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THE THIRD DEGREE AND LEGAL INTERROGATION OF SUSPECTS

EDWIN R. KEEDY †

I

Twenty-five years ago the present writer published two editorials directed against the practice of the third degree.¹ The occasion for the publication of these editorials was the notorious Conway Case in Chicago, in which police officers, by the continuous questioning of a woman for forty-eight hours, secured a statement that her husband was guilty of murder.² The officers, apparently proud of their activities, gave interviews to newspaper reporters during the course of the questioning, stating the progress being made in their efforts to secure an incriminating statement.

At the time when the editorials referred to were published, considerable public interest had been aroused by reports of brutal methods employed by the police in their efforts to secure incriminatory admissions and confessions. The term "third degree"³ had a short time previously been employed to

† A. B., 1899, LL. D., 1927, Franklin and Marshall College; LL. B., 1906, Harvard University; Professor of Law, University of Pennsylvania; Reporter (with William E. Mikell) for the American Law Institute's proposed CODE OF CRIMINAL PROCEDURE; author of *The Decline of Traditionalism and Individualism* (1918) 65 U. OF PA. L. REV. 764, and of numerous articles in other legal periodicals.

1. *The Third Degree and Trial by Newspapers* (1912) 3 J. CRIM. L. AND CRIMINOL. 502; *The Third Degree and the Position of the Trial Judge in Illinois* (1912) 7 ILL. L. REV. 303.

2. "So far as appears, the woman was not struck nor beaten by the officers, but was deprived of sleep for 48 hours and was subjected to continued questioning and dramatic confrontations until, after several fainting spells and an attack of hysterics, she broke down completely and confessed that her husband committed the murder in question." *Id.* at 304.

3. "Third degree, originally an American slang or cant term, but now in common use in the United States and coming into such use in Great Britain, to designate the employment of brutal methods by police or prosecuting authorities to extort information or confessions from persons in custody. The phrase is believed to have been suggested by the third masonic degree, that of master mason, which is conferred with considerable ceremony.

"The phrase as often employed includes not only the use of physical violence, but also such forms of torture as depriving a prisoner of food, drink, sleep and toilet facilities and the prolonged and uninterrupted interrogation of him when exhausted, suffering and broken down

describe these methods, and a number of adversely critical articles and editorials had appeared in legal periodicals.⁴ In seven states statutes had been recently enacted making it a criminal offense to employ methods designated as improper for the purpose of obtaining confessions.⁵

In the year 1910 the question of the third degree was debated at the meetings of the Academy of Political and Social Science and of the International Association of Chiefs of Police. The police officers who participated in these discussions generally denied that there was any such practice as the third degree.⁶ Some statements were made, however, from which it

by such deprivations. It is more commonly applied however to those forms of physical assault (such as beating with a rubber hose) which produce pain but leave no traces." 22 *ENCYCLOPEDIA BRITANNICA* (14th ed. 1929) 135.

4. *The Third Degree, Ancient and Modern* (1906) 10 *LAW NOTES* 151; *Psychology and the Third Degree* (1907) 19 *GREEN BAG* 720; *The Third Degree in Its Constitutional Aspects* (1909) 38 *NAT. CORP. REP.* 789; *The Third Degree in Its Constitutional Aspect* (1909) 18 *BENCH AND BAR* 9; *The Third Degree* (1910) 33 *N. J. L.* 259; *Spur, The Third Degree* (1910) 16 *CASE AND COMMENT* 370; Hochheimer, *The Third Degree—an Illegal Procedure* (1910) 71 *CENT. L. J.* 24; Thomas Byrnes and *The Third Degree* (1910) 21 *BENCH AND BAR* 91; Chesebro, *The Third Degree Illegal* (1911) 4 *LAWYER AND BANKER* 6; Kelly, *Third Degree Outrages* (1912) 5 *LAWYER AND BANKER* 300.

5. Louisiana, Acts 1908, p. 66 [*LA. CODE CRIM. PRO.* (Dart, 1935) art. 777]; Colorado, Laws 1909, pp. 468-9 [2 *COLO. ANN. STAT.* (Courtwright's Mills, 1930) § 1789]; Washington, Laws 1909, p. 1001 [4 *WASH. REV. STAT. ANN.* (Remington, 1932) tit. 14, § 2611 (5)]; Indiana, Acts 1911, p. 6 [IND. *STAT. ANN.* (Baldwin, 1934) § 2143]; Montana, Laws 1911, p. 158 [5 *MONT. REV. CODE ANN.* (1935) §§ 10923, 10924]; Nevada, *REV. LAWS* (1912) § 6266 (enacted 1911) [5 *NEV. COMP. LAWS* (Hillyer, 1929) § 10488]; Kentucky, Acts 1912, pp. 542-3 [KY. *STAT.* (Carroll, 1936) § 1649b-1, -2, -4]. Edward Livingston in his *PROJECT OF A NEW PENAL CODE FOR THE STATE OF LOUISIANA* (1824) provided that, "No person accused of any offense shall be compelled by violence or menace to answer any interrogations relative to his innocence or guilt; nor shall his confession, unless it be given freely, without violence, menace, or promise of indemnity or favor, be produced in evidence against him." At p. 106. Nearly a century later this provision was in substance included in the Constitution of Louisiana as follows: "No person under arrest shall be subjected to any treatment designed by effect on body or mind to compel confession of crime; nor shall any confession be used against any person accused of crime unless freely and voluntarily made." *LA. CONST.* art. I, § 11.

The Legislature of Illinois in 1847 enacted the following provision: "If two or more persons shall commit an assault and battery on, or shall imprison another within this state, for the purpose of obtaining a confession or revelation tending to criminate the person assaulted, or any other person, or shall assault and batter, or imprison another on account of a refusal of such person to make such confession or revelation, the persons so offending, on conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than one year, nor more than three years." Ill. Laws 1847, p. 84 [*ILL. REV. STAT.* (Cahill, 1933) § 370].

6. "Volunteer confessions and admissions made after a person has been cautioned that what he states may be used against him are all there is to the so-called 'third degree'." Major Richard Sylvester, Supt. of Police, Washington, D. C., in *PROC. 17TH ANN. MEETING INT'L ASS'N CHIEFS OF POLICE* (1910) 57.

