

Defending the Interrogation Case: Confession Contamination & Evaluations

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Our Clients

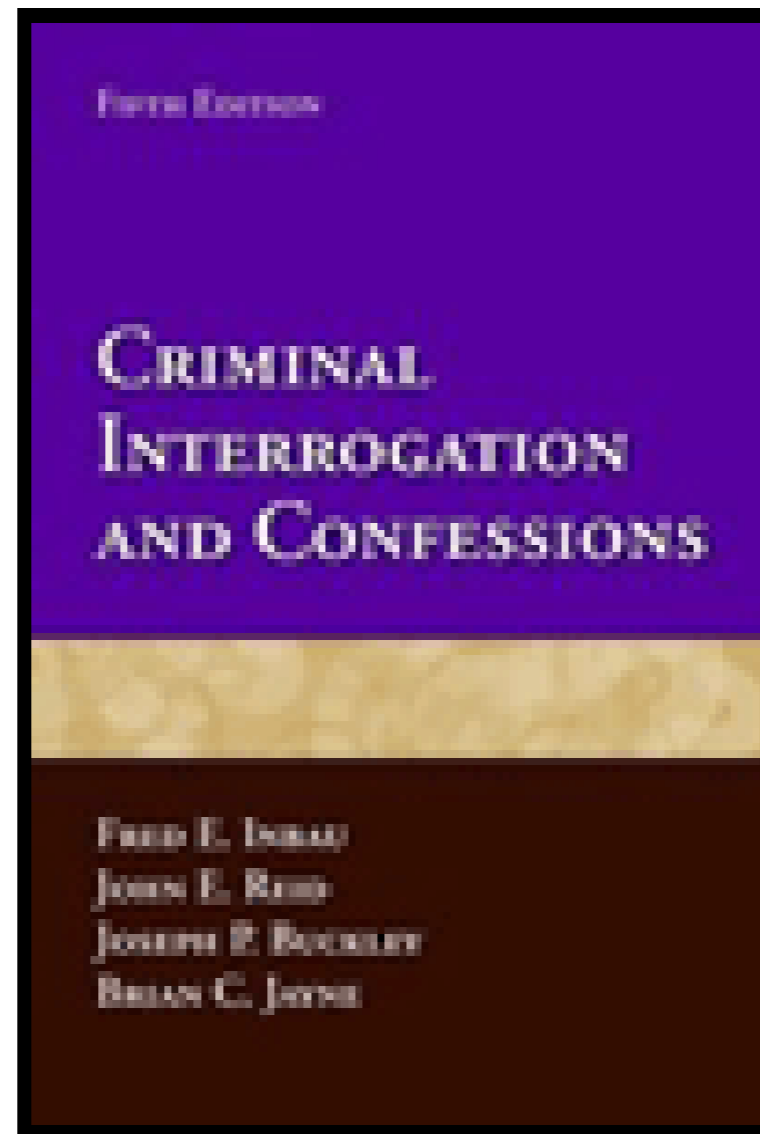


Police interrogation
is not a search
for the truth

Quest for a Confession

The Bible of Interrogation

www.reid.com



Reid Technique

- **Behavior Description Interview**
- **Bait Questions**
- **The Nine Steps**

Behavior Description

- 17+ Questions
 - What should happen to the person who (describe crime)
 - Should they get a second chance?
 - Body Language assessment

Bait Questions

What would you say if I told you we have this amazing airtight case against you?

The Nine Slippery Steps

9. written statement
8. nail down the story
7. alternative question
6. handle passive mood
5. procure attention
4. handle objections
3. cut off denials
2. theme development
1. confrontation



a primer on police interrogation

Persuade suspect:

- case is strong**
- situation is hopeless**
- detective is on their side**
- “truth” will help lesser penalty**



Making a Murderer

Bluffing
Evidence Ploys
Appeal to Emotions

Coercion can sound mild

Client Interview

- Social history
- Arrest
- Food, meds, sleep
- Impact of interrogation techniques
- Tipping point
- Expectations after confession
- Source of information in statements

Review the interrogation

Coercion

True/False

Contamination

voluntariness

- **Lengthy repeated interrogations**
- **Physical & psychological discomfort**
- **Maximization & minimization**
- **Extreme evidence ploys**
- **Vulnerable clients**

Client Vulnerabilities

- **Unknown**
- **Ignored**
- **Exploited**



Dassey aftermath

Brendan Dassey

Miranda...

Voluntariness...

**MiraMiranda...VoluntVolunta
riness...**

ContContamination...

Contamination...

