Confessions and Expert Testimony

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In this clinical paper, the author discusses criminal confessions from the point of view of the expert witness who may be asked to comment on the reliability of the statement and waiver of rights. From the time a suspect is in police custody, constitutional protections against self-incrimination and for due process are in place. The Supreme Court set the standard for these situations in the 1966 *Miranda v. Arizona* decision. Although it has long been criticized by law enforcement, the decision was upheld in the 2000 decision in *Dickerson v. U.S.* For a waiver of rights to be valid, it must be a knowing, intelligent, and voluntary decision. Voluntariness is an equation of objective and subjective variables. Treatment by police, physical conditions of interrogation, the suspect's experience and mental state can alter the reliability of a confession. Accordingly, the author has devised a mnemonic for the recognition of conditions that may give rise to expert testimony. The conditions are: Mental illness, Intoxication, Retardation, Acquiescence, Narcotic withdrawal, Deception, and Abuse. These are discussed, supported by examples from the author's practice.

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The Constitution of the United States provides that no person "shall be compelled in any criminal case to be a witness against himself. . ."[1] This clause of the Fifth Amendment was a reaction to inquisitorial procedures in Europe and represents the elevation of a rule of law in Great Britain to a guarantee in the United States. Tension between the aims of prosecution and the rights of accused persons has been a perennial aspect of law enforcement. There is great pressure on prosecutors and detectives to solve crimes and close cases, which sometimes induces errors in the process. The reliability of confessions is not perfect—less so when the suspect has been subjected to harsh interrogation or possesses a state of mind that is susceptible to the demands of law enforcers. A great deal has been written about the psychology of confessions, vis-à-vis suggestibility, compliance, and acquiescence.[2] There is also literature and case law surrounding the misuse of psychiatric testimony as it relates to incriminating information given naively by defendants under evaluation.[3] Clearly, not all criminal suspects understand their rights or possess the presence of mind to resist waiving them. This clinical paper discusses the forms and permutations of the suspect's condition during interrogation that later may give rise, at a suppression hearing or at trial, to the need for expert testimony.

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False and Involuntary Confessions

Effective interrogation technique produces confessions, often by employing psychological principles to break down a suspect's resistance. Gudjonsson[2] points out that these techniques are inherently coercive, and lists five potential problems: (1) manipulation of the suspect; (2) the use of trickery, deceit, and dishonesty; (3) misreading the suspect's nonverbal behavior; (4) police evidence unduly influencing judges and jurors; and (5) lack of scientific evidence informing police procedure manuals. Confessions are often the most important pieces of evidence in a criminal prosecution, and judges are loath to suppress them without a compelling reason. Prosecutors often believe that suspects want to confess, that they are reluctant to do so for a variety of reasons, and that effective interrogation technique provides a medium for the expression of truth. There is psychoanalytic theory to support this view.[4]

False confessions, that is, statements that are either fabricated or not based on the suspect's actual knowledge,[5] often form the basis for prosecutions. (A famous example is New York's Central Park jogger case in which convictions of several youths whose confessions may have been pressured have been overturned by the Manhattan District Attorney.[6]) On one ex-

treme, an innocent person may confess falsely to achieve notoriety or in the service of neurotic or psychotic guilt. On the other extreme, a person may be persuaded to "recall" criminal activities that were committed by someone else. In the middle are a vast number of confessions given falsely by suspects under stress whose will is overborne. In practice, this is the most common form of the involuntary confession. Studying types of confessors, Gudjonsson[2] reviewed a wide array of social and psychological variables that influence the reliability of a custodial statement. He found that resisters ranked lowest and false confessors ranked highest on measures of compliance and suggestibility. Of course, there is no constitutional protection from psychological traits working against a defendant's liberty interest. How, then, does the law functionally protect Fifth Amendment and related rights?