"I have been connected with the police department for twenty-five years, and I have yet to discover the 'third degree'." John B. Taylor, Supt. of Police, Philadelphia, *id.* at 65.

"There may be a voluntary statement, but the 'third degree' manner is absolutely misguided information that is furnished to the public through the press." Henry D. Cowles, Chief of Police, New Haven, Conn., *id.* at 73.

"'Sweating or third degree system' is an imaginary something—derived from the brain of some bright news writer. The only interrogation of an accused person, and he must be one accused of a serious crime, is to ascertain from that person, by examination and questioning, how much he may know of the crime he is accused of committing." William F. Baker, former Police Commissioner of New York City in (1910) 36 *ANNALS* 9.

appears that the use of a certain amount of pressure to secure confessions was favored.⁷

Two decades after the period covered in the foregoing discussion there was renewed interest in the problem of the third degree. In 1928 a committee of the Association of the Bar of the City of New York presented a report discussing the problem in New York and urging a thorough investigation by some official body, which would have the power to subpoena witnesses.⁸ In 1930 the Committee on Lawless Enforcement of the Law presented a report condemning the third degree to the Section on Criminal Law and Criminology of the American Bar Association.⁹ In the following year appeared the comprehensive and able *Report on Lawlessness in Law Enforcement* by the National Commission on Law Observance and Enforcement (Wickersham Commission). With regard to the prevalence of third degree methods throughout the country the report contains the following statement: "After reviewing the evidence obtainable the authors of the report¹⁰ reach the conclusion that the third degree—that is, the use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions—is widespread. Protracted questioning of prisoners is commonly employed. Threats and methods of intimidation, adjusted to the age or mentality of the victim, are frequently used, either by themselves or in combination with some of the other practices mentioned. Physical brutality, illegal detention, and refusal to allow access of counsel to the prisoner is common. Even where the law requires prompt production of a prisoner before a magistrate, the police not infrequently delay doing so and employ the time in efforts to compel confession."¹¹ The report lists sixty-seven cases from 1920 to 1930 inclusive "in which appellate courts found it to be proved that third degree methods were used to extort confessions from suspected criminals."¹² The proposed *Code of Criminal Procedure* of the American Law Institute, published in 1930, contains the following provision: "No peace officer, or other official engaged in administering the crim-

7. "I do not believe that there is a Chief of Police in the United States, or a police department, that would use undue means in obtaining a confession, but we all know, as chiefs of police, that we have to go through certain methods in getting confessions, and in almost every case it is the criminal himself who exaggerates the treatment he has received." Henry Behrendt, Chief of Police, Lansing, Mich., in PROC. 17TH ANN. MEETING INT'L ASS'N CHIEFS OF POLICE (1910) 65.

"Of course there are certain methods which are used, and those methods are for the benefit of the public, and I feel that when a man commits an act in violation of law, he should be made to suffer for his offense." John B. Taylor, Supt. of Police, Philadelphia, *id.* at 66.

8. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK YEARBOOK (1928) 235.

9. Published as a pamphlet.

10. Messrs. Zechariah Chafee, Jr., of the Harvard Law School, and Walter H. Polak and Carl S. Stern of the New York bar, consultants of the Commission.

11. At p. 4.

12. At p. 52. An interesting discussion of these cases is found in a note, *The Third Degree* (1930) 43 HARV. L. REV. 617.

inal law, shall use oppressive methods of any kind for the purpose of securing a confession or other evidence of guilt from an arrested person.”¹³

Since 1930 appellate courts in a number of cases have reversed convictions because confessions obtained by various forms of the third degree had been admitted in evidence. The most important of these are *People v. Mummiani*¹⁴ and *Brown v. Mississippi*.¹⁵ In the Mummiani case the defendant was questioned for about twenty-four hours without food and then said he would confess if food was given him. He testified that he was also beaten by the officers, but they denied this. Lehman, J., in his opinion, made the following statement: “The growing number of instances in which officers of the police force stand accused at our bar of threats and brutality in the extortion of confessions is a cause of deep concern to all the judges of the court. We feel it a solemn duty, irrespective of the outcome of this cause, to remind the officers of the law that the suspicion now attaching to them has been fostered by their own conduct, at times by abuse of power, not amounting in itself to violence or coercion, but furnishing the soil out of which violence and coercion spring, at times by sheer indifference, a cynical refusal to inquire where relentless pressure of the probe would be likely to reveal too much.”¹⁶

In the *Brown* case, where three defendants were suspected of murder, a deputy sheriff accompanied by several other persons accused one of the defendants of the crime. Upon his denial they hanged him with a rope to the limb of a tree and then, having let him down, they hanged him again. After having let him down the second time, he was severely whipped. A day or two later he was whipped again by the deputy sheriff, who told him he would be whipped until he confessed, which he then did. The other two defendants were severely whipped until they confessed. The only evidence against the defendants at the trial was their confessions, but on the strength of these they were convicted. The Supreme Court of Mississippi affirmed the conviction,¹⁷ but it was reversed by the Supreme Court of the United States on the ground that there was a violation of the due process of law provision of the Fourteenth Amendment. In rendering the opinion of the Court, Chief Justice Hughes said: “It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus

13. Sec. 38.

14. 258 N. Y. 394, 180 N. E. 94 (1932).

15. 297 U. S. 278 (1936). Other cases are *People v. Dye*, 119 Cal. App. 262, 6 P. (2d) 313 (1931); *State v. Newton*, 173 La. 382, 137 So. 69 (1931); *People v. Mellus*, 134 Cal. App. 219, 25 P. (2d) 237 (1933); *Jackson v. State*, 226 Ala. 72, 145 So. 656 (1933); *Thompson v. State*, 124 Tex. Crim. App. 440, 63 S. W. (2d) 849 (1933); *State v. Wickman*, 39 N. M. 198, 43 P. (2d) 933 (1935); *Chambers v. State*, 123 Fla. 734, 167 So. 697 (1936); *Cobb v. Commonwealth*, 101 S. W. (2d) 418 (Ky. 1936).

16. 258 N. Y. 394, 399, 180 N. E. 94, 96 (1932).

