

COERCED CONFESSIONS

PROFESSOR RICHARD A. ROSEN

UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW

2008 SPRING PUBLIC DEFENDER CONFERENCE

WRIGHTSVILLE BEACH, NORTH CAROLINA

MAY 14, 2008

Why Do People Confess to Crimes They Did Not Commit?

Steven A. Drizin

Most people can't imagine any set of circumstances, other than perhaps torture, under which they would confess to a crime they did not commit. And even fewer can imagine ever falsely confessing to a murder, a crime that can lead to a death or life without parole sentence. Yet today, false confessions occur with alarming frequency and most documented false confessions occur in murder cases.

According to the most recent data from the Innocence Project at Benjamin N. Cardozo Law School, 142 wrongfully convicted persons have been exonerated by DNA evidence. Of these 142, false confessions played a role in approximately 25% of the cases. Of those who have been wrongfully convicted of murders, the percentage of false confessors is even higher. Of the first thirty-seven DNA exonerations in the U.S. for crimes involving murder, two-thirds of the suspects had been convicted at least partly based on incriminating statements or confessions made during interrogations. In Illinois, of the 18 persons exonerated from death row, false confessions played a role in 11 of the cases. In a 2004 study of 125 "proven false confessions," Professors Steven Drizin and Richard Leo found that 81% of these confessions involved murders, leading them to surmise that murders suspects are most at risk of falsely confessing because it is in these cases -- where the pressure on the police to solve crimes is the greatest -- that police are most likely to employ the full range of coercive psychological interrogation tactics.

The primary contributor to false confessions is the interrogator's use of coercive psychological interrogation techniques, techniques that are so powerful that they not only induce false confessions from the mentally retarded, the mentally ill, juveniles and other vulnerable suspects, but they can lead persons with high intelligence, who are in full possession of their mental faculties, to confess to crimes they did not commit. In order to understand why false confessions occur, therefore, one must understand what it's like to be subjected to today's relentless psychological interrogation techniques.

The first step in any interrogation is to isolate the suspect. This is done by shepherding the suspect into a specially designed room out of eyesight and earshot of the suspect's family or friends. The rooms are small, cramped, and without furniture, save for a few chairs and perhaps a desk. If there is a table, it is usually not placed between the suspect and the interrogator. In such a setup, the suspect can lean on the table for support and the interrogator is prevented from invading the suspect's personal space. The walls are barren, there are no phones, clocks, or other items which could distract the suspect and the interrogator from the task at hand -- getting the suspect to confess.

The first stage of an interrogation usually involves a brief period of rapport building, during which time the interrogator is sizing up the suspect's body language and evaluating the suspect's response to bait questions ("what do you think should happen to the person who did this") to determine if the suspect is being deceptive. During this rapport building phase, the suspect is read his *Miranda* warnings, usually in a way which discourages the suspect from

invoking his rights (“we need to get these out of the way so you can tell me your side of the story”). Once the rights are waived, the interrogator abruptly accuses the suspect of committing the crime. Interrogators are trained to cut off any denials and to confront the suspect with true or false incriminating evidence (“we have your hair, your blood, your fingerprints”). These tactics are designed to destroy the suspect’s confidence that he will emerge from the interrogation without being harmed and to make the suspect think that he is powerless to bring an end to the interrogation unless he confesses.

Once the suspect is on the brink of hopelessness, the interrogator engages in tactics designed to persuade the suspect that the benefits of confessing outweigh the costs of continued resistance and denial. Here, the interrogator offers inducements to the suspect, ranging from low-end inducements like appeals to the suspect’s conscience (the “truth will set you free”) or religious beliefs (“God will forgive you”), to suggestions that confession will be treated more favorably by those in the system with the power to determine his fate (“judges react more favorably to remorseful defendants”), to the more coercive inducements which expressly or impliedly promise leniency or threaten harm. These “minimization” tactics suggest to the suspect two scenarios of how the crime was committed – one which is premeditated or cold-blooded, the other which is morally or legally justifiable (it was an accident, self-defense, or impulsive) -- and urge the suspect to choose the lesser of two evils. If a suspect claims he has no memory of the crime, interrogators often suggest that the suspect committed the crime during a blackout or under the influence of drugs or alcohol. These tactics build upon one another and are rehashed again and again throughout the interrogation until a suspect breaks down and says “I did it.”

The “I did it” statement, however, is often not enough to close a case or to gain a conviction. Interrogators need full confessions, those which contain the intimate details of the crime and the anomalous crime scene facts that only the true perpetrator would know. In the best case scenario, the confession will also lead to corroborative evidence like the murder weapon or the proceeds of a robbery. Although detailed confessions, especially those which are corroborated are more likely to be true, the fact that a confession is detailed may simply be a function of poor or incompetent police work. Interrogators often contaminate the confession by inadvertently leaking these details to the unknowing suspect through the use of leading or suggestive questions, by showing crime scene photos to the suspect, or even by taking a suspect to the crime scene.

Without a tape of the entire interrogation process, it may be impossible to tell if the details originated in the mind of the suspect or were suggested to the suspect by his interrogators.

Suggested Protocol for Client Interviewing in Confession Cases
Prepared by Deja Vishny & Steven Drizin

1. Pre-Arrest questions

Go through the client's activities in the hours before his arrest. Did the client work on the day of his arrest or the night of his arrest? How much sleep did the client get the night before his arrest? When was the client's last meal and what did he eat? Did the client take any drugs or imbibe any alcohol in the hours before his arrest?

