


1958

Present Status of Police Literature, The

E. Caroline Gabard

Charles E. Gabard

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

E. Caroline Gabard, Charles E. Gabard, Present Status of Police Literature, The, 48 J. Crim. L. Criminology & Police Sci. 664 (1957-1958)

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

that the confession should be reduced to writing, signed, and witnessed. This is the view shared by the writer.

On the other hand, some investigators are of the opinion that it is better not to reduce the confession to writing but to rely upon the testimony at the trial of those who heard the confession given by the defendant. The reasoning of these devotees of the oral confession is that the new laws and decisions, which enable attorneys to obtain copies of all statements and confessions which the prosecution has in its file, will permit defense counsel to know the details and the extent to which his client has confessed and implicated himself and thereby enable him to draw a defense based on specific items, charges, admissions, and details. The investigators who favor this view feel that a prosecution will be more effective if the evidence of the confession remains solely within the minds of the investigators until such time as these investigators and other witnesses take the stand and orally reconstruct the confession from memory.

It is not my intention to become involved in any discussion as to how the confession should be reduced to writing, whether the question-and-answer-type is better than the narrative form, or how much of the confession should be handwritten by the confessor. This will vary with each investigator and the circumstances at the time the confession is obtained. The courts have held that a written confession need not be in any particular form; in other words, it may be either in narrative or question-and-answer form.

My own preference for a confession is in narrative form. The confessor starts off by stating that the confession is voluntary and given without any inducements or threats and without promises having been made to him.

When the confession is to be typed up by a court reporter or stenographer, or when it is being typed out as it is being given, the writer has the date, city, county, and state placed in the upper right hand corner of the paper. Then the person who is giving the statement is identified, along with those persons who are witnessing the confession. The recorder is also named. Then, the typed document indicates the manner in which the confession is being recorded. If a shorthand reporter is taking it down in shorthand, and in addition there is a wire or tape recorder being operated, that fact is indicated somewhere in the statement or confession.

THE CONFESSOR'S REASON FOR CONFESSING

In order to make the confession more believable, it is my practice to ask the person giving the statement just why he is confessing. Usually, the person will say that he is making the statement because the investigators know the truth anyway, or he will give some other logical and completely plausible reason for incriminating himself.

WARNING OF CONSTITUTIONAL RIGHTS

Much has been said about warning a suspect of his constitutional rights and advising him that he need not give any statement, or that any statement he gives may be used in evidence at his trial. With the exception of the State of Texas, and also as regards confessions obtained from military personnel by military investigators, it is not necessary to advise a suspect or witness of his constitutional rights. The fact that you obtain a confession from an individual without advising him that anything he says may be used against him does not invalidate that confession. For instance, a conviction for arson was upheld even though a deputy state fire marshal had obtained a confession without cautioning the defendant as to his constitutional right to refuse to answer. The court held that "The fire marshal was under no duty to advise the defendant as to his constitutional rights."²

Although this is the status of the law, the writer favors the practice of resorting to the warning after the oral confession and before it is reduced to writing. The confessor is told that he does not have to give the written statement and that he is not required to sign it. The reason for this practice is the added weight and credibility which courts and juries give to confessions when the warning has been given. It is a good investigative practice to warn the suspect of his constitutional rights and to have him write or state that he has been warned and advised prior to giving his confession.

TWO CONFESSIONS

There is an advantage in obtaining from the confessor two separate confessions made under entirely different circumstances. This suggestion results from experience and has been used with excellent results. Several years ago, a state police officer and the writer obtained a confession from a suspect at his home. He confessed to a felony, and after taking a written, signed, and witnessed con-

² *State v. Lloyd*, 152 Wis. 24, 139 N.W. 514 (1913)

fession, we reported to the County Prosecutor having jurisdiction. We decided that a second confession should be taken from the prisoner under entirely different circumstances. The police officer and the writer, who were the only witnesses to the first confession, accompanied the prisoner to the prosecutor's office. We then left the room, and the prosecutor obtained other witnesses and took a second detailed confession. The second confession was also reduced to writing, signed, and witnessed.

Months later at the trial, the defendant pleaded "Not Guilty" and contended that we had obtained the confession by physical cruelty and that it was involuntary in nature. His attorney was evidently unaware of the second confession, as was indicated by his dismay when it was introduced. The prosecutor was able to get both confessions into evidence, and the second confession did much to dispel doubts as to the involuntary nature of the first.

CONCLUSION

By way of summary, the following suggestions are submitted for the consideration of investigators confronted with the responsibility of taking criminal confessions:

1. Do not become discouraged and "let up" on the investigation because you do not get a confession. Work just that much harder. Remember that many cases are made without confessions.

2. When you do get the opportunity for an interrogation which you believe may lead to a confession, prepare for the interrogation and be ready to receive the confession in the proper manner.

3. Avoid questioning or interrogating "in relays" over a period of hours. That is, do not "take turns" with other officers where each one questions for a period of time, leaves the room, and another officer takes over. The courts have held that this method "suggests that force or coercion was used".

4. Avoid continuous questioning over a lengthy period of time.

5. Do not make any threats, promises, or inducements in an effort to obtain the confession.

6. Interrogate in privacy, but after the confession is obtained, have several good, reliable witnesses come in, and have the confessor repeat the confession in their presence.

7. Reduce the confession to writing, and have it properly signed and witnessed. Include several errors, and have the confessor make corrections and sign or initial them.

8. Use the language of the confessor throughout the written confession, including grammatical errors, slang, and swear words.

9. Include complete details of the crime, including time, dates, premeditation; identify others involved, and include any additional evidence.

10. Include in the confession some details that only the guilty party would know.

11. Try to make the confession completely believable by having the confessor state just why he is giving the confession.

12. Have the confessor relate such facts as proper treatment, of his having been fed, and given an opportunity to go to the toilet; and also that his confession is entirely voluntary in nature.

13. After you have taken the confession, have the confessor re-enact the crime.

14. When your confession is completed, have several responsible persons who were not present, or in any way involved with the first confession, take a second confession under entirely separate and different circumstances, including another interrogation room in another building.

15. Take your confessions on the assumption that they are going to be repudiated by the confessor, challenged by a defense attorney, and viewed with skepticism and disbelief by the court—because there is a good possibility that is exactly what will happen to your confession!