



Motion to Suppress: Attacking the Voluntariness of a Confession in Wisconsin

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Wisconsin's policy to require police to electronically record custodial interrogation of persons accused of committing a felony marks an extraordinary evolution in the way the state investigates and prosecutes crimes. Many would describe this development as a revolution in the way our clients have traditionally been treated in interrogation rooms all over our state. There is no doubt that the benefit to our clients will be tremendous. No longer will they be subjected to the tyranny of the interrogation room, where slick, well-prepared detectives could sew up a confession by using coercive tactics and then lying about what your client said. The new reality is that many investigations will not result in criminal charges and those that are will proceed to trial lacking the essential advantage of a confession.

In those cases where police managed to get a confession, we have the solemn obligation to determine whether they violated the Constitution. Just because some interrogations are being recorded does not mean that the number of motions will decrease. What it means is that we have an obligation to do it better, because the hearing will be less about credibility issues or factual disputes about what was said. We will get a rare chance to argue and prevail on legal substance.

Despite this technological safeguard against coercive tactics, law enforcement will continue to exploit suspects who are mentally or emotionally vulnerable in order to get a confession and solve their cases. The motion to suppress statement is the best vehicle to ascertain what happened in and out of the interrogation room and will provide you with a preview of the challenges you will face during the trial of a false confession case.

Occasionally, the hearing will reveal glaring mistakes such as the police's failure to read the Miranda warnings, failure to scrupulously honor your client's request not to be interrogated and failure to honor your client's request for counsel. In other circumstances, the hearing will help you uncover important factors such as police use of lengthy interrogation sessions, sleep deprivation and isolation designed to break your client's free will and render him or her more vulnerable and susceptible to police interrogation.



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Preparing the Motion to Suppress

Preparing an effective motion to suppress a confession requires groundwork. The following steps can help you determine whether your client fully understood his rights and whether he may have been coerced into confessing.

One of the most important steps to undertake is the client's interview. Start by developing a narrative of his social history. The social history may reveal important features of his personality that may have contributed to your client succumbing to police questioning during the interrogation.¹ Your client's education is an important component of the social history.

Examining your client's education and I.Q. are important because having a limited education and low I.Q. could render him susceptible to police interrogation.² A low I.Q. could have interfered with your client's ability to understand the Miranda warnings, and also his ability to waive his right to remain silent and his right to counsel. For example, assessing his literacy level is something that can be readily ascertained by having him read a portion of the Miranda warnings and then asking if he can explain to you what those rights mean. Ask about his highest grade of schooling achieved. Find out if he attended special education classes and whether the school made any special accommodation in connection with a learning disability. If he is not of school age, discover how he supports himself. Many of our clients are afflicted with mental disabilities and receive supplemental social security income. It would be helpful to examine Social Security records as they may contain valuable information regarding your client's disability. These records may also reveal a history of alcohol and drug abuse.

You may also discover that English is your client's second language. You have to be especially careful when assessing whether the client is fluent or not. I recommend that you find a person who is fluent in his native language to determine whether your client really understood his constitutional right to remain silent and to have an attorney.³ We cannot disregard the role of culture in the context of the interrogation process when interviewing clients who were born in a foreign country and may not understand some of the fundamental tenets of our constitution. In many countries, criminal suspects do not have the right to remain silent and are presumed guilty. It might be helpful to do some research ahead of time in order to determine the existence of a cultural barrier that may have rendered your client vulnerable and compliant to police interrogation.

Corroboration of what your client has told you about his education and mental health is a critical aspect of the investigation process. Interview his relatives, friends, teachers, school administrators and treatment providers in order to establish the nature of his mental or emotional vulnerabilities. If there is a lack of treatment records, consult with an expert that could perform an I.Q. or general psychological test. Some psychologists are able to evaluate the suspect's Miranda comprehension and suggestibility to coercive interrogation by administering the Grisso Comprehension and Gudjonson Suggestibility Scale tests.⁴

With the help of your client, recreate a time line of the events that led to his arrest and subsequent interrogation. It might be difficult for him to recreate a traumatic or painful event. For instance, in determining the passage of time in a jail or other detention facility, ascertain whether he could see a clock or a window. A window might allow the client to see whether it was day or night when he was interrogated. Also, find out how many times he was offered food or water during the detention. From time to time, the jail might track your client's movements in and out of the cell to the interrogation room providing a more accurate account of the passage of time and powerful evidence during your suppression hearing establishing proof of your client's lengthy and unconstitutional detention.⁵

Visit the jail or detention facility, in particular the room where the interrogation took place. Take photographs and measure the room. Find out whether the interrogators controlled the temperature of the room by paying attention to the presence of a thermostat and whether there are windows or vents to the outside that if opened might allow the room to get very cold during the winter. The temperature of the room might be self-evident. Make sure to bring an investigator with you so that you have a witness who could testify to this fact. Of course, your attempt to examine the scene of the interrogation should be undertaken after your client's interview. Hopefully, you will be able to elicit from your client information that could help you determine where to most effectively focus your investigation.