2. Arrest

Go through the details of the arrest with the client, in particular if he was asked any questions about the case, told what they were arrested for and what would happen to them. Did client ask any law enforcement the penalty and what client was told. What was stated to the client at booking, what was told about what would happen to them, how long they would be in the lockup facility.

3. Medical History

Find out what medical conditions client has, what prescribed medications they normally take, where they given these medications during the time period in which they were being interrogated. If client did take medications, what was the regular dosage, did client ask for medication or medical care, what was the police response. Did client have any special dietary needs as a result of their medical condition. Did client have any special physical needs as result of medical condition. Obtain medical releases for medical records, including jail medical records.

4. Education Level

What is client's level of education. Any special education classes, ED or LD classes. What type of schools did client attend. Determine what client's literacy level is by having client read aloud to you. Determine if client can, in addition to pronouncing the words, comprehend the content of what is being read. Be sure to get release and obtain school records if available.

5. Mental Health

Has client ever sought or been provided any professional help for mental health issues, including school or any institutional counselors, social workers, psychologists or psychiatrists. Has client ever been told they should seek counseling or treatment for mental health issues. Was client ever evaluated as the subject of a CHIPS petition or other juvenile or family court related matters or removed from the parental home. Did client ever have a GAL. Obtain releases for records.

6. Family History

Does anyone in client's family have any mental health history or any disease which has resulted in cognitive or behavioral changes. Did client grow up outside of parental home? How was client disciplined as a child, how did client respond to authority figures.

7. Criminal/Juvenile History

What is client's juvenile and adult court history of arrests, charges, convictions. Has client even been questioned before by the police. What did client do when previously questioned? Has client ever asserted his constitutional rights before? What was the length of questioning? Was the statement client gave on previous occasion truthful? What was the result of the questioning – e.g. did client give statement and then get released from custody. Was client brought up to respect and to trust police officers? Are there any previous experiences with police that made the client fear police? Did client know that police could lie to him about evidence?

8. Client custody status

Was client ever handcuffed? Was he told he was free to go? Did client ever ask to leave? Was the door to the interrogation room open or closed? Was it locked or open when officers were not in the room? Was client escorted to and from the bathroom when he asked to use the toilet? How were police officers positioned vis a vis the door in the interrogation room? Did client come into police building using public elevator/stairwell

9. Detention Conditions During Times of Questioning

Where was client held before and during interrogation periods. Specific description of lockup, including whether single cell, or bullpen type facility. Description of what was provided for sleep. Are lights out at night. Is there quiet or noise. What food is provided and when. Is client woken up for meal delivery. What did or didn't client eat. What was the temperature of the room where client was interrogated? Was client cold or hot? If cold, was he given a blanket?

10. Opportunities for communication

Was client permitted any communication with the outside world, others in custody, phone calls, etc. Did client request to make phone calls. In juvenile cases, find out if the client requested an opportunity to speak to his or her parents and how police officers dealt with this request. Also ask parents what, if any, attempts they made to speak with their children, and what if anything police told them.

11. Pre & Post Interrogation Conditions (relate to question of whether client was “in custody”)

When was client taken to and from interrogation. Who transported client. What conversations took place during that time. Was client left alone in interrogation room before or after interrogation, length of time left, who checked on client, what client did during that time. Was client handcuffed while left alone. Was client given bathroom breaks?

12. Beginning of Interrogation/Miranda warnings

Was client interviewed at all before Miranda warnings- e.g. family or personal history taken. If so, how long this took & specifics of what was discussed. Did client ask any questions before Miranda and police response. How were rights read to client? Did police pause after each right to ask client if he understood rights? Did they ask him if he wished to waive his rights after each right or only once at the end of reading of rights?. Did police present the rights to the client in a way that implied that the client would be better off talking to the police? With children, ask if the police asked them to explain the meaning of each of the rights in their own words. Did client sign waiver at time.

13. Pre-Interrogation Interview

Before beginning interrogation, did police ask questions in a mild tone, more open ended type questions. Did police ask client not only for their version of what occurred but questions such as what client thinks should happen to the person who committed the crime, does the perpetrator deserve a second chance, did the client ever think/fantasize about committing the offense, is client willing to take polygraph or voice stress analyzer test, what police told them about these tests. How police were positioned during this stage of questioning. How long did this type of questioning last. Did any officer leave the room and come back in, at what stage, did tone of questioning change when this happened.

14. Confrontation Statement

What did police say there were questioning client about. Did they tell client what they thought he did. Did they express certainty that client had committed the crime (or was involved in it). What words they used. Did they sit or stand while telling this to the client. What was the tone of voice. Did client attempt to interrupt, how police handled the interruption.

15. Bait Questions & Discussions of Evidence

What evidence did police claim they had against client or were likely to have – e.g eyewitnesses, DNA, fingerprints, gunshot residue from hand swabs, evidentiary items seized.

Did police directly tell client they had this evidence or ask it hypothetically such as “what would you say if I told you we have...(named evidence).” Did police tell client they had a strong case against them and what the case consisted of. Were any photos, reports, other evidence shown to client. What details were told to client about the offense. Were files brought into room even if not shown, or any other props used to give impression that police had strong case. Were misleading statements such as “we’re questioning so-and-so right now and they are talking to us, telling us the truth, etc.

16. Client’s Denials

Did client give or repeat denial. Was client given an opportunity to voice denials fully or did police interrupt and cut them off. If interruptions, what police said, did they raise their voice, stand up, etc. Did police take notes when client gave denial. Did police accuse the client of lying? Did they claim to be able to tell the client was lying by looking at him?