17. 173 Miss. 542, 158 So. 339 (1935).

obtained as the basis for conviction and sentence was a clear denial of due process." ¹⁸

Bills directed against the third degree were introduced in the present sessions of the legislatures of Pennsylvania and New York. These bills attack the problem from entirely different angles. The Pennsylvania bill is as follows: "Any person who shall wilfully inflict or who, being in a position of authority, permits to be inflicted any bodily harm upon any person charged with or suspected of having committed any crime or with having knowledge thereof for the purpose of procuring a confession or information regarding the said crime shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine not exceeding five thousand dollars and to imprisonment either at labor by separate or solitary confinement or to simple imprisonment not exceeding ten years. Any person convicted of said offence shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust, or profit under this Commonwealth or any political subdivision thereof." ¹⁹

Two bills were introduced in New York. The first of these provides that a record shall be kept of every person in detention, setting forth *inter alia* the time of arrest, the time when taken to the place of detention, any transfer from such place, and all interviews of police, prosecutors, other public officials, or any other person.²⁰ The bill further provides that a physical examination by an official physician shall be made of every arrested person as soon as taken to a place of detention.²¹ The other bill, which provides that an arrested person shall be *immediately* taken before a magistrate, contains the following provision: "In no event is the arrested or otherwise detained person to be taken to any police station for questioning, investigation, detention, or for any other purposes not consistent with the provisions of this section, prior to his being brought before the magistrate or placed in a prison, jail, or other institution above described pending his production before the magistrate." ²² It will be noted that, while the Pennsylvania bill simply punishes the infliction of bodily harm already inflicted, the New York bills provide for the establishment of a procedure designed to *prevent* all forms of the third degree.

In addition to statutes making the third degree a criminal offense ²³ and preventive measures such as contained in the New York bills the following are some of the proposals that have been presented as remedies for the practice: (1) A statute making confessions obtained by police officers inadmis-

18. 297 U. S. 278, 286 (1936).

19. Pa. Sen. Bill No. 852, introduced Apr. 6, 1937.

20. N. Y. Sen. Bill No. 538, introduced Feb. 4, 1937, § 1.

21. *Id.* at § 2.

22. N. Y. Sen. Bill No. 539, introduced Feb. 4, 1937, § 1.

23. A recent inquiry made in the states where such statutes have been enacted indicated that they have proved to some extent successful as deterrent measures.

sible in evidence;²⁴ (2) Improvement of the efficiency of police officers;²⁵ (3) Employment of so-called scientific methods, such as the "lie detector," to determine guilt or innocence of defendants;²⁶ (4) Extension of the public defender system;²⁷ (5) Allowance of comment on failure of the defendant to testify;²⁸ (6) Legislation authorizing judicial interrogation of persons suspected or accused of crime.²⁹ The present writer has been particularly interested in the last of these proposals,³⁰ and in the summer of 1936 he made an investigation of the situation in France where interrogation of suspects is authorized by law.³¹

II

French law authorizes the interrogation, at various stages of the proceedings, of a person suspected or accused of crime. The *Code d'Instruction Criminelle*, adopted in 1808, specifically provides for this interrogation by the investigating magistrate (*juge d'instruction*),³² and also by the official prosecutor (*procureur*) when the offense involved is of a serious nature (*crime*) and may be described as "*flagrant*."³³ A law passed in 1863³⁴

24. See discussion of this proposal in Kauper, *Judicial Examination of the Accused—a Remedy for the Third Degree* (1932) 30 MICH. L. REV. 1224, 1226.

25. Larson, *Present Police and Legal Methods for the Determination of the Innocence or Guilt of the Suspect* (1925) 16 J. CRIM. L. AND CRIMINOL. 219, 252; Smith, *Municipal Police Administration* (1929) 146 ANNALS 1, 21; Chafee, *Remedies for the Third Degree* (1931) 148 ATL. MON. 621, 629.

26. See discussion of such methods by Chafee, *id.* at 627.

27. HOPKINS, OUR LAWLESS POLICE (1931) 354. "Perhaps a watchful Public Defender or a zealous committee of the bar association (as in Los Angeles, California) would prove to be a remedy for the third degree." CANTOR, CRIME, CRIMINALS AND CRIMINAL JUSTICE (1932) 157.

28. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT (1931) 5; *On the Third Degree* (1932) 23 J. CRIM. L. AND CRIMINOL. 370; HOPKINS, *op. cit. supra* note 27, at 354; Spence, in PROCEEDINGS OF THE GOVERNOR'S CONFERENCE ON CRIME (N. Y., 1935) 690.

29. KNOX, *Self Incrimination* (1925) 74 U. OF PA. L. REV. 139, 153; NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, *loc. cit. supra* note 28; Untermeyer, *The Third Degree* (1931) 133 NATION 600; Kauper, *supra* note 24; Pound, *Legal Interrogation of Persons Accused or Suspected of Crime* (1934) 24 J. CRIM. L. AND CRIMINOL. 1014; Pecora, *Are the Criminal Courts Doing Their Duty?* in PROCEEDINGS OF THE ATTORNEY GENERAL'S CONFERENCE ON CRIME (1934) 171. Mr. Kauper's proposal is as follows: "(1) That the accused be promptly produced before a magistrate for interrogation; and, (2) That the interrogation be supported by the threat that refusal to answer the questions of the magistrate will be used against the accused at the trial." Kauper, *supra* note 24, at 1239.

30. When the chapter on Preliminary Examination of the American Law Institute's CODE OF CRIMINAL PROCEDURE was being prepared, the draftsmen gave careful consideration to the question whether there should be inserted a provision authorizing the examining magistrate to interrogate suspected persons, in other words, whether the "inquisitorial system" should be adopted. The decision was in the negative, one of the reasons being the following: "While the chief reason advanced by those who favor the system is that it will do away with the third degree, there is no assurance that such result would follow." AMERICAN LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE (Tent. Draft No. 1, 1928) 27.

31. The writer was accompanied by Chauncey M. Depuy, Jr., a Gowen Memorial Fellow of the University of Pennsylvania, whose valuable assistance in the preparation of this article is gratefully acknowledged.

