acknowledgments

This is the fourth book that the two of us have authored or edited for Sage Publications on aspects of the court system. We are indebted to C. Terry Hendrix, Senior Editor of Sage Publications, for encouraging us to develop our ideas and for identifying topics of interest to scholars and professional persons. The staff of Sage Publications continue to be a model for what a publishing company should be in regard to helpfulness to authors.

We have benefited also from the assistance of students and colleagues in the preparation of this book. At the University of Kansas, Teddy D. Warner (now on the faculty of Iowa State University) was a co-author on some of the research described in Chapter 6. Chris Bauer prepared a draft of the report on the Bernhard Goetz confession. Don Christie analyzed police manuals. Jennifer Gottschalk and Stacey Stranathan did library research and analyzed data. Laura Shaw facilitated an improvement in the description of details from the *Fulminante* case. Among the faculty, Professor Pete Rowland of the Department of Political Science clarified court decisions and Professor David Holmes brought several significant pieces of research to our attention.

At Williams College a number of students have been co-authors in the program of research described in Chapter 6; these include

Marisa E. Reddy, William F. Tulloch, Karlyn McNall, Holly Sukel, Lee Kiechel, and John Facciani.

We value the comments of K. C. Scull on Chapter 3. We are unable to list the names of all of the journalists, attorneys, and judges with whom we have discussed confessions evidence but we have learned from the opportunity to interrogate them. Of course, any errors or misinterpretations in this book are our responsibility and not that of our colleagues, students, or consultants.

Finally, a special set of thanks is offered to Katia Silva, who typed several drafts of this manuscript with unfailing enthusiasm, impressive accuracy, and unbelievable promptness.

—Lawrence S. Wrightsman

—Saul M. Kassin

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O N E

Confessions in Court

Nothing has more impact on a jury in a criminal trial than evidence that the defendant confessed to the crime. In fact, J. H. Wigmore (1970), in his classic law school textbook titled *Evidence*, cited several authoritative legal scholars who confirmed his contention that a confession ranks as absolutely the most influential type of evidence.

We propose two bases for Wigmore's conclusion. First, even though estimates vary somewhat, it is clear that confession evidence is introduced with relentless regularity in the courts. A survey of deputy district attorneys in Los Angeles County, for example, revealed that confessions were a part of the testimony in 47% of the 4,000 cases surveyed (Younger, 1966). Similarly, the district attorney of New York City stated that he planned to offer confession evidence in 68% of the homicide cases that were pending there (Kaufman, 1966). Similar percentages occur in Great Britain; Baldwin and McConville (1980) found a confession rate of about 50% in London and Birmingham. Mitchell (1983) reviewed the cases of 394 defendants who came before the Worcester Crown Court in 1978; 70% had confessed to the police. Kalven and Zeisel's (1966) extensive survey of trial judges found that disputed confessions—that is, those that were later denied by the defendant or whose admissibility was challenged by the defense—arose in approximately 20% of the 3,576 criminal trials that they sampled nationwide. When we consider that

from 80% to 95% of criminal cases never go to trial because the defendant pleads guilty and/or plea-bargains—thus “confessing” to the commission of a crime—these figures are even more astounding.

In addition to the prevalence of confession evidence, a second reason for its importance is the massive impact that it can single-handedly exert on a criminal defendant’s fate. McCormick’s (1972) textbook on evidence even put it this way: “The introduction of a confession makes the other aspects of a trial in court seem superfluous” (p. 316). The compelling nature of confession evidence has also been demonstrated empirically. In a mock-jury experiment, Miller and Boster (1977) had their subjects read a description of a murder trial that included (a) only circumstantial evidence, (b) eyewitness testimony from either an acquaintance or a stranger, or (c) testimony alleging that the defendant had confessed to the police. As it turned out, those subjects who received the confession evidence were more likely to view the defendant as guilty than were those in other conditions, including those provided with the eyewitness identification.

But all is not so straightforward and simple. Two problems surface, or perhaps better put, a problem and a mystery. First, confession evidence is not always valid. That is, a suspect may have confessed not because he or she actually committed the crime, but for other reasons. Or the evidence may come not from the defendant, but from a witness who claims that the defendant confessed. (At this point we need to add an important reminder: When evidence of a confession is presented in court, it is almost always a part of the testimony of the police officer who elicited the confession, not the testimony of the defendant who allegedly confessed. When exceptions to this rule occur, as in the Chico Mendes murder trial to be described later in this chapter, they usually are accounted for by motivations other than complete honesty.)

