

Dear Sheriff, Your Detectives Coerced a Confession¹

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Abstract

When an appeal results in the overturning of a criminal conviction because a confession was coerced, that is likely to garner some public attention and scrutiny. Somewhat less attention and scrutiny might follow a finding of not guilty in a criminal trial, and still less attention and scrutiny may follow the suppression of an interrogation and confession during a pre-trial hearing. Even less public attention and scrutiny—or none at all—may follow a decision by a prosecutor not to contest a defense attorney’s motion to suppress a coerced interrogation and confession. Less public attention and scrutiny can result in less feedback to a law-enforcement agency, which could impair the agency’s ability to learn and evolve. In some cases, forensic psychologists can provide feedback to law-enforcement agencies, so that we can all work together to promote justice. A letter is a useful way to begin that process.

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We live in interesting times. One interesting aspect of these times is that more and more police detectives are beginning to record their interviews of suspects. Sullivan (2009, p. 28; see also Sullivan, in press) wrote, “Fourteen states now require that electronic recordings be made of custodial interviews of felony suspects in various categories of felony investigations. In addition, we have identified over 580 police and sheriff departments in the other 36 states that have voluntarily adopted the practice of using electronic devices to record custodial interrogations.”

Recording custodial confessions allows for greater scrutiny. As with much of human behavior, monitoring is a precursor to change. My recent experience suggests that as they begin recording interrogations, detectives initially conduct interrogations much as they did when they were not recording. I suspect that those new to recording their interrogations may be a bit more careful about how they avoid making *direct* threats or promises, but otherwise, they do what they have come to believe will get suspects to

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confess. I expect that, for many police detectives, when they believe that a suspect is guilty, they do whatever they believe will (a) get the suspect to confess and (b) be legally permissible/admissible.

Psychological scientists and practitioners, along with legal scholars and practitioners, describe how police detectives can conduct investigative interviews in ways that (a) reduce the risk of obtaining a false confession and (b) increase the likelihood that a false confession would be recognized promptly (DeClue, 2005a,b; Gudjonsson, 2003; Kassin et al., 2010); Leo & Ofshe, 1998). That has obvious benefits for the suspect, saves valuable time and resources for the law-enforcement agency, and allows the investigators to focus their attention on finding and catching the true perpetrator.

For context, consider that twenty to thirty years ago, it was not uncommon for “recovered memories” of a crime to be treated much as any other accusation. Today, “recovered memories” would be likely met with increased scrutiny. Unless they are independently verified, such claims might not be sufficient to prompt an arrest or charge, and even less likely to lead to a conviction. How did we get to here from there? To my knowledge, there are no laws that forbid arresting, charging, or prosecuting a person based on “recovered memories.” I suspect that the process unfolded gradually, first with cases not leading to conviction, then with charges being dropped, then with prosecutors electing not to file charges, and finally to police deciding not to make an arrest in the absence of stronger evidence.

At present, I believe a somewhat similar process is unfolding. Part of my professional practice involves assessment and analysis of the psychology of interrogations and confessions, applied to individual cases. In my own experience, I see some cases in which a judge suppresses an interrogation and confession because the police used coercive tactics. Within the past year, I have seen several cases in which the prosecutor read my report and viewed the recorded interrogation, and elected not to challenge a defense motion to suppress a confession. When a confession has been coerced, that is (in my opinion) the right thing for a prosecutor to do; once the prosecutor recognizes that a confession was coerced, he or she should not try to present the interrogation and confession (as evidence of guilt) to a judge or jury. Depending on the quantity and quality of other evidence in the case, charges might be dropped, plea bargaining could continue, or the case could go to trial without the coerced confession.

Although I believe that prosecutors act properly when they elect not to challenge a motion to suppress a confession that they come to recognize as having been coerced, the impacts of such a decision are varied. It is, of course, the fairest thing to do for the case at hand. Although the prosecutor’s decision does not turn back the hands of time, from that point forward the case can progress justly. Taking a broader view, the prosecutor’s decision may result in less public scrutiny. Except for a few people directly involved in the case, no one may know that an interrogation and confession have been recognized—now without dispute—to have been coerced. No public scrutiny could mean little or no change in how detectives proceed with their next case.

Over time, detectives may use fewer coercive tactics and elicit fewer false confessions. Those would be positive developments, and appropriate efforts to hasten that process should be encouraged. I took a proactive step in a recent case to provide feedback to law enforcement, and I encourage others who consult on confession cases to consider taking similar actions.

As we turn to that recent case, pertinent facts will be presented, along with my role, methods, and findings. The defendant, Mr. X, was interrogated for over six hours. After the initial warnings, the police told Mr. X that they were there to help him; they were on his side; the information from the interrogation would be used to help Mr. X, and to help others. They told him that telling the police officers what they want to hear (what they believed was the truth) would help Mr. X, would help the police to help him, and would help others (rather than—anything you say will be used against you in court).

