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Police Interrogation

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Interrogation, Police

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Abstract

Police interrogation methods in the United States have evolved over the past one hundred years as a direct result of public condemnation of violent police practices as well as decisions of the Supreme Court on constitutional challenges to police interrogation practices. Professionalization of police agencies from the 1940s to present has resulted in the use of standardized interrogation methods based on behavioral psychology, scientific methods, and advances in technology. Police interrogation practices involving juveniles generally do not differ from interrogation of adult suspects.

Main Text

Police interrogation methods have evolved over the past one hundred years in the United States as a direct result of public condemnation of violent police practices as well as decisions of the United States Supreme Court on constitutional challenges to police interrogation practices. Professionalization of police agencies from the 1940s to present has resulted in the use of standardized interrogation methods based on behavioral psychology, scientific methods, and advances in technology.

Police interrogation tactics of the late Nineteenth and early Twentieth centuries were brutally violent. The police interrogation practices of inflicting mental suffering and/or physical pain to extract information from suspects became collectively known as the “third degree” (Leo 2008). Although it is widely assumed that the third degree borrowed its name from secret Masonic initiation rituals, Thomas and Leo (2012) note that a *New York Times* article published in 1901 refers to three degrees of police interrogation. The first degree of interrogation involved questioning of a suspect by police officers at a local precinct station. The second degree of

interrogation was more formal and conducted by a police detective in a police court overseen by a magistrate. When more intense interrogation tactics were needed to elicit a confession, the third degree of interrogation was employed using whatever tactics the chief of the detective bureau deemed necessary and appropriate. Most police scholars and historians cite to the Wickersham Commission's (1931) report on police lawlessness as the watershed moment where the American public was put on notice as to the widespread third degree interrogation tactics at police departments across the country. Thomas and Leo (2008) found that contemporaneous newspaper accounts from the 1870s through the 1920s often provided stories with rich depictions of various third degree interrogation tactics used by police in large cities and small towns across the United States.

The Wickersham Commission (1931) report on police lawlessness concluded with a number of propositions on third degree interrogation tactics. Interrogation involving the infliction of mental and physical pain to extract confessions from suspects and statements from witnesses were widespread in American law enforcement agencies across the country. Physical brutality was routinely part of third degree interrogations. Sometimes third degree interrogation sessions lasted many hours and were specifically designed to overcome a suspect's resistance. The Commission also found that third degree interrogation strategies were tailored to a suspect's age and intelligence to maximize the level of intimidation invoked by police interrogators. It was not uncommon that prolonged periods of secret detention were used to conduct third degree interrogations. Third degree interrogation tactics utilized torture psychological games that sometimes resulted in false confessions where suspects told police interrogators whatever they wanted to hear and sign statements without even reading the alleged confession written by

detectives. The false confessions were often obtained after third degree tactics that included sleep deprivation and withholding food from suspects being questioned for days at a time.

Police interrogation methods dramatically changed in the years that followed publication of the Wickersham Commission (1931) report on police lawlessness during a period of increased professionalism in law enforcement. The public was no longer willing to tolerate third degree interrogation tactics of the police. Law enforcement leaders including August Vollmer and J. Edgar Hoover advocated for the use of scientific and psychological methods in police interrogations that would render the third degree unnecessary. Polygraph machines, commonly referred to as lie detectors, were developed in the 1930s and 1940s to provide more effective methods of interrogation. Polygraph examiners were viewed as impartial operators of the behavioral lie detection machines, but the success of the polygraph machine was in the ability of polygraph examiners to elicit confessions from criminal suspects. Polygraph exam results are not admissible as evidence in courts and often the examiners lied about the results of a test as part of the psychological manipulation strategies used in the interrogation process. The typical polygraph examination consists of three parts. The first is a pre-examination interview where the examiner explains to the suspect that the interview questions establish a baseline so that the polygraph machine will be able to determine truthfulness in the suspect's answers to questions that are asked during the polygraph examination. The second part is the actual polygraph examination, and third part is the post-examination interview. It is not uncommon for a polygraph examiner to advise the suspect that they "failed" the polygraph even when there is no support for that in the results from the examination. Often a polygraph examiner will say things like "I'm going to leave the room for a few minutes, and when I return you are going to need to come clean and tell the truth." Amazingly, the most common result is that when the polygraph

examiner returns to the room a short while later, the suspect willingly confesses to a crime. In these instances, the suspect wrongly concludes that the machine results would be somehow used to gain a conviction, so they might as well confess now. These types of behavior lie detection interrogation tactics were common for much of the twentieth century and into current times.