The problems with confession evidence are so common that there are numerous examples of erroneous convictions based almost exclusively on uncorroborated confession evidence. In *Convicting the Innocent*, for example, Borchard (1932) reviewed 65 criminal cases involving defendants, many of whom were incarcerated or even executed on the basis of confessions that were subsequently proved

to be false. More recently, Bedau and Radelet (1987) identified 350 miscarriages of justice in which innocent persons were convicted of capital crimes in the United States. In 49 of these cases, the conviction was based on a false confession.

Second—the mystery—social scientists have given scant attention to the role of confessions evidence in determining prosecution and guilt. If, as indicated in the Miller and Boster study cited earlier, mock jurors are more influenced by testimony about a confession than by an eyewitness's identification, we are baffled by the inconsistency between the recent mass of research and writing by psychologists on eyewitness accuracy and the virtual absence of empirical study of jurors' reactions to confession evidence. For example, an examination of the *Psychological Abstracts* and the *Sociological Abstracts* indicates that neither of the 1990 volumes had any entries under "confessions." Furthermore, a check of the eight most recent textbooks on the topic of psychology and the law finds that six of these do not include the term in their subject indexes, and the recently published and comprehensive *Handbook of Psychology and Law* (Kagehiro & Laufer, 1992) includes only three brief mentions of the term.

DEFINITION OF A CONFESSION

A purpose of this book is to redress the imbalance, and to try to draw attention to the nature of confessions and their role in criminal justice. In doing so, this chapter will illustrate the complexity of the problem by describing several examples of questionable confessions and then elucidating the confession process by examining one case in detail. But first, we need to clarify what constitutes a confession. One way that the term has been defined is "an acknowledgment, in expressed words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it" (Wigmore, 1970, p. 308). As we will see in the forthcoming example, "some essential part of it" is a portion of the definition not to be tossed off lightly. What a suspect confesses to may differ substantially from what he or she, as defendant, is charged with at trial.

Some commentators have viewed the above traditional definition as narrow in scope because it excludes guilty conduct (e.g., fleeing from arrest), exculpatory statements (e.g., a self-defense explanation or apology), and other admissions (i.e., those that do not bear directly on the issue of guilt or fall short of an acknowledgment of all essential elements of the crime). These distinctions, particularly that between confessions and other types of verbal admissions, had, in the past, enabled the courts to circumvent having to apply stringent rules governing the introduction of confession evidence when dealing with other types of self-incriminating statements (McCormick, 1972). However, because these distinctions are often subtle and difficult to make in individual cases (Slough, 1959) and because the U.S. Supreme Court has (until the 1991 case of *Arizona v. Fulminante*) indicated that coerced confessions are subject to the same constitutional safeguards as full confessions (e.g., *Ashcraft v. Tennessee*, 1944), today's accepted operational definition is, for all practical purposes, one that encompasses a relatively wide range of self-incriminating behaviors under the label "confession."

THE COMPLEXITY OF CONFESSIONS

To the layperson whose exposure to a suspect's confession may be brief—coming from a newspaper article or quick mention on the television news—the presence of a confession may be straightforward and require no further scrutiny. Nothing could be further from the truth. Is an alleged confession authentic? Was the defendant of sound mind or could he have confessed to crimes he did not commit? Was his statement coerced or induced by trickery during an interrogation? Was the suspect's constitutional privilege against self-incrimination violated? Can the testimony of possibly overzealous police officers be trusted?

Consider, for example, the case of Randall Adams, which was described in the film, *The Thin Blue Line*. After extensively questioning Adams (who was falsely suspected of killing a police officer), the detective typed up a statement supposedly made by Adams—but he added a confession. In court, he then produced a signed copy of the

statement that Adams had refused to sign. Adams was convicted of murder and sentenced to death (Adams, Hoffer, & Hoffer, 1991).

As implied earlier, many motives exist for a sudden "confession." During routine questioning in the trial of the men accused of killing the Brazilian rain forest defender, Chico Mendes, one of the defendants, 23-year-old Darci Alves Pereira, startled the courtroom spectators by admitting that he alone had gunned down the rubber tapper on December 22, 1988. His defense attorney told the press that "he was completely surprised" by the confession. But the chief prosecuting attorney discounted the admission, concluding that it was a planned maneuver to spare Pereira's father, the other defendant, from a murder conviction. If that was the reason, it didn't work, as both the son and his father, aged 54, were found guilty of the murder and were sentenced to 19 years in prison.