Thoroughly research your client's criminal record. If he has been arrested and convicted before, find out if the state relied on a confession to obtain the conviction. In some circumstances, his experience with police might be very limited. Find out if those police contacts resulted in an arrest or charges filed.

It is critical that you conduct an investigation of the individuals who interrogated your client. Talk to other lawyers with clients who may have encountered circumstances similar to those experienced by your client. Utilize Wisconsin Open Record Law⁶ to obtain information from police and fire commissions, disciplinary hearings, and personnel records. Bad cops tend to act consistently and are often involved in civil litigation. Checking to see whether the police witnesses in your case are involved in civil litigation as a result of police brutality claims or other misconduct would provide you with valuable information for your suppression hearing. In some jurisdictions you may be able to subpoena personnel records that might potentially include the training records of the police witnesses, which might also include specific training in interrogation methods and techniques.

The next step is to carefully plan the cross-examination of the interrogators. Often times you are not going to have an electronic record of the event, so you will have to virtually recreate the conditions that existed during the interrogation as best you can with the help of hostile witnesses. Do not be afraid. Think of the cross examination as the deposition of the interrogators before trial. Be prepared, intransigent judges will block every attempt to limit your cross, arguing that you are wasting their time. Many judges believe that once the prosecutor offers testimony that your client has been told or has read all rights and admonitions required in *Miranda* and indicates that he understood them the hearing is over.⁷ They are wrong! Our clients have the right not only to challenge compliance with *Miranda* but also compliance with the 6th Amendment right to counsel and, very importantly, *the right to challenge the voluntariness of their statement*.⁸ In fact, failure to conduct a hearing to suppress the defendant's allegedly involuntary statements to police constitutes reversible error.⁹ The best way to counter misconceptions about confessions is by taking control of the hearing. You accomplish this by demonstrating your knowledge of the law of involuntary confessions.

Attacking the Voluntariness of the Confession

In order for the court to determine the voluntariness of a confession it has to apply a "totality of the circumstances" test, which takes into account factors such as the personal characteristics of your client and contrasts them against the psychological and other external pressures utilized by the police.¹⁰ The totality of the circumstances may indicate that a confession was not voluntary, even though your client read and understood his rights.

Questions regarding the amount of time your client remained in custody before arraignment;¹¹ whether he was allowed to communicate with the outside;¹² whether the police threaten him;¹³ whether he was physically abused;¹⁴ whether police promised leniency;¹⁵ the length of the interrogation;¹⁶ whether police

confronted him with fraudulent and improper evidence against him;¹⁷ are all legitimate and necessary areas of inquiry into the voluntariness of a statement.

Many police witnesses will invariably deny using any particular technique or stratagem during the interrogation of a suspect. Questions about the approach adopted by the interrogator during an interrogation of a suspect are important because the approach selected may render the confession involuntary.¹⁸ Police have an aversion to admitting that the interrogation of a suspect is undertaken as part of a systematic plan to extract a confession, because they want to give us the impression that the confession is 100% voluntary. Their adoption of this approach during the hearing is probably helpful to your client but counterproductive to the state particularly in very serious cases where it is unlikely that the interrogator approached the suspect without any or little preparation.

Begin your questions by addressing the interrogator's belief that he is an excellent, knowledgeable investigator. Approach questions about their training from a general perspective without specifically connecting their training to the interrogation of your client (you can do it later). You may also have information from personnel records about the interrogator's training. Question the interrogator about his knowledge of the case. Find out if they have an opinion as to the strength of their case against your client. Ask the interrogator about previous interrogations and inquire as to how he handled a suspect's denial. Definitely ask how the interrogator moved from a denial to an admission in those cases and eventually in your case.