Over the past 80 years American police agencies developed a variety of psychological manipulation strategies also designed to elicit confessions from criminal suspects. In the 1940s and 1950s a number of police training manuals on the science of interrogation were developed by Fred Inbau, John Reid, and others. New editions of those manuals and texts are published periodically and still widely used today (see, e.g., Inbau et al. 2013). The interrogation training manuals served several purposes. The manuals were designed to elevate interrogation practices to standards of police professionalism, which in great part was meant to restore the public's trust in law enforcement agencies that had been severely damaged by the public disclosures by the Wickersham Commission on third degree interrogation practices. The training manuals on interrogation methods were also designed to standardize police training on interrogation practices to comply with the legal standards on voluntariness of confessions obtained through police interrogation promulgated by the Supreme Court in case opinions during the 1940s through the early 1960s.

Police in the United States are often trained on Reid's nine-step interrogation process. Reid's nine-step process of interrogation methods has been revised and expanded in various texts since first introduced in the 1940s and has adopted more manipulative and deceptive practices of interrogation methods over the past thirty years designed to gain psychological advantage over a suspect being interrogated. Reid's nine-steps of interrogation are:

- Step 1: Direct, Positive Confrontation
- Step 2: Theme Development

- Step 3: Handling Denials
- Step 4: Overcoming Objections
- Step 5: Procurement and Retention of a Suspect's Attention
- Step 6: Handling the Suspect's Passive Mood
- Step 7: Presenting an Alternative Question
- Step 8: Having the Suspect Orally Relate Various Details of the Offense
- Step 9: Converting an Oral Confession into a Written Confession

(Inbau et al. 2013). The nine-step process relies on psychological processes of isolating the in-custody suspect, directly confronting the suspect of the certainty that he or she committed the crime in question and blocking the suspect's efforts of denial, and minimizing the crime in an effort to elicit a confession from the suspect. The Reid interrogation techniques are utilized without distinction as to whether the suspect being interrogated is a juvenile or an adult. Feld (2013) notes that the Reid interrogation method does not account for developmental differences between adolescents and adults and the vulnerabilities an adolescent might experience when being interrogated by the police.

In *Miranda v. Arizona* (1966), the United States Supreme Court held that the Fifth Amendment to the United States Constitution protects against compulsory self-incrimination. The Court enumerated a seven-part set of procedural safeguards to protect the privilege against self-incrimination. The police must notify a suspect in custody of these procedural safeguards before they can interrogate the person. Prior to custodial interrogation, a suspect must be warned that he or she has the right to remain silent, that any statement made may be used as evidence against him or her, that he or she has right to the presence of an attorney before any questioning, and that an attorney will be provided if he or she cannot afford one. In an attempt to override *Miranda*, Congress enacted 18 U.S.C. §3501 which provided that voluntary confessions are admissible in federal courts. The Supreme Court held in *Dickerson v. United States* (2000) that Section 3501 is unconstitutional noting that *Miranda* is a “constitutional rule.”

In the years leading up to *Miranda*, the Supreme Court had twice addressed issues concerning police interrogation of juveniles in *Haley v. Ohio* (1948) and *Gallegos v. Colorado* (1962). Both cases were resolved by the Court as under a Fourteenth Amendment due process standard of voluntariness in answering police questions. In *Haley*, a 14 year-old boy was denied access to a lawyer while being questioned by the police in an all nightlong interrogation until he confessed when confronted with statements made by co-defendants. The boy was convicted of murder and sentenced to life in prison. In overturning his conviction, the Supreme Court held that special care must be made in scrutinizing the record in analyzing the voluntariness of a police interrogation of a child. In *Gallegos* the Court again applied the Fourteenth Amendment standard of voluntariness in the case of a 14 year-old boy who was questioned about a robbery in a lengthy interrogation without an attorney or his parents present. Here, again, the Supreme Court concluded that the confession that resulted in the child's conviction was obtained in violation of the due process requirements of the Fourteenth Amendment.

The Supreme Court addressed the post-*Miranda* issue of custodial interrogation of juveniles in *Fare v. Michael C.* (1979). Michael C., then 16 ½ years old, was taken into custody on suspicion of murder. Prior to being questioned by police he was advised of his *Miranda* rights. The juvenile, who was on probation and previously served a term of incarceration at a youth corrections camp, asked to speak with his probation officer. When the request was denied by the police, Michael C. said that he would speak with police officers without consulting with an attorney. He then proceeded to provide a statement and draw sketches that implicated himself in the murder. Later his attorney moved to suppress the incriminating statements and sketches on the grounds that Michael's request to speak with his probation officer before questioning constituted an invocation of his Fifth Amendment right against self-incrimination and to remain

silent. The trial court denied the request to suppress the evidence. The California Supreme Court reversed, holding that the juvenile's request for his probation officer was a *per se* violation of his Fifth Amendment rights under *Miranda*. The California Supreme Court's holding was based on their view that a juvenile probation officer holds a position of trust and that California law requires that probation officers represent the juvenile's interest. The U.S. Supreme Court held that the California Supreme Court erred in finding that the denial of the juvenile's request for his probation officer was a *per se* invocation of his Fifth Amendment rights under *Miranda*. The Supreme Court further held that the whether incriminating statements and sketches were admissible on the basis of a waiver was a question to be resolved by a review of the totality of the circumstances surrounding the interrogation of the juvenile.