But other reasons abound for confessing, especially during an interrogation by the police. Back in 1955, a woman named Nancy Parker was murdered. Her husband, David Parker, confessed but soon withdrew his confession, claiming he had been forced into it. Regardless, Parker was convicted and sentenced to spend the rest of his life in the Nebraska State Penitentiary. After serving 13 years in prison, he was released, when an appeals court ruled that his confession was, in fact, "coerced and involuntary." Meanwhile, another man, Wesley Peery, confessed to the killing of Nancy Parker. Peery, who had been questioned shortly after the murder, waited until 1977 to confess to his lawyer. Even after that delay, his admission was not revealed until after his death in 1988 (Associated Press, 1989).

Did, in fact, the husband of the victim confess only after intense pressure to do so? We all can think of famous examples—Galileo, for one—whose coerced confessions were not sincere. Or, on the other hand, was it the latter-day confession of Wesley Peery that should be suspect? It was, after all, given while Peery was on death row, expressed in the hopes that a profitable book would be written about his exploits. All we can say for sure is that two confessions exist to the same crime, and only one can be correct.

Consider another example. Johnny Wilson is a mentally retarded person, with the mental capacity of a third-grader. In 1986, at the age of 20, he confessed to the murder of Pauline Martz, a businesswoman

in Aurora, MO. He later claimed that he confessed only after a late-night, 6-hour interrogation, so that he could go home and get away from the police officer who had been abusive during the questioning. "I didn't like what they were doing to me, and the only way to get out of there was to confess," he said; "As soon as they locked me up, I thought, 'I'm in deep trouble now' " (quoted in Spivak, 1988, p. 314). After entering a so-called Alford plea (in which he did not admit guilt but acknowledged that the prosecution had enough evidence for a conviction), Wilson was sentenced to life in prison. Like the previous example, an inmate in another prison has confessed to the murder for which Wilson is serving a life sentence. This case highlights the question whether high-powered police interrogation techniques serve the course of justice when they are applied to mentally retarded or emotionally disturbed suspects. At the very least, the use of these techniques increases the risk of false confessions and erroneous convictions.

What is missing in most accounts of a "confession" are the specifics—important specifics such as just what was admitted, how it was elicited, and why it was made. The following detailed example of an actual case fills in some gaps but also illustrates how we usually don't know the answer to some important questions about the nature of a confession.

THE CONFESSION OF BRIAN KEITH BELL

As Frank Seurer, Sr., left the Village Inn in Lawrence, KS, on August 2, 1983, after drinking his early-morning coffee, he had good feelings about the future. And why not; fall football practice at the University of Kansas was about to begin, and Mr. Seurer's son was the first-string quarterback on the Jayhawks football team. In fact, Frank Jr., a senior who had started as the KU quarterback for 3 years and led them to one bowl game, had already been picked as a second-team All-American on one national preseason team. Frank Seurer, Sr., had been so excited about his son's future that in January he had moved his family from Huntington Beach, CA, to Lawrence.

He and his wife had bought a local barbecue restaurant close to the campus and had re-named it Pop's Bar-B-Q.

So there was ample reason for Frank Seurer to be joyous as he finished his morning coffee on August 2. But within 2 hours he would be dead. He was found lying on the floor of his restaurant kitchen about 9:30 that morning; the autopsy later revealed that he had been stabbed 23 times, including 6 times in the chest, 3 times around his upper arm, and 14 times in the back. Apparently two different instruments had been used, although neither was ever discovered. A total of \$446 in bills and coins had been stolen from the cash register.

On August 17, 2½ weeks after the crime, a young man named Keith Bell, age 23, was brought in for questioning. The police had been well aware of Keith Bell, who used to be an employee of the restaurant. He was a nephew of the previous owner of the restaurant, Bobby Bell, a former player with the Kansas City Chiefs and member of the National Football League Hall of Fame. In fact, Keith Bell had worked there while his uncle owned it, and had continued to after the sale. (Mrs. Sue Seurer later testified, "Keith taught us how to run the barbecue business.") But Keith was no longer employed there on the day of the murder. However, he had attended Mr. Seurer's funeral and afterward drove around with Beth Seurer, the victim's daughter, trying to calm her. His solicitousness led him to offer to help out at the restaurant again after the owner's death.

Keith Bell had become a suspect because his fingerprints were on two envelopes found at the scene of the crime. The envelopes were addressed to his uncle, care of the restaurant, and the police determined that they had been mailed after Keith's last reported visit to the restaurant. Thus, the Lawrence police suspected Bell of the murder, as the envelopes were discovered lying on the kitchen floor next to Mr. Seurer's body. The police speculated that on August 2, Keith Bell had gone to the restaurant to ask Mr. Seurer for his job back, that Seurer had given him the two letters addressed to Keith's uncle, and that, for some reason, an argument had developed.

After 6½ hours of continuous questioning on August 17, Keith Bell signed a statement confessing that he had stabbed Frank Seurer