

## Book Review

Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2013). *Criminal interrogation and confessions, Fifth Edition*. Burlington, MA: Jones & Bartlett Learning. 469 pages.

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## Background

When police suspect that someone has committed a crime, police can invite the person to participate in the investigation by answering questions. The U.S. Constitution is interpreted to provide important rights, including the fact that the suspect does not have to talk to the police, can have a lawyer present before and during questioning, etc. If the suspect is in custody, police must advise the person of his or her rights. There are additional rules and laws, some varying by jurisdiction, that frame police interrogation.

If police follow all the rules and laws, the suspect's statement can be presented to the judge or jury at trial. Challenges to the admissibility of the suspect's statement can be considered in pre-trial hearings, following a motion to suppress that evidence. In a suppression hearing, the prosecuting attorney typically calls police officers to tell the judge what happened during the interrogation, and to introduce recordings (if the interrogation was recorded). The defense attorney can cross-examine the prosecution's witnesses, and can call additional witnesses. Either or both sides can call expert witnesses to offer opinions and to help interpret the factual evidence.

At a suppression hearing, a judge considers the evidence presented by prosecution and defense attorneys, observes the recordings of the interrogation (if it was recorded), listens to arguments from both attorneys, and decides whether to allow the defendant's statement to be admitted as evidence for the jury's consideration. There are some bright lines that police must not cross. Examples including failing to advise a confined suspect of his or her rights, misleading the suspect about his or her rights, or using physical force or threats of physical force.

In cases in which the judge does not find that a bright line has been crossed, the judge considers the totality of circumstances surrounding the interrogation and makes a legal decision whether the defendant's statement was voluntary or coerced. If the judge decides that, in the totality of circumstances, the confession was coerced, then the statement cannot be presented as evidence to the jury.

The record created by police interrogators is key at trial, and at a pretrial suppression hearing (if there is one). This book, *Criminal Interrogations and Confessions*, is the fifth

edition of a manual that is used to train police how to create that evidentiary record. The primary focus of this review is the extent to which this manual assists police interrogators in creating the best evidentiary record possible.

Justice is best served if police follow all rules and laws scrupulously at all times, including all of their interactions with suspects. In *Colorado v. Connelly* (1986), the U.S. Supreme Court ruled, “Coercive police activity is a necessary predicate to finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause. . . . While a defendant’s mental condition may be a ‘significant’ factor in the ‘voluntariness’ calculus, this does not justify a conclusion that his mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional ‘voluntariness.’” In other words, for a confession to be suppressed on the grounds that it was involuntary, there must be some evidence of police coercion.

So, people who train police interrogators could present classes and write manuals with guidelines such as, “Do not ever do anything to coerce a suspect,” “Never trick a suspect,” “Do not lie to a suspect,” “Do not do anything to mislead a suspect,” etc. The manual reviewed here, the most popular manual for police interrogation, does not take that approach. The manual does include, “Nothing should be done or said to the suspect that is apt to make an innocent person confess” (p. xiv), but the authors fail to fully appreciate or acknowledge that “the same psychological pressure that is designed to cause guilty suspects to give up hope can induce despair in innocent suspects, especially when the pressure is great and/or the suspect is vulnerable” (DeClue, 2005; see also Gudjonsson, 2003; Kassin et al., 2010; Ofshe & Leo, 1997).

The authors encourage police interrogators to exaggerate and lie about “evidence” and to mislead and trick suspects, to create a psychological moment in which a guilty suspect will believe that it is in his or her best interests to confess to the crime. It is not that the authors intend to train interrogators to get innocent persons to confess. However, as the authors acknowledge, police sometimes err in pre-judging whether a suspect is guilty, and the authors accept that some innocent suspects confess. This fifth edition of the manual includes some important steps toward safeguarding against false confession, but the authors fall short of recommending sufficient safeguards to protect innocent suspects from police who follow their recommendations.

As we turn to critical examination of problems and solutions, we should be clear about some expectations:

- Some suspects will exercise their Constitutional rights, and will either decline to talk to the police or will call an end to questioning before the police are finished asking questions.
- Some guilty suspects will not confess, and some of those will not make significant admissions (statements suggesting guilt, but short of a full confession).
- Some innocent suspects, if pressured, will make false statements that appear to be admissions or confessions.

- Police interrogation will never become “perfect” in that all guilty suspects will confess and no innocent suspects will make false statements that appear to be admissions or confessions.
- Although police cannot be expected to be “perfect” in the above sense, they have the unique responsibility to create the best record possible.