17. Theme Development

Aside from telling client the evidence police had, did the police talk for lengthy period of time, almost like a monologue. Did police weave together a story of what they thought had occurred in the offense. As part of this story, in case involving violence, did they put blame on the victim – e.g. victim was violent, a drug dealer, client had reasons to be angry at or afraid of victim. If a sex crime, that victim was sexually seductive, started things. Did police hypothesize as to why client committed crime in a way that minimizes client involvement, motive, intent. If a property crime, that client not a dishonest person but just in desperate condition, had good reason to need money, etc. If a drug crime, either need for money or client has drug problem. Did police contrast this minimized intent or involvement with how the case would look without it – in other words that the facts look very bad, intentional, serious, but this scenario or reason for client’s involvement mitigates the case and if client “tells the truth” how things will go better for them.

Did police suggest the crime was an accident, or that it was impulsive, not premeditated, did they suggest it was provoked or that the suspect acted in self-defense? In cases of multiple perpetrators, did they suggest that the suspect was merely a witness, or was in the wrong place at the wrong time, that the suspect tried to stop the others, or that the suspect was a follower, not a leader.

As part of this phase of interrogation, what did police say what they would tell other players in the system – DA, court, probation officer. Did they tell client that the DA etc. would need to know client’s account and take it into consideration, or that crime looked much more severe. How if DA etc. don’t know “the truth” they will think worse of client, see things in a worse light, increase penalties, etc. Did police puff up their influence with the DA and the court, implying that their recommendation would be taken seriously by judge or prosecutors.

Did police tell stories as part of this persuasion – either of something they had done wrong as a young person and how they overcame it, of other cases they worked on and how the person

who confessed was given leniency compared to those who didn't confess, or of highly publicized cases in which a person who confessed or cooperated was given leniency. Did they talk about how they or the person they are telling the story about needed "help", received help, turned their lives around.

Did police suggest that the suspect would feel better once he confessed, that the "truth would set him free, or that the suspect needed to confess to get right with God. What, if any, discussion about religion, was there?

Did police use language that would be vague or softer than the crime – for example, calling what happened "this thing" or refer to it as having sex instead of a rape or homicide.

Did the police express sympathies for client's stresses, drug or alcohol or psychological problem and talk about how client would be able to get help. In juvenile cases, did the police suggest that the system was not designed to punish but to rehabilitate; did they suggest that the system helps only those who cooperate or help themselves by confessing?

18. Client's resistance to interrogation

Did client ask to leave or for attorney at any point. How police responded to this. Did police use delaying tactics or offer to no longer interrogate but talk about another subject instead. Did police say client was free to leave or to get lawyer, but this might harm client because then the DA, etc. would not have access to client's side of story and case is more harmful to client then.

Did client become passive and try to disengage from police during the interrogation – but looking down, trying to tune them out, close eyes, etc. How did police respond to this. Did police move closer, touch them at all, tell client to look at them directly, etc.

19. Physical Positioning

Did police go in & out of room, move in room, move closer to client, remove table from room, touch client in any manner including in empathetic way or otherwise. When did police leave room and why. What was client told about breaks and when they would be back or break would be over. Were officers positioned between the suspect and the door? Was the suspect backed into a corner?

20. Admission

When did client decide to make an admission. Why. How did the police obtain the admission. Did the police ask a double edged question in which both answers would point to guilt, but one choice would be of lesser severity than the other, such as "was this an intentional thing or was it an accident". Did police give feedback to client about admission or give client privileges as a result.

21. Obtaining Details & Written Statement

How did police get the details of the statement. Did they ask leading questions. Did they ask many questions in which they posed two possible answers, letting client choose one of the two responses. If they disliked client's response, did they attempt to change the answers or information given. Did they tell client that what he said contradicted the evidence or show photos of physical evidence to get client to make change. Did they write down what client said as he was talking or go over it first and go over it again and write down later. Did they allow client to see what they were writing as they did it. Did client ask to be allowed to write out what happened himself instead of police doing it. Was it read back to client. Did they tell client to initial it in various places and why they said to do it. If client didn't initial or sign, why he didn't and what police said to try and get him to do so. If client signed it, why. If client had previous unsigned statements that were denials, why he refused to sign then and did for the confession. Did police suggest that client write an apology statement at the end and what would be good to say in that statement.

22. Client Requests

Did client ever ask to stop the questioning. Say he was tired or put head down. How police responded when client said he was hungry, thirsty, needed to use bathroom, wanted to use phone to talk to someone else. If client is a smoker, was he allowed to smoke. Were his requests met as needed or given as a "reward" for information. Was he given breaks as a result of his request or did breaks occur for convenience of the police.

23. Police Personalities

Ask about the personalities and approaches of the different interrogators. If more than one officer present, who did most of the questioning. How they individually responded to client denials, admissions, requests. Any "good cop/bad cop" role playing. Did they smoke at all during interrogation. Did they eat in front of the client?

24. Multiple Interrogations

If there is more than one interrogation in the case, be sure to elicit details of all of the interrogations. Did the interrogations in second interrogation on refer to the previous interrogations. Did they read the previous statements to client. Did they disclose new information or change interrogation style. What they told client about why he was being interrogation again.

25. "Lie Detector" Tests

Use of polygraph or voice stress analyzer test? How was idea of truth detection device introduced into the interrogation? Did client ask for the test or did police suggest the test? What was client told about the test? Was the suspect ever told results of the test would be admissible or inadmissible in court? After the test was given, was the suspect told that he passed or failed? Did police imply that he failed or act like he had failed? How did news of this failure affect the client?

