

CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE

Minutes of Public Hearing and Commission Meeting, June 21, 2006.

Commission Chair John Van de Kamp convened the public hearing at 9:30 a.m. in Donovan Hall at Loyola Law School in Los Angeles.

Those present included Executive Director Gerald F. Uelmen, Commission Vice-Chair Jon Streeter, Commissioners Jim Fox, Scott Thorpe (for Attorney General Lockyer), Michael Hersek, Michael Laurence, Michael P. Judge, Glen Craig, George Kennedy, Cookie Ridolfi, Gerry Chaleff (for Chief William Bratton), Greg Totten, Alejandro Mayorkas, Rabbi Allen Freehling, and Douglas Ring.

Deputy District Attorney David Angel of the Santa Clara County District Attorney's office, Professor Richard Leo of USF School of Law, Tom Sullivan, of Jenner & Block in Chicago, Harold Hall, Exonoree of L.A., Chris Ochoa, Exonoree of Madison, WI, and Jeanette Popp, Mother of a Victim were present as invited guests.

Commissioners not present were Bill Hing, Michael Gennaco (representing Sheriff Baca), and John Moulds.

Mr. Van de Kamp welcomed the group and discussed purpose of Commission and recent history/activity of Commission. He also introduced Commissioners.

Public Hearing Portion

- I. Professor Leo, Part I (best viewed simultaneously with [PowerPoint presentation](#) and [submitted remarks](#))
 - a. Issues/Questions
 - i. How do we know that False Confessions are a problem?
 1. The Misclassification Error—law enforcement initially misclassify someone who is factually innocent; then subject them to guilt-assumed interrogation.
 2. The Coercion Error—techniques of interrogation. Individual vulnerabilities increase the possibility of false confession, especially in youth under 18 and the mentally handicapped.
 3. The Contamination Error—once the “I did it” statement is admitted, law enforcement lead to fleshing out of a narrative that “only the perpetrator would know.”
 - ii. Why do the innocent falsely confess?

- iii. What are the consequences of false confession?
 - 1. Police—close case, ignore contradictory evidence, refuse to admit error
 - 2. Prosecutors—set higher bail, more and higher charges, make centerpiece of State’s case
 - 3. Defense Attorneys—presume client’s guilt, pressure client to plead guilty
 - 4. Juries—more likely to convict, even if confession was coerced
 - 5. Judges—sentence higher for failure to show remorse
 - 6. Post-Conviction—law almost never permits appeals based on innocence
 - iv. Striking Fact: In the studies, if one looks at the cases that actually go to trial, somewhere between 73-81% are convicted. Adding plea bargain cases increases percentage.
 - b. Studies of Documents of False Confessions
 - i. Bedau/Radelet—1900-1987 (capital cases)
 - ii. Leo/Ofshe—looked at 60 cases
 - iii. Warden in Illinois (looked just at homicide)
 - iv. Drizin/Leo—looked at 125 different cases
 - v. Gross et al.—looked broadly at cases
 - vi. Innocence Project—DNA cases, 44 of them involved False Confession.
 - vii. *When viewing PowerPoint slides, don’t add the number of False Confessions together in this slide; there are about 200-300 total.*
 - c. Reaction to Studies
 - i. Range of error: the most reliable is Innocence Project which has 20-25%
 - ii. Counter-intuitive—false confessions happen in the most serious cases
 - iii. If you look just at wrongful conviction, if you remove the homicide cases, false confession becomes the most likely cause
- II. Tom Sullivan, Jenner & Block (best viewed simultaneously with [article](#))
 - a. Member of Gov. Ryan’s Commission on Capital Punishment in IL. One of the recommendations was that homicide investigations ought to have recorded custodial interrogations from *Miranda* to the end.
 - b. Sullivan has since sought to identify which police departments use recording and what their experience is.
 - i. Alaska—started with 8 departments that he thought were recording; asked them if he could get leads to other departments