32. CODE D'INSTRUCTION CRIMINELLE (C. I. C.) art. 93, as amended by the law of Dec. 8, 1897.

33. C. I. C. art. 40. An offense is *flagrant* which (1) is being presently committed or (2) has just been committed. It is also treated as *flagrant* (1) where it is denounced by pub-

gives the *procureur* the right to interrogate in case of a less serious offense (*délit*) which is *flagrant*. The *juge d'instruction* may in some instances delegate his right to certain specified judicial officials³⁵ and the *procureur* may authorize police officials, who serve as his assistants, to conduct the interrogation.³⁶ The most important of these officials is the *commissaire* of police. Although it is not specifically authorized in the Code, it is nevertheless clearly established in practice that the *procureur* and his police assistants may interrogate a suspect during his investigation of the case (*enquête officieuse*) before referring the case to the *juge d'instruction* or sending it to the *tribunal correctionnel* for trial.³⁷

At the trial the accused is interrogated by the president of the court. When the offense is a *délit* the trial is in the *tribunal correctionnel*, which is specifically given the power to interrogate the accused.³⁸ In the case of a *crime*, the trial is in the *cour d'assises*, the president of which interrogates under a provision of the Code giving him a discretionary power by which he may do anything which he considers useful for ascertaining the truth.³⁹ Thus a defendant in the course of the proceedings against him may legally be subjected to interrogations by four different officials, the *commissaire* of police, the *procureur*, the *juge d'instruction*, and the president of the trial court.

The defendant may refuse to answer the questions put to him, and it is illegal to employ coercive measures to compel him to answer. This is true whether the interrogation is conducted by the *commissaire*,⁴⁰ the *procureur*,⁴¹ the *juge d'instruction*,⁴² or the president of the trial court.⁴³ However, an unfavorable inference may properly be drawn from the refusal to answer.⁴⁴

lic clamor, as where there are cries of "Stop, thief," and (2) where, shortly after the commission of the offense, the suspect is in possession of effects, weapons, or papers which raise the presumption that he participated in the commission of the offense. *Id.* at art. 41.

34. Law of May 20, 1863, art. 1.

35. C. I. C. art. 90, as amended by the law of March 25, 1935, art. 4.

36. C. I. C. art. 52; 3 GARRAUD, *TRAITÉ D'INSTRUCTION CRIMINELLE ET DE PROCÉDURE PÉNALE* (1912) 284.

37. 2 LE POITTEVIN, *DICIONNAIRE-FORMULAIRE DES PARQUETS ET DE LA POLICE JUDICIAIRE* (1928) 244; 2 GARRAUD, *op. cit. supra* note 36, at 626.

38. C. I. C. art. 190.

39. C. I. C. art. 268.

40. DEVIENNE, *GUIDE PRATIQUE À L'USAGE DES OFFICIERS DE POLICE JUDICIAIRE* (1931) 19; LOCARD, *L'ENQUÊTE CRIMINELLE ET LES MÉTHODES SCIENTIFIQUES* (1920) 100; PASCAL, *LE RÔLE JUDICIAIRE DU COMMISSAIRE DE POLICE* (1922) 35; SUZZONI, *LE COMMISSAIRE DE POLICE* (ed. 1937) 371.

41. NADAU, *DÉS ENQUÊTES OFFICIEUSES DANS L'INSTRUCTION CRIMINELLE* (1913) 138.

42. "In the first place, when the suspect is interrogated [by the *juge d'instruction*], he is subjected to no coercion; he is free to keep silent, and, if he answers, he is free to answer what he wishes." 2 FAUSTIN-HÉLIE, *TRAITÉ DE L'INSTRUCTION CRIMINELLE* (1865) 404. To the same effect is MIMIN, *L'INTERROGATOIRE PAR LE JUGE D'INSTRUCTION* (1926) 34.

43. "The law does not authorize the use of any method, direct or indirect, of coercion for the purpose of obliging him [the accused] to answer the questions put to him." 2 GARRAUD, *op. cit. supra* note 36, at 230.

44. "Without doubt in the present state of our judicial practice, the refusal of the suspect to answer the questions of the *juge d'instruction* may create an unfavorable presumption against him in the trial courts . . ." Comment of the *Cour de Cassation* on the *projet* for

At the start of the writer's investigation to determine whether, notwithstanding the authorized interrogations of suspects and the legal inference that may be drawn from a refusal to answer, French police officials employ coercive measures to obtain confessions, it was discovered that the most notorious case was that of Almazian. On September 30, 1929, Michel Almazian,⁴⁵ a Russian Armenian, was arrested on suspicion of having murdered an accountant named Rigaudin. Almazian was interrogated over a period of forty-eight hours and then released. Several weeks later he was subjected to further intensive questioning regarding which one of the police officials gave the following interview:⁴⁶ "The man is very curious. At times he perspires in great drops, looks for words and seems to be losing his footing. At other times on the contrary, he seems to regain his assurance. It will be difficult to get anything out of him."⁴⁷ There was also evidence that Almazian had been beaten during the course of the investigation. After the questioning the police turned him over to the custody of the *juge d'instruction* and about a week later he filed charges against the police officials who conducted the examination.⁴⁸ The case was given much publicity and on November 29th became the subject of a debate in the Chamber of Deputies. On behalf of the police it was admitted that Almazian's body showed the marks of blows, but it was contended that they were given in subduing an attack by Almazian. To this a deputy replied, "It is always the same story; it is the soldier's cheek that struck the adjutant's hand."⁴⁹

In connection with a statement regarding many other instances of improper conduct by the police, another deputy answered an inquiry as to why formal complaints are not more frequent as follows: "Those who are arrested in such an arbitrary manner depart so terrorized that even when they are innocent, even when they are the victims of this arbitrary arrest, they do not want for anything in the world to have any new dealings with the police, because they retain too vividly in memory the real tortures inflicted on them."⁵⁰

the law of Dec. 8, 1897, quoted in OLIER, *LA RÉFORME DE L'INSTRUCTION PRÉPARATOIRE* (1898) 104. "His refusal to answer [at the trial] may bring about in the minds of the judges and jurors an unfavorable opinion regarding him, but this is the only consequence and the only penalty of his obstinacy," 2 GARRAUD, *loc. cit. supra* note 43.