### **The Problem of False Confessions**

Thanks to scientific procedures such as DNA analysis and the work of organizations such as The Innocence Project,<sup>1</sup> there are now hundreds of undisputed cases of wrongful convictions. We can learn from what went wrong in those cases. Notably, false confessions have contributed to approximately 30% of the wrongful convictions in The Innocence Project’s database.<sup>2</sup>

Analyzing data from DNA exonerations, Garrett (2010, 2011) identified 40 people who were exonerated after falsely confessing to rapes and murders, and obtained detailed trial or pre-trial records of the confessions for all 40 of them. In 38 of the 40 cases, police reported that suspects confessed to a series of specific details concerning how the crime occurred. Often those details included supposedly “inside information” that only the rapist or murderer could have known. In considering various possibilities, Garrett concluded that the most likely way that the innocent suspects learned the “inside information” was from the police who interrogated them.

That is, during interrogation, police induced 40 innocent persons to confess, and 95% of them confessed in a way that appeared to show guilty knowledge. The police were convinced, the prosecutors were convinced, the judges and juries were convinced, and in some cases, the defense attorneys were convinced. Garrett’s study should be a STOP-THE-PRESSES! moment for any police-interrogation manual. Authors and trainers should stop everything, recognize that modern American police techniques sometimes elicit false confessions that are practically indistinguishable from true confessions, and make sure that every subsequent manual and training event includes whatever safeguards are necessary to protect innocent suspects from the police they train. Timeliness is not an excuse for this fifth edition of the manual, since it carries a 2013 publication date, Garrett’s study was published in 2010, and Garrett’s study was originally posted online in late 2008.<sup>3</sup>

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<sup>1</sup> <http://www.innocenceproject.org/>

<sup>2</sup> This is slightly higher than prior figures, due to several recent exonerations in cases involving false confessions, largely from the Chicago area (Newirth, 2012).

<sup>3</sup> See [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1280254](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1280254)

### Proper Safeguards

Learning from known cases of false confessions, analysts have identified safeguards that can reduce the risk of obtaining a false confession, and can enhance recognition of a false confession if one is elicited. In all police interrogations, police should

1. Investigate before they interrogate.
  - a. Develop the details of the accusation/crime from physical evidence, victim statement, witness statements, etc.
  - b. Make a substantial, written list of key details that are not publicly available and would be difficult or impossible for a non-involved person to guess.
  - c. Set the list aside, and avoid mentioning any of those details to the suspect at any time.
2. Electronically record the entire interrogation, beginning as close to initial contact as possible, and continuing well after the suspect makes admissions (if he or she does).
3. If the suspect makes admissions, elicit a detailed post-admission narrative (who, what, when, where, how), taking special care not to suggest any details to the suspect.
4. After the interrogation has concluded, continue the investigation to seek additional details of the accusation/crime. Do the facts independently corroborate the confession statement?
5. Carefully consider whether independently derived details of the accusation/crime match the details provided in the suspect's confession statement.

Notably, these safeguards do not limit the techniques that police can use in an interrogation. For example, police might choose to mention *some* case facts to the suspect, as long as they steer clear of the specific list of facts they set aside before commencing the interrogation. The recording will show which facts the police mentioned, so that reiteration of them by the suspect will not be misinterpreted as showing guilty knowledge.

Now that we know that false-confession statements can appear very convincing, it may be impossible to be confident in the reliability of a police-induced confession statement unless it is independently corroborated. Until the details of a confession statement are independently corroborated, we should be just as skeptical as we would be if the person claimed someone else committed a crime, or if someone simply walked into a police station and said, "I killed somebody." With rare exceptions, a person who voluntarily confesses to a crime should be able to provide details that not only sound convincing, but that independently match facts that show guilty knowledge.

### Inadequate Safeguards

Inbau et al. include some of the above safeguards in the manual, but they fail to develop a comprehensive set of safeguards that will protect innocent suspects from the police

they train. Two essential issues show their failure to protect innocent suspects: “Types of Corroboration,” and their fundamental failure to recommend that, whenever possible, all interrogations should be recorded in their entirety.

### “Types of Corroboration”

The relevant section of the manual, starting on page 354, begins well: “Proper corroboration of a confession . . . represents the best measure of the trustworthiness of a confession. It is extremely convincing to a judge or jury to hear a confession that contains information only the guilty person could know.” Of course, that is exactly the scenario described in Garrett’s research involving innocent suspects (see above), yet these authors fail to mention Garrett’s work.<sup>4</sup> In fact, the authors discuss some types of “corroboration” that are not corroboration at all:

- “. . . when relying on a suspect’s signed confession as the primary proof of trustworthiness” (p. 354).
- “. . . the investigator may be left with nothing more than the suspect’s recounting of the crime. This is referred to as *rational corroboration*” (p. 355).