Many interrogators will readily disclose the use of themes, monologues and stories to get an admission. For example, in a rape case, the interrogator could use the theme of consent to get the suspect to admit to having sexual intercourse with the accuser. In a shooting or stabbing case, the issue of self-defense or defense of others could be presented to the accused to induce him to confess. The use of these techniques during an interrogation could be regarded as "improper police practices" particularly in those cases where you could *show* that your client actually believed that the interrogator's statements discussing the possibility of charging him with a less severe charge, obtaining a lesser sentence from the court as a result of his cooperation, etc., would constitute a coercive promise of leniency.¹⁹

Question the interrogators about factors that would render your client more susceptible and vulnerable to police interrogation. Determine whether he was given food and water.²⁰ Try to get a specific response from the interrogator particularly in those cases where a long, protracted interrogation is alleged. Interrogators are often with your client only during their assigned shifts and may not be aware whether or not he received any food or water during preceding or subsequent shifts.

Pay close attention to events surrounding your client's arrest such as receiving medical attention and medication. Police may have interrogated him while receiving emergency care, before and after surgery.²¹ If this is the case, subpoena the medical records to establish his physical condition. They could also reveal valuable information such as the types of medications used and prescribed to your client. Consult the Physicians' Desk Reference (PDR), which is the standard prescription drug reference for medical doctors to determine what impact the medication had on him. Of course, these suggestions are merely part of the groundwork you have to undertake if he claims his physical condition played a significant role during the interrogation.

Events preceding the client's arrest and interrogation might show his intoxication.²² It is essential to lay an adequate foundation during the motion hearing to establish that police used his intoxication to their

advantage in order to induce a confession. Subpoena all the officers involved in the arrest to ascertain your client's condition at the time of his arrest. Many times, the arresting officers (who are not involved in the interrogation process) will report your client's physical condition at the time of the arrest. Also, various police departments rely on civilian personnel such as police recruits to work the booking rooms. Find out if they prepared any reports concerning the condition of your client during booking. Many police departments scrupulously maintain booking records that include physical and mental health information as protection against potential lawsuits. They also perform breathalyzer tests if they suspect the inmate is intoxicated, again to prevent potential litigation. Ask if they have a video camera in the booking room. If he was under the influence of narcotics have him tested for drugs as soon as possible. Ascertain whether he has a documented history of serious alcohol or drug addiction in order to determine whether he experienced alcohol or drug withdrawal during the interrogation.²³ The objective is to present evidence to the court, which shows your client exhibited physical signs of intoxication before and during the interrogation.²⁴

Another important factor that could render your client more susceptible during his interrogation is sleep deprivation.²⁵ You should pay particular attention to this factor when you are alleging that his confession was obtained after being detained for an unreasonable period of time.²⁶ In circumstances where police used relays of investigators to conduct multiple interrogations over the course of several hours or even days, consider hiring an expert who could testify about the short and long term effects of going sleepless.²⁷ Keep in mind that sleep deprivation is also regarded by many as a form of torture.²⁸

Determine if the police kept any records that could help you recreate not only your client's movement in the jail but also where police kept him during the interrogation process. For instance, the Milwaukee Police Department tracks a suspect's movement in the jail following their arrest and booking by the use of what are commonly known as "movement cards." Have the client specifically describe where he was kept when not being interrogated. It might be a very important fact to discover if he was kept in a booking room surrounded by other inmates without access to a place to rest. Even if the client was placed in an individual cell, your inquiry is not over. I have clients who have painfully described their lockup in a city jail cell as cruel and inhumane. Start by asking whether the cell had a place to lie down. You will often discover that many cells do not have a soft pad but rather hard, cold concrete. Were there any lights in the cell? Was the room lit continuously from inside or from the hallway? When was food or water provided? How many times? Was he allowed to change to clean clothes? What about the ability to bathe or brush his teeth? How many times did police wake your client up?

Attacking the Sew Up Confession

Another important area that you should carefully scrutinize is whether or not your client's interrogation resulted in a "sew up" confession. In Wisconsin, it is generally recognized that although a suspect "may be detained by police and interrogated to secure sufficient evidence to either charge him with a crime or to release him, the police cannot continue to detain an arrested person to 'sew up' the case by obtaining or extracting a confession or culpable statements to support the arrest or the guilt."²⁹ Application of what is now regarded as the *Phillips* rule in circumstances where a suspect has been held in custody for an inordinate amount of time before a confession is extracted depends on the purpose and legitimacy of the delay.³⁰

Close analysis of the *purpose* and *legitimacy* of the delay is critical to the determination of whether your client should have been released or charged. Your objective during the motion hearing is to elicit facts that will support a finding that the police unreasonably prolonged the detention of your client in order to extract a confession that would "sew-up" the case for the police.

