



## Cross Examining Police in False Confession Cases

By: Attorney Deja Vishny\*

Many criminal defense lawyers are filled with dread at the idea of trying a confession case. We think the jury will never accept that people give false confessions. We worry that jurors and courts will always believe that because our clients gave a recorded confession, they must have committed the crime. Our experience in motion litigation has taught us that judges rarely, if ever, take the risk of suppressing the confession particularly when a crime is horrifying and highly publicized.

Since the advent of mandatory recorded interrogation in juvenile and felony cases we have been lucky enough to be able to listen to the recording and pinpoint exactly how law enforcement agents are able to get our clients to confess. No longer is the process of getting a confession shrouded in mystery as the police enter into a closed off locked room with a suspect who is determined to maintain their innocence and emerge hours (sometimes days) later with a signed statement that proclaims “I did it”. However, defense lawyers listening to the tapes must be able to appreciate the significance of what is being said to cajole a confession.

The lawyer handling a recorded interrogation case should always listen carefully to the recording of the entire interrogation as early as possible in the case. There have been many occasions of discrepancies between how a police officer will characterize the confession in testimony or a written report from how the statement was actually developed and what the tape shows the client’s actual words were.

### Preliminary Steps

The first step for lawyers defending a confession case is to educate themselves as much as possible about police interrogation. The lawyer should learn exactly how police interrogate suspects in their jurisdiction. The most common police interrogation technique currently used in the United States is the “Reid Technique”. Anyone who wishes to learn how this interrogation technique is practiced can easily do so. The John E. Reid & Associates company website, [www.reid.com](http://www.reid.com), contains a wealth of information about this method. Anyone can order their basic book, widely considered “the Bible of interrogation”, Criminal Investigation and Interrogation<sup>1</sup>, directly through their website. This book is also available in university and law libraries. The book outlines the Reid technique: first interviewing suspects to assess guilt and then moving on to the “nine steps” of interrogations. The site contains an archive of articles entitled “investigators



\* **Attorney Deja Vishny** has been an attorney with the State Public Defender’s Office since 1980. Currently, she is an Attorney Manager in the SPD’s Milwaukee Trial Office. She also heads that office’s Homicide Practice Group and is a statewide Training Coordinator for the agency. She is a faculty member of the National Criminal Defense College in Macon, Georgia, and a current member of the Board of Directors for the National Association of Criminal Defense Lawyers. Deja has lectured on various aspects of trial practice at CLE programs across the country. She also teaches trial advocacy at Marquette Law School.

tip” discussing specific recommendations that Reid & Associates make in applying the technique. The web site also lists dates and locations where the three- to four-day Reid seminar is taught; these are open to any person who pays the fee. Many law enforcement departments in Wisconsin send officers to be trained at one of these seminars or have adapted Reid materials in their in-house training programs.

Most jurisdictions that do not use the Reid technique use a similar method of interrogating suspects. Police interrogation is usually based on combining the tools of minimization and maximization<sup>2</sup>. Understanding how these tools work in tandem with each other is crucial.

The best way to learn how law enforcement in your jurisdiction are taught to interrogate suspects is to either make an open records request for or subpoena the training records of the detectives involved in your case. These materials are invaluable tool which enable you to learn how interrogation techniques are taught and used by police. It can also be helpful to consult with a recently retired officer who is well versed in local interrogation practices.

After learning the local interrogation practice from the law enforcement point of view, one should learn what social scientists have concluded from the study of interrogation and obtaining false and coerced confessions. An excellent starting point is Gisli H. Gudjonsson's, The Psychology of Interrogations and Confessions: A Handbook (John Wiley & Sons, 2003).<sup>3</sup>

## **Client Interview**

It's easy to conclude there is no need to interview your client about the interrogation process since it was recorded. While the tape will *per se* answer some of our questions, there is still much to talk about. The comprehensive interview should include taking the client's social, medical, educational and criminal justice system history. Questions regarding pre-interrogation events such as the arrest, booking procedure and pre-interrogation detention in a holding cell or jail should be asked. It is important to know if your client was under the influence of any medications, alcohol or conversely if they were deprived of prescription medications before and during questioning.

It is important to interview the client about how s/he interpreted the various police questions, monologues and that were employed in the interrogation process. This begins with having the client tell you their understanding of the Miranda warnings given and their rights once the warning was administered. These warning are often read extremely quickly with little to no attempt on the part of the interrogator to determine if the client has even a rudimentary understanding of what the rights mean.

