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Fear factor: How far can police go to get a confession?

By Steve Irsay, Court TV

(Court TV) — In a little more than a day, 18-year-old Peter Reilly went from grieving son to confessed murderer in the gruesome death of his mother in late September 1973.

Reilly returned to his Connecticut home from a church meeting to find his mother's battered and bloody body on the floor of the small bedroom the two shared. State police brought him in for questioning later that night.

At first, the frightened teen denied any involvement in the brutal crime. But interrogators pressed on for eight hours, eventually telling Reilly he had failed an infallible lie detector test. Slowly, his story changed.

"Well, it really looks like I did it," Reilly told police at one point.

There was no physical evidence linking Reilly to the scene nor did he readily remember committing the crime. But he signed a full confession implicating himself and was convicted of first-degree manslaughter, done in by his own words.

But three years later a judge cleared Reilly, citing new evidence and a false confession coerced by investigators.

The debate over police interrogation tactics is fueled by stories like the Reilly case and the case of Michael Crowe, a California teen charged with the murder of his sister in 1998 based on a confession that was later thrown out. In New York, the Central Park jogger rape case was reopened a few months ago more than a decade after five teenagers were convicted of the crime based on videotaped confessions.

For critics, the cases are classic examples of powerful interrogation techniques gone wrong: vulnerable suspects interrogated for hours on end, confronted with false promises and even lies. For supporters of modern police practices, they are tired example of exceptions to the rule.

"Critics recycle the same old stories over and over again, but the frequency is not what is to be suggested," said Joseph Buckley, president of John E. Reid and Associates, considered the nation's foremost interrogation training firm.

There are no definitive statistics on the occurrence of false confessions. Estimates by scholars range from less than 35 to almost 600 each year.

Confessions are one of the most powerful tools in a prosecutor's arsenal, but how far are police allowed to go to get them? Critics and advocates of current police tactics agree that the goal of interrogation is to elicit voluntary and truthful information. They also agree that there are far more gray areas than clear lines when it

comes to the rules of interrogations.

"The law has failed to give police good guidance with regard to coercion and false confessions," said Richard Leo, a University of California, Irvine, associate professor who served as a consultant in the case against one of Crowe's co-defendants. "Police are only taught that you don't shine bright lights on people, you don't beat them up and you give them food and bathroom breaks."

Even this was not always the case.

The early days

In the early 1900s the rules of interrogation and confessions where relatively simple: if you could force it out of them, you could use it against them.

The infamous "third degree" was the name of the game in backroom interrogations. Cops routinely beat suspects with everything from fists to rubber hoses to phone books. Others were hung out windows, drugged, deprived of food and sleep, and questioned for days on end. One of the most creative and depraved tactics was the sweatbox — a tiny room with a stove burning a foul-smelling mixture of coal, bones, rubber and garbage.

It took a Supreme Court ruling to formally end the brutal days of the third degree. It would be the first in a line of decisions that gradually mapped the legal terrain in the interrogation room.

In 1937 the court heard the case of Brown v. Mississippi, in which three black defendants had been found guilty of murder based solely on their "free and voluntary" confessions.

It was later revealed that one of the defendants was repeatedly hung from a tree and whipped before confessing. His co-defendants were beaten with leather straps until they too admitted to the crime. The Supreme Court found that such physical coercion during interrogations was a violation of the constitutional right to due process.

In two decisions in the 1940s, the court clamped down on less brutal tactics like sleep deprivation. It reversed the death sentences of a man who was interrogated for five straight days and another who was convicted of being an accessory to the murder of his wife based on a confession given after 36 hours of questioning.

With physical coercion banned, the court turned to verbal coercion in the famous 1966 Miranda decision. In requiring police to read suspects their rights, including the right to remain silent and the right to a lawyer, the Miranda decision seemed to offer people facing an interrogation either the help of an attorney or an out before tough questioning begins. "If they exercise those rights then the interview should stop right at that point," said Don Rabon of the North Carolina Justice Department, a lecturer and author on interrogations. "Anything you get after that is subject to be thrown out."

Critics of the Miranda decision claimed it would handcuff interrogators because suspects would immediately clam up and lawyer up. But numerous studies show that as many as 80 percent of suspects currently waive their rights.

"Miranda warnings are little more than a speed bump for police officers when they interrogate," said Steve Drizen, a clinical associate professor of law at Northwestern University School of Law (and an expert on false confessions who helped analyze the Crowe case for Court TV).

In addition, the courts have ruled that the Miranda warnings only apply when a person is actually in custody. If a suspect is voluntarily speaking with police during an interview rather than an interrogation and is free to

leave at any time, Miranda doesn't apply.

Once suspects waive their Miranda rights, interrogators are free to begin using many deceptive approaches to interrogation, such as appearing to befriend a suspect, good-cop-bad-cop routines, and suggestive "what if" lines of questioning.

Only direct threats of violence and promises of leniency are clearly prohibited. Beyond that, the Supreme Court has given interrogators some freedoms to lie about things like witnesses and evidence, to the dismay of some critics.

Deceiving the suspect

In 1977 the Supreme Court reviewed the case of Carl Mathiason, who was convicted in Oregon of first-degree burglary based largely on a confession. The state's highest court tossed the conviction, in part because an investigator falsely told Mathiason that his fingerprints were found at the scene. The Supreme Court, however, did not object to the deception and upheld the conviction.

