



False Confessions "I can't believe I said that"

By Diane Wiley

AS RITA HANDRICH AND DOUG KEENE have so clearly laid out in this issue, [false confessions](#) are very difficult for jurors to understand and believe. Why in the heck would someone confess to something they didn't do unless they were crazy? Sometimes they are. But most of the people who confess do so under the pressure of the interrogation, whether they are mentally ill or not. Due to the difficulty and strength of jurors' attitudes and emotional reaction to false confessions, supplemental juror questionnaires are essential to distinguish the jurors who will be able to even consider that a person could confess to something they didn't do.

From the defense standpoint, as with most criminal cases, the more black and white the thinker, the less likely they will be to even consider the defense. The ability to understand that someone could become so stressed or sleep deprived, confused or fearful, or be so impulsive that they would confess to something they didn't do depends on a person being able to put themselves in someone else's shoes. Since the research shows that most people don't believe that they would ever confess to something they didn't do, the ability to evaluate another's situation as distinct from their own is very important. The

defense needs to find leadership jurors who have enough of a sense of human frailty that they will be able to look at all the variables that affect an interrogation.

Jurors will have to be able to consider the psychological ramifications of pressure, fear of the police and the conditions of the interrogation, combined with the defendant's personality and situation. Asking about experience with mental health issues and attitudes towards psychology can help to identify those jurors who most need to be challenged. A questionnaire is a particularly good way to ask about such sensitive issues which jurors might not want to talk about in open court. Keep in mind that not everyone who has had a mental illness or dealt with someone who has had a mental illness will be good for the defense. It's important to explore attitudes about the impact of mental illness and about those who are mentally ill if this is a part of your defense. But in general, jurors who "don't believe" in the influence of psychological factors are not going to be able to consider any kind of defense to false confession.

There are questions which should be asked in the questionnaire based on the specifics of the case. If the

defendant is a young person with emotional problems, you would want to know if jurors have had a job where they worked with this kind of population and then in voir dire you can explore what their attitudes are about these kinds of kids. As with any experience, it's the attitude and lessons the juror draws from their experience that is important.

Attitudes towards the police and criminal justice system are always useful indicators of a juror's ability to be fair in a criminal case. False confession cases necessarily involve extensive criticism of the interrogation techniques utilized by the police, thus it is important to ask numerous questions to determine which jurors will be able to consider that the police were overzealous. Questions about jurors' experience with, connections to and support for law enforcement are essential. In general, those who are more supportive of law enforcement will have a harder time finding that interrogation techniques could produce a wrong

result. Again, the juror's reaction to their experience with the police can help you to understand how they may, or may not, react to the defendant's reaction during their interrogation.

Of course, any jury questionnaire has to be tailored to the case and the jurisdiction. Trial consultants and lawyers should be aware of local and possibly national news stories that involve claims of false confessions. In persuading the judge to allow a questionnaire, cite the research which shows that there is widespread skepticism about the defense. If the case involves a horrendous crime, point out that the attitudes of jurors will be even stronger that no one who is not guilty would confess, unless they were tortured or significantly mentally ill. If the defendant is not white or has other personal characteristics which could produce prejudice in jurors, those issues should be included as well.

Finally as with all questionnaires, you

have to consider the voir dire conditions in your jurisdiction. The more restrictive the jurisdiction, the more questions you may want to include in the questionnaire. Under the best voir dire circumstances, questionnaires help to identify issues that will be fruitful for follow-up questioning during jury selection. One of the benefits of having a questionnaire is that it gives jurors a chance to think about some of their experiences and attitudes without the pressure of public testimony and we get fuller answers during jury selection. Sometimes referring to their anxiety in jury selection can help them to begin to understand the defendant's anxiety in being questioned by the police.

Following are some of the questions that will be useful in a juror questionnaire in a case involving false confessions. Some are general, some are more case-specific, depending on the facts. Many of these same questions would be useful in a civil wrongful imprisonment case.

Questions to identify experience with and support for law enforcement:

1. **Do you or any member of your family or close friends belong to any organization such as neighborhood Crime Watch, Crime Stoppers, or Mothers Against Drunk Drivers, Domestic Abuse Project, etc.?**

_____ Yes _____ No _____

IF YES, which ones? _____

2. **Have you ever taken any courses or training in or worked in the field of law enforcement or criminology, such as for the police, highway patrol, FBI, sheriff, corrections, state crime bureau, security, investigation?**

_____ Yes _____ No _____

Please explain, including courses or jobs held and dates of employment: _____

3. **Have you or anyone you know ever worked in the field of law enforcement or criminology, such as for the police, highway patrol, FBI, sheriff, corrections, state crime bureau, security, bureau of compliance?**

_____ Yes _____ No _____

IF YES, is this: Spouse/partner Child Family Friend/Acquaintance

Please explain, including job held and dates of employment: _____

4. Do you or anyone close to you have any connections to the _____ County Sheriff's Department, the _____ Police Department or the _____ County Prosecutor's Office, State Bureau of Criminal Investigation (BCI), _____ State Crime Lab?

_____ Yes No _____

IF YES, is this: You Spouse/partner Child Family Friend

Please explain: _____

5. You will be hearing testimony from several police officers in this case. Would you be able to judge the believability of law enforcement witnesses the same as any other witnesses (rather than giving more or less credibility to law enforcement)?

_____ Yes No _____

Please explain your answer: _____

6. Have you or has anyone you know ever had a particularly good, or particularly bad, experience with a police officer, another law enforcement officer, or a law enforcement agency?

