**Cassell Cross-Examination Outline**

1. **Cassell’s Qualifications as Expert on False Confessions**
   1. Set Up

# MARK PRIOR REPORTS & TESTIMONY- EXHIBITS 309-320 SHOW HIM EACH

**- HAVE HIM ACKNOWLEDGE HE WROTE/TESTIFIED IN EACH**

* + - Reports all submitted under penalty of perjury
      * why do that
      * take what is in reports seriously
    - Read and digested all sworn testimony -

# Caine, Maughan, Thomas, Gonzalez, Hassell & Wenatchee

* + - * fair to say listen carefully to questions
        + don’t understand Q - ask examiner to re-phrase
      * fair to say answer the questions thoughtfully and carefully
        + obviously - under oath
    - for purposes of this deposition - when I use the term false confession
      * what I mean is an admission of guilt to a crime of which the person is factually innocent
      * limit the deposition to false confessions that occur during police questioning
      * exclude “voluntary false confessions” (eg Lindbergh kidnapping)
    - So based on those understanding and your prior testimony
      * going to try to narrow focus on deposition
  1. Cassell’s Prior Testimony.

You agree that:

* + - false confessions do exist - **Hassell 71; Thomas 179**
    - factually innocent people falsely confess - **Caine 72, 210**
      * means real perp goes free - **Caine 78**
    - factually innocent people falsely confess during police interrogations
    - police interrogation techniques can cause a **guilty** person to truthfully confess
      * done some empirical research on that - SLC study - UCLA article
    - police interrogation techniques can cause a factually innocent person to falsely confess - **Gonzalez 30, 131**
      * certain factors can cause both innocent and guilty people to confess - **Caine 149-150**
      * use of deception can make a guilty person truthfully confess or could make an innocent person falsely confess - **Caine 223**
* haven’t determined frequency with which factually innocent people falsely confess during police interrogations
* can’t say that a particular interrogation technique **will cause** a factually innocent person to falsely confess
* can’t say that a particular interrogation technique **is likely to cause** a factually innocent person to falsely confess
* Agree: For false confessions
* mental retardation is a risk factor for false confessions

# Maughan - 414; - Gonzalez 135-136, 155-156; Hassell- 90

**- READ QUOTE - Hassell - p. 92**

* certain other kinds of psychological conditions - **Gonzalez - 91-93**
* youth is a risk factor for false confessions -
  + minors under age of 18 - **Gonzalez - 135-136, 155-156**
* intoxication can be a risk factor - **Caine 187**
* promises of rewards/leniency can be a risk factor

# Gonzalez 138; Caine 190-193

* + continuum - based on perception of the person offered the reward
    - if perceives the reward to be of great benefit - higher risk
  + Use of minimization can play a role - **Caine 198**
* threats can be a risk factor - **Gonzalez 138; Caine 189**
  + Continuum - based on perception of person who is threatened
    - if perceives threat of very serious consequences - higher risk
  + greater threat - higher risk
    - gun to head - threat of imminent death - **Hassell 90**
    - threat of death penalty -

# READ QUOTE - Caine 193

-potential consequences can be a factor - **Caine 155-156**

* Being sleep deprived can play a role in false confessions - **Caine 199**
* Deception can play a role **- Caine 223**
* Your basic position with regard to false confessions
  + no one has determined the frequency with which modern police interrogation techniques cause false confessions
  + based on research to date - can’t say that a particular technique will cause or even that it is likely to cause a false confession as opposed to a true confession
  1. Importance of psychology
     + agree that a modern police interrogation techniques rely upon psychological principles - **SHOW REID BOOK**
       - to be an effective interrogator - need to understand the psychology of confession
       - agree - psychological factors can cause false confessions

# Caine 91-93; 197

* + - * “videotaping would help false confessors by allowing us to explore the psychological aspects of false confessions - **Caine 83-84**
      * you did not study psychology in college
        + didn’t take a course in psychology - Hassell 26
        + have no formal training in psychology - Hassell 26
        + no formal training- social psychology - Maughan 417
        + no post-graduate degree in any social science field

don’t belong to any professional associations in fields of psychology or sociology

for example - not member of the APA or American Sociology Association

never received any awards or recognition from any such professional organization for work on false confessions

