

DeClue, G. (2006). The psychology of interrogations and confessions. *Florida Psychologist*, 57(1), 17-18.

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No one knows how many people confess to crimes they did not commit. Thanks in part to DNA and other scientific evidence, it is certain that some people do. This is not a rare phenomenon. False confessions are second only to mistaken identity among the causes of wrongful convictions: Of the first 130 DNA exonerations, 35 (27%) involved false confessions (Innocence Project, 2006).

When a person confesses to a crime, the results are profound. A recent study of 125 cases of proven false confessions (Drizin & Leo, 2004) found that when the charges were not dropped prior to trial, 86% of suspects who falsely confessed were convicted. That was true even though there was no credible corroboration of the suspects' confession, and in many of the cases there was actually compelling evidence of the defendant's factual innocence. Drizin and Leo conclude that ***modern police interrogation practices, which now rely primarily on psychological techniques, can cause innocent suspects to confess.***

Policy Remedies

The implementation of three procedural safeguards could protect innocent defendants against the admission of false confession evidence into trial proceedings and the subsequent likelihood of wrongful conviction: 1) Courts should adopt mandatory electronic recording requirements in felony cases, 2) The admissibility of confession evidence should be allowed only when the accused subject's guilt is corroborated by

independent evidence, and 3) All confessions should meet a reasonable standard of reliability before being admitted (DeClue, 2005a, 2005b; Ofshe & Leo, 1997).

The most important of these safeguards is electronic recording of the entire interrogation, including a post-admission narrative in which the suspect supplies details that corroborate the reliability of the confession. Expert law enforcement officers recognize that interrogators can inadvertently contaminate confessions by asking questions that contain crime scene data and investigative results (Napier & Adams, 2002). Unless the entire interrogation is audio- or video-recorded, it is impossible to know which details, if any, were imbedded in the interrogators' questions.

Mandatory electronic recording of some interrogations has been required in England and Wales for 20 years, and has been instituted in Alaska, Minnesota, and Illinois. In recent years Florida legislators have introduced a bill to require electronic recording of some interrogations, and I plan to seek Florida psychologists' support in backing such legislation in the future. Stay tuned.

Psychologists' Role in Confession Cases

Based on my review of the psychological and legal literature and on my experience, I find that in disputed confession cases psychologists are most likely to be asked to provide testimony relevant to the following legal issues:

- Did the State fail to prove, by a preponderance of the evidence, that the Defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights?
- Did the State fail to prove, by a preponderance of the evidence, that the Defendant's supposed confession was freely and voluntarily made under the totality of the circumstances?

- Should the Court suppress the Defendant's coerced statements to the police because they are so highly unreliable and virtually uncorroborated? (DeClue, 2005a).

(Note that these questions are in the form that would be presented to the judge. The questions posed to a testifying psychologist would be in a different form, but would be designed to produce testimony that would be relevant to the question ultimately considered by the judge.)

Elsewhere (DeClue, 2005a) I describe in detail how psychologists can gather relevant evidence and prepare reports and testimony to assist courts in deciding legal issues in cases involving disputed confessions. Here I would like to report that, as a field, the psychology of interrogations and confessions has sufficiently matured that the following recommendation is in order: ***In any case that includes a so-called confession by the defendant, an evaluator who conducts an assessment relevant to adjudicative competence (also termed competence to proceed or competence to stand trial) should collect, at a minimum, preliminary data regarding the mental state of the person at the time of the confession and the circumstances surrounding the confession*** (DeClue, in press). At least one forensic assessment instrument, the Fitness Interview Test – Revised (FIT-R; Roesch, Zapf, & Eaves, 2006) facilitates collection of relevant data. Some familiarity with confession issues and relevant assessment techniques (DeClue, 2005a, 2005b; Gudjonsson, 2003) is necessary to guide this screening process. Whenever preliminary screening suggests that (a) the confession statement may have been coerced or (b) the confession statement might be wholly or partially false, the consulting psychologist should

recommend to the defense attorney that confession issues be fully explored, including consultation by an expert in the psychology of interrogations and confessions.

Some courts, including *Massey v. State*, 820 So.2d 1003 (Fla.App. 4 Dist. 2003), have determined that a defendant's claim that his confession was induced by police trickery is sufficient legal grounds to require an evidentiary hearing to determine whether the confession should be suppressed. And some appellate courts, including *Boyer v. State*, 825 So.2d 418, 419 (Fla.App. 1 Dist. 2002), have specifically held that trial courts must allow testimony by "an expert on interrogation techniques and false confession phenomena."

In some cases psychologists conducting competency evaluations may be the first to recognize that (a) a vulnerable person confessed or (b) police pressure and/or trickery may have contributed to the elicitation of a confession. In such cases, psychologists can recommend to the defense attorney that confession issues be fully explored, thereby initiating a process that can prevent an innocent person from being convicted.

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