The State has an affirmative obligation to prove that the delay in your case was for a legitimate purpose. Legitimate reasons for the delay include: to verify a defendant's story;³¹ to actually complete the investigation of a crime;³² to locate alibi and other witnesses;³³ to acquiesce to a defendant's request to take a polygraph;³⁴ to detain a defendant pending another charge;³⁵ to provide a defendant with medical attention;³⁶ where defendant confesses to other crimes during the original questioning, or evidence of other crimes is discovered;³⁷ or when the defendant spends most of the time during detention sleeping or visiting relatives.³⁸

Of course, you also need to carefully examine the length of your client's detention.³⁹ The longer the client remains in custody, the stronger the evidence of overbearing pressure to obtain a confession or inculpatory statement.⁴⁰

Attacking the Use of Lie Detection Methods

Although the practice of using lie detection methods such as polygraph examinations or voice stress analyzers in conjunction with the interrogation of suspects is not widely present in many criminal cases, they continue to be an integral part of major criminal investigations involving homicides and sexual assault of children cases.

In Wisconsin, if the post-polygraph interview is so closely related to the mechanical portion of the polygraph examination that it is considered one event, the statements are inadmissible.⁴¹ This is consistent with the general rule that polygraph test results are completely inadmissible in criminal proceedings.⁴² Whether a statement was made as part of or discrete from the polygraph process is determined upon consideration of the totality of the circumstances.⁴³ Carefully consider the time elapsed between the mechanical or electronic testing and the post-polygraph interview.⁴⁴ For instance, an interview which took place six days after a polygraph examination has been found to be totally discrete from the examination which preceded it.⁴⁵ Other factors you should take into account when evaluating if the post-examination interview was discrete from the polygraph test would be (1) whether the defendant knew the examination was over; (2) whether the defendant had been disconnected from the polygraph machine; (3) whether the post-examination interview took place in a separate location distinct from the location of the polygraph; (4) whether defendant understood that answers to questions asked after the test were separate from the polygraph examination and (5) whether there is a specific chronologically measurable break between the examination and the start of the interrogation.⁴⁶

During your cross of the polygraph examiner/interrogator explore if the examiner specifically delineated the mechanical portion of the polygraph from the interrogation of your client. For example, determine whether, following the mechanical portion of the polygraph exam, the interrogator informed your client of his Miranda rights. Some interrogators might avoid taking this step, because it may send a signal to the suspect that something different is taking place consequently endangering the polygraph stratagem. Your objective is to establish that the interrogator did not act or treat the post-polygraph interrogation as a separate event.

A critical factor to examine is whether the interrogator used the results of the polygraph examination to confront your client. The practice of informing the suspect that he has failed a polygraph test can, under some circumstances, become a coercive tactic designed to make the suspect confess and can undermine the voluntariness of his confession.⁴⁷ Consider the following remark about the use of lie detection devices as a coercive strategy during an interrogation:

One of the most common and influential evidence ploys involves lie detecting machines—whether polygraph devices or voice stress testers. While the nominal purpose of a lie detection test is to diagnose the subject as truthful or deceptive, the primary function of any lie detector test administered during an interrogation is to induce a confession. By creating the impression that the procedure is infallible and by playing on a suspect’s fear of arrest, the lie detection examination can be a powerful pseudoscientific tool of persuasion and manipulation. . . . The effect of negative lie detector results, in conjunction with other false evidence ploys, can be so devastating that it can actually shatter a person’s belief in his innocence as well as convince him that he will be convicted.⁴⁸

Contrast police use of lie detection devices during an interrogation from those situations in which police confront a suspect with physical evidence such as the discovery of fingerprints or DNA evidence. The detection and removal of a fingerprint during a criminal investigation as an evidentiary item can be subjected to scientific analysis. The results of a polygraph examination, however, so far defy the rigors of strict scientific analysis. In other words, a suspect can physically test the assertion his fingerprints have been found in the crime scene by the scientific method. A suspect, however, would feel powerless to challenge the opinion of the polygraph examiner even if he were factually innocent of the accusation.

No Recording, No Confession?