* + - * not an expert in psychology - **Caine 57**
      * Know Saul Kassin is an expert in psychology

# SHOW TEXTBOOK

* + - * agree - Saul Kassin is a leading researcher on subject of false confessions - **Caine 64**
  1. Study design (only if frequency and causation are issues in case)
     + hypo - studying concussions in female soccer players - **Grayson depo**

-hypo - studying effect of Tylenol on people w/liver disease

# - Gonzalez 151-153

* + - Believe study should be done that involves a random selection of a large sample of prosecutions involving confessions made during police interrogations, determine the number of false confessions, and then determine the police interrogation techniques that are associated with those false confessions
      * that is what needs to be done to determine frequency and causation of false confessions
    - Agree - “ if we’re talking about the danger of these techniques in generating a false confession, one would want to know if a factually innocent person is subjected to these techniques, how likely is it that person will falsely confess.”

Cassell: That certainly would be one way of going about it

# - Gonzalez p. 133.

* + - Agree - that first you would have to find factually innocent people who have confessed. - **p. 133.** Cassell thinks “somebody could pull that together.” **- p. 134**
    - Imagine hypothetical study- a random sample of 1000 criminal prosecutions from all over the country involving confessions - that would be first step as far as you are concerned - eliminates selection bias
      * Then - have to determine which confessions were false
        + how would you do that?
      * assume could determine with absolute accuracy 950 were true confessions to at least some crime they had committed, only

50 were completely false confessions

* + - * + that wouldn’t be surprising to you

because vast majority of people who are prosecuted are in fact guilty of some crime related to arrest

# “almost all” - UCLA Article - Ex. 327, p. 916

* + - * in terms of the frequency of the problem of false confessions in criminal prosecutions, that depends **first** on the number of factually innocent people who are actually prosecuted, which is a very small percentage, and **then** on the number of those factually innocent people who falsely confessed, which presumably would be an even smaller number
        + agree - in terms of the frequency of false confessions - number is going to be tiny in relation to the number of guilty people who truthfully confess to at least some crime they have committed
        + but that wouldn’t tell you anything about the frequency of factually innocent people being convicted each year - because we don’t know how many factually

innocent people who were convicted did not confess.

* + - * in terms of the issue of what causes false confessions
        + wouldn’t do us any good to look at the 950 who were guilty
        + have to focus on the 50 who were factually innocent
      * what would you do at that point to investigate the causation issue
        + to determine what causes factually innocent people to falsely confess

would it be better to look only at those 50, instead of looking at every known factually innocent person who has confessed?

?? - isn’t that exactly what Drizin and Leo did in their 2004 study

# Cassell’s Qualifications as an Expert - additional topics

**SHOW Exhibit 321** (Report)

- report did in this case

- **pages 1-3** - list qualifications

- in support your assertion - particular expertise on police interrogations and false confessions

* 1. U.S. v. Dickerson - **EXHIBIT 322**
     + note SCOTUS appointed you to brief and argue *Dickerson* - p. 3
       - case concerning the Miranda rule and confessions (2000)
       - Court rejected your position 7-2 (Rehnquist wrote opinion)
       - “the advent of modern custodial police interrogation brought with it an increased concern about confessions obtained by coercion. Because custodial police interrogation, by its very nature, isolates and pressures the individual, we stated [in Malloy v.

