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# Criminal Interrogation and Confession, by Fred E. Inbau & John E. Reid

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# BOOK REVIEWS

CRIMINAL INTERROGATION AND CONFESSIONS (2d ed.). By Fred E. Inbau and John E. Reid. Baltimore: The Williams & Wilkins Company. 1967. Pp. xiii, 224. $8.00.

In his landmark majority opinion in *Miranda v. Arizona*,[1] Chief Justice Earl Warren quoted freely from the first edition of *Criminal Interrogation and Confessions*.[2] He did so not only to illustrate the inherently coercive nature of the incommunicado, police-dominated atmosphere existing during custodial interrogation, but also to justify the safeguards for individual liberty formulated in *Miranda*.

As a result of the *Miranda* decision, it was to be expected that Messrs. Inbau and Reid would issue a retort, but the second edition of *Criminal Interrogation and Confessions* fails in this respect. While paying lipservice to the safeguards formulated by the Supreme Court, the authors ignore the very essence of the Court's purpose in *Miranda*. The tenor of the book is established in the introduction, where it is claimed that, "The Court's critical comments about the procedures we advocated were, we believe, for the purpose of establishing the necessity for the warnings rather than as a condemnation of the procedures themselves."[3] From this starting point it is more than easy for the authors to conclude that the procedures they have always advocated are still within the law so long as the *Miranda* warnings are given to the suspect. The Supreme Court, however, did not consider the constitutional warnings the ultimate end it was seeking but rather only one means of assuring that end: dispelling the compulsion inherent in custodial surroundings so that a statement obtained from the defendant would truly be the product of his free choice. Likewise, it should be clear to all lawyers and policemen that the coercive atmosphere can be produced even with the recitation of the suspect's constitutional warnings, and, this reviewer submits, the procedures advocated in *Criminal Interrogation and Confessions* are designed to create — not dispel — just such an atmosphere.

The cornerstone of the Inbau-Reid philosophy is that no tactic

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[1] 384 U.S. 436 (1966).

[2] F. INBAU & J. REID, CRIMINAL INTERROGATION AND CONFESSIONS (1962).

[3] F. INBAU & J. REID, CRIMINAL INTERROGATION AND CONFESSIONS 1 (2d ed. 1967).

or technique which they advocate is apt to make an innocent person confess. While such a philosophy is commendable, it is, at least, debatable. In spite of all that has been said and written, the authors still recommend to an interrogator that the only meaningful rule of thumb is to ask himself: "Is what I am about to do, or say, apt to make an innocent person confess?"[4] To advocate and rely upon the test of trustworthiness as the only meaningful and fair rule for determining the admissibility of confessions is not merely to reject the Supreme Court's most recent pronouncement in this area, *Miranda*, but also to reject the history of criminal procedure for the past 25 years. It is to deny the federal rule formulated in 1943 holding that confessions obtained by federal police officers should not be admitted into evidence if the defendant was not promptly brought before a federal commissioner after his arrest,[5] and it is to further ignore the Supreme Court's first attempt at formulating a general rule governing the admissibility of confessions in state courts: that subjecting a suspect to 36 hours of incommunicado interrogation, without permitting him to sleep, is inherently coercive and a violation of due process.[6] Displaying one of the greatest communications gaps in the history of the United States, Professor Inbau and Director Reid are, in effect, saying that the only important test is whether the confession is trustworthy, *i.e.*, whether the suspect is guilty or innocent. The Supreme Court, on the other hand, has been saying for 25 years that the ultimate guilt or innocence of the defendant is not the sole concern for the system, and that a supposedly civilized and democratic society cannot exist unless we bring the means for determining guilt or innocence within the constitutional framework.[7] The only way to do this is to in-

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[4] *Id.* at 163.

[5] McNabb v. United States, 318 U.S. 332 (1943).

[6] Ashcraft v. Tennessee, 322 U.S. 143 (1944).

