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# CRIMINAL LAW UPDATE

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## ***new jersey cases***

*It is about time.* The New Jersey Supreme Court, by way of rule change effective January 1, 2006, has mandated *not only* the electronic recordation of confessions, but also the critical interrogation process leading to the confession. The requirement is limited to homicide cases only in 2006, but in 2007 will be expanded to included offenses ranging from kidnaping, aggravated manslaughter and aggravated sexual assault down through criminal sexual contact and burglary. Trial courts have been rejecting for years arguments that due process requires the recording of confessions, and this rule change seems to reflect the Supreme Court's thinking that fundamental fairness does in fact require this protection. While law enforcement has shyed away from recording confessions in the past, anecdotal evidence from those states where it has been in place for some time reflects that police, in general, strongly support it. The rule allows either audio or visual recordings, and requires the recording to begin at the point where Miranda warnings are being given. The rule only applies to suspects held in "places of detention," such as a police station, county prosecutor's office or jail. It does not seemingly include the back seat of a patrol car, and it will be interesting to see if there is a sudden spike in backseat or on-the-scene confessions. It is encouraging that our Supreme Court recognized the critical importance of the pre-confession interrogation

by mandating its recordation also. New Jersey law prohibits the use of an expert witness to testify as to the coercive effect of the custodial interrogation process in producing false confessions, the sense of the court being that it is a matter of common experience and jurors do not need expert assistance (*State v. Free*, 351 N.J.Super. 203 (App.Div. 2002)). That is true, of course, so long as all the jurors are uneducated, illiterate, poor, scared, and have had long experience in being confined and isolated in the presence of uniformed, armed, highly skilled and trained interrogators. False confessions, contrary to common perception, are an all too real problem. Indeed, Barry Scheck and the Innocence Project have found that many falsely convicted murderers had in fact "confessed," obviously falsely. This change in judicial philosophy regarding confessions is long overdue and very welcomed. Kudos to the Supreme Court. This makes New Jersey only the third state in the union where such recordation is judicially mandated (in three other states, it is required by statute). If the police do not record the statement, the court must charge the jury to use "great caution and care" in determining if the statement was in fact made and accurately reported.

Speaking of confessions, even if recorded, the state must prove that the defendant's confession was voluntary, not made because his/her will was

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overborne, and must do so beyond a reasonable doubt. Court will look at the totality of the circumstances, weighing both the characteristics of the defendant and the nature of the interrogation. In *State v. Knight*, 183 N.J. 449 (6/8/05) the New Jersey Supreme Court ruled that a physiologically oriented interrogation technique is not inherently coercive. The "totality of the circumstances" include the accused's age, education and intelligence, advice as to his rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment and mental exhaustion were involved. And if after losing the motion to suppress the statements, your client decides to plead guilty to challenge that ruling on appeal, make sure to preserve his right to appeal by making the guilty plea conditioned upon that right of appeal.

### ***scooters, cheaters and beaters***

**M**any municipalities have been unclear as to the legality of motor scooters, including motorized skateboards and the like. It does not include electric wheelchairs and other devices used by the disabled. Scooters can only be ridden on private property, or on property specifically designated by a town or county for that purpose. Liability insurance must be in place, the operator must be at least 12 years old and liability insurance is required. The law does not apply to Yugos or Hyundais, as in some circles they are considered automobiles. Penalties: \$100--\$750, mandatory scooter forfeiture on a 3<sup>rd</sup> offense. *NJSA 39:4-14.12*.

**M**any of our clients drive trucks, buses limousines and other commercial vehicles for a living. Loss of their commercial driver's license (CDL) may result not only in a major inconvenience, but loss of their employment. Since this October 1<sup>st</sup>, our statutes have been revised to include the regulations of the federal Motor Carrier Safety Improvement Act, detailing the consequences for a CDL of an NJ MV violation. Those regulations require, for instance, that a CDL holder lose his/her CDL *for life* if convicted of a second DWI, even one

that was incurred in a non-commercial personal vehicle. Even certain criminal offenses will require suspension or lifetime loss of a CDL. Look for a chart summarizing all of these consequences at [www.state.nj.us/mvc/bc/licenses/cdl\\_chart.pdf](http://www.state.nj.us/mvc/bc/licenses/cdl_chart.pdf). Everyone should also bookmark on their web browser the Motor Vehicle Commission website at [www.state.nj.us/mvc/index.shtml](http://www.state.nj.us/mvc/index.shtml) as it is a font of information on many municipal court daily practice issues.

**I**n response to last months's mention of embarrassing questions we have all asked at trial, and pointing out how far we go so as to not "lead" the witness, Judge Escala provided this anecdote: "Further to your collection of attorneys' gaffes in witness examination, I recall (from my days as a practicing attorney)... listening to a trial in progress. There was examination of a private detective by a now-deceased attorney during a divorce proceeding. The detective related how he had tailed the cheating spouse to a location in Lodi, where she alit from the car being driven by her paramour. The attorney waited a brief interlude for that picture to set in, and then asked the witness: 'And what, if anything, was she wearing?'"

**D**omestic Violence matters: criminal lawyers think they are the domain of family practitioners, and family lawyers think they belong to we pratitioners of the dark arts. Stop—you are both right! Learn *everything* you need to know at a January BCBA seminar. Stay tuned.

**P**retrial nerves are not all bad; keep us sharp, on our toes. Learning from trial mistakes? Welcome to the human race. Ageless wisdom understood 2500 years ago. *There are times when fear is good. It must keep its watchful place at the heart's controls. There is advantage in the wisdom won from pain.* Aechylus (525-456 BC), Greek dramatist.

**P**ace on earth, good will to all. Year round sentiments with a seasonal reminder. *Pax vobiscum. Shalom.*