- ii. Up to 500 departments in nearly every state in the Union.
- iii. California—37 departments currently record, including many of the major cities.
- c. 500 experienced detectives support the program and few talk about the downsides. The ones who use recording don't object.
- d. There are statues in IL, NM, ME, and D.C. Legislation is pending in a number of different states and cases are being brought in others.
- e. Sullivan read from memos of testimony from detectives in California (alphabetically)
 - i. 21 years on force, good experience of recording interrogations, video alleviates concern that no one believes police.
 - ii. 21 year detective, supervisors watch from live feed in another room. Harder for people to decry police work and action.
 - iii. 8.5 years, recoding avoids allegation of misconduct; if on tape it is undisputed.
 - iv. 14 years, detective characterizes as "crucial," reduces citizens complaint and gives police credibility; allows interrogator to review for self-critique
 - v. 19 years, great for accuracy and force is protected against allegation of coercion
 - vi. 19 years, jury expects and likes the subtleties of inflection, etc from video
 - vii. 27 years, absurd to say that recordings inhibit investigations; increase investigation
 - viii. 22 years, motion to suppress is a swearing match between suspect and officer;
 - ix. 17 years, protects integrity of interrogation and officers, officers focus on interview and not note-taking, review later allows for officers to pick up on subtle body language issues, etc.
- f. Question of cost—who will pay for this?
 - i. Video costs more than audio because rooms have to be setup. IL people can help us. TransTech did the setup of the rooms.
 - ii. In 500 departments that record, cost is mentioned 20-25 times in initial setup.
 - iii. If cost becomes a problem, he recommends taking out video for homicide interrogations.
 - iv. Ochoa case settled for \$16 million; in IL there are cases over \$40 million totaling up. Initial video costs are saved in settlements. Police don't have to testify in motions to suppress, saving judges

and advocates' time. The litigation drops off dramatically over whether the confession was false or not.

- g. Federal agencies are also considering recording. FBI prohibits recording without approval.
- h. In principle, defense attorneys must not oppose rightful convictions just like they oppose wrongful convictions.
- i. Questions from panel/audience
 - i. J. VAN DE KAMP
 - 1. Is it viable to use Sheriff's department as central place for recording when you have smaller departments that can't afford recording equipment? Sheriffs have jurisdiction as well as police.
 - 2. Was the funding originating out of local departments or through State assistance? State statute mandated it and paid for cost. Cost of video equipment in Chicago cost millions of dollars. Sheri Mecklenburg, general counsel at Chicago Police Department, could be very specific about IL cost.
 - ii. G. Uelmen—multi-million dollar judgments were false confession cases? Yes, the James Newsome case was up to \$18 million.
 - iii. J. VAN DE KAMP—who are the persons most likely to succumb to make false confessions? See Richard Leo testimony.
 - iv. M. Judge—in terms of departments with experience of recording, can you characterize magnitude of support after experience or is there still residual resistance and what is it based on? IL Commission is waiting one year before they interview detectives. In a few months, Sullivan's group will go back to start interviewing detectives with experience of recording. Chicago has had enthusiastic support.
 - v. A. Mayorkas—what is FBI's reason for not recording? Goes back at least to the 1950s. The sub-text to this rule is that police can't be trusted to tell the truth. Sullivan rejects this assertion. Recording shows public that police are not afraid to let the recordings be viewed by all.
 - vi. M. Laurence—any empirical research on conviction rates and motions to suppress as a result of adopting recording policies? Pleas of guilty go up, according to prosecutors.
 - vii. J. VAN DE KAMP—
 - 1. Any evidence that it inhibits coercive interrogations by police? None yet, but some cases have had techniques over the line and they lost the case.

2. Should law enforcement be statutorily precluded from lying to a suspect? There are certain tactics that are lawful, e.g. lying, which might prejudice jury. Sullivan recommends having a jury instruction that law enforcement may lie. He is not in favor of changing coercive law enforcement techniques. Death penalty and leniency threats are not permissible, according to Sullivan.

III. Professor Leo, part II

a. How do we know that false confessions are a problem?

- i. The Misclassification Error—law enforcement initially misclassify someone who is factually innocent; then subject them to guilt-assumed interrogation.

1. Should there be a probable cause requirement?

2. Problem of police training

- a. Police training can put in place a guilt-presumptive process. That means police officer gets confession.

