FALSE CONFESSIONS

Interrogation Is NOT Investigation

Common Sources of Error
Based on first 325 DNA Exonerations

1. False DNA Inclusion (3)
2. False confessions (88)
3. Snitches (48)
4. Bad Science (154)
5. Mistaken identification (235)

Source: Cardozo Innocence Project
The Inquisition

- “Arise, oh Lord, and judge thine own cause”
- 12th – 19th Centuries
- French, Portuguese, Roman, and, of course, Spanish

Bernard Gui, Pope Clement’s Inquisiteur

- Chief Inquisitor (1300-1315):
- 1000+ “heretics” confessed and were punished;
- At least 42 were burned at the stake.
Bernard Gui’s Inquisitor’s Manual

- “it is exceedingly difficult to catch heretics when they themselves do not frankly avow error but conceal it”
- “they usually say of themselves that they are good Christians”

Excerpts, The Inquisitor’s Manual

- “he is required to answer about himself without delay”
- the faithful laity see occasion for scandal in the fact that the proceedings of the Inquisition, once started against someone, are abandoned, as it were, in confusion, and they are to some extent weakened in the faith by observing that learned men are thus mocked by low and uncouth persons.
The Inquisitor’s Manual

- “it is not expedient to dispute in matters of the faith against such astute heretics in the presence of laymen.”
- just as no one medicine is for all diseases,…so neither is the same method of questioning, investigation, and examination to be employed for all heretics…,but for each, whether there be one or many, a particular and suitable method ought to be utilized.

The Inquisitor’s Manual

- He himself can be constrained in various ways including limitation of food and being held in chains. He can even, on the recommendation of qualified persons, be put to the question in order to get at the truth, as the nature of the business at hand and the condition of the person may require.
While you’re thinking…
No One Escapes the Spanish Inquisition

Pope Sixtus IV

- Papal bull of 1480 authorized Spain’s Ferdinand and Isabella to conduct an inquisition.
Chief Inquisitor Tomas Torquemada:

- According to Spanish royal records, 2,000 were convicted and executed
- According to Church records: 8,800 were burned at the stake.

Noteworthy Victims of the Inquisition

- **Galileo** (tried in 1632), was imprisoned and questioned until he confessed.
  - “with sincere heart and unfeigned faith I abjure, curse and detest [my] errors and heresies.”

- **Joan of Arc**: repudiated her divine voices; imprisoned on bread and water until she retracted her retraction
Galileo Galilei

- Tried in 1632, imprisoned and questioned until he confessed.
- “with sincere heart and unfeigned faith I abjure, curse and detest [my] errors and heresies.”

Joan d’Arc

- Interrogated about divine voices;
- Repudiated her divine voices
- Imprisoned on bread and water until she retracted her retraction
Anne Boleyn

King Henry VIII “is one of the best princes on the face of the earth, and who hath always treated me so well...I deserve death.”

Catherine Howard (Wife #4)

I am “justly condemned... By the laws of the realm and Parliament to die.”
Salem Witchcraft Trials

- Most convictions based on actual or alleged confessions
- Holy Chief Inquisitor estimated 30,000 practitioners of witchcraft were brought to justice in Europe and America.

The Federalist Debates and Interrogations

William Loughton Smith
South Carolina

8th Amendment

- Mr. SMITH, of South Carolina, objected to the words 'nor cruel and unusual punishments;' the import of them being too indefinite.
- Such limits would impede investigation into infamous crimes
The Eighth Amendment and Interrogations?

Patrick Henry

Cruel & Unusual Punishment

- They may introduce the practice of France, Spain, and Germany -- of torturing, to extort a confession of the crime... [T]hey will tell you that there is such a necessity of strengthening the arm of government, that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone.