Lawyers should play the tape for their clients, interrupting frequently to ask questions about how the client felt about what was going on in the process as it unfolded. We need to find out why our client made denials, how they felt when their denials were rebuffed and why they changed their story to ultimately give a confession.

Not everything in the interrogation process may be taped. Be sure to inquire as to what gaps exist in recording: were there conversations as your client was moved from a holding cell to an interrogation room, during trips to the bathroom, etc. Ask about polygraph procedures as well; pre and immediate post polygraph conversation may not be recorded. Be sure to discuss this and find out details of the pre-test interview, what questionnaires were completed and documents were reviewed with the client before the test as well as what the client was told about the test results.

If the interrogation was videotaped, inquire how the client felt as officers moved closer to him or had any physical contact with him during the interrogation. Many jurisdictions are only audio taping interrogations. We must detail all of the non-verbal aspects of the interrogation, such as a description of the room, positioning of the parties and how the positions changed as the interrogation progressed.

## **Other Pretrial Preparation**

The lawyer should attempt to verify as much as possible about what occurred during the interrogation process that is not on the recording. Police departments often maintain time records of when a person is taken to and returned from the lockup to the interrogation room. Records may be kept of meals provided, phone calls and medications. You should also investigate whether there are previous complaints against or discipline of the law enforcement interrogators.

Sometimes client's friends and relatives may be able to verify your client's story. Often they will have contacted the police department to find out what happened to the suspect under arrest. They may have had contact with the interrogating detectives and obtained some information about the interrogation from them. An investigator can interview other persons who were interrogated by law enforcement in the same case. Be sure the investigator interviews these witnesses not only about their knowledge of the crime but of the police interrogation techniques that were used in their own interrogations.

Every recording must be closely analyzed in conjunction with the rest of the discovery in the case. Determine what facts or events in the recording were provided by the investigators to your client. Take note of all leading questions that were used. How did the interrogators "correct" what the client said if it didn't match the other case evidence. Is the client really telling their own story or merely acquiescing to what the police told them happened? Is what the client stated vague or stated in conditional terms such as "I could have... I might have"? Does the statement contain any new information that was unknown to the police prior to the interrogation? If it did, be sure to find out if any attempts were made to verify the information produced from the questioning and if so, what was learned.

Anyone defending a false confession case should consider retaining experts. Successful litigation may require hiring two different types of experts. A clinical psychologist should examine the client and determine what if any particular characteristics the client has which render him particularly vulnerable to police interrogation techniques. The clinician will conduct a clinical interview of the client and after discussion with the lawyer can administer tests such as an IQ test, general personality functioning tests, the Gudjonsson suggestibility scale<sup>4</sup> and the Grisso Miranda comprehension test<sup>5</sup>.

However, many false confessions occur with people who are not developmentally disabled, mentally or unusually suggestible.<sup>6</sup> A clinical psychologist cannot complete the picture of why a client gave a false confession; one should retain an expert such as a research psychologist or social scientist who is well-versed in the literature of false confessions. This expert will be able to teach you, the court and ultimately a jury how police interrogation techniques elicit false confessions.

Bringing a pretrial motion to suppress is essential in every confession case, no matter how certain you are that the motion will be denied. The accompanying article by Alejandro Lockwood outlines what these motions are and how to litigate them.

## **The Trial**

Prosecutors consider confessions their *piece de resistance* and the key to victory in the trial. Defense counsel must begin counteracting the effects of the confession in every phase of the trial, beginning with voir dire.

Many courts put severe restrictions on the time allotted for voir dire, forcing defense lawyers to carefully maximize the precious minutes they have. Get right to the heart of the matter by telling the jurors that the prosecution will present your client's statement and let them know that this is a false confession. The jurors should be questioned as to whether they believe false confessions exist and under what circumstances they occur. Many jurors are familiar with this; in all likelihood someone will be able to share knowledge they have with the other jurors about false confessions. Counsel should move to strike any juror for cause who doesn't believe that false confessions exist and won't seriously consider it a possibility in the case.