- b. Body language marks a shift in interrogation practice

- ii. The Coercion Error—techniques of interrogation.

1. As clinical psychologist, the primary explanation for getting false confession is interrogation techniques and suspect's vulnerability.

2. Individual vulnerabilities increase the possibility of false confession, especially in youth under 18 and the mentally handicapped.

- iii. The Contamination Error—once the “I did it” statement is admitted, law enforcement lead to fleshing out of a narrative that “only the perpetrator would know.”

1. Police elicit an “I did it” statement at some point, moving from denial to admission.

2. Post-admission interrogation process is not just Q&A period. Questions are persuasive b/c they contain motives of why person committed crime. They contain explanations and expressions of remorse/regret and voluntariness. Non-public crime facts are involved, which only perpetrator can know.

3. In all cases, there are facts recorded that “only the perpetrator” could know.

4. Problem of feeding misleading specialized knowledge of crime facts—that moves confession from false to convincing

defense, prosecutors, and others that the confession must be true.

- b. Why do the innocent falsely confess?
 - i. Police are often trained to use scenarios. The interrogation can appear at that moment to be a rational choice to agree to a statement of false confession.
 - ii. **Interrogation is a legitimate activity and Leo supports it.** He just thinks critically about the process, including techniques of interrogation.
- c. Who are most vulnerable to false confessions?
 - i. Mentally retarded/handicapped—onset before 18 years of age and low-level cognitive functioning with IQ below 70. Some with IQ's just above 70 exhibit similar characteristics (submissive, tend to please authority, look for queues in society).
 - ii. Youth—particular under age of 16, disproportionately represented. Children are terrified of interrogation environment. Michael Crow in CA, Joshua Treadway, etc. were 13 or 14 at the time.
 - iii. Mentally Ill—less common than first two categories.
 - 1. Tend to have problems with reality monitoring.
 - 2. Compliance (going along with authority) and suggestibility (incorporating the suggestions of others into responses)—psychological terms
- d. Two kinds of False Confession
 - i. Being worn down, knowing you are innocent, but you want to get out of interrogation room—intuitive and most common
 - ii. Someone doubts their memory and questions whether they remember correctly or not. They assume that evidence must exist and that police are telling the truth—similar to a blackout after drinking. Cases about temporary false belief.
- e. Issues left?
 - i. Time limits—should there be a 4 hour limit for interrogation?
 - ii. Cautionary jury instructions?
 - iii. See Broward County, Florida information at <http://www.ccfaj.org/rr-false-fed.html>
- f. Questions
 - i. M. Judge—what about the issue of phobias, including claustrophobia? No studies that Leo is aware of. Anecdotally, he has heard about claustrophobia. Interrogation is inherently stressful process.

- ii. J. VAN DE KAMP—on time limits, the avg. length of interrogation is 16.3 hours? This includes detention and interrogation. Leo’s study said that the interrogations lasted an hour or two or less. Leading manual from professor at Northwestern says that good interrogators shouldn’t have to go over 4 hours. The 1-2 hour interrogations result in mostly true confessions; the 16 hour long lead to more false confessions. In the longer interrogations, cases are more serious and less evidence exists, homicide detectives will spend more time interrogating. Can we put the written report up on website? Yes, but as long as Chris cleans up typos.
- iii. C. Ridolfi—assuming we recommend to videotape, how important is it to tape only the suspect or both the officer and the suspect? Daniel Lassiter at Ohio University studies the focus of suspect, police, and suspect/police. Perceptions of voluntariness and coercion change depending on who you focus on. Perception of coercion increases when you show just police, not suspect. Middle view when police and suspect shown together. We should recommend a dual-focus view on both suspect and officer.
- iv. M. Laurence—Fairchild case from AK, confession was videotaped that focused on him directly, lasted about 90 minutes. What recommendations should we examine to deal with a videotaped, short confession that is false? Should we look at standards for determining whether confession is involuntary? The confession might have been recorded, not the entire interrogation. Recording is not a panacea for false confessions. Drizin et al. wrote an article called “Bringing Reliability Back In” in which they argue for pre-trial reliability hearings alongside voluntariness hearings. Article has judicial principles. Recording will significantly reduce the number of confessions and we should think about reliability as well as voluntariness.
- v. G. Totten—well-intentioned folks can miss the falseness of confession, what training would you recommend for prosecutors, defense counsel, and law enforcement so that they are better adept at spotting false confession? In Chicago, prosecutors do day-long training.
- vi. R. Freehling—what about circumstances where a person admits guilt and is found not guilty? Cases tend to involve recording. See Ohio case and Dateline special on it.

