

Name _____

The Crucible Argumentative Writing

The Situation:

Getting to the bottom of a crime is a complex process. More than ever before, authorities are using technology to build a case. However, the cornerstone of any good prosecution has been obtaining a confession. There is controversy as to what methods are best to extract information from a suspect and unfortunately these methods being used sometimes go too far.

Your task:

Write a letter to the editor of a newspaper describing tactics detectives **may** use to elicit a confession from a criminal suspect. Argue against these tactics. In your argument, incorporate what you have learned from reading the articles provided.

Read the three (2) articles:

SOURCE 1: (article) "The False confessions in the Central Park Jogger Case" by Elaine Cassel

SOURCE 2: (article) "The Humane Interrogation Technique That Actually Works"

SOURCE 3: (article) "\$41 Million Settlement in Central Park Five Case Gets Final Approval"

SOURCE 4: (documentary) PBS "Central Park Five" Ken Burns, director

When you write your letter, you must make sure you use the information you have gathered from the two of the three articles (sources) you read and THE DOCUMENTARY. Every time you refer to the information from the articles or directly quote an article, identify which source you are using.

EXAMPLES.

Another injustice to young people being interrogated without representation is they may not even understand the Miranda warnings. According to Cassell, "Behavioral science research has shown that teenagers (and many adults) generally don't; they may not understand what is meant by "waiver."

Or

Another injustice to young people being interrogated without representation is they may not even understand the Miranda warnings. "Behavioral science research has shown that teenagers (and many adults) generally don't; they may not understand what is meant by "waiver." (SOURCE 1).

ARTICLE #1

The False Confessions in the Central Park Jogger Case

by ELAINE CASSEL (2002)

On December 5 of this year, the Manhattan district attorney's office made a rare move: It asked a judge to dismiss all charges against five men it had earlier prosecuted.

As teenagers, the men had been convicted and incarcerated for raping a jogger in Central Park in 1989, and they had since served years of jail time for the crimes. Now, however, the actual perpetrator, an older man named Matias Reyes, has been linked to the victim with DNA evidence—after confessing to the rape and assault earlier this year.

What went wrong, and why? Why were the boys convicted in the first place? There is plenty of blame to go around. But their false confessions played a large role, and the circumstances of how those confessions came about are worth a long, close look.

The Jogger Case and Its Miscarriage of Justice

In April 1989, in New York City, violent crime rates—murders, rapes, and robberies—were out of control, and people were afraid to walk city streets. The Central Park jogger case set a record (and served as a symbol) for brutality—it was a violent rape in which the victim was also badly beaten, leading to a lengthy hospitalization.

Five teenagers, ranging in age from 14 to 16 years, who had been implicated in a separate series of muggings, were questioned about the rape. The boys were black; the victim was white. Some say that things began to go wrong right there—that the race factor trumped a search for the truth. The idea of a roving gang of black boys brutally beating and raping a white woman fit the schema of the public's fear of African-Americans and of teenage gangs.

All of the boys made statements to the police, though not one of them admitted to actually having intercourse with the victim. The search for the perpetrator stopped.

Meanwhile, the real perpetrator, Reyes—who had committed a rape a few days before the jogger's, and would go on to rape and kill—remained out there. Even at the time, it was clear that his modus operandi matched the assault and rape of the jogger, but prosecutors did not follow leads relating to Reyes.

Why, when no physical evidence linked the five boys to the crime and their confessions were implausible and mutually contradictory, were the boys convicted?

In part, because a defendant's confession is considered by judges and juries to be compelling and unequivocal evidence. Indeed, the power of a confession is so strong, according to McCormick's

treatise on evidence, as to make other aspects of the trial superfluous. As demonstrated in this case, a confession can even override strong physical evidence to the contrary.

Moreover, at the same time that confessions are viewed as virtually incontrovertible, police are allowed to use a number of wrongful tactics to get them. These tactics greatly increase the possibility of false confessions, and go a long way towards explaining why they occur.

Some Current, Psychologically Coercive Interrogation Tactics Should Not Be Permitted

The Supreme Court limits the admissibility of confessions that are coerced or given without the requisite Miranda warnings. But what counts as coercion?

Torture and beatings are obviously coercive, and were ruled to be so as early as 1936 in *Brown v. Mississippi*. Fortunately, they are largely a thing of the past. (However, in the past couple of years there has been a resurgence of reported violence perpetrated during interrogations in New York City, Los Angeles, and Prince Georges' County, Maryland).