The false confession should be discussed from the beginning of the opening statement. Make the police interrogation the centerpiece of the opening statement. Detail the techniques that were used; there should be plenty of ammunition that can be used from the recording. The jurors should be told in story form how the interrogation techniques led the client to falsely confess. Let the jury know what the expert witnesses will tell them about how interrogation techniques can lead to false confessions and what vulnerabilities your client has. Be detailed! A good opening statement will prepare the jurors to be skeptical of the confession and police testimony.

Using exhibits will make an interrogation come alive and better enable the jurors to understand the situation the client was in. One of the most effective tools is to recreate the interrogation room in the well of the courtroom, using masking tape to mark off the exact dimensions of the space the client was in when subjected to interrogation. You can then cross examine the detectives in this space as well as use it demonstratively during opening statement and closing argument. Enlarged photos of the interrogation room and a time line to visualize the lengthy and repeated interrogations are also helpful exhibits.

## **Preparing for Cross**

In preparing to cross examine the interrogating officers, it is important to marshal all of the data gathered in the recording, motion hearing, interrogation training records, records of police discipline, your client's version and whatever other sources you have to prepare the cross examination. Having an accurate transcript of the entire interrogation process is an absolute must! It can take an outstanding secretary about eight hours to transcribe one hour of a recording. You cannot rely on simply having your secretary or a court reporter transcribe the tape and plan to review it a few days before trial. You must carefully review the recording and transcript together to make sure the transcript is as complete and accurate as possible. Since sound quality may be very poor, this may require multiple listening sessions in order to point out corrections to the transcriber, who must then re-listen to the tape with the corrections in order to certify its accuracy.

Once you have the transcript you can use it to prepare your cross examination. Count up the number of times your client denied committing the offense. Police can no longer get away with testifying that they don't know, or just a few, when there are in fact many denials. Other details of the interrogation should also be analyzed in their totality: the number of times the police cut off or interrupted the client's denials by telling the client they didn't believe them, how many times they told the client they had a strong case, the false evidence ploys, explicit and implicit claims that confessing would be helpful, number of references to what the DA or court will do and how the client could only help himself by making admissions. Be sure you are prepared to

exactly document what facts the police revealed to the client about the case that became the foundation of the false confession. Familiarize yourself with the exact questions asked: how many times did the police ask leading questions that implied or suggested the “correct” answer or gave the client a few options to select from.

You will want to get these points across smoothly in your presentation before the jury. As you prepare your cross, be ready to impeach the detective on every point you wish to make. You must know the exact start and end time of each portion of impeachment. It is best to prepare individual sound files of each bit of impeachment that can be replayed in court for a seamless cross examination. Because the recordings are difficult to understand for the uninitiated ear, each of these sound bites should be accompanied by a separate transcript with enough copies available for the jury to read along.

Cross examination occurs in chapters. Here you want to create chapters to show tell the story of the interrogation and how it elicited a false confession.

The cross examination must be done in pinpoint fashion, asking only precise leading questions that will not leave room for the detectives to maneuver in. Of course, most detectives will try to wiggle out of direct answers, but you will have the tape to impeach them (as well as the transcript of the pretrial motion hearing).

The goal of the trial cross-examination is to persuade the jurors that the police interrogation techniques were able to overcome an innocent’s person resolve and make them think it was in their best interest to give a confession to a crime they didn’t commit. The prosecutor will have presented the interrogation as an “interview” where the police politely asked questions and the client came forward with the true story of his guilt in the case. You must remove the sparkle from this story and establish that this is a fictional version of what occurred in the interrogation room.

Active listening during cross is crucial to success. Police are trained witnesses and are used to giving general, vague and evasive answers to lawyers’ questions. Many times lawyers are too busy sticking to a pre-planned agenda and are ready to move on, only to later realize they haven’t really pinned down the detective or achieved their goal. Listen carefully, be prepared to depart from your agenda and ask follow-up questions to enforce the point you are trying to make.

## **Crossing the Detectives**

It is best to begin with generalities. A few general questions about the detective’s training will pin down that he adheres to what he as taught. Only after getting agreement that they heed and utilize training in all aspects of police matters (e.g. specifics such as crime scene investigation, use of service weapons and witness interviewing) should you obtain agreement that they are trained in interrogation of suspects. While this seems like a very boring way to begin a cross examination, it can become useful at a later point for impeachment. Many detectives deny using the Reid technique or other methods as a means to induce a confession, claiming that they “learned interrogation through on the job experience” or have “developed their own style”. Jurors will be skeptical of the detective who claims to pay close attention and make use of training in every subject but claims to ignore or neglect his training during the interrogation of a suspect he wrongfully concludes is guilty. At the same time, it can open an opportunity to argue that the detective is a rogue cop, failing to follow safeguards that the training has put into place to avoid obtaining a false confession.