Nemo Tenetur Seipsum Accusare

No man is bound to accuse himself. The protection against self-incrimination is in effect throughout proceedings from arrest to trial. Whereas ignorance of the law is never an excuse, suspects in custody are not presumed to be informed of their constitutional rights. The Fifth, Sixth, and Fourteenth Amendments place responsibility on the state for the assurance that suspects are availed of their rights to silence, counsel, and due process. By the mid 20th century, the law focused more on due process (e.g., police violence and prosecutorial manipulation[7–9]) than on subtler aspects of self-incrimination.[10] Newer constitutional interpretations of confessions took place at the height of the civil-rights movement of the 1960s. Thus, for example, the U.S. Supreme Court in *Escobedo v. Illinois*[11] ruled a statement inadmissible by a suspect who was neither advised of his right to remain silent nor permitted access to counsel. The police intentionally kept Escobedo and his lawyer apart during a homicide investigation, a Sixth Amendment violation.[10] An excerpt from the Supreme Court decision gives a flavor of the objective and subjective aspects of the suspect's condition:

> There is testimony by the police that during the interrogation, petitioner, a 22-year-old of Mexican extraction with no record of previous experience with the police, 'was handcuffed' in a standing position and that he "was nervous, that he had circles under his eyes and he was upset" and was "agitated" because "he had not slept well in over a week" [Ref. 11, p 482].

Such a description by police is a gift to the defense. In practice, absent audio or video evidence to the contrary, police and detectives are reluctant to share evidence of the suspect's impairment or of harsh or coercive conditions.

Two years after *Escobedo*, the Supreme Court issued its landmark ruling in *Miranda v. Arizona*.[12] Whereas *Escobedo* dealt principally with due process aspects of the Sixth and Fourteenth Amendments, *Miranda* (actually a conglomeration of cases) interpreted the Fifth. Miranda, a 23-year-old poorly educated man with schizophrenia, gave what appeared to be a voluntary confession to a homicide. However, he was not warned about the effect of his confession on his freedom or ability to defend himself. Here, we have not as much a question of the police's taking advantage of a suspect as of whether an incriminating statement can be used to prosecute when the suspect had no procedural safeguards with respect to self-incrimination. Chief Justice Warren, in the majority decision, considered the application of legal principles to the police station setting "not an innovation in our jurisprudence." On the other hand, Justice Harlan, writing the dissent, was appalled by the decision, terming it "voluntariness with a vengeance" and a "utopian" decision. In the dissenters' view, since the police did not appear to have coerced the confession, it was wrong to expect more of them. They predicted a collapse of an aspect of law enforcement: "[T]he thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all" (Ref. 12, p 505). The author will discuss "nervous" (mentally ill) and "ignorant" (developmentally disabled) suspects in the sections that follow. The *Miranda* decision remains a thorn in the side of political conservatives, who consider it an impediment to law enforcement and a threat to public safety.[13] There is a scholarly "abolitionist" response to *Miranda* suggesting that, by discarding one of the key elements of prosecution (confessions), the law is doing more harm than good.[14]

Miranda*: Still the Law of the Land?*

Two years after *Miranda*, Congress enacted 18 U.S.C. § 3501, governing the admissibility or weight of confessions within the federal jurisdiction. In part, § 3501 uses an operational criterion of voluntariness as the sole factor in a court's determining whether a confession can be used in a criminal prosecution.

While the law appears to be a direct attack on *Miranda*, it permits the judge to use the elements of the *Miranda* warnings as a basis for determining voluntariness. In addition, the law permits the judge to rely on factors outside the immediate prosecutor-suspect interaction, such as the amount of time elapsed between arrest and arraignment and the suspect's knowledge of the offense under investigation. Hence, § 3501 is known for its totality-of-circumstances analysis, a pre-*Miranda* posture.