45. The name appears also as Almazof and Almazoff.

46. All translations were made by the writer of this article.

47. SIFNÉOS, *L'ORGANISATION DE L'INSTRUCTION ET LES GARANTIES DU PRÉVENU* (1930) 242.

48. *Le Journal* (Paris), Nov. 15, 1929, p. 4.

49. M. Henri Gamard in *JOURNAL OFFICIEL, DÉBATS PARLEMENTAIRES, CHAMBRE DES DÉPUTÉS* (Sess. Extra., Nov. 29, 1929) 3679, col. 1. Following is a newspaper account of Almazian's experience with the police: "What occurs during these fifty hours? Almazian asserts that he was handcuffed and beaten. According to his statements, he was struck with a hammer on the joints of his fingers, punched in the stomach and his feet were pounded. He filed a complaint. Dr. Paul, appointed to examine him, found three bruises on his back, each five centimeters long, one along the spinal column, one above and one below the left breast, a wound on the right and a contusion on the left forearm, one on the right biceps and a stiffening of the right thumb." *Le Journal*, Nov. 14, 1929, p. 1.

50. M. Georges Monnet in *JOURNAL OFFICIEL*, cited *supra* note 49, at 3678, col. 3.

During the debate of the Almazian case in the Chamber of Deputies certain other instances of improper police conduct in examining suspects were mentioned. M. Pierre Cot, addressing the Minister of Justice, recounted the following case:

"It was in the last days of last August. A person had been arrested, brought to the station of the *police judiciaire*,⁵¹ subjected to that grilling (*cuisine*) concerning which M. Lafont has, with so much wit, unveiled the secrets and, if I may say so, the somewhat barbarous 'sauce.' He confessed. The case came before the *tribunal correctionnel* and there it was definitely established, by virtue of a report of Dr. Paul, that this person was beaten. The *tribunal correctionnel* acquitted him. By acquitting him, it condemned the police who had obtained the confessions, which the judicial authority has said were extorted by force and consequently of no value.

"*Monsieur*, the Minister of Justice, consult the judges who surround you. They will cite you similar cases."⁵²

M. Georges Monnet stated the two cases which follow:

"Are not the trials full of analogous examples? You can find there the story of the worker, employed by the Paris Transit Company, who was, some twelve years ago, prosecuted for several aggravated thefts. His counsel proved that on the day he was accused of having committed these thefts which he had confessed at the *police judiciaire*, he was employed in the repair of certain tramway lines where his presence was attested by time checks made every half hour. His confessions, extorted by violence at the *police judiciaire*, despite the denials of them which he made before the *juge d'instruction*, would certainly have brought about his conviction if he had not been able to furnish this alibi, which it was possible to produce in time to avoid an error of justice."⁵³

"Here is another example not less illustrative taken from the judicial annals, which shows that these proceedings are not exceptional. About two years ago, during a trial in the *tribunal correctionnel*, a defendant complained of having been the victim of violence by the police, who in this way extorted confessions which he had retracted before the *juge d'instruction*.

"'Why did you confess?' asked the president. 'Because I was struck by the officer,' he replied.

"The police officer was brought in, astonished. 'How can I be reproached for having struck this defendant? I am precisely one of those rare officers who never strike.'"⁵⁴

51. A group of officials whose duty it is to make the preliminary investigation of suspected offenses.

52. *Id.* at 3689, col. 3.

53. *Id.* at 3680, col. 1.

54. *Ibid.* at col. 2.

During the course of the debate in the Chamber of Deputies statements were made indicating the coercive measures employed by the police. M. Georges Monnet, quoting Senator Delthil, a former *procureur*, described the practice of keeping a suspect in "detention which lasts ordinarily forty-eight hours, which may last three days, and in the course of which the police employ the same methods of investigation as existed under the old regime and do not seem to have been abolished in the capital of France; torture seems not to have been eradicated;—it is no secret that the *passage à tabac*⁵⁵ is still rife."⁵⁶ M. Henri Guernut said: "If the police only limited themselves to interrogating. But they use, in these interrogations, extraordinary methods. M. Monnet has shown us that the '*passage à tabac*' is not a legend. And he has not left us in ignorance of other forms of '*passage à tabac*,' namely, moral, which, by intimidation and deception, are adapted to obtaining confessions, and which constitute, also, a sad reality."⁵⁷

Following the discussion in the Chamber of Deputies, there was continued agitation on behalf of Almazian. On April 11, 1930, the body of judges whose function it is to find indictments (*chambre des mises en accusation*), decided the evidence against Almazian was insufficient to justify an indictment and ordered his release from custody.⁵⁸ Five days before this action, M. André Benoist, the director of the *police judiciaire*, because of his connection with the investigation of the case was removed from his post.⁵⁹

The following statements of a number of writers indicate that the Almazian case was simply one instance of an existing practice:

"The investigation which I have just conducted enables me to assert that the general opinion at the *Palais* is that these practices are frequent, if not usual."⁶⁰

"In the absence of any counsel, and by methods concerning which the Almazian scandal resulted in opening the most obstinately closed eyes, the unfortunates, shut up face to face with robust and not very gentle police officers, were subjected to interrogations occasionally some-

55. A slang expression, the origin of which is obscure, used to indicate brutal treatment by police officers.

56. *Ibid.* at col. 1.

57. *Id.* at 3683, col. 1. M. Tardieu, the Premier, stated that in the preceding year six hundred complaints of improper action by the police in Paris were investigated and of these sixty were found justified and were followed by punishment. *Id.* at 3692, col. 1.

58. *Le Temps* (Paris), April 11, 1930, p. 3.

59. *Le Temps*, April 6, 1930, p. 8; BENOIST, *LES MYSTÈRES DE LA POLICE* (1934) 156, 166. Benoist on several occasions denied that Almazian was improperly treated. In a newspaper interview he made the following statement: "It was within our duty that in the interest of justice, and solely in that interest, we conducted interrogations in such a way as to verify presumptions and to establish the truth, but these interrogations have never involved the least brutality, nor the least coercion, and we have always acted according to our duty within the bounds of the law." *Le Journal*, Nov. 17, 1929, p. 1. See also BENOIST, *op. cit. supra*, at 133.