Custody: Voluntary Interview

- **Public safety**
- **Transporting Client**
- **Location at station**
- **Duration**
- **Custodial type setting**
- **Techniques used to break denial**

- **Interrogation:**

- “A practice that the police should know is reasonably likely to evoke an incriminating response”

- *Training*
Techniques Used
Interrogation ≠ Questions

Right to Silence

**They don't hear it
happen....**

...We can't miss it

Undermining Miranda

Voluntariness



a message to the judge

this is a false confession!



ask why

(& other follow up questions)

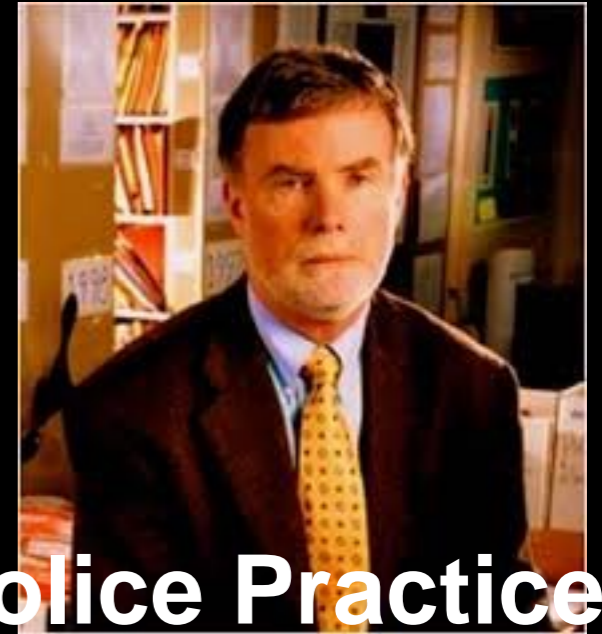
active

listening

Consulting Experts:



**Clinical
Psychologist**



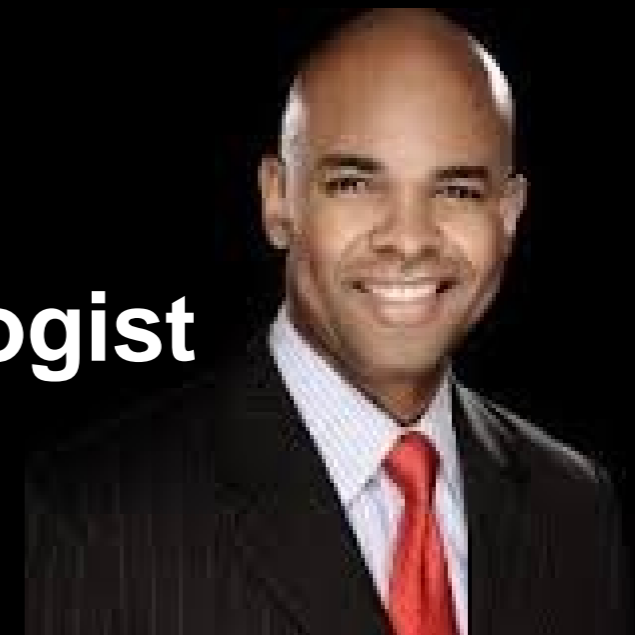
**Police Practices
Expert**



Research Psychologist



Social Scientist



Psychiatrist

Client Testimony

MCHUMOR.COM by T. McCracken



"Your Honor, my client requests
the opportunity to try a different story."

Basis Truths

- **Even the most coercive interrogation can result in a reliable and accurate confession**
- **Just because a confession is accurate, does not mean that it is reliable.**
- **Confession evidence evaluation methodology can be applied to other statements as well.**

False -Unreliable Statement Evidence

- **Totally false statements**
- **True statement where contamination nullifies its reliability**
- **Statements that criminalize a non-criminal act or incident**
- **Statements that falsely increase the suspect's criminal culpability**
- **Statements containing false elements to conform to the investigators perception of the truth.**

Interrogation...It's not just for suspects anymore.

- **Interrogation: Used to obtain information that you believe a person has but is not willing to provide to you.**
- **Can apply to:**
 - **Suspects**
 - **Witnesses**
 - **Victims**
 - **Informants**



Obtaining False Confessions – the “Three Step” Program

STEP #3:

Contamination

“They gave details that only the killer would know”



The Substance of False Confessions

Brandon L. Garrett

Vol. 62 Stanford Law Review pg. 1051 (2010)

- **40 false confession cases uncovered by DNA testing**
 - **In *97%* of those cases, the innocent suspect *provided “specific details* concerning how the crime occurred...” often including “inside information” only the true suspect could have known.**

Contamination From Outside Sources

- When your “hold back” ain’t held back.
- Neighborhood knowledge and rumors
- Knowledge from inference



Question Structure



- **Leading questions**
 - “Didn’t you come through the cut before the shooting happened?”
- **Forced Choice Questions**
 - “How did you get out, the door or the window?”