In contrast, psychological coercion, under current rules, does not automatically count as coercion; rather, psychological tactics must be proven to be coercive under a "totality of circumstances" test, as the Supreme Court held in *Haynes v. Washington*.

As a result, officers are indoctrinated into the psychological methods of interrogation designed to get a suspect to confess. Manuals tell investigators, for instance, to use the physical environment to law enforcement advantage, by creating small, starkly furnished, and brightly lit interrogation rooms; they instruct in how to get in a defendant's face and invade his personal space. Officers learn how to conduct long interviews that may span three or four days, with little respect for a suspect's need for sleep, food, or bathroom breaks.

The purpose of all these tactics, of course, to break down recalcitrant suspects. The problem is that they tend to break down vulnerable and innocent people as well as—or perhaps even better than—the hardened and guilty recidivist.

Deceptive Tactics, In Particular, Often Induce False Confessions

Deceptive tactics are also encouraged. Investigators are taught to minimize the likely results of suspects' confessions, and to suggest to suspects that they will get a better "deal" if they talk than if they remain silent. They pretend to identify with the suspects and to offer "rationalizations" for suspects' alleged crimes, suggesting the crimes were not so bad, and thus confessing them wouldn't be so bad, either.

Interrogators are allowed to tell suspects that if they take a polygraph and "pass," they will be released—which is not always the case. Then, once the polygraph has been taken, investigators may lie about its results if they think that would be helpful—telling a defendant falsely that he failed. Consider, for instance, the case of an Egyptian man who was wrongfully charged with lying to the FBI in post-September 11 investigations. He falsely confessed because he was told he had "failed"

a polygraph, and that if he did not confess, the government would make life for his family in Egypt “hell.” His conviction has been overturned, but not until he served 31 days in solitary confinement. Similarly, interrogators are encouraged to falsely tell suspects they believe them to be guilty, and that another suspect or physical evidence has implicated them. That was what happened in the Central Park jogger case: The boys were told that hairs linked them to the victim’s body, which turned out not to be true.

These lies can be very harmful, since the suspect can, through repetition, be induced by the investigator to believe them. Studies show that some people who falsely confess do so because they internalize the repeated suggestions and scenarios of questioners. Nevertheless, offering scenarios for the suspect to buy into, is still a common tactic of investigators.

Indeed, a popular text of investigative techniques explains how to offer alternative explanations for how and why a crime occurred, and encourage the subject to pick “a,” “b,” or “c.” Once the subject makes his choice, the questioner is told to help the subject “fill in the blanks,” often falsely.

A case in point is the infamous false confession of Paul Ingram, a highly suggestible person who confessed to totally incredible allegations of ritualistic sexual abuse against his daughters (subsequently proved to be totally false). Ingram is still serving out a 25-year sentence, because he confessed.

Accusation after accusation was thrown at Ingram, with the encouragement to “think about it,” even “pray over it,” and refresh his memory. He did even more—“confessing” to bizarre, baseless details. Amazingly, as long as deceptive tactics like these are not deemed by a court to be coercive under the totality of the circumstances, the confessions they induce remain admissible. This is true even though statistics show that false confessions are second only to false eyewitness identification in being responsible for wrongful convictions.

Other Factors that Were At Work in the Central Park Jogger Case Interrogations

Manhattan District Attorney Robert Morgenthau’s report supporting reversal of the convictions reveals other troubling aspect of the five suspects’ confessions—besides investigator’s lies that physical evidence linked the boys to the victim’s body.

First, none of the boys admitted actually raping (that is, penetrating) the victim. Second, their tales of time and location of the rape were inconsistent not only with each other, but with statements of reliable witnesses.

Third, the suspects’ conflicting and confusing statements, taken together, made no sense. It seemed, the report notes, as if the boys were talking about different crimes. It also seemed that each expected that talking would enhance his chances of become a witness against others, not a defendant in his own case.

Thus, each of the suspects' statements minimized their own involvement, while placing more blame on one or more of their buddies. Together, however, the statements (though contradictory) were taken by prosecutors, at the time, to amount to a sort of group confession. They were seen that way even though some of the boys refused to admit any guilt on their own part. (Ironically, they served longer sentences as a result of insisting on their innocence).

Playing suspects off against one another, like the other psychologically coercive tactics noted above, is entirely legal, even though it also predictably leads to false confessions. Research shows that some people will say whatever a questioner wants to hear, in order to improve their status at the expense of their partner in crime.