Invariably, in dealing with electronically recorded interrogations you are going to have to deal with cases where no recording was made because the tape recording broke down, the detective failed to turn it on or the pause button was inadvertently pressed during a critical moment in the interrogation. Courts in Alaska and Minnesota have upheld the admissibility of statements made when no functioning recording device was available;⁴⁹ when there is no evidence that police deliberately failed to start the recording device;⁵⁰ or when the recording was inadvertently erased or destroyed.⁵¹ Nevertheless, should a statement be admissible at trial when law enforcement willfully and intentionally erased, destroyed or otherwise interfered with the recording of a custodial interrogation?

The answer to this question generally depends primarily on the legislation that mandates electronic recording. Contrast our state policy requiring audio or visual recording of a custodial interrogation of a person suspected of committing a felony with that of our neighbor Illinois.⁵² The law in Illinois mandates that police officers record certain custodial interrogation and establishing that any oral or written statement of an accused shall be presumed inadmissible as evidence in a criminal proceeding for homicide unless “an electronic recording is made of the custodial interrogation” and such recording “is substantially accurate and not intentionally altered.”⁵³ An intentional violation of the Minnesota Supreme Court’s rule requiring electronic recording could potentially result in the suppression of the statement at trial as well: “In the exercise of our supervisory power to insure the fair administration of justice, we hold that all custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention. If law enforcement officers fail to comply with this recording requirement, any statements the suspect makes in response to the interrogation may be suppressed at trial.”⁵⁴

Even after we establish an intentional violation of the statute we may not be able to get the statement suppressed as the fruit of the poisonous tree. Unfortunately, the doctrine is a constitutional principle and does not apply to statutory noncompliance.⁵⁵ On the other hand, in our arguments we must insist that the policy concerns expressed in *Jerrell* in connection with juvenile interrogations remain as vital and critical in the interrogation of an adult suspect as well.⁵⁶ Lastly, if you are able to demonstrate the purpose and flagrancy of the official misconduct in the selective destruction or editing of the electronically recorded

confession, ask the court to sanction the state by suppressing any police statement that seeks to recreate that which the police intentionally destroyed.⁵⁷

Conclusion

In a society where police are increasingly under a tremendous amount of pressure to reduce crime and produce results, we have the responsibility to utilize every resource at our disposal to make sure that the principles enshrined in our Constitution are not blatantly ignored and casted aside because it inconveniences the public, police and the prosecutor. We should view our motion practice as a vehicle to redeem not only important constitutional rights, but fundamental human rights as well, which are, after all, essential components of most modern, progressive and just societies.

Endnotes

- ¹ Police coercion and a defendant's personal characteristics are interdependent concepts; the more vulnerable a person is because of his unique characteristics, the more easily he or she may be coerced by subtle means. *State v. Xiong*, 178 Wis. 2d 525 (Ct. App. 1993).
- ² Limited education (8th grade) and low IQ (84) are factors to consider when determining whether the individual is susceptible to police pressure. *State v. Jerrel C.J.*, 2005 WI 105, para. 27.
- ³ State must prove the sufficiency of foreign language warnings when challenged by non-English speaking defendant. *State v. Santiago*, 206 Wis. 2d 3 (1996).
- ⁴ The Grisso test evaluates an individual's competency in regard to a particular stage of trial proceedings. It should include a determination of whether your client possessed the competency to understand his Miranda rights. The Gudjonsson Suggestibility Scale (GSS) is a test that tries to measure how susceptible your client is to coercive interrogation.
- ⁵ *Phillips v. State*, 29 Wis. 2d 521 (1966); *Wagner v. State*, 89 Wis. 2d 70 (1979).
- ⁶ Wis. Stat. § 19.35
- ⁷ *State v. Mitchell*, 167 Wis. 2d 672 (1992) (prosecutor can establish prima facie case of compliance with *Miranda* if defendant has been told or has read all rights and admonitions required in *Miranda*).
- ⁸ Wis. Stats. § 971.31(3), (4); *Miranda V. Arizona*, 86 S. Ct. 1602 (1966); *State v. Jerrell C.J.*, 2005 WI 105.
- ⁹ *State v. Monje*, 109 Wis. 2d 138 (1982).
- ¹⁰ *State v. Hoppe*, 2003 WI 43; *State v. Clappes*, 136 Wis. 2d 222 (1987).
- ¹¹ *Wagner v. State*, 89 W2d 70 (1979).
- ¹² *State v. Hunt*, 53 Wis. 2d 734, 745 (1972); *State v. Whitman*, 160 Wis. 2d 260 (Ct. App. 1991); *Phillips v. State*, 29 Wis. 2d 521, 535 (1966).
- ¹³ *Arizona v. Fulminante*, 111 S. Ct. 1246, 1253 (1991).
- ¹⁴ *Hill v. State*, 91 Wis. 2d 315 (Ct. App. 1978).
- ¹⁵ *Pontow v. State*, 58 Wis. 2d 135, 139 (1973); *State v. Nicholson*, 187 Wis. 2d 688 (ct. App. 1994); *Turner v. State*, 76 Wis. 2d 1, 22 (1977) (statements that cooperation with authorities will result in a benefit to the confessor such as in the declaration "if you would confess we would see that you get help for your sexual problem" do not create "compelling pressures which overcome the individual's will to resist"); *State v. Deeds*, 187 Wis. 2d 630 (Ct. App. 1994); *State v. Edwardsen*, 135 Wis. 2d 208 (Ct. App. 1986).
- ¹⁶ *Phillips v. State*, 29 Wis. 2d 521, 535 (1966); *Ashcraft v. Tennessee*, 322 U.S. 143 (1944) (questioning suspect for excessively long time without a break); *Jerrell C.J.*, 2005 WI 105, para. 35 (suspect left alone in interrogation room for two hours, then questioned for 5.5 hours leading the suspect to wonder if interrogation will ever cease); *State v. Farias-Mendoza*, 2006 WI App 134 (leaving the suspect isolated in a locked room for five hours then entering the room and immediately asking suspect to offer DNA exacerbated his illegal detention).
- ¹⁷ *Turner v. State*, 76 Wis. 2d 1, 20-22 (1977) (confronting defendant with information such as fingerprints, hair samples "does not amount to the utilization of overwhelming force or psychology"); *State v. Albrecht*,