60. Reuillard, *Le Droit des Gens dans la Recherche d'un Coupable*, *Le Journal*, Nov. 14, 1929, p. 1.

what rough. These interrogations lasted even during the night. It was a souvenir of the former torture." ⁶¹

"The *chambre des aveux spontanés* ⁶² rendered celebrated by the Almazian case is no myth at all. . . . That these brutalities exist is a fact. That they are common, especially when the person thus investigated is without connections, unknown or of an obviously humble position, is another fact." ⁶³

It has been further stated that "numerous and scandalous violations of the law about the same time disclosed that the Almazian case was not an isolated instance, imputable to the excessive zeal and unusual brutality of certain police officers, but that it formed part of a frequently applied system." ⁶⁴

Other cases in which there was evidence that the police employed harsh or even brutal methods in their efforts to secure confessions follow:

Mestorino Case. Charles Mestorino, an Italian jeweler in Paris, was suspected of murdering Gaston Truphème, a jewel broker, on February 27, 1928. Following is an account of the examination of Mestorino by police officers:

"Two police sleuths, among the best in Paris, actuated by a conviction of the guilt of Mestorino, impose upon him, called as a witness, 'the longest, the most crucifying of interrogations.'

" 'They are there alone with him and nearby are their chiefs. The night is cold, the room is not heated. Mestorino, his fists clenched, his eyes wild, standing against the wall of this office of the *police judiciaire*, where he had entered twenty hours earlier, faces the pack of policemen, who harass him, and relaying each other two by two, hurl questions full in his face as one thrusts swords.

" 'Upon a curt order, they take off his clothes. There he is entirely nude—nothing more than debris, a wreck. He sways on his legs. At the windows the dawn appears. . . . He is alone against six men, leaning over him. And the relentless phrase incessantly returns. So, you defended yourself, Mestorino?

" 'Then, that phrase, he repeats it, suggested and imposed by his subconsciousness, stronger than his will: He insulted me, I defended myself.

" 'That's it. He has confessed. They put his clothes back on him, who is nothing but a rag.' " ⁶⁵

61. DENYS, *LES GARANTIES DE LA LIBERTÉ INDIVIDUELLE* (1933) 40.

62. "Everyone knows that there exists at the *police judiciaire* what is called euphemistically 'the room of the spontaneous confessions' (*la chambre des aveux spontanés*)." Reuil-lard, *supra* note 60.

63. ULMANN, *LE QUATRIÈME POUVOIR—POLICE* (1935) 206.

64. ALLARD, *L'ANARCHIE DE LA POLICE* (1934) 96.

65. de Marmande, *Les Brutalités Policières* (1929) 29 *LES CAHIERS DES DROITS DE L'HOMME* 734. The Mestorino case was made the subject of discussion at a meeting of the *Société Générale des Prisons et de Législation Criminelle*. An excerpt from this discussion follows:

The Case of the Parish Priest. An elderly woman, Madame de Malherbe, after a fall, died. Her servant stated that she had been killed by the parish priest who had come to administer the sacrament. The subsequent experience of the priest is described as follows:

"Upon this complaint the priest is summoned to the police station—he is called in at noon, but not questioned until six o'clock in the evening; he is made to undergo an all-night interrogation, probably of the same character as that employed upon Mestorino. The priest declares he suffered seriously from this interrogation. Nevertheless, he did not confess—and if he did not confess, it is because he was certainly not guilty, for later an autopsy of the body of the alleged victim was made, and, on the report of Dr. Balthazar, it was established that Madame de Malherbe died a natural death. Thus there was no crime. But see the danger if the priest, as the result of fatigue, had had a moment of weakness, and had let escape some imprudent word from which there might have been gathered a seeming confession."⁶⁶

Vlachos Case. At the trial in 1922 of Vlachos, a Greek chauffeur, for the murder of his employer it appeared that after a prolonged questioning by police officers, he had confessed. Vlachos testified at the trial that he had been tortured by a head band consisting of a rubber tube which was inflated until he fainted. He also said he was beaten with a rubber whip. One of the officers denied striking Vlachos, but said that after confessing he was given rum as he "was tired."⁶⁷

Remy Case. A young man named André Remy was taken into custody on suspicion of having committed a murder in 1926. As a result of a nine hours' "grilling," which left the police officers exhausted, Remy confessed. On the basis of this confession he was convicted and sentenced to twenty

M. Magnol. "All the newspapers told us that he was subjected to an interrogation of eighteen hours in the police station.

M. Maurice Garçon. "Forty hours."

M. Magnol. "Mestorino, gentlemen, is certainly of no particular interest. We need have no special regrets for him, but in defending Mestorino, we defend all of us. Honest people, so far as criminal investigation is concerned, are in the same position as criminals." (1928) 52 REVUE PÉNITENTIAIRE ET DE DROIT PÉNAL 159.

At the same meeting of the *Société* a prominent Paris lawyer made the following statement: "Everyone knows the rumors which are in circulation: the *passage à tabac* is spoken of, so are the *chambre des aveux spontanés* and excessive violence. There is given as an example the marks on the faces of those who appear every day for the trial of *flagrants délits*, and who, just the day before, were without bruises when they came into the hands of the police. I believe there is exaggeration—I have no doubt that the superior officers would not permit such ill treatment, but, to take account only of the official statements to the press, it is not rare—we have seen it recently for Mestorino—that the questioning lasts for hours, continues at night, goes on without respite, preventing the person, presumed guilty, from sleeping or resting. It will be admitted that this is at least a moral coercion which no one can approve." Garçon, *Faut-il Modifier les Lois sur l'Instruction Préparatoire?* (1928) 52 REVUE PÉNITENTIAIRE ET DE DROIT PÉNAL 143.

66. M. Magnol in *id.* at 160.

67. Vonoven, *L'Heure des Aveux*, Le Temps, Nov. 5, 1922, p. 3.

years at hard labor. Later it was judicially decided that he was innocent, and he was accordingly set free.⁶⁸

Bondou Case. "The mystery surrounding the death of the café proprietor of Montmagny, which the officers charged with the inquiry hoped to dissipate yesterday, does not seem very near solution. M. Yvonnet and officers Bureau and Gauthier pursued all night the interrogations, begun in the evening, of Mme Bondou and of her young maid, Mireille Adam. The two women were skilfully grilled (*cuisinées*) for fourteen hours by the police officers who relayed each other.'

