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## Inbau and Reid: Criminal Interrogation and Confessions, 2nd Edition

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Or, as one federal judge put it, if a lawyer is a ham, he will be a ham no more to national television than he is to an empty courtroom.

*Crime and Publicity* ends with the final theme that a determination by the courts and law enforcement agencies to protect defendants from potentially prejudicial news is more important than the exact words of any program. This conclusion regrettably forces the path to run in only one direction. If we are to succeed, the press must sincerely join in this determination. Perhaps the starting point is for both sides to sit together at the conference table without recrimination and discuss the issues with the same candor that permeates this book.

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*Criminal Interrogation and Confessions*, 2nd Ed. BY FRED E. INBAU AND JOHN E. REID. Baltimore: The Williams & Wilkins Company, 1967. Pp. 224. \$8.00.

An interrogator's "work is, so to speak, a kind of free-form of art . . ." spoke one of Dostoevsky's characters in *Crime and Punishment*. Inbau and Reid have achieved a remarkable degree of success in demonstrating that the art of the interrogator is subject to systematic, almost mechanical, application.

One hundred and one years after the Russian novelist wrote that the criminal himself morally demands punishment and public penances, the police investigator is shown how to most effectively accommodate him. One is tempted to ask the authors whether their theories evolved during their years of experience or whether the years of experience merely confirmed for them Dostoevsky's genius in evaluating human nature.

In *Crime and Punishment* we find the suspect being told: "You were very upset over something. Even now, you seem a bit on the pale side," and, "You can't write—the pen drops out of your hand." Inbau advises pointing out to the suspect "pulsations of the carotid artery, excessive activity of the Adam's apple, foot-wiggling, wringing of the hands, and dryness of the mouth."

Dostoevsky's inquisitor seems to excuse crime by stating that it is due to environment. Inbau advises an interrogator to "sympathize with the subject by telling him that anyone else under similar conditions or circumstances might have done the same thing,"<sup>1</sup> and, "Reduce the subject's guilt feeling by minimizing the moral seriousness of his offense."<sup>2</sup>

Inbau suggests that it is a sign of guilt (though not conclusive) when a subject tries to explain away non-existing incriminating evidence which the investigator has told him *does* exist. Dostoevsky has his character state the criminal will try to admit all the superficial and unavoidable facts; "only he will try to find different reasons for them . . ."

Inbau explains the use of what he calls "the friendly-unfriendly act" with two interrogators, one of whom intercedes on behalf of the subject against the unfriendly investigator. Dostoevsky has a similar "Mutt and Jeff" routine operate

<sup>1</sup> INBAU AND REID, *CRIMINAL INTERROGATION AND CONFESSIONS* 38 (2d ed. 1967).

<sup>2</sup> *Id.* at 40.

with Ilya Petrovich playing the hard-hearted man and Nikodim Fomich the compassionate one.

The murderer in *Crime and Punishment* had a strong urge to confess while in the police station, but the impulse vanished when he was distracted by extraneous conversation. Inbau says, "The principal psychological factor contributing to a successful interrogation is *privacy*."<sup>3</sup>

The first edition of *Criminal Interrogation and Confessions*, published in 1962 prior to the decision of the United States Supreme Court in *Escobedo v. Illinois*,<sup>4</sup> explained how to best dissuade a suspect from seeking the assistance of an attorney. The *Escobedo* decision in 1964 was vague enough so that the advice to talk a suspect out of conferring with a lawyer was not exactly obsolete. It became so on June 13, 1966, when in *Miranda v. Arizona*,<sup>5</sup> Chief Justice Warren in the majority opinion castigated the practice and mentioned Inbau and Reid's volume in a dozen footnotes. Hence, the second edition.

For purposes of analysis, it is convenient to consider the three aspects of the book as follows: (1) Tactics and techniques for interrogation of suspects; (2) general suggestions regarding the interrogation of suspects, witnesses, and other prospective informants; (3) the law governing confession admissibility.

It is the unstated thesis of the second edition of *Criminal Interrogation and Confessions* that in the search for truth from a suspect, it is neither fair to him nor efficient for an interrogator to rely upon inspiration of the moment to guide him in his work. Therefore, approximately forty percent of the book's content is a listing and an explanation of tactics and techniques for the interrogation of suspects, and the list runs literally "from A to Z" without the omission of any intervening letters of the alphabet.

Unlike most "how to" texts, this work avoids the use of vague generalities in favor of specific instruction. Each of the authors has more than thirty years experience in interrogating individuals suspected of having committed criminal acts, and an equal period of time conducting post-confession interviews—on at least one occasion in the suspect's death cell shortly before his execution! To one involved in the practice of criminal law, the effectiveness of the instructions contained in this compendium on the elicitation (some might say "extraction") of the truth from a criminal suspect is clear. To any lawyer who abhors the thought that a man might be convicted by his own words, the techniques are too effective. The response of a defense attorney might be similar to that of Dean William L. Prosser whose comment concerning a different treatise was, "This book frightens me. It doth harrow up my soul, make my two eyes, like stars, start from their spheres, and cause my knotted and combined locks to part, and each particular hair to stand on end like quills upon the fretful porpentine."<sup>6</sup>

The rule of thumb suggested by Inbau to guide the interrogator in his questioning is to constantly ask himself, "Is what I am about to do, or say, apt to make an innocent person confess?" It is the well-taken position of the authors that none of the tactics advocated would do so. A section is included on how to avoid being misled by a false confession.

The general suggestions and techniques advocated for obtaining information

<sup>3</sup> *Id.* at 5.

<sup>4</sup> 378 U.S. 478 (1964).

<sup>5</sup> 384 U.S. 436 (1966).

<sup>6</sup> Prosser, Book Review, 43 CAL. L. REV. 556 (1955).

from witnesses and other prospective informants are possibly more valuable to attorneys than to police officers. It is generally acknowledged by attorneys involved in litigation that most cases are won or lost on the basis of facts *as they appear at the trial*. Rhetoric and legal skill alone rarely suffice. Unless the trial lawyer knows that he will always have a competent and dedicated investigator available to him, he would profit by at least reading through the book.

Professor James Thompson of Northwestern University School of Law is credited in the preface for his suggestions in revisions concerning the law governing criminal interrogations. Thompson, who represented the State of Illinois in the *Escobedo* case before the United States Supreme Court, for two years predicted that the Court would expand its holding and require the warnings which were finally spelled out in the *Miranda* decision. One would suspect that it was his influence which led the authors to caution officers to give the right-to-counsel warnings in consent-search situations—even though such has not yet been required by the Supreme Court.

Sixty-eight pages are devoted to the law governing confession admissibility. The personal philosophy of at least one of the authors is evident in the tenor of his comments and criticism of the logic of the Supreme Court. It is not necessary to concur with that philosophy to agree that this is the most lucid and succinct summary of that law currently available.

During a private interview, a widely respected United States Court of Appeals judge stated that he did not feel that it was proper for him to comment concerning the social value of the police employing the techniques advocated by Professor Inbau. He did emphasize, however, that after having read the book, it was clear to him that the authors explained as clearly and as thoroughly as possible the rights of the suspect and cautioned the officers to respect those rights.

What more can be expected, unless it be the complete exclusion of extrajudicial confessions?

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