America’s 1st confirmed wrongful convictions

- **Stephen and Jesse Boorn (VT, 1820)**
  - Accused by jailhouse snitch of killing Russell Colvin
  - Stephen confessed under promises of leniency, blamed Jesse;
  - Confession “corroborated” by skeletal remains and eyewitnesses; both were sentenced to hang
  - A journalist found Colvin alive and well, in upstate New York;
  - The journalist tricked Colvin into returning to Vermont in the nick of time
20th Century Developments

- Published in 1932
- Detailed 65 cases of wrongful convictions
- Exposed the tactics of Thomas Burns
- Cited in multiple Supreme Court decisions

“The Third Degree”

- Detective Thomas “Third Degree” Byrnes
- Known for “solving” difficult cases
- Interrogation was his primary tool.
- Fired by NY Police Comm’r Theodore Roosevelt for corruption
The third degree

- Methods used by “Third degree Byrnes”:
  - Dangling suspects from 8th floor windows
  - Beatings, threats
  - “Swirlies”—a primitive form of waterboarding involving a flushing toilet

The Third Degree

- One suspect confessed to killing his landlord’s daughter.
- Byrnes took him to various vacant lots in New York looking for the body;
- During the “tour,” the “victim” arrived alive and well at Grand Central Station after a trip to upstate New York
The Police Response to Byrne’s Exposure

1. There is no “third degree;” and
2. We could not do our jobs without it.

The Third Degree

Under the Third Degree, only three things can happen:

1. He will tell anything desired;
2. He will go insane if the torture is severe enough;
3. He will die.
   - W.R. Kidd, *Police Interrogation* 47 (1940)
Interrogations and POW’s

- **American POW’s in North Korea:**
  - 70% made at least one significant contribution to Korean propaganda
  - 12% accepted basic communist ideology
  - 10% informed on fellow POW’s during captivity
  - 1% refused repatriation

Supreme Court’s Early Confession Cases

- **Brown v. Mississippi,** (1936): Forced confession; Mississippi sheriff, “[I beat him], but not too much for a Negro.”
- Duration and intensity of interrogation: **Ashcraft v. Tennessee**
- **Watts v. Indiana**
- Violence, threat of violence, lengthy & intense interrogations violate the 14th Amendment Due Process Clause;
- **Involuntary statements are suppressed for all purposes, even impeachment.**
Justice Frankfurter

- Custodial interrogations are “inherently compulsive”
- Reconstructing the facts & circumstances of an interrogation is difficult or impossible and weighted heavily against the accused
- The “suction process” of custodial interrogation is incompatible with the suspect’s exercise of free will.

Justice Jackson’s dissents

- Ashcraft v. Tennessee: “Inherent compulsion” is not a helpful standard; *all interrogations are compulsive*
- Watts v. Indiana: Police were “forced” to resort to extreme methods to “solve” a baffling crime
- The “frequent recurrence” of this issue suggests “something systemic” is wrong, but it’s an issue for the States
Ernesto Miranda

The Scene of the Crime
San Carlos Hotel Display

- Mug shot
- Guilty car
- Summary of Crime
- Miranda Warning
- Doesn’t it make you want to rent a room here?
A psychiatric report, made by a court-appointed psychiatrist (R. 6-9), gives the background of petitioner. Miranda, an indigent, was 23 years old at the time of the interrogation, and working as a truck driver and warehouseman. He had completed eighth grade and started on ninth grade before dropping out of school. Petitioner has a considerable sexual preoccupation, as illustrated in his interpretation of certain proverbs; he has been involved in a series of sex offenses. The doctor concluded that petitioner “has an emotional illness. I would classify him as a schizophrenic reaction, chronic, undifferentiated type” (R. 9).

3 The written confession says, “I started to take clothes off her without any force and with cooperation. Asked her to lay down and she did. Could not get penis into vagina got about ½ (half) inch in.” It strains credulity to the breaking point to believe that this sentence was the product of a man of petitioner’s mentality and comprehension as indicated by his answers to the questions set forth in footnote 1.
Miranda

Warning of 5th Amendment Rights is required where:
- The suspect is in custody
- There is interrogation
Miranda Warnings

- You have the right to remain silent
- Anything you say can be used against you in a court of law
- You have the right to have an attorney with you during questioning
- If you cannot afford an attorney one will be appointed for you
- If you choose to answer questions, you may stop answering questions at any time

Custody

- A significant deprivation of freedom of movement occurs and the person is not free to leave. *JDB v. North Carolina.*
- *Thompson v. Koehane* – Totality of circumstances
- Fifth Amendment “custody” is NOT the same as Fourth Amendment “custody” *Berkemer v. McCarty*
Interrogation

- the police know or should reasonably know that their actions or inquiries are reasonably likely to elicit an incriminating response. 
  *Rhode Island v. Innes*