"It is evident that an interrogation of such duration without any pause, since the officers took care to replace each other, causes to those who undergo it serious physical suffering and destroys all freedom of judgment. Such practices should not be tolerated and we have demanded of the Minister of Justice that he take all proper measures for preventing them in the future."⁶⁹

Henriot Case. Michel Henriot was "grilled" by a police official for forty-eight hours, when he confessed.⁷⁰

Lamarque Case. At the trial of Jean Lamarque, a former *commissaire* of police, for bribery, the president of the court brought out the following facts:

"He was also brutal and violent beyond precedent towards persons in custody whether innocent or guilty. By practicing that system of torture which is derisively called the method of *aveux spontanés*, Commissaire Lamarque succeeded in extorting confessions from persons who later on were officially acknowledged to be innocent.

"The president brought out that it was by this manner that Commissaire Lamarque ascertained the perpetrator of a burglary—which had never been committed. Another time, he had beaten most unmercifully a worthy man, who, to escape this cruel treatment, accused himself of an offense with which he had no connection.

"President Tissier: 'The unfortunate was in prison sixty-four days before his innocence was acknowledged. That is enough to make one's hair stand on end.'

"Lamarque protests, but not too strenuously.

"President Tissier: 'It won't do you any good to deny. These facts are established. Further, you inculcated these strange practices into a part of your personnel so well that three of your officers have been prosecuted in the *tribunal correctionnel* for assault and battery. One of them was sentenced.'⁷¹

68. de Marmande, *supra* note 65, at 733.

69. (1934) 34 LES CAHIERS DES DROITS DE L'HOMME 790, quoting l'Oeuvre (Paris), Aug. 11, 1934. See also a case described in (1932) 32 LES CAHIERS DES DROITS DE L'HOMME 350.

70. LONDON, LES GRANDS PROCÈS DE L'ANNÉE—1935 (1936) 91.

71. *Id.* at 14.

Manin Case. In 1931 a farmer by the name of Manin was murdered at Peyrens, but the perpetrator of the crime was not discovered. In 1937 suspicion was cast upon the victim's wife by the remarks of her eleven-year-old son. She was accordingly taken to the local police station. At the end of forty-eight hours' questioning, when she was completely exhausted, she disclosed the names of two men, who, according to her statement, murdered her husband.⁷²

As a recognition of the existence of improper practices by the police in questioning suspects the following statement in the *Encyclopédie Française* is worthy of note: "Undoubtedly, maltreatment is not admitted [by the police], but it is frequently seen that the officers boast of having continued their cruel and unfair interrogation for hours, relaying each other, exhausting the suspected man, depriving him of sleep, subjecting him to a moral coercion absolutely not permissible."⁷³

Another statement of interest is the following: "This is what happens: The person discovered by the police, and presumed to be the perpetrator of the offense is interrogated by the officers of the *police judiciaire* before being taken before the *juge d'instruction*. He is pressed with questions, entangled, confronted with the witnesses. The interrogation lasts for hours, sometimes all night, in the police station where *commissaires* and *inspecteurs* relay one another, renewing repeatedly the assault against the person arrested, until the latter, driven crazy, exhausted by fatigue, his nerves frayed, makes the confession."⁷⁴

Most significant are two statements by Dr. Edmond Locard, the famous director of the police laboratory at Lyons. Following is an excerpt from his book, *La Police*:

"How to secure a confession? There are two methods: insinuation or force; to ask questions or to inflict 'the question'; interrogation or

72. Le Journal, March 4, 1937, p. 3. On April 8, 1937, the *Ligue Française pour la Défense des Droits de l'Homme et du Citoyen* made a protest regarding the Manin case to the Minister of the Interior, who is the official head of the police. Following is an excerpt from this protest: "The police even take pride in their zeal and whenever they have an opportunity to display it, they cause to be published in all the press that such and such a person, simply under suspicion, has been the object of an interrogation in which *commissaire* and *inspecteurs* have exhibited their courage and their energy, by torturing with questions, for long hours, an unfortunate, thus deprived of all the safeguards that the law, and even humanity, grant to every accused, even if his guilt is established. The newspapers relate with complacency these exploits, which are the more questionable in that, while the accused is often made to stand for hours on end without food—whatever his age or state of fatigue—the officers take good care to refresh themselves and relay each other. In a word, the shame of such measures, recalling the former tortures, is doubled by the display made of them in the press which thus gives to these scandalous practices an appearance of legality and the supposed approval of public opinion." Letter dated April 26, 1937, from M. Emile Kahn, *Secrétaire Général* of the *Ligue*, to the writer.

73. (1935) Vol. 10, p. 10.36.5.

74. Brêthe de la Gressaye, *La Liberté Individuelle et le Procès Criminel* in LES GARANTIES DES LIBERTÉS INDIVIDUELLES (1933) 102.

torture. The law has repudiated the second; the police also, but less certainly. Let us see how things happen.

"The man is at the police station; an informer has betrayed him. There is other incriminating evidence: bloody clothing has been found at his house; since the crime he has made large expenditures; the girls with whom he has associated are known, also the number of bottles that he has drunk. His regular income—nothing. The police officers who have just encountered him in a disreputable café, where they knew he was, have taken him to the station: all around are officers in uniform waiting to begin their rounds. No civilians are present. 'Do you want to talk?' He denies vehemently, explains the blood stains by a nose-bleed, the money by a gift. Also, the girls—it was their beautiful eyes—just for a lark. The proprietors of the café lie—he didn't show so much money, and he did not drink so many bottles. At the time of the crime, he was with companions—he doesn't very well remember where: he must reflect. Someone stamps his foot: now he does nothing but deny, shaking his head with the bored manner of a man who has said all he has to say, and who is tired of repeating. The officers insist—they are getting tired; no progress is being made with the case; if he doesn't confess now he'll never speak. And the only witness is the informer, who can't be disclosed. 'Do you want to talk?' Ah, if one could only give him the *strappado* he would tell everything. He is guilty, that is certain. They shake him, but he becomes silent. No use to beat him—it's finished—he won't talk any more. They take him to the *Sûreté*. The struggle is renewed. 'Everything is known—why don't you want to talk? You bought the knife in a store eight days ago. You prowled in front of the house for an hour. Confess—they'll be gentle with you.' Gentle! He knows what it means to talk. If he talks, Deibler⁷⁵ won't be gentle. And he relapses into silence, the eyes downcast. 'You don't want to talk so we're going to let you think it over.' The black cell, with iron door, closes on him. He is alone, he can't see anything, he is hungry. Time passes. No dinner. The night the same as the day; no bed, no bench, and always the gloomy silence, and the lack of air. The door opens: 'Do you want to talk?' 'I'm hungry.' 'Do you want to talk? You will then get something to eat.'—'No.' Noon—pangs grip his empty stomach. Again the door opens. He is brought out into the light. A meal is served, which seems superb: meat, wine, an enormous loaf of bread, particularly plenty of brandy. 'Sit down at the table.' This is a jest immediately understood; for in the slang which they both know, 'to sit down at the table' means 'to speak, to tell things, to confess.' And he sits down at the table. The brandy loosens his tongue. In the satisfaction of a full stomach, he lets himself go, and in order to be sure of eating again, he puts his head on the block. This is the torture, abolished in vain."⁷⁶