- vii. J. Fox—relative to length of interrogation, would the 16 hour interrogation be a single interview or broken up over a number of days? Usually it's consecutive, say for 8 hours and then 8 hours again the next day.
- IV. Mr. Harold Hall, exoneree from Los Angeles
- a. Convicted and spent 19 years in prison for crime he did not commit, double murder rape.
 - b. In 1985, he was arrested for strong-arm robbery. Some jailhouse informants said that he confessed to them. Detectives spoke to him and he denied it. On third occasion, he was handcuffed to chair for 17-18 hours, questioned by four detectives. They had fingerprints, footprints, and semen (even though they didn't have that evidence). He was unable to leave room, go to the bathroom, food, rest, etc.
 - c. He was mentally degraded. Every time he said he didn't know anything, they told him he was lying. Then they fed him information about the crime. He fed it back to them.
 - d. The crime didn't occur in the place that he told them. He was 18 years old.
 - e. He went to trial, was convicted, and sent to prison. They also offered two jailhouse notes about things that happened in the neighborhood. Law enforcement erased questions to make him look more guilty.
 - f. Evidentiary hearing resulted in new trial, but appellate court reversed the hearing. Sentenced to prison for life without parole.
 - g. He tried to get DNA test. It was two other people's semen, not his.
 - h. In 2004, the 9th circuit reversed case and his charges were dismissed.
 - i. Questions:
 - i. G. Craig—was he advised of his right to have an attorney present and did he exercise it? He asked for attorney but detective responded that only guilty people need an attorney. He didn't want to look guilty so he didn't ask for attorney.
 - ii. G. Totten—did he tell defense attorney that confession was false? Motion was made at 402 hearing to get confession thrown out. There was evidence in police report that named him as a suspect. That information wasn't used at trial. He tried to litigate at Appellate level that it was a violation of Miranda rights. Did his attorney assert at the 402 that the confession was false? Yes, it was litigated at trial.
 - iii. J. VAN DE KAMP—he pled guilty for 18 months about strong-arm robbery. He works for LA County Bar Association today. He's been out for just over a year. What about the appointed

counsel at trial? He was appointed by court. He was from ICDA program.

- iv. J. Uelmen—what difference would it have made if police interrogation had been recorded? You would have been able to see size of room, number of detectives, his demeanor, etc. Was there differing testimony at trial as to what happened in interrogation room? Detectives testified to one thing and he did not testify.
- v. G. Totten—have you successfully pursued a civil action? He has a case pending against city of L.A.

V. Mr. Ochoa

- a. In 1988 in Austin, TX, there was a woman who was robbed, raped, and murdered at Pizza Hut. He worked at a different Pizza Hut restaurant. The restaurant was closed for crime scene investigation. When re-opened, he went to have a beer there and was questioned by security guard.
- b. Detectives who investigated crime had told employees that perpetrators may come back. If there were suspicious people, employees should call. Co-defendant had a record.
- c. Detectives picked him up at pizza hut to ask him questions about burglary. He willingly submitted assuming that all Pizza Hut employees were being questioned.
- d. On his way to station, he asked the detectives questions. They asked him questions about burglary at other Pizza Hut.
- e. A tough cop started to interrogate him. Then another cop played the “good cop” role.
- f. He asked for attorney, but was refused. He was shown picture of death row.
- g. He went in at 9pm. At the time of his forensics exam, it was already dark.
- h. They told him he would be bait for jailhouse rape. At that point, he signed typewritten confession.
- i. Interrogators stopped and started tape to get details right for recording of interrogation.
- j. He told defense attorney and innocence project of what happened, but response was that no reasonable person would confess.
- k. He agreed to testify falsely after hearing of his mother’s heart attack.
- l. He went to prison for 12 years. Doesn’t think his attorney made any suppression motions.
- m. Questions