More recently, in *J.D.B. v. North Carolina* (2011), the Supreme Court held that a child's age and youthfulness is an objective factor that must be part of an analysis of the circumstances surrounding the interrogation and, given those circumstances, whether a reasonable person would have felt he or she was at liberty to terminate the interrogation and leave in determining if a suspect was "in custody" when being questioned by the police. The Supreme Court more specifically explained that a child's age is different than other personal characteristics that have no objectively discernable relationship to a reasonable person's understanding of whether they were free to not answer a police officer's questions and leave and that a child's age properly informs a *Miranda* custody analysis. The juvenile, J.D.B., was a 13 year-old seventh-grade student at a middle school when he was removed from his classroom by a uniformed police officer, escorted to a closed-door conference room at the school, and questioned by police for at least half an hour in the presence of two police officers and two school administrators. At no time during the question was J.D.B. advised of his *Miranda* rights against self-incrimination.

The Supreme Court noted that a child's age would not be determinative or even a significant factor in every case. It is precisely because of the totality of the circumstances in the *schoolhouse interrogation* by police officers in a closed-door conference attended by school administrators that necessitates the objective analysis as to whether the juvenile was "in custody." *J.D.B.* ultimately stands for the proposition that a child's youthfulness makes him or her susceptible to vulnerabilities that an adult would not experience in an in-custody police interrogation.

Some states require that a parent be present to assist their child when being interrogated by the police. At least one state's court of last resort has long required the use of a simplified *Miranda* rights form for juveniles to ensure that an in-custody interrogation of a juvenile only occurs after a juvenile has voluntarily, knowingly, and intelligently waived his or her privilege against self-incrimination. In *State of New Hampshire v. Benoit* (1985) a 15 year-old juvenile was arrested and, while in custody, advised of his constitutional rights and privilege against self-incrimination by a police officer who read the rights from the police department's standard *Miranda* form used for adults. The juvenile waived his rights and provided an incriminating statement to police. He was later indicted for armed robbery and certified to stand trial as an adult. Benoit's attorney filed a pretrial motion to suppress the incriminating statements made by the juvenile to police. The motion was denied and after a jury trial the juvenile was convicted and sentenced to prison. On appeal, the New Hampshire Supreme Court reversed the conviction and remanded the case for a new trial. The Court held under the Constitution and the New Hampshire Constitution that the juvenile had not voluntarily, knowingly, and intelligently waived his rights and recommended that police use a simplified juvenile rights form when interrogating juveniles in custody. The New Hampshire Supreme Court noted that its holding

would not put an end to controversies surrounding juvenile waivers of constitutional rights, but that the *Benoit* holding provides concrete procedures for police officers to follow in the future which will safeguard children in New Hampshire from unknowing and unintelligent waivers of their constitutional rights against self-incrimination.

Five decades after the *Miranda* decision still little is known about how police questions suspects (Feld, 2013, 2014, Leo, 2008, Thomas & Leo, 2012). Only limited empirical research has been published on police interrogation methods and most people know very little about the techniques and strategies that police use to elicit confessions from criminal suspects. King and Dunn (2010) found that information on police interrogation methods designed to detect deception is inaccurate and misleading in numerous popular criminal justice textbooks.

Advances in scientific methods and use of technology such as video cameras to record police interrogations are being utilized in many police departments to reduce the likelihood of false confessions.

SEE ALSO: Competence, Legal Rights; Due Process for Juveniles; *Fare v. Michael C.*; Juvenile Due Process Rights; *Miranda v. Arizona*; Police.

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Author Mini-Biography: Philip Matthew Stinson, Sr., J.D., Ph.D., is an Assistant Professor of Criminal Justice at Bowling Green State University. He earned his Ph.D. in Criminology at Indiana University of Pennsylvania and his J.D. at the University of the District of Columbia.

Professor Stinson's research interests include police integrity, police corruption, police crime, and police misconduct, as well as matters relating to constitutional criminal procedure.

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