CRIMINAL INTERROGATION AND CONFESSIONS 3rd ed. By Fred E. Inbau, John E. Reid and Joseph P. Buckley. Williams & Wilkins, 1986 Pp. 353. ($45.50)

The authors claim that the third edition of CRIMINAL INTERROGATION AND CONFESSIONS is "basically and an entirely new book."[1] It is not. Rather, it is an elaboration on and re-organizatrion of the 1967 edition. The themes of all the editions remain the same. First, interrogation is necessary to solve many criminal cases. Second, criminal offenders will not confess their guilt unless questioned in *private* for a period of several hours (the authors suggest that most interrogations should not take more than four hours).[2] Third, in dealing with criminal offenders the interrogator must of "necessity employ less refined methods than are considered appropriate for the transaction of ordinary, everyday affairs by and between law-abiding citizens".[3] This is not to say that the authors condone the "third degree". They certainly do not. They are professional interrogators, who categorically reject physical intimidation in favour of the psychological "coaxing" of a confession.

Approved of are tricks, bluffs, ploys and outright lies all designed to mentally compel a person "thought" guilty to confess. Most assuredly the methods are compelling and would result in more confessions. But does this make it right? To Messrs. Inbau, Reid and Buckley the ends justify the means —more confessions, more convictions, more law enforcement. The book, in fact, is intended for a receptive audience of police, security personnel and prosecutors. As a former member of the defence bar, however, I found the engrossing description of police interrogation tactics and techniques troubling. I certainly have a better understanding of why so many accused persons literally convict themselves through their own words. But at what sacrifice to our system of criminal justice? This question is never addressed by the authors.

Former Chief Justice Warren of the United States Supreme Court read the first edition of CRIMINAL INTERROGATION AND CONFESSIONS. He too found it disquieting. Writing the majority judgment in the landmark *Miranda* v. *Arizona* decision the Chief Justice canvassed various police manuals and texts on interrogation. The first edition of the book was extensively referred to and he concluded:[4]

> Even without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.
> . . .
> It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This

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[1] P. v.
[2] P. 310.
[3] P. xvi.
[4] (1966), 384 U.S. 436 at 455 and 457.

> atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity.

Professor Ratushny in his superb book on self-incrimination referred to a "law and order" perspective versus a "rule of law" perspective, where everyone and that includes accused persons are accorded certain protection.[5] The authors in advocating their "law and order" viewpoint so strongly, in turn, invite strong reaction.

Part I of the book describes the authors' model for police interrogation. The goal of interrogation is "to decrease the suspect's perception of the consequences of confessing, while at the same time increasing the suspect's internal anxiety associated with his deception".[6] The authors rely upon their wealth of experience to provide vivid insights into how this goal is achieved.

Interrogation begins with preparation. Interrogators are admonished to "[i]nvestigate before you interrogate".[7] The interrogation room is prepared. Chapter three details the room, complete with diagrams. All distractions are to be removed. The interrogator is to be seated 4-5 feet from the suspect. Of most importance is that the interrogation is conducted in *private*. The suspect is alone to face the interrogator. The interrogator too is prepared; he is armed with a variety of approaches to use in the interrogation. The key qualities required of the interrogator are patience and persistence. The suspect is escorted to the room by a person, other than the interrogator, who advises that "Mr., Mrs., or Miss _____" will be there shortly. In this way the interrogator has an "exulted status".[8] The suspect is then left to wait; this heightens anxiety. The interrogator arrives and addresses persons of low socioeconomic status as "Mr., Mrs., or Miss", thereby flattering the person, whereas a person of high socioeconomic status is addressed by their first or simply last name in order to defuse the suspect's usual sense of superiority.[9]

The actual interrogation now commences and Chapter six is the heart of the book. Spanning some 120 pages the authors detail nine steps for the interrogation of "suspects whose guilt seems definite or reasonably certain".[10] In essence the interrogation overcomes the suspect's deception and wears the defeated opponent down to the point where he is prepared to confess. "The majority of suspects do not cry at this stage. They do, however, indicate defeat by a blank stare and complete silence. They are

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[5] E. Ratushny, SELF INCRIMINATION IN THE CANADIAN CRIMINAL PROCESS (Toronto: Carswell, 1979) at 40-41.