- i. G. Uelmen—what about civil suit? Cochrane and Sheck filed suit in 1993. Report said that officers weren't trained. Settled for \$5.3 million and co-defendant sued for \$9 million as well as district attorney.
- ii. C. Ridolfi—co-defendant was beaten in prison and suffered brain damage. Was there ever physical evidence found about the actual perpetrator? Yes, he told officials where he hid gun, etc. How long was he writing to the officials before police searched house?
- iii. R. Freehling—the session was recorded, but it was being manipulated so that the final product was what the officers wished to have. Are there technical ways to safeguard that recordings are not altered in some way? Second tape was destroyed. He recommends videotaping before interrogation. Someone else should control computer, remote control, etc.
- iv. J. VAN DE KAMP—in first interrogation, did they audiotape whole thing or just confession extracted after a period of time? The first day they did not record. The second day they only recorded part of the interrogation that resulted in confession.

VI. Jeanette Popp

- a. Daughter was murdered. During trial of exonerees, she heard first details of crime from the exonerees.
- b. Detectives made up details and fed to suspects. Police knew for 4 years that someone else was confessing.
- c. Recommendations to help judicial system
 - i. Police Officer Code of Silence—support for program such as crime-stoppers where police could anonymously report each other.
 - ii. Police should not be allowed to attend autopsies, suggesting things to medical examiners that didn't really happen.
 - iii. Recording of interrogations is essential. Police should not have control of the tape recorder. Should be controlled outside of recording room or by unbiased party.
 - iv. Police records should be reviewed on a regular basis. Polanco solved every case he had ever been given. That should have sent red flags up.
 - v. Excessive force and abuse charges should be taken seriously. Review of records should happen by unbiased person outside police force.

VII. Sheriff's Ass'n representation—Lt. Ferguson of San Bernadino County

- a. No concerns with tape recording.

- b. Concern with cautionary instructions that will be given to jury, creating shadow of doubt in jury's mind.
- VIII. Sgt. Bell in homicide division of San Bernadino County
- a. Dept. not opposed to tape recording interviews.
 - b. They encourage tape recording suspects and witnesses. They issue belt-recorders to deputies in field. HQ has interview rooms with video and audio monitoring.
 - c. Rooms will be retro-fitted to digital. Cost is an issue. To retrofit four rooms, controlled by independent room and viewed by supervisors, will cost \$150,000-200,000.
 - d. Mobile command posts are necessary because of size of county. It's not always practical for audio and video recording to be performed.
 - e. One concern is with videotaped portions. It would not be practical to set up a tripod in certain situations.
 - f. Division has protocol that they will audio-record every interview that they do. They will even re-interview people who were previously not interviewed on tape.
 - g. Biggest concern: cautionary instruction. There may be times when they are not able to record a confession. In those cases, the jury will be instructed that the statement is not to be trusted. If the jury makes the determination that the officers were giving false testimony, they can disregard. But if they determine that officers are telling truth, the statement can't be trusted.
- IX. Paris Cohen, CA Public Defender's Ass'n
- a. Three reasons for recording:
 - i. Interrogations are not being recorded routinely.
 - 1. 37 agencies record, 10% of total. The number of instances in which recordings are utilized is minimal.
 - 2. Recording is done in cases where a person is being considered a formal suspect. In capital cases, it's still a small percentage.
 - ii. Recordings are powerful tool for all involved: supplies prosecutors as well as law enforcement with weapon for conviction.
 - iii. Allow trier of fact to be able to judge demeanor of defendant instead of rely on officer's testimony.
 - b. Defense Attorneys appreciate being able to see recording.
 - c. Cohen told the story of Sergio Valencia, charged with joyriding in juvenile court.
 - d. One additional recommendation—enact a statute to make unrecorded statements presumptively inadmissible unless court finds exception listed