Detectives told Mr. X that they had unassailable evidence that proved he is guilty of sex crimes. Mr. X asserted his innocence. I counted 174 assertions of innocence. Detectives told Mr. X that he had to talk, confess, explain, etc. Detectives told Mr. X that, if he would tell them a version of events that minimizes Mr. X's involvement or responsibility, they would help him. If Mr. X would confess to the police a version of events that minimizes his responsibility, the police would tell the prosecutor and the judge that Mr. X had minimal involvement in the case. If he would not confess to the police, then that would prove that he is a "monster" and the police would not help him.

Police suggested that Mr. X acted out of curiosity. The police claimed to have human lie-detector ability, that they could read Mr. X's mind (or body language, etc.) and tell whether he was lying or not. Police challenged Mr. X to explain the evidence/allegations. Then, police accused Mr. X of making excuses.

Mr. X noted that it is hard to prove a negative. Police asserted that scientific and/or "scientific" evidence can prove that he is innocent or guilty, and that it will prove that he is innocent. Mr. X agreed to participate in voice-stress analysis. Police portrayed the procedure as extremely accurate, went through the procedure, and then told Mr. X that the procedure proved that he is guilty. In fact, independent analyses consistently fail to support claims regarding the use of voice-stress analysis for "truth verification" (see, e.g., Meijer et al., 2009). The Innocence Project (Unvalidated or improper science, no date) demonstrates that such unvalidated or improper forensic science can indeed lead to wrongful convictions (see also Saks & Koehler, 2005).

Mr. X continued to assert his innocence. In response to seemingly benign questions early in the interview, Mr. X had told the police that he lived with his mother, who was in ill health. Later in the interview, police used this information to pressure Mr. X to confess, suggesting that if he would not confess it would harm his mother's health and wellbeing.

Having noticed that Mr. X was in serious financial stress, police accused Mr. X of wasting valuable time and expensive resources. They told him that he would have to pay for

the costs of the investigation, and then they threatened to keep “jacking up” the bill if he did not confess. Detectives told Mr. X that if he would not confess that day, the police would hound him and “make sure you’ll never breathe another fresh air outside a prison wall again.”

Detectives suggested that the allegations constitute a mistake or a misunderstanding, rather than a crime, and are “not a big deal.” Police provided details of the allegations to Mr. X. Mr. X eventually acknowledged the possibility that he might have touched a child by mistake, without knowing that he did so. I did not find any details in Mr. X’s statement that had not already been mentioned by the police.

I was hired by the prosecution in Mr. X’s case. After a direct evaluation of Mr. X and a review of the available material (including the audio-visual recording of the interrogation and confession, and the transcripts thereof), I wrote a report. I expressed my opinion that the confession was coerced, and I provided the basis for my opinion.

I appeared in court prepared to testify at a suppression hearing. The prosecutor and defense attorney met outside the courtroom, and the prosecutor offered a plea bargain. After some negotiation, they reached an agreement, went before the judge on the record, and the defendant pled to a lesser charge. Thus, there was no suppression hearing, and there was no trial. There were no reporters present in the courtroom, and it is likely that Mr. X’s case will never come to public attention.

At that point, my involvement in the criminal case was over. I consulted separately with the defense and prosecuting attorneys, and expressed my interest in communicating with the sheriff in charge of the detectives who had interrogated Mr. X. Neither attorney objected, and I sent a copy of my report along with a letter to the sheriff (see Appendix). A meeting was set up between a ranking officer and me in the detective bureau, and we went over the interrogation and my report in some detail. I have subsequently learned that one of the detectives who interrogated Mr. X has been re-assigned out of the detective bureau. I do not know whether policy changes were instituted. The process was collegial, and of potential benefit to the community.

We can all learn from our mistakes, provided we get accurate feedback about our actions, the consequences of our actions, and the perceptions of others. I invite other forensic psychologists to consider providing feedback to others when there are no legal or ethical reasons not to do so.

Appendix

Dear Sheriff,

I hope you are doing well.

I was recently hired by the Office of the State Attorney to consult on a case that was investigated by your Office. It is my opinion that detectives from the Sheriff's Office coerced a confession from the suspect, Mr. X. I'm attaching a copy of my report.

My work on the criminal case is complete.

I would be happy to meet with you and/or your designees if you would like to use this as a learning opportunity. You may also want to seek information and perspective from the prosecutor on the case, Assistant State Attorney YZ.

Thanks and best wishes.

Sincerely,

Gregory DeClue, Ph.D.

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