Investigator's Response to Answers

- **“You’re lying!!”**
- **Repeating the question when the first response was “wrong”**
- **The interrogation becomes a game of 20 Questions.**



Revealing Evidence – Crime Scene Photos

- A picture is worth a thousand “hold back” details.
- False evidence plays
 - **“Witnesses saw you and another guy going through the back window”**
 - Two suspects
 - Entry through the back window



Theme Development

- **A monologue presented by the interrogator in which reasons and excuses are offered that justify or minimize the seriousness of the suspect's criminal behavior.**
- **If not careful**
 - **Details of the crime can slip in.**
 - **Provides the suspect with the minimum “script” that the interrogator will accept to provide the benefit.**

Just “out and out” tell them...

- “And then you got the gun from the drawer, right?”
 - “yeah”
- “And you shot him through the door, right?”
 - “(sigh)...yeah”



“Cold Reading”

- **Broad, non-committal answers**
 - Investigator fills in the blanks
- **Guessing + Verification Bias**



Selective Listening

- **Hearing what you want to hear**
 - **Guilt presumptive interpretation**
- **Gratuitous concurrence**





Obtaining False Confessions

The “Nail in the Coffin”

**Failure to
corroborate
the confession**



Steps 1 of 3 in Statement Evidence Evaluation

- Crime scene analysis
 - Whenever the crime scene analysis is found to be out of sync with a given statement or theory requires that aspect of the theory to be revisited.
- Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction (3rd Edition)



Witness Statement

- **Was looking out my window.**
- **Saw Marcus and another man chasing the truck, shooting at it as he ran down the street.**
- **The truck crashed right across the street from me.**
- **Marcus and the man ran up and shot the man several times through the driver's side window.**



Step 2 – New Information



- **Does the statement contain information not previously known to the detectives and that can be corroborated?**

Step 3 – Looking for Contamination.

- Does the statement contain information that is known to be true by the detective and can be shown to have been provided by the subject without contamination.



What about those details that just don't fit...

- **Found in both reliable and unreliable statements.**
 - **Often explained away by the detective**
 - **The suspect is minimizing their involvement**
 - **Trying to protect someone.**

On closer examination....

- **Reliable Statement Clues:**
 - **Does the other information that was provided pass the corroboration tests?**
 - **Would the missing or incorrect details increase the criminal culpability of the suspect or link him to other crimes?**

Unreliable Statement Clues:

- Is the suspect unable to provide the details because they were not provided to him during the interrogation by way of contamination?**
- Does the suspect provide false information that increases their culpability?**
- Is the suspect unable to provide mundane, neutral details**

Breaking Down the Confession

- **Timelines**
- **Evidence Charts**
- **Interrogation Spreadsheets**
- **Statement & Evidence Comparison Spreadsheets**

Overall Timelines

- **Captures progress of investigation**
- **Who knew what and when.**
- **Why decisions were made.**
- **Identifies potential contamination.**
- **Identifies potential verification bias.**

Date	Event	Documented	Notes	Comments
7/11/88 12:00 AM	The Wards leave their residence - Wesley at home alone 7208 Rutland St	Tab 16 - copy of search warrant		
7/12/88 12:00 AM	Sara Stinson saw a W/M with a box standing on the northeast corner of Castor & St Vincent - looked like he was waiting to cross the street. Don't remember time but believes it was before Barbara was found. Saw him from her kitchen window (7200 Rutland St) - Asked if she knew Wesley Ward or any of his friends.	Tab 15 - Stinson 8/29 interview		
7/12/88 7:00 AM	Sharon left for work	Tab 5 - Sharon 7/12 interview	between 700 and 730 - intended to work until 2000 hours. <i>Called John 3 or 4 times and he called her twice (is this usual?)</i>	
7/12/88 7:30 AM	Sharon Fahy went to work. John Fahy still sleeping	Tab 4 - Fahy interview by Miller		
7/12/88 8:30 AM	John Fahy woke when Barbara Jean tured on TV	Tab 4 - Fahy interview by Miller	Barbara Jean ate Lucky Charms for breakfast	
7/12/88 9:00 AM	Sharon called John	Tab 5 - Sharon 7/12 interview	Asked if he was up. Asked him if he was going to take out the trash and reminded him about the stuff in the refrigerator that needed to be thrown out. John said Barbara was watching TV	
7/12/88 9:00 AM	Barbara Jean had breakfast - Lucky Charms	Tab 4 - John Fahy 8/8 interview		
7/12/88 9:30 AM	Trash picked up at 1409 Vincent St	Tab 7 - Stanldy Zablocky interview		
7/12/88 11:00 AM	John called Sharon to say "Hi"	Tab 5 - Sharon 7/12 interview	Sharon said she would call back later - was busy. <i>Added later in the statement that she spoke with Barbara - she asked for a freeze pop and Sharon said "after lunch". John said Barbara was not saying "Hi Mommy" (Sharon said she had heard it in the background) but "Hi to Charlie outside the window".</i>	