It seems, then, that at least in federal courts § 3501 would have been the law of the land because it was enacted by Congress. However, there was residual concern about whether Congress had, in fact, superseded *Miranda*. The matter was not settled until 2000, when the Supreme Court decided *Dickerson v. U.S.*[15] Dickerson had moved to suppress a confession that he made to the Federal Bureau of Investigation (FBI) in a bank robbery case, on the grounds that he had not received *Miranda* warnings (not required under § 3501). The Fourth Circuit, acknowledging that the warnings had not been given, found the confession to be valid because it was voluntary under § 3501. The Supreme Court did not agree, noting that *Miranda* was constitutionally based and therefore not superseded by an act of Congress. In its *stare decisis* position, the Court said that any legislative action would have to be at least as protective of suspects as *Miranda* and its progeny.

"Doctor, are you saying that anyone who confesses is crazy?"

On more than one occasion, the author has been confronted with cross-examination during a suppression hearing attacking the concept of a false or involuntary confession. The prosecutor's question was based on the belief that confessing is good and on the suspicion that the defendant was using a tactic of *post hoc* denial. The answer is no, it is not crazy to confess, but because of extenuating factors (described later) the suspect lacked or was deprived of the requisite capacity to maintain self-interest. This raises central questions of how we understand the suspect's motivation in confessing and whether the suspect made the confession knowingly, intelligently, and voluntarily.

Freedom of choice is presumed in the law, and the analysis of confessions is no exception. When authorities become heavy handed, constitutional protections come to the fore. What about subjective factors? The analysis of a confession's validity is based on how the reasonable person would behave under similar circumstances.[16] A suspect may make apparently voluntary statements; however, the cognitive, affective and motivational processes that went into them may have been materially altered by police conduct, the suspect's mental condition, or both. What would happen if a man with schizophrenia committed a crime and then hallucinated voices compelled him to confess? Is that not a clear example of an involuntary confession? According to the Supreme Court,[17] the answer is no, as they decided in just such a case in 1986, *Colorado v. Connelly*. In this case, Connelly reported a homicide to the Denver police. He was given the *Miranda* warning and provided what was for all outward appearances a voluntary confession. There was no question that an internal stimulus motivated his confession. Connelly was then sent for a psychiatric evaluation. The evaluation indeed showed that he was psychotic, but whereas the confession may have been a product of the psychosis, Connelly's mental ability permitted him to understand and waive his rights. Writing for the majority, Chief Justice Rehnquist opined that the notion of free will did not pertain to this area of the law. Rather, it was Connelly's burden to show coercive police activity, because the suspect's mental condition by itself would not be dispositive of the question. (Whereas the standard promulgated in *Connelly* may place the emphasis on police conduct for determining voluntariness, in practice states' rules of evidence can countenance subjective factors of the suspect in the analysis.) Thus, neither Connelly's Fifth nor Fourteenth (Due Process Clause) Amendment rights had been violated in the use of his confession. The dissent by Justice Brennan, joined by Justice Marshall, opined that Connelly's mental disability was so severe as to render the confession involuntary, citing the findings of court-appointed psychiatrist Dr. Jeffrey Metzner. As it was, Connelly required six months of treatment to regain trial competency. Nevertheless, the question has been answered: voluntariness is largely a function of the absence of coercion.

Potential Expert Testimony: The MIRANDA Mnemonic

The adjudication of a contested confession is an opportunity for both objective and subjective evidence. A suppression hearing, from the defense's per-

Table 1 Circumstances Contributing to Unreliable Confessions (MIRANDA)

Variable	Opportunity for Expert Testimony
Mental illness	Psychosis, depression, etc. may reduce a suspect's ability to comprehend rights and/or withstand interrogation.
Intoxication	Police may take advantage of a suspect's state of mind when it entails poor judgment.
Retardation	Lack of comprehension of rights and a tendency to go along with detectives as an adaptation; "faking good."
Acquiescence	This adaptation is seen in normal persons, those with mental retardation and others, leading to unreliable information.
Narcotic withdrawal	Police may take advantage of a person craving drugs to force a confession by suggesting "help is on the way."
Deception	Police may legally deceive, but a "susceptible" person's will can be overborne.
Abuse	Police misconduct may be gross or subtle, the effects of which can alter voluntariness.

spective, also affords the defendant two bites of the apple, in that the judge hears about the circumstances of the confession at the hearing and later at trial, assuming the motion to suppress is denied. The judge, who might not otherwise hear testimony from the defendant, may have an opportunity to observe the defendant's deficits, while the defendant preserves the right to remain silent during trial. When the defendant claims that his or her will was overborne, it is often advisable for the defendant to testify at the hearing—especially as a prelude to the expert witness's testimony on the same issues. Ideally, the expert witness should not be sequestered during the defendant's testimony.