Hogan] that ‘even without employing brutality, the ‘third degree’ or other specific strategems, custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.’**” p. 435**

* 1. Cassell articles
     + Noted that you have published “a *number* of scholarly articles on issues relating to confessions *and the American criminal justice system*.” - **Report p.2**
       - vast majority of your articles relate to either “reforming” Miranda or Victim’s rights
       - **CV -EXHIBIT 321A** - pages 2- 6
         * lists 47 articles from 1983 - 2015
         * only 4 are on the subject of false confessions

three written between 1997 and 1999

one written in 2012

* none of the 4 articles you wrote were “peer-reviewed”
  + if claims 1998 article was peer-reviewed

# GO TO EXHIBITS 332 & 333

* + If admits none have been peer reviewed

# Go to Hassell hearing - p. 7, 27-28, 41

* + - **go to Thomas hearing - p. 157, 158**
    - **go to Maughan depo - p. 418-419, 426**
  + misleading testimony (“peer-reviewed journal)

# Gonzalez - p. 87

* + - **Burge - p. 205**
      * “I am quoted frequently in scholarly articles and publications relating to false confessions.” -**Report 3**
        + give 1 example - book 1998 - **footnote 8**
        + book - ed. by Richard Leo & George Thomas

- another example where been quoted with approval

* 1. General Acceptance in Scientific Community
     + report - “the false confession theories have not been sufficiently tested, have an unacceptably high rate of error, depart from accepted standards in the area, and have not been accepted in the relevant scientific community.” - **p. 29**
     + unacceptably high rate of error refers to Ofshe & Leo’s study of 60 cases in their 1998 article *The Consequences of False Confessions*
       - anything else (if not, set aside - one 1998 study)
     + focus on the other factors mention - theories have not been sufficiently tested, theories depart from accepted standards in the area, and have not been accepted in the relevant scientific community.
     + Agree - one of the factors in assessing whether something is accepted in a scientific community includes the presentation and publishing of peer-reviewed articles

# - Maughan 417

**Exhibit 331 -DEFINITIION OF PEER-REVIEWED ARTICLE**

* + - agree - when talking about general acceptance of a theory or opinion in scientific community, have to look at whether anyone other than Paul Cassell disagrees with that theory or opinion - **Maughan - 424**
    - Claim - Saul Kassin, Welsh White and Major James Agar all agree with you
      * have testified to that under oath

# - Maughan - 393-394; Hassell 58, 85-87

* + - * with regard to Professor Kassin
        + Quote his 1997 article - “the current empirical foundation may be too meager to …. qualify as a subject of ‘scientific knowledge’” - **p. 32**
        + ignore his 2004 article

# - QUOTE EXHIBIT 346 - p. 59

- hasn’t agreed with you for more than 10 years

* + - * With regard to Professor White - wrote in report that “Professor Welsh White has noted that the empirical data on false confessions could be described as ‘tentative and fragmentary.’” - **p32**
        + testified in depo in 2009 that you had a copy of White’s article w/you - **Maughan 394**
        + testified that White was “referring directly to the research done by Leo & Ofshe in saying that the data is tentative and fragmentary and therefore doesn’t meet the reliability tests” for admitting expert testimony - **Maughan 394**

# SHOW WHITE ARTICLE - EXHIBIT 325

read passage re tentative & fragmentary - p. 15

* + - * With regard to Major Agar - quote his 1999 article
        + When was last time spoke with Major Agar

# -MARK EXHIBIT 373

Agar 2008 email to Kassin

* 1. Knowledge of other experts in field
     + know how many PhD’s or JD’s have written peer-reviewed articles relating to the topic of false confessions since 2000
     + name any besides Kassin, Leo, Ofshe, Drizin, Gudyonson, Garrett and Welsh White

# -SHOW EXHIBIT 323A- NAMES OF AUTHORS

* + - * out of list - whose articles have you read
        + describe what those articles were about
        + describe topic any authors have written about
  1. Knowledge of academic literature in field
     + in your report - say “familiar with the academic literature on false confessions” - **p. 28**
     + know approximately how many articles have been written since you published your article in 1999
     + how many articles did you carefully review before you wrote your report in this case
       - names of articles
       - authors of articles
       - take any notes on what read
       - have any notes on anything you have read
     + do you have your research assistants read and summarize articles for you?
       - ever done that - **Gonzalez - p. 22**

-read the ones that “seemed important”