I suggest that the authors could present a better take-home message for readers and trainees if they renamed what they call “rational corroboration” as, perhaps, “plausible but not corroborated.”

### Turn the Damn Recorder On!

As a person concerned with creating a clear record that includes effective safeguards to protect innocent suspects, I found some wonderful sections in this manual. For example,

- “Upon arriving at a crime scene, the lead investigator should decide and document on the case folder what information will be kept secret” (p. 355).
- “After a suspect has related a general acknowledgment of guilt, the investigator should return to the beginning of the crime and attempt to develop information that can be corroborated by further investigation. He should seek from the suspect full details of the crime and also information about his subsequent activities. What should be sought particularly are facts that would only be known by the guilty person (for example, information regarding the location of the murder weapon or the stolen goods, the means of entry into the building, the type of accelerant used to start the fire, and the type of clothing on the victim, etc.)” (p. 306).

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<sup>4</sup> Indeed, Garrett’s work organized what analysts had already been reporting, case by case. Garrett’s work adds stunning quantitative evidence to the qualitative cautions already widely reported (see, e.g., Davis & Leo, 2006).

- “When developing corroborative information, the investigator must be certain that the details were not somehow revealed to the suspect through the questioning process, news media, or viewing of crime scene photographs. In this regard, it is suggested that early during an investigation a decision be made by the lead investigator as to what evidence will be withheld from the public, as well as from all suspects. This information should be documented in writing on the case file so that all investigators are aware of what information will be withheld” (p. 306).
- “The best type of corroboration is in the form of new evidence that was not known before the confession, but yet could be later substantiated. Prior to conducting the interrogation, the investigator should consider what types of independent corroborative information should be sought. Examples include the present location of a murder weapon or the suspect’s bloody clothing, where stolen goods were fenced, and who the suspect talked to about the commission of his crime” (p. 306).
- “It is improper to tell the suspect that he is facing inevitable consequences. In fact ... we have referenced several cases in which innocent people falsely confessed, because the investigator convinced the suspect that he would suffer consequences regardless of denials” (p. 368).
- “Our courts have long recognized that promises of benefit or threats of adverse consequences may cause an innocent person to confess” (p. 369).
- “The interrogator cannot mention a benefit of more favorable treatment in exchange for telling the truth” (p. 369).
- “There is no question that innocent suspects have been induced to confess to crimes they did not commit” (p. 366).
- “A confession that contains no corroborative information, beyond merely accepting personal responsibility for committing the crime, suggests the possibility that improper inducements were used to elicit the confession and the confession may well be false” (p. 367).
- “A recent review indicted (sic) that 11 states require electronic recording via statutes or court decisions. In states that do not require electronic recording, more than 400 departments have established electronic recording as a standard practice.<sup>5</sup> This is a national trend and law enforcement agencies should accept that if electronic recording is not yet required in your state, it most likely will be in the future” (p. 50).

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<sup>5</sup> A recent update of this research by Tom Sullivan appears here:  
[http://www.ajs.org/ajs/publications/Judicature\\_PDFs/955/ajs\\_955\\_compendium.asp](http://www.ajs.org/ajs/publications/Judicature_PDFs/955/ajs_955_compendium.asp)

I am encouraged that the authors included important items such as those above, but I am discouraged that they did not connect the dots by emphasizing that creating a full and accurate record of the entire interrogation is an essential part of the corroboration process. A full and accurate recording is essential to show the judge and jury whether the suspect showed guilty knowledge, and whether the police statements included promises, threats, inducements, etc.

### **Conclusions**

The Conclusion to Chapter 15, Distinguishing between True and False Confessions, includes the following sentences in succession:

1. "The studies and research citing support of the belief that psychologically sophisticated interrogations routinely produce false confessions, in our opinion, offer no substantive evidence to support this claim" (p. 366).
2. "To the contrary, our experience has been that such interrogation techniques, if used in accordance with the guidelines offered in this text, greatly reduce the risk of an innocent suspect confessing" (p. 366).
3. "The self-preservation instincts of an innocent suspect during an interrogation, conducted in accordance with the techniques taught in this text, are sufficient enough to maintain the suspect's stated innocence" (pp. 366-367).

The first of these three sentences is a straw man, with regard to disputed-confession cases. My learned response to the next two sentences is, "Who knows?"