In the author's experience, a significant proportion of defendants regret having given statements, which, in turn, are often the state's strongest—if not only—evidence against them. Because of the law's unflagging presumption of free will, defendants are precluded from having confessions suppressed on the basis of morning-after regrets. Thus, "I don't know what I was thinking" is a start, but it must be wedded to a cognizable mental condition that withstands scientific scrutiny. Clinicians who are interested in a structured approach to the measurement of understanding *Miranda* rights might consider Dr. Thomas Grisso's psychometric approach.[18] Using such an approach helps to avoid what might otherwise appear to be impressionistic opinions. It is unlikely, however, that testimony about a suspect's mental state would be subject to a *Daubert*-type analysis.[19]

The following schema and MIRANDA mnemonic is an attempt to categorize situations in which psychiatric testimony can illuminate whether a custodial statement and waiver of rights was made knowingly, intelligently, and voluntarily (Table 1). Composite case vignettes from the author's practice will be used as illustrations.

Mental Illness

Whereas, from a clinician's viewpoint, it may appear self-evident that mentally ill persons' confessions are less than reliable, one must remember the presumptions of free will and competence and the irrelevance of guilt feelings, even if they are prompted by hallucinations.[17] In the case of depression, wherein excessive guilt is a dynamic in the wish to confess, one would be hard-pressed to construe the behavior as involuntary. A rare case of depression with psychotic features could produce a confession to a crime not committed. This would be a delusion, but more would be needed to overcome the *Connelly* burden; that is, the suspect would have to lack appreciation that the statement was incriminating rather than purifying in consequence.[4] In the case of mania, wherein poor judgment is the rule, one would have an easier time explaining to the court how feelings of grandiosity or invulnerability stood in the way of the suspect's appreciating the actual threat of self-incrimination or declining counsel (lack of impulse control would not be sufficient according to *Connelly*). Schizophrenia would be expected to give rise to unreliable confessions and waivers, because of deficits in thinking and judgment. But just as not all schizophrenics are legally "insane," not all confessions of schizophrenics are "involuntary." The clinical examination and testimony would have to focus on establishing a causal nexus between the deficits and the local standards for adjudicating confessions.

The most common example of an unreliable confession/waiver by a person with schizophrenia is with the negative symptom of conceptual disorganization.

In the author's experience, the suspect with schizophrenia often misidentifies the waiver form because, "They said I could go home" or "They said this will help me." Conceptual disorganization is, by nature, not obvious—to the police, to the examiner, and to the judge. It is important that the examiner get as detailed a recollection of the interrogation as possible. Almost always, an item-by-item review of the *Miranda* warnings and waiver is helpful. A structured approach may resolve basic deficits in the defendant's cognitive capacity,[18] but may not completely illuminate the mental state at the time in question. Finally, the examiner will have to rule out malingering, in which an otherwise intelligent but psychotic defendant draws blanks on all items and has other capacities preserved (fund of knowledge, among others).[16]

Intoxication

A substantial proportion of crimes are committed while the perpetrator is under the influence of one or more substances; the likely substances are alcohol and cocaine. Phencyclidine, hallucinogens, and "ecstasy" (MDMA) are sometimes associated; marijuana intoxication rarely gives rise to any credible defense. When the suspect is caught red-handed or within the period of drug effect, the police have an opportunity to get a quick confession (*in vino veritas*). Whereas one might consider such a technique unfair, the official statement, sometimes recorded, is taken when the suspect is less impaired but already incriminated. For this reason, audio and video recordings often fail to show objective signs of impairment.