184 Wis. 2d 287 (Ct. App. 1994) (even though police deceived the defendant into believing that a fictitious crime organization would help him flee the state in order to induce an admission from the defendant, the deception was deemed to create “a self-imposed coercive element” that did not destroy the voluntary nature of his admission).

¹⁸ *Commonwealth v. DeGiambattista*, 813 N.E. 2d 516 (MA 2004) (intensive use of the Reid method by repeated use of minimization techniques such as police suggestions to defendant that he committed crime because he was under stress, his desire to commit crime understandable and that he had no intent to hurt anyone could, under a totality of the circumstances analysis, render the confession involuntary).

¹⁹ *State v. Owens*, 148 Wis. 2d 922 (1989); *State v. Edwardsen*, 135 Wis. 2d 208 (Ct. App. 1986).

²⁰ *Phillips v. State*, 29 Wis. 2d 521 (1966).

²¹ *Renner v. State*, 39 Wis. 2d 631, 636 (1968) (the state has the burden to show the voluntariness of a statement given to police before and after surgery).

²² *State v. Clappes*, 136 Wis. 2d 222 (1987) (keep in mind, however, that the fact that suspect may be intoxicated during the interrogation does not render the statement involuntary in every circumstance).

²³ *State v. Hoppe*, 2003 WI 43.

²⁴ *State v. Shaffer*, 96 Wis. 2d 531, 543-544 (Ct. App. 1980).

²⁵ *State v. Hunt*, 53 Wis. 2d 734 (1972).

²⁶ *Reimers v. State*, 31 Wis. 2d 457 (1966).

²⁷ Menachem Begin, the Israeli prime minister from 1977-83, was tortured by the KGB as a young man. In his book, *White Nights: The Story of a Prisoner in Russia*, he wrote of losing the will to resist when deprived of sleep.

“In the head of the interrogated prisoner, a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep... Anyone who has experienced this desire knows that not even hunger and thirst are comparable with it.

“I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them.

“He did not promise them their liberty; he did not promise them food to sate themselves. He promised them - if they signed - uninterrupted sleep! And, having signed, there was nothing in the world that could move them to risk again such nights and such days.” (Menachem Begin, *White Nights: The Story of a Prisoner in Russia*, trans. Kafie Kaplan (Jerusalem: Steimatzky, 1977)).