[7] *See* Spano v. New York, 360 U.S. 315, 320 (1959), where Chief Justice Warren stated:

> The abhorence of society to the use of involuntary confessions does not turn alone on their inherent unthrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves . . . .

In Rogers v. Richmond, 365 U.S. 534, 543-44 (1960), Justice Frankfurter seemingly put an end to this discussion by declaring:

> From a fair reading of [the decision of the Supreme Court of Errors of Connecticut], we cannot but conclude that the question whether Rogers' confessions were admissible into evidence was answered by reference to a legal standard which took into account the circumstance of probable truth or fal-

sure that the presumption of innocence, right to counsel, and privilege against self-incrimination exist in the police station as well as in the criminal court.[8]

Many of the specific tactics and techniques recommended by the authors are innocuous in themselves but when taken together they all add up to create an atmosphere that is designed to throw the suspect off balance and to convince him that the interrogator is in complete command. A quiet room, set aside from the usual humdrum of a police station and into which no one will have occasion to enter, is recommended. The room should be bare, devoid of all reminders that the suspect is in a police station and free from all ornaments and objects which may serve to relieve tension. The best type of room is one without windows! An adjoining room should be provided with a two-way mirror. The two-way mirror is necessary to permit other investigating officers to observe, hear, and be prepared for whatever role they may play in the interrogation, to permit a policewoman to observe when a woman is interrogated to safeguard against false accusations of misconduct, and to keep the suspect under surveillance when he is left alone in order to prevent escape or suicide.[9] But the authors see no need, apparently, for disinterested third persons to use the two-way mirror permitting them to observe the interrogation thereby insuring that the suspect's constitutional rights have been observed.[10]

Inbau and Reid treat the attitude and conduct of the interrogator as a subject for lengthy discourse.[11] He should, they recom-

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sity. And this is not a permissible standard under the Due Process Clause of the Fourteenth Amendment. The attention of the trial judge should have been focused, for purposes of the Federal Constitution, on the question whether the behavior of the State's law enforcement officials was such as to overbear petitioner's will to resist and bring about confessions not freely self-determined — a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth.

[8] *See* Kamisar, *Equal Justice in the Gatehouses and Mansions of American Criminal Procedure*, in CRIMINAL JUSTICE IN OUR TIME (A. Howard ed. 1965); Herman, *The Supreme Court and Restrictions on Police Interrogations*, 25 OHIO ST. L.J. 449 (1964).

[9] F. INBAU & J. REID, *supra* note 3, at 11-13.

[10] There is an absolute attitude that prevails throughout the book that the police do all that is expected of them and that police brutality, while to be condemned, is so rare that it is not worth mentioning. If this is true, one can only wonder why the authors considered it necessary to advise how to obtain a legally valid confession from a person who has been mistreated or threatened in any way (if such a confession is at all possible).

[11] F. INBAU & J. REID, *supra* note 3, at 17-23. The authors advise the interrogator to wear civilian clothes rather than a uniform to avoid reminding the suspect of the consequences of an incriminating disclosure. The interrogator should wear a conservative suit or jacket (because a shirt-sleeved interrogator does not command respect) and "avoid any loud ties." *Id.* at 18. The interrogator is also advised to be free of any of-

mend, sit in a chair immediately opposite the suspect, with nothing in between. While the chairs may be separated by 2 or 3 feet in the beginning, once the interrogation is under way "the interrogator should move his chair in closer, so that, ultimately, one of the subject's knees is just about in between the interrogator's two knees."[12] It is at this point, the authors imply, that the *Miranda* warnings should be given. It is this reviewer's opinion, however, that under these circumstances the *Miranda* warnings might even be dispensed with because they will have little or no effect, at least upon the suspect who is unfamiliar with police procedures and his own constitutional rights! Once the suspect has been brought into the little, windowless room and sat in a chair immediately facing the interrogator, and possibly already in the vise created by the interrogator's two knees, the import of the *Miranda* warnings would be lost. The situation bears no resemblance to the atmosphere envisioned in Chief Justice Warren's statement that "the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it."[13] On the contrary, the issuance of the warning under these circumstances will only aid in creating the inherently coercive atmosphere that the Supreme Court was trying to dispel. On the basis of all this preparation leading up to the issuance of the warnings, a reasonable person might wonder whether the interrogators are, in fact, prepared to recognize the right of the suspect not to answer any questions should he choose this alternative.