Trial counsel should know exactly what role the detective played in the overall case investigation. You must establish that the detective had knowledge about the case and thus would have been able to inform the innocent suspect of enough facts to get a false confession. The best way to do this is review in detail exactly what the detective knew about the case and what his or her source of information was. Later, when questioning the detective about overcoming your client's denials, you can talk about how the police told the client that they had a "strong" case, and use the details of their knowledge.

You may want to then get the detective to state that prior to beginning the interrogation, he or she had an opinion that your client was guilty. You must be careful with this question; if there is any suppressed or inadmissible evidence in the case, you will not want to ask this because it can and undoubtedly will open the door to the admission of such evidence. If all of the known facts are going to be admitted, then the detective will probably deny having this opinion and answer the question by stating that they wanted to "find out the truth". This is a good opportunity to launch into your questions detailing how the truth couldn't be that the client was elsewhere, a victim of mistaken identity, framed by a lying snitch, or whatever your defense may be. When the detective agrees that he thought none of these possibilities were true he will look less believable to the jury because he refused to answer your question in a straightforward manner.

Create chapters on the overall picture of the criminal investigation as it existed before the interrogation. Point out what the "perfect" case would look like and contrast it with the case that the police actually had at the time. For example, if there is an eyewitness to the crime who was not able to identify your client in a photograph, question the detective about this. Question them about the discrepancy between what the witness' original description of the perpetrator and your client's physical appearance, or the different descriptions of the perpetrator or the event by the various witnesses. Discuss the lack of physical or documentary evidence, how a gun wasn't recovered, there was no DNA or fingerprints, etc. Ask about the credibility deficiencies of witnesses who were on drugs, have criminal records or motives to falsely accuse your client of the crime. Try to get the detective to agree that the pre-interrogation case against your client was weak; even if the officer won't agree with you, the jury will get the point.

Question the detective about the difference between an interview and an interrogation. Since these are terms of art in police training and practice, the witness can acknowledge that at some point he conducted an interrogation, not an interview of the client. This will make the prosecutor's repeated references to what happened when the detective "interviewed" the client seem disingenuous.

Paint a word picture of the interrogation room, using the exhibits you have prepared so the jury can visualize it. This is a good time to break out a roll of masking tape and recreate the exact measurements of the room in front of the jury.

After setting the scene, question the detective about the total control the police maintained over this environment: only they could lock and unlock the door, provide food and water to your client, let him use the bathroom, let him take medication, let him communicate with the outside world (which they of course did not permit), leave the room or go to sleep. Detail how the police physically positioned themselves vis-à-vis the client, their movements during the interrogation, and how and why they touched the client. Ask about their tone of voice and how it varied during the interrogation. Be sure to elicit a description of the extent to which the client was held incommunicado from the outside world; if the recording reveals that the client wanted to make a phone call, point out how the police deferred the request until after the interrogation was over.

Make the amount of time come alive by figuring out the total interrogation time of your client in seconds. Have the detective take a watch with a second hand and wait in silence until a minute has passed. A minute of dead time in the courtroom will seem to go on forever and you can use this to vividly illustrate how much time was spent interrogating your client.

You can point out that the police have been trained in the legal elements of crimes and defenses and are able to tailor their questions to obtain details that can match a crime or a particular lesser offense.

If the detective ever did undercover work during the course of his or her career, you may also want to cross examine them about how successful their work was in that area. This can be used to later point out that they were successful in deceiving your client when they adopted a phony empathetic persona or presented false information to him in the interrogation.

Detail each phase of the Reid or whatever technique was used in the interrogation. Point out how many times the client denied the crime and how did they handle the denials. What evidence did the detectives tell the client they had against him? Describe any specific evidence ploys such as bringing in a thick folder claiming it was the evidence in the case or state that they had eyewitnesses? Note any claims of DNA or other “foolproof” scientific evidence and whether the police engaged in puffery or outright deceit. The recording may reveal that the detectives posed the existence of such evidence in hypothetical terms, such as “what would you say if I told you that your DNA and blood from the scene is being tested at the crime lab right now”. This is a move right from the Reid playbook; it should be pointed out that this method is used so detectives can deny in court that they lied to the client about non-existing evidence.

