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Study shows insight into false confessions, offers idea for reform

In his legendary treatise on evidence, John Henry Wigmore dismissed the concept of "false confessions." He described the idea as "scarcely conceivable." He wrote this in 1923 and for years many criminal law experts regarded the expression "false confessions" as an oxymoron.

What a difference dozens of DNA exonerations makes! For the details, you must make it a priority to read Brandon L. Garrett's important new book "Convicting the Innocent: Where Criminal Prosecutions Go Wrong" (Harvard, 2011). In it, Garrett studies the cases of the first 250 prisoners who have been exonerated through post-conviction DNA testing. Garrett found that an astonishing 40 of these 250 cases involved a false confession.

Before examining why Garrett found false confessions such a commonplace occurrence in this sample, it is interesting to consider how matter-of-factly their existence is now acknowledged in case law. As an example, take a look at Judge Richard A. Posner's opinion for the court in *Aleman v. Village of Hanover Park.* 662 F.3d 897 (7th Cir. 2011).

The case involved a 1983 action filed by Rick Aleman against Joseph Micci and Eric Villanueva, two law enforcement officers. It involved an interrogation concerning the death of an infant for whom Aleman provided day care. Aleman stated that, while caring for the infant, the baby began gasping for air and then collapsed. Aleman shook the baby gently in an attempt to elicit a response. After attempting CPR unsuccessfully, Aleman called 911. The infant was taken to a hospital, where he died four days later.

Prior to the baby's death, Micci and Villanueva interrogated Aleman. Micci repeatedly told Aleman that he had spoken with three doctors, who all had told him that the baby had been shaken in such a way that would have made him immediately unconscious. Thus, Micci insisted, it was Aleman's shaking — which Aleman insisted was "gentle" — that must have caused the baby's injuries.

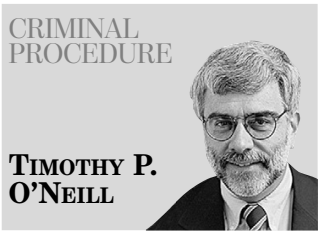
This was quite simply a lie. Micci had spoken to no doctors. When Aleman repeated that his shaking had been gentle, Micci continued to assert that three doctors contradicted this. Aleman, exasperated, at one point said "[I]f the only way to cause [the injuries] is to shake that baby, then when I shook that baby ... I admit it. I did shake the baby too hard." Yet even after this statement, Aleman continued to both deny and express disbelief that he could have caused the injury.

This "confession" resulted in Aleman being indicted for first-degree murder after the baby subsequently died. However, the case against Aleman quickly unraveled.

Examining doctors said that the baby's condition could have been based on a trauma that occurred days before Aleman had seen the baby. They also agreed that the mild shaking Aleman spoke of was indeed the proper way to begin CPR. Police then began to focus on the baby's mother, who turned out to be a person with a criminal record. They discovered that previously the mother had both beaten and violently shaken the baby. Eventually, the charges against Aleman were dismissed. No one else was ever charged.

Posner notes that courts have always been reluctant to hold that police trickery per se makes a confession involuntary, but a confession is excludable if the police feed the suspect lies that destroy his capacity to make a "rational choice."

Here, Aleman was falsely told that doctors concluded that he must have been responsible for the baby's death. This placed Aleman in a dilemma. He was not a medical expert. And he did admit to gentle shaking of the baby.



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Therefore, the lie deprived Aleman of any rational basis to deny that he must have been the cause of the baby's death. The lie placed him in a vise that compelled him to confess. The court held that the trickery resulted in Aleman's "confession" being "worthless as evidence."

Because it led to his arrest, the court reversed the trial court's summary judgment in favor of the officers and remanded the false arrest claim for further proceedings.

So how prevalent are police fabrications in Garrett's study of the first 250 DNA exonerees? Garrett notes that in the famous Central Park jogger rape case, the police lied when they told one suspect that they were able to identify his fingerprints from the jogger's satin shorts. The suspect was convicted and later exonerated through DNA. The same tactic was used on an exoneree named David Vasquez. And falsely telling suspects they had failed a polygraph exam may have been involved in as many as eight of the cases.

> *"In 30 of the 40 cases, the exoneree supplied facts during the interrogation that were clearly inconsistent with the facts known by the police."*

But Garrett found other factors as well. Police are trained never to "contaminate" a confession by inadvertently (or purposely) feeding or leaking crucial facts.

And in 95 percent of the cases — 38 out of 40 — interrogators claimed that suspects had "volunteered key details about the crime, including facts that matched the crime scene evidence, or scientific evidence, or accounts by the victim."

Yet not only were all exonerated; Garrett also found that almost all of these confessions were contaminated.

This is especially troubling because in 27 of the 30 confession cases that went to trial, police witnesses either denied that they had disclosed any facts to the defendant or they testified that the defendant had independently volunteered key facts during interrogation. And in those cases without a recorded interrogation, it is impossible to tell if the officers were lying or simply mistaken.

Yet one fact stands out. In 30 of the 40 cases, the exoneree supplied facts during the interrogation that were clearly inconsistent with the facts known by the police. Yet instead of seeing this as a red flag, police went right ahead with the interrogation.

What does Garrett suggest to reform the system? Not surprisingly, a videotape of the entire interrogation.

Eighteen states and the District of Columbia require at least some interrogations to be recorded. (Illinois' version is at 725 ILCS 5/103-2.1.)

It is a reform that cannot come fast enough.