ELECTRONIC RECORDING OF INTERROGATIONS IN HOMICIDE CASES

§ 15A-211. (Effective March 1, 2008) Electronic recording of interrogations.

(a) Purpose. – The purpose of this Article is to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes about interrogations, thereby improving prosecution of the guilty while affording protection to the innocent and increasing court efficiency.

(b) Application. – The provisions of this Article shall only apply to custodial interrogations in homicide investigations conducted at any place of detention.

(c) Definitions. – The following definitions apply in this Article:

(1) Electronic recording. – An audio recording that is an authentic, accurate, unaltered record; or a visual recording that is an authentic, accurate, unaltered record.

(2) In its entirety. – An uninterrupted record that begins with and includes a law enforcement officer's advice to the person in custody of that person's constitutional rights, ends when the interview has completely finished, and clearly shows both the interrogator and the person in custody throughout. If the record is a visual recording, the camera recording the custodial interrogation must be placed so that the camera films both the interrogator and the suspect. Brief periods of recess, upon request by the person in custody or the law enforcement officer, do not constitute an "interruption" of the record. The record will reflect the starting time of the recess and the resumption of the interrogation.

(3) Place of detention. – A jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges.

(d) Electronic Recording of Interrogations Required. – Any law enforcement officer conducting a custodial interrogation in a homicide investigation shall make an electronic recording of the interrogation in its entirety.

(e) Admissibility of Electronic Recordings. – During the prosecution of any homicide, an oral, written, nonverbal, or sign language statement of a defendant made in the course of a custodial interrogation may be presented as evidence against the defendant if an electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded in its entirety, any statements made by the defendant after that non-electronically recorded custodial interrogation, even if made during an interrogation that is otherwise in compliance with this section, may be questioned with regard to the voluntariness and reliability of the statement. The State may establish through clear and convincing evidence that the statement was both voluntary and reliable and that law enforcement officers had good cause for failing to electronically record the interrogation in its entirety. Good cause shall include, but not be limited to, the following:

- (1) The accused refused to have the interrogation electronically recorded, and the refusal itself was electronically recorded.
 - (2) The failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure, and obtaining replacement equipment was not feasible.
- (f) Remedies for Compliance or Noncompliance. – All of the following remedies shall be granted as relief for compliance or noncompliance with the requirements of this section:
- (1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of the defendant made during or after a custodial interrogation.
 - (2) Failure to comply with any of the requirements of this section shall be admissible in support of claims that the defendant's statement was involuntary or is unreliable, provided the evidence is otherwise admissible.
 - (3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine whether the defendant's statement was voluntary and reliable.
- (g) Article Does Not Preclude Admission of Certain Statements. – Nothing in this Article precludes the admission of any of the following:
- (1) A statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing.
 - (2) A spontaneous statement that is not made in response to a question.
 - (3) A statement made during arrest processing in response to a routine question.
 - (4) A statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state.
 - (5) A statement obtained by a federal law enforcement officer.
 - (6) A statement given at a time when the interrogators are unaware that the person is suspected of a homicide.
 - (7) A statement used only for impeachment purposes and not as substantive evidence.
- (h) Destruction or Modification of Recording After Appeals Exhausted. – The State shall not destroy or alter any electronic recording of a custodial interrogation of a defendant convicted of any offense related to the interrogation until one year after the completion of all State and federal appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate

relief or habeas corpus proceedings. Every electronic recording should be clearly identified and catalogued by law enforcement personnel. (2007-434, s. 1.)

SELECTED SUPREME COURT DUE PROCESS VOLUNTARINESS CASES

Brown v. Mississippi, 297 U.S. 278 (1936)

Supreme Court holds, for the first time, that use of coerced confession at a state trial violates the due process clause of the Fourteenth Amendment. Suspects tortured into confessing by state officials. Mississippi police admit torture at trial, but State courts find no constitutional or other violations warranting suppression of confession.

Jackson v. Denno, 378 U.S. 368 (1964)

In Jackson, the Court made clear that it violated due process to allow a jury to make, in the first instance, a determination of voluntariness. Once the defendant adequately raises the issue, the trial court must make a preliminary determination of voluntariness.

Crane v. Kentucky, 476 U.S. 683 (1986)

Unanimous Supreme Court holds that even if a judge determines that a confession is voluntary, the due process clause and the Sixth Amendment confrontation clause require that a defendant be allowed to introduce evidence about the circumstances under which a confession was made, and to contest the reliability of the confession in front of the jury, so the jury can make an independent judgment as to the weight to be accorded the confession.

Lego v. Twomey, 404 U.S. 477 (1972)

Supreme Court holds that the prosecution is only required to prove voluntariness under the due process clause by a preponderance of the evidence.

Colorado v. Connelly, 479 U.S. 157 (1987)

Mentally ill suspect approaches police officer on street and confesses to crime. Suspect continues to confess after being taken into custody and provided with rights. Evidence shows suspect felt compelled to confess by “voices” produced by mental illness. Supreme Court holds that there can be no due process violation in absence of official coercion, trickery, or other state misconduct. No matter how outrageous, behavior of a private party does not make a confession inadmissible under the due process clause.