Waiver of *Miranda* Rights

- Knowing, Voluntary and Intelligent, Free of threats/coercion. *Colorado v. Spring*
- Assertion of *Miranda* rights must be “scrupulously honored” *Michigan v. Mosley*
- Officers may re-initiate interrogation
Miranda: the practical impact

Seibert v. Missouri

- Cognitively impaired mother; child w/CP died in her care
- Seibert burned down the trailer, allegedly to avoid detection by family services
- Unrelated cognitively impaired 18-year-old boy living w/Seibert dies in the fire
Seibert v. Missouri

- Det. Hanrahan tells arresting office NOT to give Miranda warnings to Seibert
- Det. H. questioned Seibert 30-40 minutes
- Det. H. squeezed her arm, repeated “Donald was also to die in his sleep”
- Seibert admitted Donald was meant to die in the fire

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Seibert v. Missouri

- 20 Minute coffee and cigarette break
- Interrogation resumes w/Miranda warnings
- Confession repeated on audio tape
- Hanrahan corrected her w/earlier pre-
  *Miranda* admissions
Seibert v. Missouri

- Hanrahan admitted he got the idea of the two-step interrogation from “a national police training organization.”
- “this practice…is not confined to Rolla, Missouri.”

Seibert v. Missouri

- Police Law Manual 83 ("There is no need to give a *Miranda* warning before asking questions if . . . the answers given . . . will not be required by the prosecutor during the prosecution's case-in-chief")
Seibert v. Missouri

California Commission on Peace Officer Standards and Training, Video Training Programs for California Law Enforcement, Miranda: Post-Invocation Questioning (broadcast July 11, 1996) ("We . . . have been encouraging you to continue to question a suspect after they've invoked their Miranda rights")

Seibert v. Missouri

D. Zulawski & D. Wicklander, Practical Aspects of Interview and Interrogation 50-51 (2d ed. 2002) (describing the practice of "[b]eachheading" as useful for impeachment purpose (emphasis deleted))
Seibert v. Missouri

“Scholars have noted the growing trend of such practices. See, e.g., Leo, Questioning the Relevance of Miranda in the Twenty-First Century, 99 Mich. L. Rev. 1000, 1010 (2001); Weisselberg, In the Stationhouse After Dickerson, 99 Mich. L. Rev. 1121, 1123-1154 (2001).”

Why the innocent confess

Wharton: “There is a species of morbid vanity which sometimes leads innocent persons [to confess].”
Eddie Lowery (and the Exoneree Band)
Modern understanding of why the innocent confess

- duress
- Coercion
- intoxication
- diminished capacity
- mental impairment
- ignorance of the law
- fear of violence
- the actual infliction of harm
- the threat of a harsh sentence
- misunderstanding the situation
Miller v. Fenton: Permissible interrogation techniques:

- False & misleading statements;
- Feigned sympathy & manipulation;
- Misleading legal advice re: justification and punishment
- Psychological ploys, such as “good cop/bad cop”
- Deceit & trickery short of coercion

The Reid method…

“The interrogator's refusal to listen to a suspect's denials creates feelings of hopelessness, which are compounded by the fake file and by lies about the evidence. At this point, short-term thinking takes over. Confession opens something of an escape hatch, so it is only natural that some people choose it.”
Miller v. Fenton interrogation by Detective Miller

- If I promise to do all I can with the psychiatrist and get the proper help you need, will you talk to me about it?
- “I want to help you…you are not responsible.”
- Miller confessed, then collapsed on the floor, and was taken to a psychiatric hospital.

Interrogation Transcript

- “Look, Joe, your mother was a cancer. Think about all of the bad things you told us she did. She hurt people. You should be proud of what you did. Seriously! She was a problem, and you eliminated that problem. That was the right thing to do. It took a hell of a lot of courage. I'm sure other people in the family were fed up with her, too, but they didn't have the balls to do what you did."
Camp X-Ray & the KUBARK manual

- Central Park jogger/“wilding” teenagers
- 13 years later: DNA hit on serial rapist Matias Reyes who gave a spontaneous confession that fit the physical evidence
- ONE investigation, FIVE false confessions

Reforms?

- Ban the Reid method;
- Record all police-suspect interactions
- Disclose/interview all persons present
- Special procedures for the mentally ill and cognitively impaired
- Conduct all witness interviews in accordance with standards of professional integrity
- Close Guantanamo
- Join the 21st Century
Resources