The interrogator, continue the authors, should always display an air of confidence in the suspect's guilt and give no indication that he is being influenced by the suspect's disclaimer of guilt, even when the reasonable implication of the suspect's statements points to his innocence. Similarly, to retain control of the situation, the suspect should not be permitted to offer any exculpating explanation about a particular piece of incriminating evidence because it would bolster his confidence.[14] Above all, the interrogator should make the suspect believe that he already has the evidence necessary to convict

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fensive breath odor and to talk at close range with a fellow interrogator just before entering the interrogation room, "with the understanding that he will advise the interrogator of any possible offensive breath odors." *Id.* at 19. The authors even recommend a remedy for offensive breath odors.

[12] *Id.* at 27.

[13] Miranda v. Arizona, 384 U.S. 436, 468 (1966).

[14] This alone gives rise to a doubt concerning the validity of the claim that interrogation gives the innocent person an opportunity to demonstrate his innocence.

him and wants the suspect's confession only to corroborate the evidence that the police have. In summary, the authors advocate that all psychological tactics should be used on the suspect so long as they fall short of specific tactics which have been prohibited by the courts. Since the courts will not tolerate promises or threats, the interrogator should speak in generalities to remain within permissible bounds. While trickery and deceit have been condemned by the Supreme Court, the authors contend that "no case has prohibited their usage"[15] and such techniques are recommended so long as the trickery and deceit are not apt to make an innocent person confess. Understanding, sympathy, pride, the suspect's family, and even religion are recommended as tools for making a hesitant person confess. The authors would have us believe that in spite of what the Supreme Court has said these techniques are not calculated to overcome the suspect's will to resist but, in fact, are designed to help the suspect achieve what he is really seeking: an opportunity to unburden himself of this terrible guilt. Somehow, however, this just doesn't ring true. Whatever euphemism is used, the Inbau-Reid techniques are designed only to dissuade a suspect from exercising his constitutional rights and to persuade him, against his will, to confess to a crime. The authors contend that the only step left to the Supreme Court is to prohibit the use of these techniques, specifically deceit and trickery, and they further claim that if the Court chooses to do so it will eliminate the confession as a meaningful tool for fighting crime. To threaten dire consequences from Supreme Court decisions is an old dodge which sometimes works. But it should be clear that more rules are not necessary; enforcement of the spirit of the Supreme Court's decisions of the past 25 years in this area would alone insure that the only confessions used in the future are truly voluntary.

*Criminal Interrogation and Confessions* was not written for the lawyer or judge; the criminal lawyer, however, should read the book to see what he is up against. The book was written for the police interrogator, but the authors have failed their self-chosen constituency. Granted it is difficult to tell a group with which you sympathize that its long-tested and effective methods for doing its job are wrong, especially so when you have been teaching and advising the group to use these methods for many years. But that is exactly what was needed. Instead of assuring the police that the responsibility for the unfortunate consequences of recent decisions rest not upon

[15] F. INBAU & J. REID, *supra* note 3, at 196.

them but on the Supreme Court, and instead of reassuring the police that the old tactics and techniques can still be used, the authors could have used their position of respect with their constituency to explain the meaning of *Miranda* and what it requires. This they have not done and their own intransigency can only result in more decisions imposing greater restrictions upon criminal interrogation and confessions.

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DELINQUENCY CAN BE STOPPED. By Judge Lester H. Loble and Max Wylie. New York: McGraw-Hill. Pp. x, 148. $4.95.

