



Cite as: 2010 (3) AELE Mo. L. J. 101

ISSN 1935-0007

Civil Liability Law Section – March 2010

Civil Liability for Coercive Interrogation

Contents

Introduction

Civil Liability for Coercive Interrogation

Resources and References

Introduction

Custodial interrogation is an essential tool for effective law enforcement. Questioning suspects may elicit confessions, and even when it does not, may result in uncovering leads and other information that can avoid the waste of valuable time and resources by pointing towards fruitful avenues for further investigation.

To be admissible as evidence in criminal proceedings, confessions must be voluntary rather than compelled, in order not to violate the [Fifth Amendment](#) privilege against self-incrimination. In addition, the courts have erected the requirements found in the [Miranda](#) admonitions familiar to almost everyone after decades of their use.

Coercive interrogation techniques, in addition to raising the possibility that courts will exclude resulting statements as involuntary, also may raise the specter of civil liability for officers and their agencies. This article examines two important recent cases, one from a federal appeals court and one from a state appeals court, in which courts examined lawsuits claiming that officers used such coercive interrogation techniques and wound up accusing innocent persons of serious crimes as a result. In one of the cases, a jury awarded over \$5 million in damages against a county, based on a finding of a pattern and practice of such interrogations.

The subject of possible liability for intentional violations of *Miranda* is not addressed here, but was examined in two prior articles in this publication, one focused on [liability](#) and the second on issues of [criminal admissibility](#).

At the conclusion of this article, there is a listing of useful resources and references on the subject of interrogation and related topics.

Civil Liability for Coercive Interrogation

In [Crowe v. County of San Diego](#), #05-55467, 2010 U.S. App. Lexis 894 (9th Cir.), a federal appeals court examined a lawsuit involving the investigation and prosecution of three innocent teenagers for a crime they didn't commit.

A 14-year-old boy, one of the plaintiffs, now an adult, allegedly falsely confessed to murdering his younger 12-year-old, sister, who was killed in her bedroom, following a series of "coercive" and "grueling" interrogations. He, and a 15-year-old accused of being his accomplice, were allegedly isolated and subjected to many hours and days of questioning, during which time they were lied to, threatened, cajoled, and pressured by teams of officers. Ultimately a third teenage boy was also accused of being an accomplice.

A federal appeals court overturned summary judgment for the defendant police detectives, finding that such tactics, if true, violated the Fifth Amendment, and also "shock the conscience" in violation of substantive due process. "'Psychological torture' is not an inapt description," the court stated. The defendants were not entitled to qualified immunity on claims relating to the interrogations, which allegedly resulted in coerced statements used in various proceedings. Qualified immunity applied, however, to claims relating to the arrest and search warrants, since the warrant applications, while arguably omitting some exculpatory information, did not demonstrate reckless disregard of the boys' rights or deliberate falsification.

Before his interrogations began, the 14-year-old brother was given *Miranda* warnings. It was repeatedly suggested to him that he had killed his sister, and he was falsely told that police had evidence that he had committed the crime. He was told that he would have to explain how various evidence came to be where it was, and further admonished that under the "rules of the game," he was not allowed to answer "I don't know."

He was told that he had a "good" persona and a "bad" persona, and that if he would only confess, he would receive "treatment." The detectives also repeatedly told the boy that perhaps he simply "did not remember" killing his sister, and that they would help him remember. He was instructed to "tell a story" about him killing his sister, and he finally agreed to do so, stating first that it would be a "complete lie," since he had not done it.

The detectives, according to the appeals court, then “latched onto” this story “as a confession,” and tried to fill in various holes in the story during the remainder of the interview. Similar tactics were used during interrogations of the two alleged teen-age accomplices.

Statements obtained from the boys were utilized during three pre-trial proceedings, during a hearing to make two of the boys wards of the court, during a grand jury proceeding resulting in all three being indicted for murder and conspiracy, and during a hearing to determine if the three boys would be tried as juveniles or as adults.

A vagrant who suffers from schizophrenia was later convicted of voluntary manslaughter in connection with the sister's death after the sister's DNA was found on one of his shirts. The charges against the three boys were dismissed.

In the federal civil rights lawsuit filed concerning the interrogations and various other aspects of the investigation and prosecution against the boys, the federal appeals court noted that the U.S. Supreme Court, in [Chavez v. Martinez](#), #01-1440, 538 U.S. 760 (2003), held that mere coercion does not create a cause of action under 42 U.S.C. Sec. 1983 for violation of the Self-Incrimination Clause of the Fifth Amendment, absent the use of the compelled statements in a criminal proceeding. In this case, however, the court found that the use of statements from the interrogations during the pre-trial proceedings was sufficient to distinguish the case from the rule in *Chavez*. The case against the boys did not conclude with their interrogations. Instead they were indicted and the case against them continued for a year, until “the eve of trial.”

In [Stoot v. City of Everett](#), #07-35425, 582 F.3d 910 (9th Cir. 2009), the court found that a coerced statement has been “used” in a criminal case when it has been relied on to file formal charges against the suspect, to “determine judicially that the prosecution may proceed, and to determine pretrial custody status.”