Arizona v. Fulminante, 499 U.S. 279 (1991)

FBI informer posing as an organized crime figure encouraged incarcerated suspect to confess by offering to protect him from other inmates if suspect told informer about suspected murder. Supreme Court holds that trickery used by informer on mentally weak suspect rendered confession coerced even though no direct threats or physical violence used. Although Court holds, for the first time, that harmless error analysis can be used when coerced confession used against defendant at trial, use here is held not harmless, and Court notes that it rarely should be found harmless.

List of Factors Relied On To Find Coerced Confession In U.S. Supreme Court Cases

Prepared by Bill Kroll, second year law student, UNC School of Law

Ashcroft v. Tennessee, 322 U.S. 143 (1944)

- Interrogation room had intimidating detective devices
- Interrogated with a light over his head
- Questioned in relays for over a day and a half with no rest or sleep

Blackburn v. Alabama, 361 U.S. 199 (1960)

- Mental illness and most likely insane and incompetent (discharged in 1944 as permanently disabled by a psychosis)
- eight or nine hour sustained interrogation
- Tiny room (four by six or six by eight feet) filled with police officers (as many as three officers)
- Absence of defendant's friends, relatives, or legal counsel
- Mention of lack of education

Brooks v. Florida, 389 U.S. 413 (1967)

- Confined naked in a tiny cell without toilet facilities except a hole in one corner
- Subsisted for two weeks on a daily fare of 12 ounces of thin soup and eight ounces of water
- Two weeks had no friendly visitors

Brown v. Mississippi, 297 U.S. 278 (1936)

- Physical abuse involving hanging, whipping

Chambers v. Florida, 309 U.S. 227 (1940)

- Continuous, persistent and repeated questioning for over 12 hours
- Kept awake all night with questioning
- No visitors allowed
- No counsel allowed
- Conflicted testimony concerning physical abuse
- Questioning without any formal charges having been brought
- Tactics to cause fear and fright
- Threats of mob violence
- Never knew when they would be called back for questioning

Fikes v. Alabama, 352 U.S. 191 (1957)

- Third grade education
- Expert testimony of being schizophrenic and highly suggestible
- Multiple hour interrogation sessions over 4 days; questioning continued after first confession.
- No appearance before Magistrate in violation of state law
- Taken to prison 55 miles away for prisoner's protection, but no specific threats had been made
- Kept in the segregation unit
- Father was refused contact with petitioner.
- Confession consisted of leading or suggestive questions.
- Lawyer was turned away.

Haley v. Ohio, 332 U.S. 596 (1948)

- Evidence of physical abuse (disputed)
- 15-year old
- Questioned in relays by multiple police for 5 hours
- No friend or counsel present.
- Not advised of his right to counsel.
- He was held incommunicado for 3 days.
- Lawyer was refused admission by the police.
- His mother was not allowed to see him.
- He was not taken before a magistrate and formally charged with a crime until three days after the confession.

Harris v. South Carolina, 338 U.S. 68 (1949)

- No warrant nor charge was brought to attention of petitioner.
- Relay questioning involving 5 officers in a hot cubicle for multiple hours (one time over 12 hours) for 5 days
- Police threatened to arrest petitioner's mother for handling stolen property and petitioner confessed.
- Not informed of his rights under state law to secure a lawyer, to request a preliminary hearing, or the right to remain silent.
- Denied the benefit of consultation with family and friends
- During interrogation, he was surrounded by as many as a dozen authority figures.
- Petitioner was an illiterate.

Leyra v. Denno, 347 U.S. 556 (1954)

- Questioned multiple hours (one time 14 hours, another 23.5 hours) over 4 days
- Only slept 1.5 hours
- Defendant had sinus pain, police promised to get a doctor, and doctor was a psychiatrist who used hypnosis.

Malinski v. New York, 324 U.S. 401 (1945)

- Malinski was held incommunicado
- He was not allowed to see a lawyer, though he asked for one
- He was not allowed to see friends, with one exception. Police let Malinski see a criminal "friend" (Spielfogel), who ends up implicating Malinski. Friend tells Malinski to confess and not let cops hit Malinski.
- Prosecutor said that Malinski 'was not hard to break'
- Use of humiliation by questioning while he was undressed
- Mental abuse of making him think he was going to be physically abused

Payne v. Arkansas, 356 U.S. 569 (1958)

- Mentally dull
- Arrested without warrant
- Denied a hearing before a magistrate as required by state law
- Not advised of his right to remain silent or of his right to counsel
- Held incommunicado for three days, without counsel, adviser or friend (even was refused permission to make one telephone call)
- Denied food for long periods
- Threats of mob violence

Spano v. New York, 360 U.S. 315 (1959)

- Refused defendant's requests to contact attorney
- Questioned defendant for approximately eight hours
- Used policeman friend to falsely tell defendant that telephone call had got him into trouble

Turner v. Pennsylvania, 338 U.S. 62 (1949)

- Arrest without a warrant and did not tell the petitioner why he was being arrested
- Multiple hours interrogations sessions (3-6 hours each) involving multiple cops sometimes at same time for period of 5 days
- Petitioner was not permitted to see friends or relatives during the entire period of custody
- He was not informed of his right to remain silent until after confession

Ward v. Texas, 316 U.S. 547 (1942)

- Ward was slapped by a constable.
- Arrested at a party, where Ward was handcuffed, and taken into custody despite a total lack of evidence.
- Moved petitioner 110 miles to another jail.
- Continuous questioning all day while transporting Ward around.
- Ward questioned in three different jails on three different days.
- "ignorant negro"
- Tales of threats of mob violence

Watts v. Indiana, 338 U.S. 49 (1949)