Evidence Charts

- **Identifies probative value of evidence and lab results.**
- **Identifies what wasn't done – could have been done.**
- **Helps in understanding of crime scene**

Item #	Description	Location	Date Recovered	Tests	Results	Comments
4531	rolled condom	body recovery site - Southside of road	2/9/99			
4532	tire impression cast	body recovery site	2/9/99			
4533	feathers - 3	body recovery site - top of log near victim	2/9/99			
4534	two Blockbuster video cases	body recovery site - north side of roadway	2/9/99			
4535	fiber	body recovery site - top of victim	2/9/99			Fibers recovered under UV light
4535	fiber	body recovery site bottom of victim	2/9/99			
4536	six 9mm cartridge casings	body recovery site - roadway	2/9/99	processed for latent prints	no prints recovered	
4536-2	thirteen .40 cartridge casings	body recovery site - roadway	2/9/99	processed for latent prints	no prints recovered	
4537	condom wrapper	body recovery site - north side of roadway	2/9/99			
4538	[nothing listed]					in the detective's written report he says all evidence listed under 4531-4542
4539	rope	body recovery site - ground near victim	2/9/99			described in detectives' report as "section of insulated wire"
4540	soil sample from under victim	body recovery site	2/9/99			

Interview Charts

- **Charts progress of interview/interrogation.**
- **Identifies tactics that change narrative account.**
- **Identifies potential contamination.**
- **Lets you see who is telling the story.**

DECOSTER		INTERROGATION TECHNIQUE/POINT	PAGE	COMMENTS	CLEAN/OTHER	TYPE OF QUESTION
			1	interview begins 9:23		
I want to help you clean this thing up...this seems kind of messy, so we want to --I understand you want to , you know clean this thing up.		Leniency - maximization	6	Lead in following several minutes of routine background questions	Clean this thing up	
	Yes, I did not do anything	Denial	6			
We do not want to have somebody kick your ass for no reason....people were running their mouths....threatening you more or less...they [officers] felt like they needed to get you out of there and that is why you are here. Does that sound fair?	Yes.		6	Lead in for justification for bringing to station		
I just want to make sure there is no misunderstanding, I know I said it earlier but you are not under arrest			7	Non-custodial justification		
The people at the scene are saying some stuff that is concerning, and so we need to get it all straightened out	I understand	Legal advice - leniency - control	7		Get it all straightened out	
			8	Past exposure to interrogation		
			8 9			
So you know how the criminal process works...you are no stranger to that. You got the thing dropped down to a misdemeanor which I guess is pretty good.		leniency	9			
What did you hear the people back at the house saying? What were they saying to you	They said I pulled down their son's pants....I did--- whatsoever did not do that.	indirect confrontation - denial	11			Open
	[provides initial account]		11 thru 15			
	I went upstairs to my room to go to sleep and then [redacted] came in and said....M told me that you told him to pull down--you pulled down his pants. [added that S wanted to kill him]		15			

Statement/Evidence Comparisons

- **Compares:**
 - Subject statement to subject statement
 - Multiple subject statements to each other.
 - Statements to evidence
- **Identifies narrative shifts and potential contamination.**

Time	Statement 1	Statement 2	Cell	Jen's Statement
0001			Call to Hae's residence 0.02	
0035			Call to Hae's residence 1.24	
1000				Between 1000 and 1200, Jen speaks with Jay on his house phone. Jen was going to pick Jay up on her way home.
1045	Adnan calls my house at 10:45 or a quarter to 11		Call to Jay's residence 0.28	
1100		Adnan arrives at Jay's hours and they leave for the mall		
1145	Adnan arrives about an hour later and we leave for the mall	Went to Security Square Mall		
	Went to Westview Mall and did some shopping.			
	Adnan gave Jay his car and cell phone, asking him if he would pick him up later	Adnan told Jay he was going to kill Hae. Gave Jay his car and cell and would call him when he wanted to be picked		
1200				"Maybe" a little after 1200 Jen called Jay to let him know she was running late and found out that he did not need a ride.
1207			Call to Jen's residence 0.21	
1230	Dropped Adnan off at school at			

Suppression due to Contamination

Trial before plea





Trial

BE A TRUE BELIEVER



DAVE Coverly

"You know, we just might win that trial today."