Regarding the first statement, it would be interesting to know how often innocent suspects confess in response to commonly used police interrogation techniques. However, in an individual legal case, the key question is whether there is reasonable doubt about the certainty of the confession evidence. Working backward from known cases of false confessions, we can sometimes learn important lessons about what went wrong (why the innocent person confessed, what led to his conviction, etc.). That does not tell us how often (or "routinely") that occurs, but perhaps a properly informed jury would draw conclusions similar to those of the authors: "A confession that contains no corroborative information, beyond merely accepting personal responsibility for committing the crime, suggests the possibility that improper inducements were used to elicit the confession and the confession may well be false" (p. 367). The jury is tasked with deciding whether the prosecution has presented evidence of guilt, beyond a reasonable doubt.

We do know something related to statement 1, above. We know that some innocent suspects begin by denying guilt and then, in the course of psychologically sophisticated interrogations, accept responsibility for a crime they did not commit. Of course it is pos-

sible to study such cases, and of course it is possible to develop expertise that would assist people who have no specialized knowledge, training, or experience in the area.

Statements 2 and 3, above, address empirical questions, but the authors' responses are entirely anecdotal. I, too, suspect that some of the techniques the authors recommend would reduce the risk of an innocent suspect confessing, but I am not confident that we will ever reach a point that no innocent suspect would confess in response to police questioning.

Statement 3, in particular, is a bold claim without empirical support.<sup>6</sup> I encourage these authors and all interrogation trainers to take a more humble stance. In life, many effective procedures yield some unintended consequences, and I would prefer that police who interrogate me, my family, or anyone, not conduct an interrogation with the expectation that powerful techniques only work on guilty suspects.

### **Recommendations**

I will briefly address three areas that are related to my work as an expert witness in confession cases: *Miranda* issues, reliability, and voluntariness.

#### ***Miranda* Issues**

As mentioned above, police have the unique opportunity and responsibility to create a record that shows whether police gave a *Miranda* warning, and whether the suspect knowingly, intelligently, and voluntarily waived his or her rights. In my experience, police could often do a better job in two ways:

1. Record the entire interrogation, beginning as early as possible, and always including the *Miranda* warning/waiver.
2. Read the *Miranda* warnings one at a time, encouraging the suspect to read along. Alternatively, ask the suspect to read the rights aloud. Pause after each right, and ask the suspect to restate (paraphrase) the statement in his or her own words. Encourage the suspect to ask questions. Answer the questions, correcting any misconceptions. Only after the suspect has clearly and explicitly shown understanding of a right, ask the suspect whether he or she wants to waive that right.

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<sup>6</sup> Although one study (Blair, 2005) might appear at first glance to offer some support for the more modest claim that such techniques are unlikely to induce a false confession from a suspect who is not particularly vulnerable, Blair acknowledges important limitations in that study, particularly, "Information about interrogations was derived exclusively from secondary sources, and these secondary sources may have contained inaccurate information" (Blair, 2005, p. 139).



This procedure provides a clear record of whether, and to what extent, the suspect understood his or her rights at the time of the warning and waiver. The procedure is presented, with examples, in DeClue (2010).

## Reliability

Earlier in this review, I outlined five recommended safeguards to reduce the risk of a false confession, and to create a record that would enhance everyone's ability to consider whether a suspect's confession statement shows guilty knowledge. At this point, we can look to see which of those recommendations are included in this manual.

Recommendation	Is it in this Manual?	Page
Police officers should investigate before they interrogate.	"One basic principle to which there must be full adherence is that the interrogation of suspects should follow, and not precede, an investigation conducted to the full extent permissible by the allowable time and circumstances of the particular case. The authors suggest, therefore, that a good guideline to follow is 'investigate before you interrogate.'"	18
Police should develop the details of the accusation/crime from physical evidence, victim statement, witness statements, etc.	"Prior to an interview, and preferably before any contact with the suspect, the investigator should attempt to become thoroughly familiar with all the known facts and circumstances of the offense."	10
Police should set the list aside, and avoid mentioning any of those details to the suspect at any time.	"Upon arriving at a crime scene, the lead investigator should decide and document on the case folder what information will be kept secret".	355
Electronically record the entire interrogation, beginning as close to initial contact as possible, and continuing well after the suspect makes admissions (if he or she does).	"Everything should be recorded, from the time the suspect is given <i>Miranda</i> rights to the conclusion of his confession."	51
If the suspect makes admissions, elicit a detailed post-admission narrative (who, what, when, where, how), taking special care not to suggest any details to the suspect.	"After a suspect has related a general acknowledgment of guilt, the investigator should return to the beginning of the crime and attempt to develop information that can be corroborated by further investigation. He should seek from the suspect full details of the crime and also information about his subsequent activities. What should be sought particularly are facts that	306