- Not taken before magistrate in violation of state law
- 5 days of questioning for up to 9.5 hours at night, 3 of these days he was driven around town to elicit identifications
- 2 days in solitary confinement, “the hole”
- He was without friendly or professional aid and without advice as to his constitutional rights.
- Deprivation of sleep
- Deprivation of food

White v. Texas, 310 U.S. 530 (1940)

- Petitioner was illiterate
- Kept in jail six or seven days
- No lawyer
- No charges were filed against him
- Kept out of touch with friends or relatives
- Physical abuse at night where he was whipped
- Petitioner was interrogated for 4 hours 6-7 days of abuse when he confessed

U.S. S. CT. - CATEGORIES OF FACTORS RELIED ON TO FIND CONFESSIONS COERCED

Prepared by Bill Kroll, Second Year Law Student, UNC School of Law

Age Counsel Drugs Used to Assist Confession Education Food Highly Suggestible Holding Facility/Solitary Confinement Incompetent Interrogation Setting Lack of Control Length of Confinement Length of Interrogation Mental Abuse	Mental Illness Moved to Far Away Jail Multiple cops/interrogators Noticeable Injury/Sickness No Prior Trouble with Law Physical Abuse Relay Questioning Rest/Sleep Rights Social Support Stranger to Community Trickery Violate Statute/Lack of Charges
--	---

Age		Counsel	
Case	Specific	Case	Specific
Haley v. Ohio, 332 U.S. 596 (1948)	15 years old	Blackburn v. Alabama, 361 U.S. 199 (1960)	
		Chambers v. Florida, 309 U.S. 227 (1940)	
		Clewis v. Texas, 386 U.S. 707 (1967)	
		Fikes v. Alabama, 352 U.S. 191 (1957)	Counsel turned away
		Haley v. Ohio, 332 U.S. 596 (1948)	
		Harris v. South Carolina, 338 U.S. 68 (1949)	

	Malinski v. New York, 324 U.S. 401 (1945)	
	Mincey v. Arizona, 437 U.S. 385 (1978)	
	Payne v. Arkansas, 356 U.S. 569 (1958)	Denied hearing where counsel would have been provided
	Reck v. Pate, 367 U.S. 433 (1961)	
	Spano v. New York, 360 U.S. 315 (1959)	
	Turner v. Pennsylvania, 338 U.S. 547 (1942)	
	Watts v. Indiana, 338 U.S. 49 (1949)	
	White v. Texas, 310 U.S. 530 (1940)	

Drugs Used to Assist Confession		Education	
Case	Specific	Case	Specific
Beecher v. Alabama, 389 U.S. 35 (1967)	Confession received while on morphine and pain killers for pain	Arizona v. Fulminante, 499 U.S. 279 (1991)	He had low intelligence
Reck v. Pate, 367 U.S. 433 (1961)	Truth serum drug	Blackburn v. Alabama, 361 U.S. 199 (1960)	Mentioned in footnote 2, but no specifics.
		Clewis v. Texas, 386 U.S. 707 (1967)	5th grade education
		Columbe v. Connecticut, 367 U.S. 568 (1961)	Illiterate, IQ 64, mental age 9
		Davis v. North Carolina, 384 U.S. 737 (1966)	3rd or 4th grade education
		Fikes v. Alabama, 352 U.S. 191 (1957)	Left school at age 16 in 3rd grade

	Harris v. South Carolina, 338 U.S. 68 (1949)	Illiterate
	Reck v. Pate, 367 U.S. 433 (1961)	Never finished 7th grade
	Ward v. Texas, 316 U.S. 547 (1942)	Illiterate
	White v. Texas, 310 U.S. 530 (1940)	Illiterate

Food		Highly Suggestible	
Case	Specific	Case	Specific
Brooks v. Florida, 389 U.S. 413 (1967)	For 2 weeks had 12 ounces of thin soup and 8 ounces of water	Fikes v. Alabama, 352 U.S. 191 (1957)	Schizophrenic and highly suggestible
Clewis v. Texas, 386 U.S. 707 (1967)	Little food		
Davis v. North Carolina, 384 U.S. 737 (1966)	Lost 15 pounds		
Payne v. Arkansas, 356 U.S. 569 (1958)	Denied food for long periods		
Reck v. Pate, 367 U.S. 433 (1961)	1 sandwich for 48 hours		
Watts v. Indiana, 338 U.S. 49 (1949)			

Holding Facility/Solitary Confinement		Incompetent	
Case	Specific	Case	Specific
Brooks v. Florida, 389 U.S. 413 (1967)	Confined naked in a tiny cell without toilet facilities except hole in corner	Blackburn v. Alabama, 361 U.S. 199 (1960)	
Davis v. North Carolina, 384 U.S. 737 (1966)	6' x 10' cell with no sunlight		

Fikes v. Alabama, 352 U.S. 191 (1957)	Kept in segregation unit
Watts v. Indiana, 338 U.S. 49 (1949)	Kept in "the hole" which was solitary confinement for 2 days