- in our recommendations. Juries can't "unring a bell" and distinguish why someone would lie and falsely confess.
- e. J. VAN DE KAMP summary: Instead of cautionary instruction, she suggests presumptive inadmissibility unless exception is satisfied.
- X. Rabbi Brody, Member of Progressive Jewish alliance
- a. Handed out position paper on Jewish understanding of death penalty and wrongful conviction.
 - b. His congregant has a son serving in prison for a crime he did not commit.
 - c. Perspective of religious conviction—the tradition lends significant support to the fundamental concerns of people of faith, conscience, and religious conviction around the idea of justice.
 - d. There is a need for extreme caution and balance within the administration of justice. In Deuteronomy, "justice, justice, you shall pursue." This is a reminder that society should find weaknesses in current justice system and improve it.
 - e. Recording of confession can provide fairness across the board for all parties.
 - f. General concern for humanity of individuals taken in for interview; shaming or degrading people is not necessary and crosses the line. Exodus 23:1-3
 - g. Prophetic tradition calls out for concern for widow and orphan. Categories we heard earlier about children and mentally incapacitated are included in those wider categories.
 - h. Numbers 35:30—one cannot be convicted based upon one's own confession alone, according to traditional Jewish jurisprudence.
 - i. Traditional values support at the least the recommendations the Commission proposes and on the other end a moratorium on the death penalty.
- XI. Sheldon Plotkin—Death Penalty Focus of L.A.
- a. Consulting systems and safety engineer in accident analysis field.
 - b. He has had a number of cases involving false confessions and eyewitness identification material.
 - c. Plotkin shares hypothetical of young defendant with defense attorney who lacks in scientific understanding facing a determined prosecutor. Defendant confesses in plea bargain.
 - d. Recommendations/Issues
 - i. Need experienced defense attorney with fighting spirit.
 - ii. Overzealous district attorneys must be prevented from hiding exculpatory evidence. They can produce fear on the part of the

defendant. Mandatory jail time for prosecutors who withhold exculpatory evidence in their files.

- XII. Randy Adams, Glendale Police Department—Cal Chiefs of Police, President of LA County Chiefs.
- a. No law enforcement professionals condone inappropriate behavior by officers. However, it's important that we don't broad brush the thousands of professional law enforcement officers that do a good, but challenging, job. They need to have appropriate tools while being held to appropriate standards.
 - b. Recommendations
 - i. Industry standard is for audio-recording of interrogations.
 - ii. Placement of recording device in front of person being interrogated can be overwhelming. Have state of the art facilities that can covertly record with audio and video.
 - iii. Caution about mandating the video recording of interrogations. Where possible, it should be done. But there are circumstances where it is impossible to video record.
 - iv. Implement digital recording of all field interrogations. Concern not about false confession, but about recanting. An audio recording will help law enforcement verify confession.
 - v. Audio will be significant enough, let alone video. We are not there with the ability for every agency to video record every interrogation.
- XIII. Eric Green of ACLU
- a. Recording should be considered a floor, not a ceiling. Recording of interrogations will not eliminate all problems that ACLU is concerned of.
 - b. Michael Crowe case. Primary causes of false confessions:
 - i. Police tactics
 - ii. Limited capacities of those interrogated.
 - c. Reiteration of Richard Leo's comments about developmentally disabled adults and children
 - d. Recommendations
 - i. All involved should be trained on the causes of false confessions and wrongful convictions, with a specific eye to mentally handicapped individuals.
 - ii. Purpose of interrogation is to further investigation of facts, not get a confession.
 - iii. Minors should have parent present.
 - iv. Statutory rule against threatening death penalty.

- v. Developmentally disabled should have a statutory right to advocate being present.
 - vi. See [ACLU letter](#) for more information.
- XIV. Gloria Killian, exoneree
 - a. Interrogation is very terrifying for women. Police officers menace during interrogation.
 - b. Women who have been battered are particularly susceptible to feeling menaced.
 - c. Conviction was reversed in 2002 for prosecutorial misconduct.
- XV. Richard Leo, Part III
 - a. No study of interrogations with regards to women
 - b. No study with regards to false confessions and women.
 - c. Recommends looking at the subset of women who are interrogated.
- XVI. J. VAN DE KAMP's closing comments
 - a. Be cautious: we can acknowledge there is a problem.
 - b. Is the recording going to prevent false confessions in every case?
Probably not, but it will help law enforcement and general public.