	would only be known by the guilty person (for example, information regarding the location of the murder weapon or the stolen goods, the means of entry into the building, the type of accelerant used to start the fire, and the type of clothing on the victim, etc.).”	
After the interrogation has concluded, continue the investigation to seek additional details of the accusation/crime. Do the facts independently corroborate the confession statement?	“The best type of corroboration is in the form of new evidence that was not known before the confession, but yet could be later substantiated. Prior to conducting the interrogation, the investigator should consider what types of independent corroborative information should be sought. Examples include the present location of a murder weapon or the suspect’s bloody clothing, where stolen goods were fenced, and who the suspect talked to about the commission of his crime.”	306
Carefully consider whether independently derived details of the accusation/crime match the details provided in the suspect’s confession statement.	“A confession that contains no corroborative information, beyond merely accepting personal responsibility for committing the crime, suggests the possibility that improper inducements were used to elicit the confession and the confession may well be false.”	367

I was surprised to find that all of the recommended safeguards are included in this manual, with an important qualification. The authors’ recommendation to record everything (p. 51) is presented as a suggestion *if* investigators record, rather than as a strong recommendation that all interrogations *should* be recorded. Overall, then, the procedures described in this manual are fully compatible with proper safeguards, but there is a risk that a reader or trainee would fail to get and retain the important message that electronic recording is an essential component of corroboration.

I recommend that, in training sessions and in later editions of this manual, there be just as much emphasis applied to “Turn the damn recorder on!” as there currently is for “Investigate before you interrogate.”

### **Voluntariness**

Case by case, a suspect’s confession is voluntary if a judge decides that it is voluntary (rather than the product of coercive police tactics). My reading of this manual is that the authors encourage police to make an educated guess about whether a particular suspect is guilty, and if the police think the suspect is guilty, use whatever means courts allow to try to get the person to confess.

The general approach presented in this manual was developed by the two senior authors, Inbau and Reid, beginning in the 1930s and 1940s, and the first edition of the manual was published in 1962. Inbau and Reid have both been dead for two decades, but their legacy lives on.

Shortly after Fred Inbau's death in 1989, the *New York Times* presented the following:

When he began his work in the 1930s, society was growing squeamish about police use of rubber hoses and other forms of the third degree, an interrogation technique that often wrung confessions out of the innocent as well as the guilty. In its place, Mr. Inbau helped develop an approach to interrogation that relied on presenting a mass of damaging facts to persuade criminals that they had no choice but to confess, and that used subtle psychology in dealing with crimes of passion. . . . Mr. Inbau urged the police to use deceit, deception and outright lies to trick suspects into confessing.<sup>7</sup>

The headline writer for that Times article summarized this by asserting that Mr. Inbau was the "Criminologist who Perfected Interrogation."

In this fifth edition of the manual, the authors (living and dead) continue to recommend that police use deceit, deception, and outright lies to trick suspects into confessing. The authors assert, "The self-preservation instincts of an innocent suspect during an interrogation, conducted in accordance with the techniques taught in this text, are sufficient enough to maintain the suspect's stated innocence" (pp. 366-367). I recommend that the authors present a challenge to readers and trainees, offering a \$7,250,000 reward<sup>8</sup> to any police agency whose interrogators scrupulously adhere to the techniques taught in this text, record the entire interrogation, and elicit significant admissions or a full-blown confession that is ultimately recognized to be false. They could call it "The Reid Technique Challenge."

Alternatively, the authors could tell readers and trainees that the book describes very powerful psychological techniques designed to get guilty suspects to confess, but some people think that these same techniques could get an innocent suspect to confess, given a vulnerable enough subject, a combination of multiple powerful techniques, a lengthy interrogation process, etc. Readers and trainees could be encouraged to consider an interrogation to be a success, not when they get a person to confess, but when they have created a full, clear electronic recording and conducted a thorough investigation to determine whether or not the details of the suspect's confession statement match the well-kept secret of what the perpetrator actually did.

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<sup>7</sup> <http://www.nytimes.com/1998/05/28/us/fred-inbau-89-criminologist-who-perfected-interrogation.html>

<sup>8</sup> This is the amount awarded to the Crowe family after Escondido, California, police detectives coerced a false confession from then-14-year-old Michael Crowe, lying to him about the evidence.

See <http://www.kpbs.org/news/2011/oct/21/7-million-settlement-reached-stephanie-crowe-murde/>

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