_____ Yes No _____

IF YES, is this: You Spouse/partner Child Family Friend

Please explain, including where and when that was, and what law enforcement agency was involved: _____

7. Generally, would you give more credibility to the testimony of a police officer than to the testimony of another person, if their testimony conflicted?

_____ Yes No _____

Please explain: _____

8. Do you think police officers might make mistakes as often, or more or less often, than people who aren't police officers?

More often As Often Less often

9. Do you think if a police officer makes a mistake, they are more, or less, likely to admit their error than people who aren't police officers?

More likely Less likely

10. Do you think that because police officers are trained to be observers, they are more likely to be accurate in their observations about people and things that they have seen?

_____ Yes No _____

Please explain: _____

11. Do you think that police officers should have limits on the techniques that they use to interrogate suspects?

____ Yes No ____

Please explain: _____

12. Have you ever served in the military?

____ Yes No ____

IF YES, please list branch, rank at discharge, place and date of service and if you ever served in the military police or worked in military court system: _____

13. Have you or anyone close to you, ever had any of the following experiences? (“Spouse” also refers to partner.)

Have you ever...	No	Person	Please Explain
Been a victim of a crime?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
Witnessed a crime?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
Been stopped by the police?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
Been interviewed or questioned by the police?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
Been interviewed or questioned by an investigator or attorney?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
Been charged with a crime?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
Been convicted of a crime?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	
Made a charge against someone?		<input type="checkbox"/> Self <input type="checkbox"/> Spouse <input type="checkbox"/> Family <input type="checkbox"/> Friend	

Questions to identify experience with, knowledge of and attitudes towards mental health issues, psychology and psychological processes

14. Have you ever taken any courses, training or worked in psychology, social work, child development, mental or physical health or chemical dependency?

____ Yes No ____

IF YES, please explain: _____

15. Have you or someone you are close to had serious emotional problems?

____ Yes No ____

IF YES, is this: You Spouse/partner Child Family Friend

Please explain: _____

What type of treatment has this person received? _____

16. Have you or someone close to you suffered from depression, anxiety, ADHD, emotional distress or mental illness of any kind?

____ Yes No ____

IF YES, is this: You Spouse/partner Child Family Friend

What kind of treatment was received: _____

17. Do you think that anyone can overcome any kind of psychological trauma or mental health problem if they try hard enough?

____ Yes No ____

Please explain: _____

18. What is your general opinion about counseling, psychologists, psychiatrists, social workers and other mental health professionals?

Favorable Negative Mixed

Please explain your answer: _____

19. Have you ever had any training in interviewing or conducted interviews?

____ Yes No ____

IF YES, please describe: _____

It's important to ask about jurors' experience with the specific kind of crime that the defendant is charged with.

20. Have you or someone close to you ever been the victim of a violent crime, such as being stabbed, shot, assaulted, or anyone you know ever been murdered, or died a violent death?

____ Yes No ____

IF YES, is this: Spouse/partner Child Family Friend

Please briefly describe the circumstances: _____

Have you heard anything about this case or the people involved or did you see or hear any news reports about it on the radio, TV, internet or in the newspaper?

____ Yes No ____

IF YES, what have you heard or read about this case? _____

What stands out in your mind about what you have read or heard? _____

Do you or anyone you know have any connection to this case or the people involved? This could include police officers, investigators, people who were interviewed, family members of people who were interviewed or who know the family of the deceased.

____ Yes No ____

IF YES, please explain: _____

Have you ever expressed an opinion as to Mr. ____'s guilt or innocence?

____ Yes No ____

General questions on agreement with criminal justice principles

28. Do you have any problem with the legal proposition that a defendant must be presumed innocent unless and until the prosecution can prove he or she is guilty?

____ Yes No ____

Please explain: _____

29. Do you have any problem with the legal proposition that a defendant must be proved guilty beyond a reasonable doubt or he or she must be found not guilty?

____ Yes No ____

Please explain: _____

30. Do you have any feelings that a defendant must prove his or her innocence?

____ Yes No ____

Please explain: _____

31. A defendant has the constitutional right to not testify. Would you have any problem not considering that a defendant did not testify in reaching your decision as to whether the defendant is guilty or not guilty?

____ Yes No ____

Please explain: _____

32. Is there anything else the judge and attorneys should know about you in relation to serving on this jury?

____ Yes No ____

IF YES, please explain: _____

33. Do you or anyone you are close to know or do business or have any other kind of social or personal connection with any of the following people, law firms or organizations?

No connection	Have heard of	Know or have met	Know someone with a connection	Please explain the connection

34. Is there any subject covered in this questionnaire that you would not want to discuss in front of the other jurors in open court?

____ Yes No ____

What question or questions are those? _____

For more information about juror questionnaires in general, including jurisdictions where they have been used, sample questionnaires and motions, see JURYWORK: Systematic Techniques (Krauss, Elissa, West Group, 2d Ed., 1978, updated annually).

[Diane Wiley](#) is a founder of the [NJP Litigation Consulting](#) and President of the Midwest Office in Minneapolis. Diane is a pioneer in the field of trial consulting, having begun her work in the jury system in 1973. Diane has extensive experience in assisting attorneys with mock trials, voir dire, juror questionnaires, jury selection, opening statements, developing themes and other trial preparation assistance, venue challenges and post trial interviews. Over the past 39 years she has assisted criminal defense attorneys on cases involving standard criminal charges and white collar cases; plaintiff's attorneys in personal injury cases, including medical and other professional malpractice, products liability and employment cases; and commercial attorneys on all kinds of cases, including intellectual property, contracts and securities cases. She prides herself on making her work available to attorneys on cases both big and small all across the country. She has written numerous articles and chapters for legal publications and teaches at seminars.