Investigators take advantage of this psychological fact (known as "The Prisoner's Dilemma"); they split up and during breaks, caucus with each other and returned to their suspects armed with information gained from the other. And they may begin plea-bargaining early—suggesting suspects should confess to one crime in exchange for not having to face more serious charges.

Meanwhile, that teens—some of them young teens—were involved heightened the coercive environment of the interrogation. The younger boys may not fully have understood the Miranda warnings. Behavioral science research has shown that teenagers (and many adults) generally don't; they may not understand what is meant by "waiver," and despite the warnings' language, most persist in thinking they will get to go home if they simply cooperate with the authorities.

In addition, teenagers—especially antisocial kids like these—are also egocentric and like to put themselves into the stories they tell (as I discussed in a column about the youthful sniper suspect, John Lee Malvo). At times, they lie; often, they exaggerate. A boy who ran away from the scene, for instance, might not admit it since his flight would not seem macho or manly.

Here, one of the teens also seemed to display borderline mental retardation and perhaps a psychotic mental disorder. In some of his statements, he referred to flying around the park in a blue bus.

People with mental retardation are much more likely to tell any questioner what he or she wants to hear, and people who are delusional are too far out of touch with reality, of course, to make reliable statements.

Despite all these problems, the prosecutors—eager for a conviction—still went forward.

How To Stop It From Happening Again

How can we stop other cases like this from occurring? A number of simple measures could prevent many false confessions like these.

First, children, teenagers, and people with mental deficiencies should not be questioned outside the presence of a competent guardian or legal representative. In this case, none of the boys' parents were present when their children made the most damaging statements against their interests.

Second, all interrogations ought to be videotaped. In this case, the taping did not begin until after the boys had been questioned for hours. As a result, the film shows only the statements, not the psychological and environmental pressures that preceded them. Jurors could certainly get a false impression of the “confessions,” viewing them outside the context of law enforcement tactics. Third, all statements offered as confessions should not be admissible unless they are corroborated by credible and, when possible, physical evidence. Fortunately, most states do have laws that require corroboration of admissions. Unfortunately, the qualitative standard for how good the corroboration must be is quite low. Circumstantial evidence may suffice. Worse, even the statement of an accomplice, as in the Central Park jogger case, is deemed to be enough—despite the accomplice’s obvious incentive to escape responsibility by placing the lion’s share of blame on someone else.

Fourth, there should be strict, carefully-enforced time limits on interrogations. Questioning that goes beyond three or four hours begins to be coercive; questioners intensify their techniques, and subjects become fatigued, confused, even disoriented. In the jogger case, the interrogations—which ranged from fourteen to thirty hours—clearly crossed the line from questioning into coercion.

Fifth, contrary to current Supreme Court standards, law enforcement lies to suspects should be forbidden. As noted above, the “confessions” such lies prompt are often highly unreliable.

Sixth, and finally, prosecutors should be held to their duty to do justice. Because they are immune from suit, they are unaccountable—except to voters—for negligence and fraud. Requiring them to vouch for the evidence produced by their investigators and law enforcement, might make them think twice about putting on any evidence and hoping it sticks.

Defense attorneys can lose their licenses for putting on false and misleading evidence, even though their duty is to defend zealously. Prosecutors, on the other hand, often do so with impunity, even though their duty is to serve justice, not to convict. That needs to stop. Prosecutors should be held as closely accountable for what they do as are defense attorneys.

The Cost of False Confessions

Some observers have expressed little sympathy for the falsely convicted boys, who seem to have been muggers, even if they were not rapists. But of course, a mugging is a world away from a rape, for which they were incarcerated. And more fundamentally, the Constitution guarantees that the punishment fit the crime—not some other, worse crime one did not commit.

In any case, one need not have an excess of sympathy for the boys in order to condemn the injustice done here. One need only have sympathy for the next woman whom the real perpetrator, Reyes, went on to rape and murder, and for the jogger-victim, who did not get justice for 13 years.

They deserved much better. So did the boys, and so do we all.

ELAINE CASSEL practices in Virginia and the District of Columbia. She also teaches law and psychology and is the author of [Criminal Behavior](#) (Allyn & Bacon, 2001). She is a contributor to CounterPunch and [FindLaw Writ](#), where this column originally appeared. Cassel can be reached at cassel@counterpunch.org.

Article #2

\$41-million settlement in 'Central Park Five' case gets final approval

James Queally, LA Times

September 5, 2014

A federal judge approved a \$41-million settlement Friday for five black and Latino men who were wrongly accused in the brutal rape and beating of a Central Park jogger in 1989.