75. The executioner.

76. LOCARD, *LA POLICE* (1919) 99. In the same volume Dr. Locard says: "It is no longer permissible that a confession be obtained either by physical violence known by the name of *passage à tabac*, or by holding the suspect in custody with deprivation of food. Torture should be effectively abolished, even in its attenuated forms." *Id.* at 229.

In another book, Dr. Locard says:

"Inferior officials of the police, imbued with the idea that a prosecution can be properly commenced only with a confession, or reduced to seeking by this kind of proof a method for justifying an arrest made with the aid of an informer, which can not be admitted, forget that torture has been abolished for more than a century and seek to acquire by brutality that which their own gross ignorance of all psychology prevents their seeking by insinuation.

"Sometimes the suspect is given a slap on the face at each refusal to admit his guilt, at other times he is beaten unmercifully and even knocked to the floor, with some instances of which I am acquainted, and finally, which is the worst, he is sometimes illegally held in custody and tortured by hunger, until the moment when a meal, abundantly washed down by alcohol, following upon a prolonged fast, appears to be the most likely method of loosing his tongue."⁷⁷

The foregoing evidence indicating the existence of improper police practices, which would be described in this country as the third degree, and which in France are variously designated as the *passage à tabac*, the *chambre des aveux spontanés*, and the *cuisine* of suspects, must be contrasted with some general denials made by officers of the *police judiciaire*. M. Louis Lépine, for many years prefect of police of Paris, made the following statement in 1928 during a discussion of the subject at a meeting of the *Société Générale des Prisons et de Législation Criminelle*: "In the course of twenty years there was never called to my attention [by the officials appointed to supervise police activities] any instances of violence resembling those spoken of. But, yes, once in twenty years. It was at Pantin; a very energetic *commissaire* of police, too energetic, in fact, wished to obtain a confession, as I suppose—I am not very well acquainted with the details—and he took a girl's wrist and squeezed it until she cried out. I do not need to tell you that I administered punishment—that I made an example."⁷⁸ M. André Benoist, in 1929 when director of the *police judiciaire* in Paris, stated in a newspaper interview: "Never at any time have suspects been subjected to the slightest ill-treatment."⁷⁹ As already pointed out, Dr. Locard has stated that the police of the city of Lyons never employ improper practices.⁸⁰ M. Kastler, in 1920, when an associate judge of the *tribunal* of the Seine, asserted that during his term as *juge d'instruction* he had never observed

77. LOCARD, *L'ENQUÊTE CRIMINELLE ET LES MÉTHODES SCIENTIFIQUES* (1920) 14. Dr. Locard, in a letter under date of July 16, 1936, stated that, while confessions have been formerly obtained by illegal methods, the practice is now extremely rare and that the police of the city of Lyons "never use coercion". He further stated that "confessions obtained by means of threats, blows, or deprivation of food are worthless because the suspect retracts before the *juge d'instruction* and does not fail to relate for what reasons he confessed in the first place."

78. (1928) 52 *REVUE PÉNITENTIAIRE ET DE DROIT PÉNAL* 204.

79. *Le Journal*, Nov. 17, 1929, p. 1.

80. *Supra* note 77.

that the police "resorted to the harsh measures which they are sometimes accused of employing."⁸¹

While the evidence presented is somewhat conflicting, it seems to be a safe conclusion that, notwithstanding the official interrogations of suspects, French police officials have employed coercive measures to obtain confessions. Personal inquiries made by the writer verified this conclusion. There is also support for the opinion that the skill and efficiency of the police in solving crimes, rather than the official interrogations, explain the fact that third degree methods are not more extensively employed.⁸²

81. (1920) 43 REVUE PÉNITENTIAIRE ET DE DROIT PÉNAL 28.

82. Imann, *Quand Arrêtera-t-on l'Assassin?*, Candide (Paris), Feb. 11, 1937, p. 3; LOCARD, LA POLICE (1919) 112; LOCARD, L'ENQUÊTE CRIMINELLE ET LES MÉTHODES SCIENTIFIQUES (1920) 25, 295; DONNEDIEU DE VABRES, LA JUSTICE PÉNALE D'AUJOURD'HUI (1929) 102; JOHL, LA POLICE FRANÇAISE (4th ed. 1931) 106, 116. In the letter from the *Secrétaire-Général* of the *Ligue Française pour la Défense des Droits de l'Homme et du Citoyen*, *supra* note 72, the following paragraph appears: "These measures to which we have many times had occasion to call attention, and which have brought forth from us vigorous protests, remain happily exceptional. Our laws, the level of our manners and customs, and the control by public opinion serve as a brake on the excesses to which certain police officials might be tempted to yield. Further, we flatter ourselves with having, by the vigilance of our association, the publicity which it gives to these instances, and the punishments which it obtains against those who are guilty, contributed largely toward limiting the abuses of the police." A prominent French lawyer, writing in the *Encyclopédie Française*, urges as a remedy for improper police methods the abandonment of the interrogation by the *juge d'instruction* as well as by the *commissaire* of police and the substitution of the English practice according to which an arrested person is taken immediately before a magistrate and given the opportunity to make a *voluntary* statement. (1935) Vol. 10, p. 10.36.5.