As for the plaintiffs’ substantive due process claims, the appeals court explained that officers need not use “physical violence” to violate such rights and “shock the conscience.” Other conduct, such as an interrogation plan to ignore a suspect’s requests for an attorney and relentlessly interrogate him may suffice.

“It has also long been established that the constitutionality of interrogation techniques is judged by a higher standard when police interrogate a minor. See [In re Gault](#), 387 U.S. 1, 55 (1967) (In an interrogation of a minor, ‘the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.’).”

In the immediate case, a child psychiatrist called the interrogation of the 14-year-old brother an “extreme form of emotional child abuse.” Examining the transcripts and videotapes of the lengthy interrogations, the appeals court found that the detectives’ conduct shocked the conscience. The court further pointed out that, at the time, the 14-year-old was in shock over his sister’s brutal murder. The court rejected the argument that the detectives were entitled to qualified immunity, stating that the special care that must be taken with the interrogation of a juvenile was long clearly established.

The issue in *Crowe*, however, was simply whether the case could proceed to trial, and that lawsuit is still far from over. In another recent case involving similar issues, [Prince Georges County Maryland v. Longtin](#), #1818, 2010 Md. App. Lexis 9, claims of coercive interrogation were tried to a verdict, liability was found, substantial damages were awarded, and the verdict was upheld on appeal by the Court of Special Appeals of Maryland.

The case involved a man who was charged with murdering his wife. She had been raped and killed while jogging near her home. He was released after eight months and another man, a serial rapist, was convicted of the crime, based in part on DNA evidence. The freed man claimed that he had been subjected to excessive interrogation totaling 38 hours, deprived of sleep, harassed, and humiliated, all to try to coerce him into making a false confession, after which a confession was falsified, resulting in his incarceration while the defendants ignored or neglected exculpatory evidence in their possession.

A jury awarded the plaintiff \$5.2 million in damages. The compensatory damages award was reduced to \$5.025 million by the trial court and upheld on appeal, along with an award of \$50,000 in punitive damages against one police detective.

In the immediate case, the husband phoned police to report that his estranged wife was missing. At the time the call was received, the police had already discovered her dead body, and the husband was immediately considered a suspect. The husband later appeared at the crime scene after hearing reports that a woman’s body had been discovered near his wife’s apartment, and an officer took him by police cruiser to an interrogation room.

He was then questioned, over the next day and a half, on a rotating basis by at least six different officers, and only slept 50 minutes during that 38-hour period. He later alleged that he was also only provided with insufficient food during that time period, and that some of it was putrid.

The officers asserted that he never asked for a lawyer, and, indeed, at one point he signed an “Advice of Rights and Waiver” form indicating that he was willing to make a

statement without a lawyer. The husband, however, later stated that he told the officers that he wanted to talk to a lawyer, and his cell phone records indicated attempts to call two different lawyers.

Officers argued that the husband was not in custody or under arrest until the end of the interrogation, and therefore did not have to receive *Miranda* warnings. They also claimed that the clock did not, therefore, start to run on a 24-hour period under Maryland law within which a suspect must be presented to a district court commissioner.

The appeals court noted, however, that the officers took away his belt, wallet, shoelaces and cell phone in the interrogation room, allegedly threatened him with violence when he wanted to leave, and, at one point, handcuffed him to the wall.

Interrogators showed him pictures of his dead wife, and asked him “what if?” questions about her murder, such as “what if you had done this murder?”

The husband was arrested for the murder, with a probable cause statement drawn up by a detective claiming that the husband had “volunteered” to come in and talk, and had “admitted” being “involved in this case.”

The detective claimed that the husband had related details of the crime that had not been reported by the media, and which only the perpetrator would know.

The husband contended that he never admitted involvement in the case and only discussed facts about the case reported in the media or provided to him by the police. The detective’s statement also allegedly deliberately omitted his repeated insistence that “I didn’t kill her.”

DNA samples taken from the husband, when compared to DNA left at the crime scene by the murderer, excluded him. While this exculpatory information was given to a detective by the crime lab, it was allegedly not then shared with the prosecutor or with the husband’s defense attorney, and no steps were taken to release him from custody.

The husband was not released until five months later, after the actual killer was identified. During the husband’s incarceration, he lost three autos, was evicted from his apartment, and had his belongings left on the street. He was also not allowed to attend his wife’s funeral, and was attacked by another prisoner at a detention center.

The appeals court upheld the award of liability against the county based on a finding that there was a pattern and practice of coercive interrogation techniques, such as sleep deprivation, a manual advising officers that they could read a suspect his rights “or wait until after he admits,” and a record of past lengthy interrogations, including one lasting

72 hours, and violations of a rule requiring that a suspect be presented before a court within 24 hours, as required by state law.

The county's interview and interrogation training manual also indicated that officers should consider handcuffing angry suspects to the wall and let him "sit a while," and to "wait out" passive suspects because "few people can keep it up." The plaintiff also presented evidence concerning a prior case in which there was "another dubious confession and erroneous confession."