[6] P. 332.

[7] P. 10. A common criticism of police interrogation is that the interrogation is conducted as a substitute for thorough investigation. *See*, Ratushny, *supra*, note 5 at 206.

[8] P. 37.

[9] Pp. 38-39.

[10] P. 77.

no longer resistant to the interrogator's appeal to the truth."[11] The obtaining of a written confession culminates the interrogation.

The narrative outlining the nine steps makes for interesting reading. A variety of tactics are exposed. The providing of a "moral excuse" is suggested to help accused persons explain their crimes. The excuses include: anyone in the circumstances would have done the same; the crime was an accident or induced by alcohol; blame the victim, blame an accomplice, blame somebody else. For more difficult cases resort to tricks may be necessary: fake the taking of a confession from a co-accused; use the "friendly-unfriendly" interrogation routine to coax the suspect into helping the "friendly" interrogator.

The amount of time spent describing the interrogation of "suspects whose guilt seems definite or reasonably certain" belies a major concern—what if the interrogator is wrong? "Guilt" is based upon the very subjective opinion of the interrogator. An innocent person subjected to the nine steps interrogation may well be defeated by the persistent suggestion that he is guilty. It can happen and particularly susceptible are those of low self-consciousness, the uninitiated, the uneducated and the mentally ill.[12] The authors address this concern in Chapter two, which is four pages in length, and simply caution against the frailties of eye-witness identification and not to jump to "conclusiveness" on the basis of circumstantial evidence. Chapter five does go on to deal with the interrogation of "suspects whose guilt or innocence is considered doubtful or uncertain".[13] Interrogators are to rely upon observations of the suspect's verbal and nonverbal responses. Gross generalizations are cited. "A lying suspect's eyes will appear foggy, puzzled, probing, pleading (as though seeking pity), evasive or shifty, cold, hard, strained, or sneaky. On the other hand, a truthful person's eyes will appear clear, bright, wide awake, warm, direct, easy, soft, and unprobing."[14] The authors' test for permissible practice is that "nothing shall be done or said to the suspect that will be apt to make an innocent person confess".[15] However, Chapter five does little to alleviate the concern that police officers, perhaps less experienced or less thorough than the authors, could wrongly mark a suspect as "guilty", subject that person to the "nine steps" and obtain a false confession.

A second concern is abuse. Custodial interrogation requires privacy and time. In such circumstances psychological compulsion can give way

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[11] P. 165.
[12] *See*, Ratushny, *supra*, note 5 at 244-248.
[13] P. 43.
[14] P. 52.
[15] P. xvii.

to physical abuse.[16] Not all police officers, as noted by the authors, have the necessary temperament and patience to be professional interrogators.[17]

In Part II the authors canvass the American law on interrogation and confessions. This section is largely a response to the *Miranda* decision.[18] In *Miranda* the Supreme Court of the United States mandated certain warnings for a person "taken into custody or otherwise deprived of his freedom by the authorities in any significant way".[19] Such a person had to be warned prior to questioning:[20]

1) that he has the right to remain silent;
2) that anything he says can be used against him in a court of law;
3) that he has the right to the presence of an attorney; and
4) that if he cannot afford an attorney one will be appointed for him prior to any questioning.

In the 1967 edition of the book, Messrs. Inbau and Reid called for the Supreme Court to reconsider the *Miranda* rules.[21] No similar request is made in the third edition. There is no need. Although police interrogation practices offend the spirit of *Miranda*, custodial interrogation is not prohibited.