A few years earlier, in the case of Frazier v. Cupp, an Oregon man confessed to second-degree murder after interrogators falsely told him that his accomplice had confessed and was cooperating. The Supreme Court ruled that misrepresenting evidence alone was not enough to disqualify the confession.

"It's not a blanket ability to lie," said David Zulawski, a partner in the law enforcement training firm Wicklander-Zulawski & Associates. "[The courts] will take the person's age, experience with police and other factors and then put that all in a big pile and say whether the confession is admissible."

Critics agree that not all forms of deception increase the chances of a false confession, but it is a slippery slope particularly with regard to certain kinds of deception and certain types of suspects such as juveniles.

"In so many of these false confession cases the presentation of false evidence is the one technique that seems to push the person over the edge," said Prof. Saul Kassin of Williams College, who studies confessions.

While many supporters of modern interrogation tactics say they do not encourage deception, they also do not believe it can make an innocent person confess either.

"The use of deception is a valid approach," said Rabon. "We put officers in undercover work. They are not drug dealers, but they are deceptively playing the role. Deception in and of itself will not cause someone to confess to something they have not done."

But some experts say that deception is what began to overwhelm Michael Crowe.

The Michael Crowe Case

Twelve-year-old Stephanie Crowe was found stabbed to death on the floor of her bedroom in Escondido, Calif., on Jan. 21, 1998. Within weeks her 14-year-old brother Michael and two teenage friends were charged with conspiring to kill her, largely due to their confessions.

After confronting Crowe with some troubling lie detector evidence, lead Escondido police investigator Ralph Claytor told the teen of physical evidence linking him to his sister's murder.

"Its very difficult for the person who did it not to get blood on them and not transfer that blood to other parts of the house," Claytor told Crowe during the videotaped interrogation. "We found blood in your room already."

"God," Michael responded, beginning to cry. "Where did you find it?"

Actually, no blood was found. Investigators later testified that they thought they saw blood but, as the Supreme Court has ruled, there was no need for them to explain their tactic. A judge did find other problems with the ways the confessions were obtained, however, and tossed out all three statements.

During pretrial hearings San Diego Superior Court Judge John M. Thompson ruled that police made illegal promises of leniency to Michael, telling him on several occasions that he would get "help" if he confessed but would go to jail if he didn't. The confessions of the other two teens were excluded because one suspect was denied sleep and food and the other was not properly read his rights.

Later, DNA evidence that pointed to a transient seen in the neighborhood the night of the killing finally destroyed the case against Michael and his friends.

The cases of Crowe and his friends also highlight the special considerations that come with interrogating one of the most vulnerable groups of suspects: juveniles.

Questioning kids

After his sister Stephanie was found murdered, Michael Crowe was placed in protective custody at a children's center with his 10-year-old sister Shannon before being brought in for his first interrogation. He was away from his parents, and he did not have a lawyer.

"Right off the bat things went wrong when the police officers interrogated Michael outside the presence of his parents," said Drizen of Northwestern University. "They were incapable of looking out for Michael's best interest."

In between the landmark Brown and Miranda decisions, the Supreme Court addressed what it saw as the special needs of juveniles when they are dealing with law enforcement.

In 1948 the court took the case of 15-year-old John Harvey Haley, who was convicted of first-degree murder and sentenced to life in prison for his role in the death of a candy store owner during a robbery. During a five-hour interrogation, Haley was without a parent, lawyer or other advisor. Even after he confessed and was imprisoned, a lawyer hired was denied access to the teen.

The court ruled that age was a critical factor in confessions and discussed the need for a teenager to have an "interested adult" present so that "the overpowering presence of the law, as he knows it, may not crush him."

In 1962, the court struck down a conviction based on the confession of a juvenile in the case of Gallegos v. Colorado. A 14-year-old was found guilty of first-degree murder based on a confession given after the boy had been held for five days without seeing a lawyer, parent or other "friendly adult."

Five years later in the case of Gerald Gault of Arizona, the court formally extended the Miranda protections to the 15-year-old who had been detained for making lewd phone calls. In its decision, the court encouraged states to adopt tests to determine whether a juvenile should be eligible to waive Miranda rights.

Presently, 39 states including California, where Michael Crowe was prosecuted, require courts to weigh a combination of factors, such as age, education and experience with the law, in deciding whether an interrogation is admissible, according to the National Center for Juvenile Justice. Eleven states use the presence or absence of a concerned adult as the test, while nine states use an absolute age cutoff to reject juvenile confessions given without the presence of a lawyer or adult.

Getting it on tape

For Michael Crowe, a telling video of almost his entire interrogation was crucial in his confession being thrown out. Many critics of police interrogation techniques see mandatory recording of all interrogations as the best and most likely legal reform to the process. Only two states, Alaska and Minnesota, currently require videotaping.

"We ask judges and juries to evaluate confessions without seeing what went on," said Kassin of Williams College. "It's like a coroner doing an autopsy without the body. It doesn't make sense. I think videotaping will alleviate all the problems."

Law enforcement is divided on the issue of mandatory recording. Some say it will wrongly influence juries and that an absolute requirement would be too restricting.

"I think in many cases it is very impractical," said Buckley of John E. Reid and Associates. "Law enforcement is a very fluid process. You do a lot on the street and on the scene of the crime."

Rabon, of the North Carolina Justice Department, admits that many of his colleagues would disagree, but he supports mandatory recording.

"In the investigative process we ought to be ready for the light of day to shine on everything," he said. "Techniques we use should not be hidden behind a curtain."

More on the Michael Crowe case.

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