Typically, such defendants report to the examiner hazy or fragmented memory of the confession and will say: "I couldn't have said that [even though it is on tape and/or transcript]"; "I would have said anything, I was so strung out [usually on cocaine]"; "All I remember is a bunch of people yelling at me and telling me to sign my name [probably not far from the truth]"; and "If I wasn't high, I would have kept my mouth shut." Whenever possible, the expert witness should look and listen for signs of intoxication apparent on audio/video.[20] Statements given under such conditions are, of course, unreliable by common-sense standards, but just as being drunk is not a defense against driving accidents, confessing while drunk may be a hard sell with respect to a *Miranda* challenge. It may be useful for the defense attorney to argue that the police knew the suspect was intoxicated and that they overreached by taking a statement. This is more effective when the incident reports note that the suspect looked drugged or drunk or had alcohol on the breath. In addition, the potential expert witness should examine police reports for indicia of intoxication, such as wild, boisterous behavior and seemingly random actions. When the timing of the behavior and the confession are known, there may be a scientific basis for asserting that the effect of an intoxicant casts doubt on the reliability of the statement and/or waiver of rights.

Retardation

The individual with mental retardation is susceptible to making an incriminating confession, often to an offense not committed or to one in which the suspect was only peripherally involved. An especially vulnerable time is just after arrest, before counsel has been appointed.[21] At the time of arrest or at the police station, the disabled suspect is informed of his or her *Miranda* rights and then asked to sign a waiver of rights, which the suspect is happy to do—because it pleases the police—or too scared not to do. This type of behavior, which tends to mask deficits and facilitate blending in with others, is a typical adaptation among the developmentally disabled. However, it works against the individual faced with a challenge from authority.

From a practical defense point of view, attacking the confession of a mentally retarded defendant is important because such individuals have difficulty getting out of jail, lack the capacity to participate in a vigorous defense, and may find themselves serving long prison sentences—or on death row—for offenses they did not commit.[22] The *Miranda* warnings are often read fast and with little room for explanation; the police usually require a one-word answer to each item.

How comprehensible are the *Miranda* warnings? A group of legal professionals conducted an empirical study of how well mentally retarded persons actually understood the *Miranda* warnings.[23] Comparing 49 retarded subjects (ranging from severe to borderline; mean IQ = 55.5) with 22 nonretarded controls, they examined vocabulary, understanding of *Miranda* warnings, and a test of relevant legal concepts. They found that the retarded subjects simply did not understand the warnings, that the words contained within the warnings were meaningless, and that they could not form the concepts to make know-

ing and intelligent decisions. This held true for many of the subjects with borderline intellectual functioning as well. Intelligence, but not the other factors considered in the totality-of-circumstances analysis, predicted *Miranda* comprehension. That is, mental retardation, irrespective of factors such as age, experience, and education, determined that the warnings would not be understood. In New Jersey, Greenfield and colleagues[24] undertook a reading-level analysis of the respective *Miranda* cards from each of the 21 counties. The grade-level range was 4.0 to 15.2, with 14 of the counties in the fourth- to seventh-grade range. This may sound reasonable, but one must also take into account the performance anxiety of the suspect, the fear the suspect may be experiencing, and the retarded person's need to be compliant, to fit in and to avoid revealing deficits. In any event, as Oberlander and Goldstein[16] point out, it is unlikely to find *Miranda* warnings at the third-grade level, which would be compatible with that of a person with mental retardation. Under *Miranda* principles, police must prove that a waiver of rights is voluntary, which can be inferred from the suspect's actions.[25] However, the police retain a burden to show that the rights were understood in a meaningful way.[26]

The forensic professional evaluating the defendant with mental retardation should obtain school records and psychological testing results. Whenever possible, an audiotape or videotape of the interrogation is helpful as a basis for testimony. The suspect's statements may appear rote or "parroted," indicating lack of comprehension.[28] As part of the Miranda Checklist Inventory, Greenfield and colleagues[28] list other factors for the clinician to use, including the defendant's experience, medical condition, personality type, and physical characteristics of the interrogation process (temperature, lighting, food, and the visibility of a weapon on the interrogator, for example). These can be incorporated into testimony.