* + - * + how determine which those were

**- SHOW EXHIBIT 323 -** List of seminal Articles

- ask about articles

* 1. Psychological Principles Underlying Study of False Confession

# INSERT QUESTIONS FROM TEXTBOOK INSERT QUESTIONS SUPPLIED BY SAUL

* 1. Knowledge of Specific Articles
     + Go through Kassin articles - **Exhibits 343-350**
     + Go through other articles - **Exhibits 351-359**
     + Go through Leo & Drizin 2004 article - **Exhibit 361**

**-** as of 2009 - didn’t have opinion about methodology used

- as of 2009 - had not gone through all 125 cases

-had other things to do - **Gonzalez 92-93**

* + - 2013 - said aspects of article that were reliable - **Caine 142**
      * what aspects were you referring to
* Have opinion about methodology used now

# -SHOW EXHIBITS 362- 363

* + SCOTUS reliance on article

# - READ quotes

* + didn’t know until 2009 - **Gonzalez 93**
  1. Specific Indicia of Acceptance in Scientific Community

# SHOW EXHIBITS 364 - 369

* + - 6 Amicus Briefs
      * go through tables of contents
* any evidence of acceptance in scientific community
  + **SHOW EXHIBIT 370**- Criteria for approval

# SHOW White Paper - EXHIBIT 371

* + go through contents
  + in 2013 - testified familiar with it - **Caine 212**

- represented views of 6 authors

* + when asked if Paper represented the views of more than 6 authors, responded “I’m sure there are some people who subscribe to the views in that

paper and I’m sure there are others that would not. - **Caine 213**

- name any other than you

* + also testified in 2009 were not aware of an APA endorsement of views and opinions expressed in White Paper - **Maughan - 424-425**
    - “I’m not aware of anything like that. If you’ve got some proof of that, I’d sure be glad to look at tem. But I’m not aware of anything. - Maughan - 424-425
  + “Such an endorsement might be significant depending on what it said, *if it existed*” - **Maughan - 425-426**

# Show EXHIBIT 372 - Read

* + - Thompson description of approval process
  + When wrote report last month - not aware of that
  + Still your position that the false confession theories have not been accepted in the relevant scientific community.

-in fact - it is your views that have not been accepted in scientific community

I. Cassell “Testimony” as expert on false confessions

- Also stated that “I have been called to testify as an expert witness in state and federal courts on the subject of false confessions in both civil and criminal cases

# CV Exhibit 321A - p. 9-10

* + list expert witness work back to 1996
  + list 11 cases where say you provided “Expert Testimony” on false confessions
  + only 9 of those cases are in last 14 years
  + 5 of those - didn’t actually testify

- just only submitted report

* + one case - gave deposition
  + 3 cases - involved pre-trial hearings relatingto admissibility of proposed testimony of Richard Ofshe or Richard Leo
* when lawyer wants to call expert to testify (hearing/trial)
  + procedure is that before witness can render any opinions
    - proponent first has to establish expert’s credentials
    - then proponent tenders the witness as an expert in a particular subject area
    - judge then finds that the witness is in fact an expert in that particular subject area by reason of his education, training or experience
    - once judge makes that finding - expert is allowed to

- render his opinions

* Has any lawyer ever tendered you to a judge as an expert in false confessions
  + ever asked a judge to find that you are an expert in false confessions
* Has any judge has ever found or declared you to be an expert in false confessions
* Has any judge has ever said “I find that Professor Cassell, by reason of his education, training and experience, is qualified to testify as an expert on the topic of false confessions.”
* Other than critiquing Drizin and Kassin’s reports
  + what understand your role as expert in this case to be
* designated as expert only with regard issues relating to the admissibility of Professor Drizin and Professor Kassin’s testimony at trial
* understand reports are only admissible at trial for impeachment
  + we would not be offering the reports into evidence
  + we would be calling them as live witness
* If Judge Reidinger finds that the testimony of Professor Drizin and Professor Kassin, based upon their depositions and the Daubert hearing, is admissilble, what would you testify to at trial