Interrogation Setting		Lack of Control	
Case	Specific	Case	Specific
Ashcroft v. Tennessee, 322 U.S. 143 (1944)	Room was fully equipped with detective devices: fingerprint outfit, cameras, high-powered lights, etc.	Brooks v. Florida, 389 U.S. 413 (1967)	He was completely under control and domination of jailers.
Blackburn v. Alabama, 361 U.S. 199 (1960)	Tiny room (4' x 6' or 6' x 8') occasionally filled with police (as many as 3)	Chambers v. Florida, 309 U.S. 227 (1940)	Petitioners never knew when they were going to be called into room.
Harris v. South Carolina, 338 U.S. 68 (1949)	Stifling heat of cubicle	Columbe v. Connecticut, 367 U.S. 568 (1961)	Columbe was told he was going to court and instead it was a Police Court. Entire police procedure showed they were in control.
Mincey v. Arizona, 437 U.S. 385 (1978)	In intensive care with tubes and medical equipment	Mincey v. Arizona, 437 U.S. 385 (1978)	In intensive care, so was at complete mercy of police
		Reck v. Pate, 367 U.S. 433 (1961)	Shuttled back and forth between interrogation room, police station, and show ups

Length of Confinement		Length of Interrogation	
Case	Specific	Case	Specific
Brooks v. Florida, 389 U.S. 413 (1967)	2 weeks	Ashcroft v. Tennessee, 322 U.S. 143 (1944)	over 38 hours

Columbe v. Connecticut, 367 U.S. 568 (1961)	5 days	Blackburn v. Alabama, 361 U.S. 199 (1960)	8-9 hours
Reck v. Pate, 367 U.S. 433 (1961)	Held 8 days without hearing	Chambers v. Florida, 309 U.S. 227 (1940)	For a week; sometimes all night
		Clewis v. Texas, 386 U.S. 707 (1967)	Held 38 hours and frequent questioning for 3.5 days
		Columbe v. Connecticut, 367 U.S. 568 (1961)	5 days with repeated questioning
		Davis v. North Carolina, 384 U.S. 737 (1966)	Repeated but short interrogations over 16 days
		Fikes v. Alabama, 352 U.S. 191 (1957)	Questioned for 10 days, several hours at a time
		Haley v. Ohio, 332 U.S. 596 (1948)	After midnight for 5 hours
		Harris v. South Carolina, 338 U.S. 68 (1949)	Multiple days, one occasion for 6 hours
		Leyra v. Denno, 347 U.S. 556 (1954)	23.5 hours
		Mincey v. Arizona, 437 U.S. 385 (1978)	4 hours while in intensive care
		Reck v. Pate, 367 U.S. 433 (1961)	For 4 days, 6-7 hours at a time with multiple officers
		Turner v. Pennsylvania, 338 U.S. 547 (1942)	5 days, multiple hours each day
		Ward v. Texas, 316 U.S. 547 (1942)	"continuous question" over 3 days
		Watts v. Indiana, 338 U.S. 49 (1949)	Questioned up to 9 hours for six days
		White v. Texas, 310 U.S. 530 (1940)	6-7 days

Mental Abuse		Mental Illness	
Case	Specific	Case	Specific
Arizona v. Fulminante, 499 U.S. 279 (1991)	Informant offered "protection" from other prisoners	Arizona v. Fulminante, 499 U.S. 279 (1991)	After isolation had been admitted to psychiatric hospital
Beecher v. Alabama, 389 U.S. 35 (1967)	2 guns pointed at head, fired shot near head	Blackburn v. Alabama, 361 U.S. 199 (1960)	Mentally ill, insane, incompetent. Discharged from armed services as permanently disabled by a psychosis.
Beecher v. Alabama, 389 U.S. 35 (1967)	Medical assistant told him to cooperate	Columbe v. Connecticut, 367 U.S. 568 (1961)	Mentally deficient: Illiterate, IQ 64, mental age 9
Chambers v. Florida, 309 U.S. 227 (1940)	Possible mob violence	Fikes v. Alabama, 352 U.S. 191 (1957)	Schizophrenic and highly suggestible
Davis v. North Carolina, 384 U.S. 737 (1966)	14 mile hike in shackles used to discredit alibi	Reck v. Pate, 367 U.S. 433 (1961)	Mentally retarded, 19 years old with intelligence of a 10-11 year old, never finished 7th grade
Harris v. South Carolina, 338 U.S. 68 (1949)	Threatened to involve mother		
Lynum v. Illinois, 372 U.S. 528 (1963)	Told financial aid for children would be cut off, children taken away, and she would be locked up for 10 years		
Lynum v. Illinois, 372 U.S. 528 (1963)	Encircled by 3 officers and informant in apartment		
Malinski v. New York, 324 U.S. 401 (1945)	Humiliation by making him undress; use of fear		
Mincey v. Arizona, 437 U.S. 385 (1978)	Nurse told Mincey to cooperate		
Payne v. Arkansas, 356 U.S. 569 (1958)	Fear		

Ward v. Texas, 316 U.S. 547 (1942)	Telling him about threats of violence	
------------------------------------	---------------------------------------	--

Moved to Far Away Jail		Multiple cops/interrogators	
Case	Specific	Case	Specific
Fikes v. Alabama, 352 U.S. 191 (1957)	55 miles away	Blackburn v. Alabama, 361 U.S. 199 (1960)	
Ward v. Texas, 316 U.S. 547 (1942)	110 miles away	Chambers v. Florida, 309 U.S. 227 (1940)	
		Clewis v. Texas, 386 U.S. 707 (1967)	
		Harris v. South Carolina, 338 U.S. 68 (1949)	
		Reck v. Pate, 367 U.S. 433 (1961)	
		Turner v. Pennsylvania, 338 U.S. 547 (1942)	