*Delinquency Can Be Stopped* represents a reflection of the thoughts of an experienced juvenile court judge, Lester H. Loble of Helena, Montana. Perhaps the attitude and firm position of Judge Loble can best be exemplified by the following excerpt:

> If a youth is old enough and tough enough to topple a tombstone, wreck a church or schoolhouse, hold up a service station, snatch a woman's purse or beat up an old man, he is old enough and tough enough to have a public trial with his parents in the front row and full newspaper coverage.[1]

Initially, one's response to this "get tough" attitude might be: "Does not Judge Loble's reaction militate against the existence of the very court on which he sits?" For, if youngsters are to be treated as ordinary adult criminal defendants, subject to all the incidents of criminal proceedings, why is there a need for a special "juvenile" court? It is precisely this equation of juvenile offenders with adult criminal defendants by the state juvenile court systems that prompted the Supreme Court's recent extension of the constitutional due process criminal procedure safeguards to juveniles in the *In re Gault* decision.[2] Consequently, it appears that Judge Loble's "get tough" thesis, promulgated prior to the *Gault* decision, has been shackled by the Supreme Court, and rightly so, in response to the very premise (equation of juvenile offenders with adult criminal defendants) upon which Judge Loble's thesis is based. It is the opinion of this reviewer, however, that the Court, through Mr. Justice Fortas, has *not* foreclosed the possibility of a state juvenile court system which does, in fact, muster up to the rehabilitative ideal conceived by the liberal "reformers" in Chicago in 1899.[3] Rather,

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I read the *Gault* decision as sanctioning a state juvenile court system *minus* the full-blown adult criminal procedural due process safeguards where that state system does provide the solicitous care and regenerative treatment postulated for children by the reforming founders of the juvenile court concept.[4]

Judge Loble is sharply critical of the rehabilitative ideal while simultaneously concerned about punishment. He states, with respect to the juvenile court law passed in Chicago in 1899 which served as the model for the New York City juvenile court system, as well as most other such American efforts, that: "The people who have been in charge and who are in charge right now of the *thinking* of law enforcement, in juvenile crime areas, are still operating under that law, obsolete, boneheaded, and corroding."[5] Perhaps the law of 1899 and its rehabilitative *parens patriae* ideal are sound and socially desirable, if and when properly implemented, and it is the *thinking* of the law enforcement officials which should be characterized as "obsolete, boneheaded, and corroding."

Perhaps it is this abuse of the *parens patriae* discretion granted to law enforcement officials by the juvenile justice system which should be the subject of Judge Loble's "get tough" approach. If the systems of juvenile "injustice" were cleaned up by the states and the proper measure of welfare efforts and financial resources were channeled by the states into the establishment of a rehabilitative, care-oriented system in accord with the *liberal* 1899 reform ideal, rather than a punishment-oriented system, decisions like *Gault* would be unnecessary. If this is what the Supreme Court meant to say in *Gault*, and I think it is, the Court should have done so in a more clear and unequivocal manner.

Finally, Judge Loble suggests that "exposure in open court, instead of concealment in the underbrush of our rehabilitative system . . . ."[6] is the solution to the problem of juvenile delinquency. Unfortunately, this proposal places its concern after the fact rather than before the fact. It smacks of a hard-nosed, nonjuristic response

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[1] L. LOBLE & M. WYLIE, DELINQUENCY CAN BE STOPPED 145 (1967).

[2] 387 U.S. 1 (1967).

[3] See the Court's discussion of this early reform movement in *id.* at 14-16.

[4] *See id.* at 17-18, including the Court's footnote 23 noting Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7 and Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775 (1966).

[5] L. LOBLE & M. WYLIE, *supra* note 1, at 30.

[6] *Id.* at 144.

— "let's *fry* the little bastards." Would not society better be served by a Christian rehabilitative reform approach — "let's *save* the little bastards"?

Juveniles *are* different from adult criminal offenders. This fact, unfortunately, is not recognized *and acted upon* by Judge Loble, and his book makes one ask if his solution is not worse than the problem.

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