Explore the interrogation themes. If the detective claims he doesn’t know what you mean by this, briefly explain what a theme is and ask if he or she used it. There are specific themes recommended for various crimes that can be found in interrogation training materials or are published by Reid & Associates and other trainers. Go through these themes and give an accounting of how the detective used these in the interrogation process. Point out that these themes are designed to make the client believe that if they confess they will be prosecuted on a less serious charge than what the evidence looked like without the confession. The detectives may deny this was the purpose of the utilized themes. Use specifics from the recordings to show the disingenuousness of this response.

If the detectives deny deliberately using bait questions or themes in the interrogation, this is a good place to use their training materials as an exhibit. Point out the detective earlier told the jury that training was important. Show how the training they received correlates to the exact techniques they used in the interrogation room. Demonstrate to the jury that the entire interrogation was manipulated to obtain a confession from your client

What you are essentially trying to get the interrogators to tell the jury is how they deliberately moved your client from a denial to an admission of involvement in the crime. Often the recording will reveal that detectives told the suspect to “tell the truth” or they just wanted to get the truth. Point out in cross that they had already decided that the truth could not be that your client wasn’t involved, had an alibi, was an innocent bystander, or whatever facts point to innocence in your case.

Breaks during interrogation are almost always for the benefit of the interrogators, not the client. Discuss what particular strategies going into the interrogation and what the detectives did during breaks to strategize the interrogation because the client was not making any admissions up to that point.

If your client has particular vulnerabilities such as mental or physical health issues or developmental disabilities or is a juvenile, you should explore what the police knew of these. Point out their lack of special education or training in this area and how they failed to alter their standard interrogation operating procedures to take the problem into account.

After completing the cross chapters on how the police obtained your client's admission of involvement, explore how they developed the post-admission narrative. Use specifics from the recording to show about how they led the questioning of the client. If there are points in the tape where the client claimed one version and they informed him that things occurred differently or that this explanation was "not the truth" point this out. You must show the jury in blow-by-blow detail how the police shaped the statement.

If the police obtained a written summary confession after developing the post-admission narrative be sure to take this on in the cross examination. The written summary will undoubtedly fail to document the many twists and turns that occurred during the questioning. You must show the jury that the statement is a product of what the police chose to write; they decided to write out the statement at a point they felt would suit their needs and failed to truthfully reflect the actual conversation that took place in the interrogation room. Most written statements have cross-outs which are then "corrected" and initialed by the client. This is another technique straight from the Reid training. The detectives will probably claim this was not manipulated by a genuine error on their part. Show the jury that the cross outs are not true errors, but deliberate errors on the part of the detectives to get the client to initial various pages. If the crossed out words are correctly used or spelled and the substitute language is erroneous; this can also be used to impeach this claim.

Often police investigations come to a halt once a confession is obtained from the suspect. Point out the lack of investigation to corroborate the confession and that good police work would entail verification of a confession. You may want to reinforce this by questioning other detectives in the case who were not involved in obtaining the confession.

All good cross examinations should end on an important point you want to drive home to the jury; in the case of a false confession, the statement usually deviates significantly from the true facts or physical evidence in the case. This is a key fact you must emphasize that to the jury. Contrast each false detail with the known evidence to show that the client did not commit the crime but was manipulated during the interrogation process. Reinforce this by playing the recording of each obviously false statement.

## **The Defense Case**

Clients should be prepared to testify at the trial. There is no bright line rule for whether or not a client should testify in a false confession case but you may not be able to complete the true picture of what occurred without the client telling their story. Sometimes this story can be told strictly through cross examination and expert testimony. Some clients will only damage themselves by taking the stand; there may be otherwise inadmissible facts the jury will learn of only if the client testifies. But there can be many advantages to having the client testify. The jurors will want to know what the client has to say about the interrogation process and how they were led into giving a confession. The client's version can fill in the gaps as to anything that occurred which is not on tape. The client can explain the range of emotions they felt during the interrogation and why they chose to do something so harmful as to give a false confession. An important caveat: the client must be well prepared to testify. Good preparation must include reviewing the event in detail; the client is part of the team and should have a good understanding of the important



points you will be bringing out. Being ready for cross-examination is a must- the client should be asked all the questions you anticipate the prosecutor will raise at the hearing. The best practice is to prepare the client for the prosecutor by bringing in another lawyer to conduct a practice cross, simulating the actual prosecutor's demeanor and style of questioning.