While admitting no wrongdoing, the city will make the payouts to Antron McCray, Kevin Richardson, Raymond Santana Jr., Yusef Salaam and Korey Wise, each of whom served between six and 13 years in prison after the vicious attack captivated the media during a time when New York City was rife with crime and violence.

Eventually, admitted serial rapist Matias Reyes told police he committed the assault, and DNA evidence confirmed the claim.

McCray, Richardson, Santana Jr. and Salaam will each receive \$7,125,000, according to court records, and Wise will be paid \$12,250,000. Each defendant was to be paid roughly \$1 million for each year they were wrongly imprisoned, according to the terms of the settlement.

The five filed a federal lawsuit in 2003, a year after their convictions were overturned, claiming police coerced their confessions. Former Mayor Michael Bloomberg's administration fought the legal challenge for years, but freshman mayor Bill de Blasio has championed the men's case.

"This settlement is an act of justice for those five men that is long overdue. The city had a moral obligation to right this injustice — which is why, from Day One, I vowed to settle this case," de Blasio said in a statement.

Calls to plaintiffs' attorney Jonathan Moore were not immediately returned Friday, but he previously said the sizable settlement serves as an acknowledgment of wrongdoing on behalf of the city.

"It's an amount that is significant enough that it represents an admission the city did something wrong," Moore told The Times last month.

Article #3

The Humane Interrogation Technique That Actually Works

A study finds that confessions are four times more likely when interrogators adopt a respectful stance toward detainees and build rapport, instead of torturing.

By Olga Khazan
December 14, 2014
The Atlantic.com

The Senate Intelligence Committee report released this week found that the CIA tortured terror suspects by, among other things, forcing suspects to stand on broken feet, and blasting detainees with songs such as "Rawhide" at loud volumes on repeat.

Many of the interrogators' actions were shocking and cruel, but some might argue (and some have argued) that torture is a necessary tool for extracting information. This, too, is dubious. The Senate investigation revealed that the CIA learned most of the valuable intelligence it gathered during this period through other means.

Military leaders have known about the pointlessness of torture for centuries. A quote by Napoleon, which was widely shared after the report's release, reads, "The barbarous custom of having men beaten who are suspected of having important secrets to reveal must be abolished. It has always been recognized that this way of interrogating men, by putting them to torture, produces nothing worthwhile. The poor wretches say anything that comes into their mind and what they think the interrogator wishes to know." The French leader wrote that in a letter in 1798.*

Still, there will always be terrorists in the world, and we will always need to pump them for information. So if we don't torture, what should we do instead?

Pretend to be their friends.

A study published this year by Jane Goodman-Delahunty, of Australia's Charles Sturt University, interviewed 34 interrogators from Australia, Indonesia, and Norway who had handled 30 international terrorism suspects, including potential members of the Sri Lankan extremist group Tamil Tigers and the Norwegian-based Islamist group Ansar al Ismal. Delahunty asked the interrogators what strategies they used to gain information and what the outcomes of each interrogation session were.

The winning technique, as BPS Research Digest notes, was immediately clear:

Disclosure was 14 times more likely to occur early in an interrogation when a rapport-building approach was used. Confessions were four times more likely when interrogators struck a neutral and respectful stance. Rates of detainee disclosure were also higher when they were interrogated in comfortable physical settings.

This isn't just theoretical, either. One former U.S. Army interrogator told PRI this week that he was able to break through to an Iraqi insurgent over a shared love of watching the TV show *24* on bootleg DVDs.

"He acknowledged that he was a big fan of Jack Bauer," he told PRI. "We made a connection there that ultimately resulted in him recanting a bunch of information that he had said in the past and actually giving us the accurate information because we had made that connection."

Delahunty notes in the study that even though rapport-building strategies, which included things like humor and expressing concern, were recognized as more effective, interrogators were still more likely to use hardball accusatory strategies when dealing with "high-value" detainees, perhaps because the nature of their crimes were considered too horrendous for buddy-buddy interviewing.

In another study highlighted by BPS, regular people were found to be more supportive of torture if they were told the suspect was a terrorist—but not because they thought the suspect had more information. Their support for torture, in other words, was rooted on a desire for payback, not intelligence.

Torture can either be viewed as a punishment or as a way to gain life-saving intelligence. International conventions prohibit the former. Psychology studies suggest it's ineffective at the latter. Which brings us, once again, back to the question: Why do it?

Source #4 PBS Documentary:

Notes:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.
