



June 19, 2006

VIA FACSIMILE (408) 253-0885

Prof. Gerald Uelmen
Executive Director
California Commission on the Fair Administration of Justice
Santa Clara University Law School
500 El Camino Real
Santa Clara, CA 95053

RE: False Confessions, Recommendations

Dear Prof. Uelmen:

We write on behalf of the three California affiliates of the American Civil Liberties Union. Together, the California affiliates of the ACLU represent more than 100,000 Californians. The diverse members of our affiliates share an abiding commitment to the Constitutional principles of due process and equal protection. We believe that these principles require that our criminal justice system do all that is reasonably possible to protect the innocent from wrongful conviction, to ensure that the guilty are apprehended, and to provide that all individuals are treated equally before the law.

While we greatly appreciate that the California Commission on the Fair Administration of Justice has quickly begun issuing tentative and final reports recommending reforms to our criminal justice system, we are concerned that the Commission has not given due and careful consideration to the complex issue of false confessions.

The Commission's tentative recommendation would require that all interrogations be recorded. We applaud this recommendation as the easiest method of ensuring that there is an accurate and enduring record of an interrogation, providing the best evidence for the fact finder to use in assessing whether a confession is true or false.

Electronic recording of interrogations, however, does not prevent false confessions. For example, Michael Crowe falsely confessed to the murder of his sister in San Diego when he was just 14 years old. The entire interrogation was videotaped. The recording provided the critical evidence needed to demonstrate that the confession was false and to prevent Michael from being wrongfully convicted. Yet, electronic recording did not stop the San Diego police from eliciting a false confession from Michael and did not stop the San

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Diego District Attorney from pursuing charges against Michael for more than a year, detaining him in juvenile hall for months and allowing the true killer to remain free.

Michael was eventually cleared because of the diligent work of a defense attorney who recognized the confession as false and knew what to do. Other defendants with less skilled attorneys will not be that lucky. Thus, the Commission should consider what steps could be taken to *prevent* false confessions in the first instance.

The primary causes of false confessions are two fold: (1) police tactics intended to "break" a suspect rather than find the truth; and (2) vulnerable suspects who may be led into false confessions inadvertently because of limited cognitive functioning.

Currently, police officers are trained to approach an interrogation with the explicit goal of getting the suspect to confess. When an officer walks in to interrogate a suspect, in the vast majority of cases, the officer has already concluded in his or her own mind that the suspect is guilty. The officer views his or her job as merely attempting to secure the confession in order to ease conviction. By the time of an interrogation, the officer's "tunnel vision" has reached its narrowest point, to such a degree that the officer simply will not accept any denials by the suspect.

Realistically, we must acknowledge that some degree of prejudice is inevitable. An officer is interrogating a suspect precisely because something has brought the suspect to the officer's attention and connected the suspect to the crime. This natural tendency, however, is reinforced in a dangerous way by interrogation trainings that teach officers how to "break" a subject through such tactics as the age old "good cop-bad cop," threats or promises of leniency, lies which exaggerate the evidence, and mock "scientific" tests which the suspect are told will prove that he or she is lying.

These types of heavy-handed interrogation techniques are exactly what convince an innocent suspect that he or she has no choice but must agree to whatever the officer is saying. Michael Crowe, for example, was told that his parents believed he was the killer and did not want to see him ever again. To a fourteen year old boy whose younger sister had been killed only hours earlier, this statement was devastating. It indeed "broke" him. But it did not help find the truth or get the real killer off the street.

While these tactics might cause anyone to falsely confess, they are particularly dangerous with vulnerable suspects, children and the developmentally disabled. Because of limited cognitive functioning, children and the developmentally disabled may have difficulty discerning the truth under the best of circumstances. Research has shown that developmentally disabled individuals often simply answer "yes" to questions that they do not understand in an attempt to "cover" for their disability. When subjected to the kind of interrogation techniques described above, children and developmentally disabled adults are particularly likely to lose sight of reality and adopt the interrogator's version of events. Indeed, an officer may easily and inadvertently lead a child or a developmentally disabled adult into a false confession.

We thus suggest the Commission consider these additional reforms:

Training

- Law enforcement officers, district attorneys, defense attorneys and judges should be trained on the causes of false confessions and, specifically, the possibility that vulnerable suspects, including minors and developmentally disabled individuals, will give false confessions.
- Law enforcement officers should receive specialized training in identifying whether an individual is likely to be developmentally disabled and in detecting the signs that a developmentally disabled suspect is giving a false confession.
- Law enforcement officers should be trained that the purpose of an interrogation is to advance the investigation of the facts, not to secure a confessional statement from the suspect regardless of the truth.

Threats or Suggestions of Leniency

- Law enforcement officers should be precluded by statute from threatening a suspect with the death penalty if he or she does not confess.
- Law enforcement officers should be precluded by statute from making promises or suggesting to a suspect that he or she will receive leniency in charging or sentencing if he or she confesses.
- Law enforcement officers should be precluded by statute from using threats or promises of leniency directed at a relative or friend of the suspect in an effort to persuade the suspect to confess.

Interrogation Tactics

- Law enforcement officer should be precluded by statute from lying to a suspect.

Minors as Suspects

- Minors should have a statutory right to the presence of a parent or guardian during an interrogation and should be advised of that right prior to any interrogation.
- If the suspect is a minor under the age of fourteen, the parent or guardian should have a statutory right to be informed before a minor is interrogated and to invoke on behalf of the minor the minor's right to presence of the parent or guardian during the interrogation or to the minor's right to counsel.

Developmentally Disabled Suspects

- Developmentally disabled individuals should have a statutory right to the presence of a guardian or special advocate during an interrogation. When an officer knows or has reason to believe that a suspect is developmentally disabled, the officer should advise the person of that right.

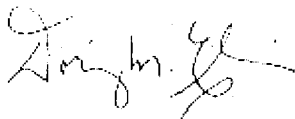
- When an officer knows or has reason to believe that a suspect is developmentally disabled, the officer should be required by statute to contact the guardian or other special advocate before the interrogation proceeds. The guardian or special advocate should be permitted by statute to consult with the developmentally disabled suspect before the interrogation, in the presence of the law enforcement officer, to assist in explaining his or her rights to the suspect, including the right to have the guardian or special advocate present during the interrogation.
- If, during the course of the interrogation, the officer comes to suspect that the suspect is developmentally disabled, the officer should be required by statute to suspend the interrogation and investigate whether the suspect is developmentally disabled before proceeding.

We would also encourage the Commission to seek comment from child advocates and legal advocates for the developmentally disabled before issuing its final report.

If you have any questions or wish to discuss our recommendations, please contact Natasha Minsker, Director of Death Penalty Policy for the ACLU of Northern California at 415-621-2493.

We greatly appreciate the opportunity to share these comments with the Commission and look forward to the Commission's future investigations.

Sincerely,



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ACLU of Northern California



Ramona Ripston
Executive Director
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On behalf of

Kevin Keenan
Executive Director
ACLU of San Diego and Imperial Counties