Defendants with mental retardation often report the following recollections: "I was scared"; "They said I could go home"; "They said they would help me"; "They said I could go to jail for a long time if I didn't say what they told me"; and "They were bothering me so much, I would've said anything to make them stop." What is being described here—good interrogation technique or a civil rights violation? In the author's experience, such scenarios give rise to both false confessions and confessions without valid waiver of rights. Potential expert witnesses should keep in mind, however, that a low IQ is never dispositive of the legal question of voluntariness. The witness must functionally tie together the deficits and the likely mental state of the defendant at the time of the interrogation.[29]

Acquiescence

The acquiescence response set is a psychological term referring to a tendency to respond to any question in the affirmative, regardless of context.[2] Persons with mental retardation are quite likely to show it, because, in their minds, it shows compatibility, friendliness, and pleases others—reasonable adaptations for disabled persons. They often mask deficits by "faking good" (the opposite of malingering). Nonretarded suspects, wanting to reduce tension or stress, or under a perceived threat of "consequences," may respond with a rote "yes" to the items in the *Miranda* warnings and waiver. Indeed, it is almost universal that statement transcripts have one-word responses from the suspect—that is, if there had been questions or clarifications of meaning, they are not apparent. No one wants to look stupid, and the suspect thinks: *The police are in authority; they must know what they are doing. Just go along and everything will be all right*. This mindset is a prelude to acquiescence.

Clinically, acquiescence may be hard to measure. Well-constructed personality inventories score for repetitive agreement. Thus, an invalid MMPI test result may be a clue to how the individual responded during interrogation. During the clinical interview, the examiner must be careful not to telegraph attitudes or "correct" answers. For example, the author asks a series of neutral questions ("Are you healthy?", "Are you living at home?") and then, "Did you plead guilty?" and "Did you plead not guilty?" This is the item-reversal technique.[2] The acquiescent subject continues to respond in the affirmative with contradictory answers. This does not mean that the subject's knowledge cannot be rehabilitated for trial-competency purposes. But the presence of acquiescence can be used as part of defense testimony on the reliability of the *Miranda* waiver.

Narcotic Withdrawal

Grouped here are withdrawal states from heroin, opioid analgesics (e.g., oxycodone), and benzodiazepines (e.g., alprazolam). Many crimes are committed in the service of procuring drugs, and many suspects are polysubstance users. To the extent that they

may be physically dependent, and when the length of initial custody or interrogation coincides with the pharmacokinetics of the drug (usually less than 24 hours' elimination half-life for short-acting sedatives and prescription analgesics), the suspect may experience an abstinence syndrome. The syndrome has objective and subjective components, with which clinicians are familiar. (This is not to say that judges are sympathetic to an explanation of a self-induced condition. Indeed, any testimony about defendants as addicts is a double-edged sword.) There are two important implications: first, the subjective withdrawal symptoms may reduce the suspect's resistance to police tactics or make getting a drug more important than self-incrimination; and second, an astute interrogator takes advantage of the more susceptible suspect. Often, defendants remark to the author that the interrogator, aware of the drug craving, said, "Just sign here [waiver] and tell us what we need to know and help will be on the way" or "After you give a statement, we'll get you into rehab." Often, the "rehab" is going "cold-turkey" in a jail cell—a medically dubious and sinister outcome. Only in rare instances is a drug screening performed, which could later support the defendant's claim.

The expert witness can shed light on the motivational and cognitive aspects of drug craving and how medical symptoms can be turned against a suspect (a type of police overreaching). A generic problem in testifying for the defense about drug-addicted defendants is the stigma associated with the diagnosis. The expert witness must separate the characterization of the drug addict, on the one hand, from the medical explanation of abstinence, on the other.