The common thread between the two major cases discussed above, assuming that the facts recited are true, is that officers allegedly pursued their interrogations with an outlook of "wearing down" the suspect's resistance and endurance and attempting to elicit a "confession," or failing that, to manufacture one, regardless of whether the suspects being questioned were in fact involved in the crimes being investigated.

It has long been clear that officers engaged in interviewing criminal suspects may properly use some false statements, hypotheticals, or "trickery and deceit" of various kinds in the service of gathering useful information. But it should never be forgotten that the legitimate purpose of all law enforcement interrogation should be the identification, apprehension, and prosecution of actual criminals, and not to merely find someone on whom a particular crime may be blamed.

In both of the major cases discussed, clearly innocent persons faced horrendous disruptions of their lives based on purported "confessions" elicited by questionable interrogation techniques designed to achieve a desired result rather than to seek to uncover true evidence.

Such practices can be costly to all concerned, can tarnish the reputation and community relations of law enforcement agencies, and, as amply illustrated by the more than \$5 million in damages awarded in the Maryland case, can be very costly in monetary terms also. Well thought out and regularly updated training and materials on both the legal and practical aspects of interrogation techniques are essential.

Resources

The following are some useful resources related to the subject of this article.

- [Interrogation](#). Summaries of cases reported in AELE publications.
- [Interrogation: Children](#). Summaries of cases reported in AELE publications.

- [Interrogation](#). Wikipedia article.
- Congressional Research Service, Annotated Constitution, [Fifth Amendment](#).
- [The Reid 9 Steps of Interrogation, In Brief](#).
- Subject Bibliography, [Interviewing & Interrogation](#). FBI Academy.
- Charlotte-Mecklenburg, N.C. Police Dept. Directives Manual, “[Recorded Interviews](#).”
- Illinois State Police, Directive EP-016, “[Electronic Recording of Interviews and Interrogations](#).”
- Kenosha Police Department Policy and Procedure Manual. [Electronic Recording of Custodial Interrogations and Confessions](#). (Jan. 1, 2007).
- University of Florida Police Dept., Department Standards Directive, “[Interviews and Interrogations](#).”
- [Mandatory Electronic Recording of Interrogations Resources Page](#), National Association of Criminal Defense Lawyers.

Prior Relevant Monthly Law Journal Articles

- **Monthly Law Journal Article:** [Civil Liability for Intentional Violations of Miranda. Part One: Liability Considerations](#), 2009 (7) AELE Mo. L. J. 501.
- **Monthly Law Journal Article:** [Civil Liability for Intentional Violations of Miranda. Part Two: Criminal Admissibility](#), 2009 (8) AELE Mo. L. J. 501.
- **Monthly Law Journal Article:** [Investigative Detention of Employees Part One: Criminal Interviews](#), 2008 (4) AELE Mo. L. J. 201.

References (chronological):

- Richard A. Leo, [Police Interrogation and American Justice](#). (Harvard University Press, 2009). ISBN 978-0674035317
- Brian Parsi Boetig and Arnold R. Bellmer, “[Understanding Interrogation](#),” FBI Law Enforcement Bulletin (October 2008).
- Thomas P. Sullivan, Andrew W. Vail, and Howard W. Anderson III, “[The Case for Recording Police Interrogations](#),” 34 [Litigation](#) No. 3 (ABA Spring 2008).
- Maria Hartwig, Par Anders Granhag, and Aldert Vrij, [Police Interrogation from a Social Psychology Perspective](#), 15 [Policing & Society](#) 379-399 (Dec. 2005). [Abstract online].
- Fred E. Inbau, John E. Reid, Joseph P. Buckley, and Brian C. Jayne, [Criminal Interrogation and Confessions](#) (4th Edition, Jones & Bartlett 2004). ISBN 978-0763747213
- Joseph P. Buckley, [Essentials of the Reid Technique: Criminal Interrogations and Confessions](#) (Jones & Bartlett 2004). ISBN 978-0763727284
- Allison D. Redlich, Ph.D., [Law & Psychiatry: Mental Illness, Police Interrogations, and the Potential for False Confession](#), 55 [Psychiatr Serv](#) 18-21 (January 2004).
- Gisli H. Gudjonsson, [The Psychology of Interrogations and Confessions: A Handbook](#). (Wiley, 2003). ISBN 978-0470844618
- David Vessel, J.D., “[Conducting Successful Interrogations](#),” [FBI Law Enforcement Bulletin](#) (Oct. 1998).

AELE Monthly Law Journal

Bernard J. Farber

Civil Liability Law Editor

P.O. Box 75401

Chicago, IL 60675-5401 USA

E-mail: bernfarber@aele.org

Tel. 1-800-763-2802

© 2010, by the AELE Law Enforcement Legal Center

Contents may be downloaded, stored, printed or copied,
but may not be republished for commercial purposes.

- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
 - The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as “legal advice.” Lawyers often disagree as to the meaning of a case or its application to a set of facts.
-

[AELE Home Page](#) --- [Publications Menu](#) --- [Seminar Information](#)