²⁸ <http://www.smh.com.au/news/National/Sleep-deprivation-is-torture-Amnesty/2006/10/03/1159641317450.html>

²⁹ *Phillips v. State*, 29 Wis. 2d 521, 535 (1965); *State v. Wagner*, 89 Wis. 2d 70, 75 (1979) (The unreasonable detention of an individual before release or initial appearance before a judge “constitutes a denial of due process under Art. I, sec. 8, of the Wisconsin Constitution and renders inadmissible any confession whether voluntary or involuntary, obtained from the suspect during the detention.”)

³⁰ *Wagner*, 89 Wis. 2d at 76 (courts have failed to establish “a set period of time beyond which the suspect must either be released or charged. The accepted analysis is to allow post-arrest detention if it is (1) for a “proper purpose” and (2) “the period of detention is not unjustifiable long under the circumstances of the case.”)

³¹ *State v. Hunt*, 53 Wis. 2d 734, 742 (1972).

³² *Id.* at 77.

³³ *State v. Wallace*, 59 Wis. 2d 66, 79 (1973).

³⁴ *McAdoo v. State*, 65 Wis. 2d 596, 607 (1974).

³⁵ *Id.* at 609.

³⁶ *Briggs v. State*, 76 Wis. 2d 313, 324-25 (1977).

³⁷ *State v. Herrington*, 41 Wis. 2d 757 773 (1969).

³⁸ *State v. Estrada*, 63 Wis.2d 476, 491 (1974).

³⁹ In *Wallace*, the period of detention in issue was approximately fifty-one hours. *See Wallace, supra*, at 77. In *McAdoo*, the period of detention was five days-but from the time of the arrest until he was charged, the defendant was held in custody on a valid commitment. *McAdoo, supra*, at 609. In *Wagner*, the period of detention at issue was approximately twenty-eight hours. *Wagner, supra*, at 76. In *Phillips*, the period of detention was three hours. *Phillips, supra*, at 535. In *Klonowski v. State*, 68 Wis. 2d 604 (1975), the period of detention was approximately 24 hours. *Id.* In *Krueger v. State*, 53 Wis. 2d 345 (1971), the critical period of detention was fourteen hours. *Id.* at 355. In *Estrada*, the period of detention was fourteen hours. *Estrada, supra*, at 490.

⁴⁰ *Phillips*, 29 Wis. 2d at 536.

⁴¹ *State v. Schlise*, 86 Wis. 2d 26, 43-44 (1978).

⁴² *State v. Dean*, 103 Wis. 2d 228, 279 (1981).

⁴³ *Barrera v. State*, 99 Wis. 2d 269, 288-89 (1980).

⁴⁴ *See Schlise* at 42.

⁴⁵ *Id.* (citing *Turner v. State*, 76 Wis. 2d 1, 19 (1977)).

⁴⁶ *State v. Greer*, 2003 WI App 112; but consider *State v. Johnson*, 193 Wis. 2d 382, 389 (Ct. App. 1995) (even if the suspect has been disengaged from the polygraph machine and interrogated in a separate room any reference to the test and its results to the defendant constitute a significant factor).

⁴⁷ *See People v. Higgins*, 239 Ill. App. 3d 260, 272 (Ill. App. Ct. 1993) (the defendant did not make any inculpatory statements until after he had been told that the polygraph examination revealed he was not telling the truth).

⁴⁸ Ofshe and Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U.L. Rev. 979, at 1036, 1040 (1997).

⁴⁹ *State v. Schroeder*, 560 N.W. 2d 739, 740-41 (Minn. Ct. App. 1997).

⁵⁰ *State v. Miller*, 573 N.W. 2d 661, 674-75 (Minn. 1998).

⁵¹ *Bright v. State*, 826 P.2d 765, 773-74 (Alaska Ct. App. 1992).

⁵² 968.073 and 972.115 Wis. Stats; *but* consider the impact of law enforcement intentional failure to electronically record the interrogation of a juvenile suspect pursuant to the Wisconsin Supreme Court's supervisory power requiring that in order for a juvenile suspect's confession to be admissible in court the police must tape record the interrogation whenever feasible and without exception in a place of detention. *State v. Jerrell C.J.*, 1005 WI 105.

⁵³ *See*, e.g., 725 ILCS 5/103-2.1(b) (2004).

⁵⁴ *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994).

⁵⁵ *United States v. Montgomery*, 390 F.3d 1013 (7th Cir. 2004).

⁵⁶ *State v. Jerrel C.J.*, 2005 WI 105.

⁵⁷ *State v. Amundson*, 69 Wis. 2d 554, 575-580 (1975). ■