Noticeable Injury/Sickness		No Prior Trouble with Law	
Case	Specific	Case	Specific
Clewis v. Texas, 386 U.S. 707 (1967)	Noticeably sick	Clewis v. Texas, 386 U.S. 707 (1967)	
Brown v. Mississippi, 297 U.S. 278 (1936)	Couldn't walk, rope burns on neck, blood, lash marks	Lynumn v. Illinois, 372 U.S. 528 (1963)	
Mincey v. Arizona, 437 U.S. 385 (1978)	Shot and was in intensive care	Reck v. Pate, 367 U.S. 433 (1961)	Lacked experience with police
Reck v. Pate, 367 U.S. 433 (1961)	Visibly ill, fainted several times, vomited blood, and twice taken to hospital		

Physical Abuse		Relay Questioning	
Case	Specific	Case	Specific
Brown v. Mississippi, 297 U.S. 278 (1936)	Hanging, whipping	Ashcroft v. Tennessee, 322 U.S. 143 (1944)	
Chambers v. Florida, 309 U.S. 227 (1940)	Conflicting testimony	Haley v. Ohio, 332 U.S. 596 (1948)	
Davis v. North Carolina, 384 U.S. 737 (1966)	14 mile hike in shackles	Harris v. South Carolina, 338 U.S. 68 (1949)	
Haley v. Ohio, 332 U.S. 596 (1948)	Disputed evidence of physical abuse	Ward v. Texas, 316 U.S. 547 (1942)	
Ward v. Texas, 316 U.S. 547 (1942)	Not confirmed	Watts v. Indiana, 338 U.S. 49 (1949)	
White v. Texas, 310 U.S. 530 (1940)	Whipped at night		

Rights		Sleep/Rest	
Case	Specific	Case	Specific
Columbe v. Connecticut, 367 U.S. 568 (1961)		Ashcroft v. Tennessee, 322 U.S. 143 (1944)	Over 1.5 days with no sleep
Harris v. South Carolina, 338 U.S. 68 (1949)		Chambers v. Florida, 309 U.S. 227 (1940)	Kept awake all night
Haynes v. Washington, 373 U.S. 503 (1963)		Clewis v. Texas, 386 U.S. 707 (1967)	Little sleep
Payne v. Arkansas, 356 U.S. 569 (1958)		Leyra v. Denno, 347 U.S. 556 (1954)	Only got 1.5 hours of sleep over 4 days
Turner v. Pennsylvania, 338 U.S. 547 (1942)		Watts v. Indiana, 338 U.S. 49 (1949)	5 days of being questioned for 9.5 hours at night

Social Support	Stranger to Community
----------------	-----------------------

Case	Specific	Case	Specific
Blackburn v. Alabama, 361 U.S. 199 (1960)		Chambers v. Florida, 309 U.S. 227 (1940)	
Brooks v. Florida, 389 U.S. 413 (1967)	No social support for 2 weeks		
Chambers v. Florida, 309 U.S. 227 (1940)	No visitors allowed		
Davis v. North Carolina, 384 U.S. 737 (1966)	Held incommunicado and not allowed to use telephone		
Fikes v. Alabama, 352 U.S. 191 (1957)	Father refused visit		
Haley v. Ohio, 332 U.S. 596 (1948)	Incommunicado for 3 days		
Harris v. South Carolina, 338 U.S. 68 (1949)	Denied benefit of friends		
Haynes v. Washington, 373 U.S. 503 (1963)	Held incommunicado for 5-7 days and could not use telephone		
Malinski v. New York, 324 U.S. 401 (1945)			
Mincey v. Arizona, 437 U.S. 385 (1978)			
Reck v. Pate, 367 U.S. 433 (1961)			
Turner v. Pennsylvania, 338 U.S. 547 (1942)			
Watts v. Indiana, 338 U.S. 49 (1949)			
White v. Texas, 310 U.S. 530 (1940)			

Trickery		Violate Statute/Lack of Charges	
Case	Specific	Case	Specific

Arizona v. Fulminante, 499 U.S. 279 (1991)	Informant offered "protection" from other prisoners	Chambers v. Florida, 309 U.S. 227 (1940)	
Beecher v. Alabama, 389 U.S. 35 (1967)	Medical assistant told him to cooperate	Clewis v. Texas, 386 U.S. 707 (1967)	Held 38 hours before being charged
Columbe v. Connecticut, 367 U.S. 568 (1961)	Illiteracy used against him in not getting a lawyer	Columbe v. Connecticut, 367 U.S. 568 (1961)	Not taken to Magistrate
Columbe v. Connecticut, 367 U.S. 568 (1961)	Trumped up charges used to hold	Columbe v. Connecticut, 367 U.S. 568 (1961)	Trumped up charges used to hold
Columbe v. Connecticut, 367 U.S. 568 (1961)	Wife and daughter used to try and get him to confess	Fikes v. Alabama, 352 U.S. 191 (1957)	
Leyra v. Denno, 347 U.S. 556 (1954)	Asked for doctor and received psychiatrist	Haynes v. Washington, 373 U.S. 503 (1963)	Violation not to allow access to use telephone
Malinski v. New York, 324 U.S. 401 (1945)	Use of friend who implicated defendant	Payne v. Arkansas, 356 U.S. 569 (1958)	No arrest warrant or hearing
Mincey v. Arizona, 437 U.S. 385 (1978)	Nurse told Mincey to cooperate	Turner v. Pennsylvania, 338 U.S. 547 (1942)	
Spano v. New York, 360 U.S. 315 (1959)	Use of policeman "friend"	Watts v. Indiana, 338 U.S. 49 (1949)	
		White v. Texas, 310 U.S. 530 (1940)	