

team members that conflicts will happen, with the acknowledgement that conflicts within the team can be intimately connected with patient care. When significant team conflicts are identified, it is important that the clinical team makes space or takes 'time out' from patient issues to look at their own methods of operation and relationships. In my experience, conflicts successfully worked through increase the team's strength and effectiveness, whereas conflicts which remain unresolved not infrequently persist with a

destructive potential. It is hoped that the three 'constructs' I have illustrated in this paper may provide some assistance to clinical teams in examining their performances and internal functioning.

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The times

False confessions: a note on the McKenzie judgement

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The Court of Appeal in its judgement of this case ruled that special care needs to be taken in cases where the defendant suffers from "a significant degree of mental handicap" (This term is used with a specific legal meaning – see below) if the only evidence against him is his confession.

If there is evidence, which may include the opinion of an expert witness, which shows that the confession is not reliable then the Judge should withdraw the case from the jury and direct an acquittal. The judgement stressed that a confession should not automatically be regarded as reliable because it contains information which should only have been known to the perpetrator of the offence ("special knowledge") but that a careful examination of all possible methods by which the accused may have obtained such information is also essential. Psychiatrists will, of course, be fully aware of the risks of unconsciously transmitting information to persons being questioned and treat with suspicion all information not obtained under "double blind" conditions.

Prior to the decision in McKenzie, the law stated that a case against a defendant must be withdrawn

from the jury (and the defendant should be acquitted) if at the conclusion of the prosecution case the evidence against him is such that no reasonable jury, properly directed on the law, could arrive at a guilty verdict based upon it. The judgement in McKenzie's case makes it plain that in certain circumstances a case in which the defendant has confessed to the offences should be treated in this way. The Court ruled that it would not be safe to allow a case to continue where the following three conditions are satisfied:

- (a) the prosecution case depends wholly on a confession
- (b) the defendant suffers from a significant degree of "mental handicap"
- (c) the confession is unconvincing to a point where no jury, properly directed, could convict on the basis of it.

It may be that where the last condition is satisfied it is not necessary to satisfy the other two as it is already the law that a case so unreliable that no jury could convict on it should be withdrawn from the jury.

Perhaps the judgement is best understood as an express ruling that even cases based upon confession evidence may be unreliable and as a warning that the confessions of persons with a significant degree of "mental handicap" are not to be relied upon without very careful scrutiny, after due consideration has been given to their mental state.

McKenzie was originally arrested in connection with charges of arson in respect of which there was other evidence against him. He confessed to these matters and went on to confess to a large number of murders. Most of these "confessions" were not believed. Indeed, it was conclusively proved he has not committed some of them but he was nonetheless charged with two murders on the basis of these confessions although there was no further evidence which supported them. One of the facts which the Court ruled made these confessions unreliable was expert evidence which persuaded the Court that the defendant suffered from "a significant degree of mental handicap". The term would seem here to be a legal rather than a medical one. There seems no reason to think that the Court meant to limit it to lack of intellectual capacity alone. When considering the question of whether the defendant suffers from a significant degree of "mental handicap" it should be noted by the expert witness that the measure of "handicap" is the extent to which such difficulties, as the defendant can be shown to have had or was likely to have had, adversely effect the reliability of his confessions. It may be that even a slight degree of difficulty in clinical terms may be "significant" to the issue of reliability.

McKenzie himself was described by the Court as being "borderline subnormal. . .with an IQ of 73 to 76 and with a history of personality disorder and sexual problems" and it therefore seems that the term "mental handicap" as used by the Courts includes at least what a clinician would define as personality disorder and there appears to be no reason to think that functional mental illness would be excluded.

For this reason any factor (within the expert witness's range of expertise) which might predispose the defendant towards confessing to crimes when he had not committed them should be placed before the Court. It must be borne in mind that the Courts are

very unwilling to hear expert psychological (or psychiatric) evidence on the mental state of "normal people" and while there are documented cases of persons without any history or symptoms of mental illness or handicap making false confessions (Kellam, 1980) the expert witness should in theory confine himself to presenting evidence that the defendant's state of mind was abnormal and the probable inferences that can be drawn from this abnormality. In practice, lawyers are going to want to extend this ruling in borderline cases and therefore the term "abnormality" should probably for the present be interpreted widely, leaving it to the Court to decide if it wishes to exclude the information concerned.

The Court of Appeal ruled McKenzie's confessions unsafe despite the fact that they contained details of the crimes which should have only been known to the perpetrator himself, "special knowledge". The expert should therefore be aware of the legal importance placed upon "special knowledge" and look for clues within the confession itself which suggest how an innocent person could have come by these details. Ideally, the tape recording of the interview should be listened to and scrutinised for leading questions and for hints of the desired answer to questions being suggested, subconsciously or otherwise. Similarly, attention must be paid to the possibility that special knowledge may have been acquired by the defendant from a source other than personal experience, such as local rumour or non recorded conversations with persons investigating the events.

The expert should bear in mind the risk of a false confession in all cases where a mentally disordered person is sent to him for assessment having confessed to an offence even if this is not the question raised by instructing solicitors.

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Reference

KELLAM, A. M. P. (1980) A Convincing false confession. *New Law Journal*, 130, (5937) 29–33.