Custodial suspects must be read the *Miranda* rights, but, as the authors advise, there is no obligation on the police to talk suspects *into* exercising those rights.[22] There is no need either for constant repetition of the caution.[23] Nor is there a need to embellish the warning with the following "gratuitous inclusion": "You can decide at any time to exercise these rights and not answer any questions or make any statements".[24] The viewpoint of the authors is obvious and in summarizing the law on interrogation and confessions their primary purpose is to show prosecutors how to get into evidence confessions obtained through interrogation. The benefit for Canadian readers is that, notwithstanding this bias, a lucid and concise source is provided on the American law. Subjects covered include: the meaning of custody, exceptions to the warning requirement, confession admissibility and waiver requirements.

The American law on these topics takes on more cogency in that we are moving towards a *Miranda* model in Canada. Section 10(b) of

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[16] *See supra*, note 5 at 199-254. Professor Ratushny reveals a number of literal horror stories of police misconduct during the course of interrogations of suspects. His solution is to rule inadmissible into evidence all statements made to police officers prior to trial.

[17] Pp. 35-36.

[18] *Supra*, note 4.

[19] *Ibid.* at 478.

[20] *Ibid.* at 479.

[21] F. Inbau and J. Reid, CRIMINAL INTERROGATION AND CONFESSIONS, (Baltimore: Williams & Wilkins, 1967) at 3. Professor Inbau continues to argue for the direct and quick demise of *Miranda*. See F. Inbau and J. Manak, *Miranda v. Arizona—Is It Worth the Cost?* (1987-88) 24 CAL W.L. REV. 185 at 199.

[22] P. 289.

[23] P. 227.

[24] P. 279.

the *Canadian Charter of Rights and Freedoms* entrenches one leg of *Miranda*, the right to "retain and instruct counsel without delay and to be informed of that right".[25] Interrestingly, there is no mention of this development in the third edition.[26] The Supreme Court of Canada in *R.* v. *Manninen*, in a unanimous decision, extended two additional duties onto the police beyond the section 10 (b) caution: (1) to provide the detainee a reasonable opportunity to exercise the right to counsel and (2) cease questionning until he has a reasonable opportunity to retain and instruct counsel. [27] The Ontario Court of Appeal in the recent decision, *R.* v. *Hicks*, dealt with whether a person has a *right* to remain silent (the first leg of *Miranda*).[28] It was argued in this case that a right to remain silent was a principle of fundamental justice under section 7 of the *Charter of Rights and Freedoms*. The court canvassed the law without resolving the issue in that, on the facts, no "right to remain silent", which would preclude the police from asking questions, could attach to a pre-arrest, pre-dentention admission.

Hicks and the cases surveyed therein show that custodial interrogation questions are ripe for determination before the Supreme Court of Canada. The vivid description of police interrogation presented by Messrs. Inbau, Reid and Buckley is a two-edged sword. The tactics and techniques outlined may be effective, but at the same time unacceptable. In 1966, Chief Justice Warren used their description of interrogation practices to support cautions to be given to persons in custody so that these people are informed that they need not be subjected to such interrogation. Our highest court may do the same. In the last line of their book the authors urge that the courts "should bear in mind the fact that being coaxed into confessing is not the equivalent of being coerced".[29] The issue, however, is not simply the voluntariness of the confession. The dignity and integrity of the criminal justice system which protects all — the guilty and the innocent — must also be considered.

Regardless of viewpoint, the book is a catalyst for thought and is well worth reading by those interested in the Canadian justice system.

*Lee Stuesser**

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[25] Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11, s. 10(b).

[26] The authors do take note of Canadian jurisprudence in that the opinion of Mr. Justice Lamer in *Rothman* v. *The Queen*, [1981] 1 S.C.R. 640 at 677ff., 59 C.C.C. (2d) 30 at 59ff, is cited in support of the authors' contention that the courts have sanctioned the use of tricks and deceit in interrogation.

[27] (1987), 41 D.L.R. (4th) 301, 34 C.C.C. (3d) 385 (S.C.C.).

[28] (1988), 42 C.C.C. (3d) 394 (Ont. C.A.).

[29] P. 325.

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