Deception

Trickery (e.g., the "false friend" technique[30]) and falsifications (e.g., "We found your fingerprints at the crime scene") are permissible tactics used by interrogators and endorsed in law-enforcement manuals.[2] The prevalent attitude is: "If he's stupid enough to fall for it, that's his problem." Practically, a lack of "street smarts" may be the manifestation of genuine impairment. Persons with cognitive impairment and low intelligence may later argue that they waived rights without knowing the consequences, because the deception deprived them of an opportunity to weigh the options intelligently. However, this does not constitute proof that the authorities overreached in obtaining the confession. In the author's experience, judges are likely to take a "caveat confessor" position.

What, then, would be the role of the expert witness? In those jurisdictions where the reliability of a confession can be calculated by subjective as well as objective factors, the expert can educate the court on how deception caused the suspect's will to be overborne. Then, if the defense can demonstrate that any interrogator knew or should have known that the suspect was mentally impaired, expert testimony can aid in the argument that there was overreaching.

Abuse

Suspects often claim to have been physically and/or mentally abused by interrogators. While common sense tells us that such instances occur and give rise to unreliable confessions, proof is elusive. For a confession to be adjudicated as coerced, there must be some proof of police misconduct (assault, deprivation, torture).[16] In the following vignette, an apparently abused (and deceived) suspect finds no comfort in bringing his story to court.

The author was asked to examine a death-row inmate (Mr. A.) seeking postconviction relief. He had been convicted of murder during a burglary. His confession (to the burglary only) was challenged in a suppression hearing but was admitted (there was little other evidence). Actually, he had consistently denied the murder. His confession to the burglary was made without his believing he was a suspect in the murder. The detectives asked him to give a set of fingerprints so that he could be "cleared" of the murder, which he gladly did. The prints matched those found around the break-in area, and he was formally charged with burglary and theft and interrogated further on the homicide. At this point, the detectives, smelling blood, vigorously intimidated the suspect. They pretended not to hear his repeated requests to use the telephone and to have a lawyer present. According to Mr. A., one of them struck him on the shoulder, causing an injury that took months to heal. When he got to jail, inmates told him not to report to the infirmary with the chief complaint, "The detective beat me," but instead, "I fell out of bed." The reason was a tendency for troublemakers to receive inadequate care. Thus, although the injury itself was documented in the medical record, it describes no connection to the interrogation. When Mr. A. had his suppression hearing, he testified to the events just

described, whereas the detectives testified that he had been treated well.

Abuse is a clear example of official overreaching causing an involuntary confession. When abuse of a suspect can be corroborated, the defendant can argue that his or her will was overborne by fear. Although the subjective response of fear is well understood, it may simply be an objective, lay determination of lack of voluntariness. That is, expert testimony may not be required. However, when the defendant is vulnerable (e.g., mentally ill, developmentally disabled), testimony can be used adjunctively by the defense. There may also be room for testimony on psychological aspects of torture generally, as background to the case.

Conclusions

Amid the tension between the aims of law enforcement and the liberty interests of citizens, the right to avoid self-incrimination stands firm. Whereas suspects' rights may have been eroded since *Miranda*,[10] the core protections have endured. Individuals under arrest understandably are under stress, yet are often called on to make quick decisions about what to say to police and prosecutors. Among the suspects are persons with mental illness, developmental disabilities, substance-related conditions, and inherent susceptibility to interrogation tactics. A strict interpretation of *Miranda* may lead to the notion that custodial confessions are immune from attack as long as procedures were followed. However, jurisdictions may acknowledge a broader-based analysis, taking into account subjective, environmental, and procedural factors. Thus, attorneys contemplating a motion to suppress a statement may employ psychiatric testimony. The MIRANDA schema provides a checklist of factors that are commonly associated with reliability issues.

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