Expert testimony can also be an important part of the defense case presentation to the jury. Whether or not testimony by a clinical psychologist will be helpful is dependant on the outcome of the evaluation and particular vulnerability of the client. Testimony by a social psychologist about interrogation techniques and false confessions should be proffered whenever a foundation has been laid for the testimony by evidence (on cross or direct) that similar interrogation techniques were used to obtain the confession. There is no Wisconsin case law on the admissibility of a social science expert in a false confession case, though there is favorable 7<sup>th</sup> Circuit case law on the admissibility of this evidence<sup>7</sup>; other jurisdictions' case law varies greatly. For this reason, you and the expert should prepare a persuasive offer of proof and brief the admissibility of the expert's testimony, making constitutional as well as statutory arguments in favor of admissibility.

Closing argument gives you an opportunity to unleash your creativity. Close powerfully: reenact the interrogation and play the roles of the interrogators and your client. Give the jury an opportunity to understand how the techniques that were used in your case coerced your vulnerable client to believe that it was in his or her best interest to make a false confession.

Whenever we try cases, there are no guarantees. Hopefully in this new era of DNA exonerations, the automatic assumption that whenever a person confesses they must be guilty is over. Careful preparation, well-crafted trial techniques and passion for the cause of the innocent client will help to tip the balance in favor of acquittals when we go in the courtroom to battle one of these cases.

## Endnotes

<sup>1</sup>Fred E. Inbau, et. al., *Criminal Interrogation and Confessions* 5 (Aspen Publishing, 4th ed. 2001).

<sup>2</sup>For a discussion of minimization and maximization, see Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. Crim. L. & Criminology 429 (1998) or Saul Kassin & Gisli Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 Psychol. Sci. Pub. Int. 33 (2004).

<sup>3</sup>The body of literature about interrogation and false confessions is growing rapidly. A few other helpful readings are: Richard Leo, *Police Interrogation and American Justice* (Harvard University Press, 2008); Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U. L. Rev. 979 (1997); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891 (2004); Russano et al., *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 Psychol. Sci. 481, 484 (2005); Saul M. Kassin, *On the Psychology of False Confessions: Does Innocence Put Innocents at Risk*, 60 Am. Psychol. 215 (2005); Saul M. Kassin, *The Psychology of Confession Evidence*, 52 Am. Psychol. 221, 222 (1997).

<sup>4</sup>The Gudjonsson Suggestibility Scale (GSS) is an instrument that intends to measure individual differences in interrogative suggestibility (Gudjonsson, 1984a; 1992; 1997). The GSS measures two different aspects of interrogative suggestibility, the tendency to give in to leading questions (Yield) and the tendency to shift responses under conditions of interpersonal pressure (Shift). The GSS consists of a narrative paragraph that is read out to the subject, who then reports all he or she recalls about the story. Following this, the subject is asked a number of questions about the story, some of which are misleading. Next, the subject is told in an authoritative manner that he or she has made a number of errors and must answer the questions for a second time. Yield refers to susceptibility to suggestive questioning, while Shift pertains to pressured suggestibility, i.e., the tendency to change answers as a result of social pressure.

<sup>5</sup>The Grisso Instrument for Assessing, Understanding & Appreciation of Miranda Rights test consists of four parts:

Part one tests a person's ability to explain accurately, in his or her own words, what aspects of the *Miranda* warnings mean; part two tests 'recognition' of *Miranda* rights, part three tests comprehension of the vocabulary used in the warnings. The fourth part involves pictures and stories about fictional persons being interrogated and tests a person's ability to recognize, during an interrogation, the function of the *Miranda* warnings.

<sup>6</sup>See for example Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891 (2004). This study found a disproportionate number of juvenile, developmentally disabled and mentally ill false confessors. However, in the majority of the cases studied none of those factors were present.

<sup>7</sup>See *U.S. v. Hall*, 93 F.3d 1337(7<sup>th</sup> cir. 1996), on remand at 974 F. Supp. 1198 (C.D. Ill. 1997). For a review of some of the federal and state court decisions see Nadia Soree, *Comment: When Innocents Speak: False Confessions, Constitutional Safeguards and the Role of Expert Testimony*, 32 Am. J. Crim. L. 191(Spring 2005). ■