

# Chicago Daily Law Bulletin

Volume 158, No. 221

## NYPD starts to show progress on recording criminal confessions

**O**n April 19, 1989, a woman jogger was found raped and beaten in New York's Central Park. Within 48 hours, police obtained confessions from five teens ranging in age from 14 to 16. These confessions formed the heart of the prosecution's case, since the victim could not identify anyone and no forensic evidence linked the five defendants to the crime. The confessions were found admissible and all five defendants were convicted and sentenced to long prison terms.

As you probably know, 13 years later, a convicted killer named Matias Reyes confessed that he alone had raped and beaten the woman. And because DNA analysis at that point was considerably more sophisticated than it had been in 1989, scientists proved that Reyes, indeed, was the sole culprit.

Faced with such an egregious failure of the criminal justice system, it might seem reasonable for the New York City Police Department to at least think about a reform such as videotaping confessions. So what was the response of NYPD Commissioner Raymond Kelly? "I don't see a need, quite frankly," he said, then added, "The logistics of (recording confessions) are mind-boggling for an agency this size."

Spurred by the 300 prisoners exonerated throughout the nation based on DNA testing, we have learned some sobering truths about traditional police investigation. We now know that the customary way lineups are conducted may increase the number of false identifications. We know that certain interrogation techniques may increase the chances for false confessions. We know that some forensic science is nothing more than "junk science." Yet in the face of this evidence, many law enforcement agencies have been unwilling to change their traditional methods.

Why this reluctance? That is the subject of David A. Harris' provocative new book "Failed Ev-

idence: Why Law Enforcement Resists Science" (NYU, 2012).

Harris begins by cataloging problems with police interrogations, eyewitness testimony and "junk science" that are probably familiar to veterans of the criminal justice system. He then notes the various reforms that have been suggested, including double-blind, sequential identifications to replace the traditional lineup, the videotaping of all police interrogations and the elimination of human biases in laboratory testing.

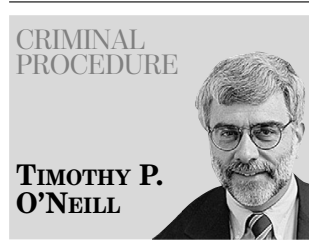
Harris notes the traditional objections to change made by police and prosecutors, including the fear that the new techniques will allow more of the guilty to go free, that these are biased attacks coming largely from defense attorneys, that the criticisms of the status quo are based on insufficient evidence and that the cost of the proposed changes would be exorbitant.

But Harris contends that these are just the ostensible reasons. The real reasons for the resistance of law enforcement to science come from two sources: cognitive barriers and institutional and political barriers.

Harris argues that the strongest cognitive barrier explaining why law enforcement resists change is simple cognitive dissonance. Cognitive dissonance is the state of tension when a person holds two ideas that are psychologically inconsistent, such as "I know smoking can kill me" and "I smoke two packs a day."

Harris traces the cognitive dissonance in law enforcement to these two ideas: First, "We police officers and prosecutors are the instruments of right, truth and justice in the system" and, second, "We used traditional, accepted investigative procedures to investigate and prosecute and by doing so we have 300 convicted prisoners exonerated by DNA evidence."

An admission that traditional techniques may not work strikes at the very heart of self-esteem of both police and prosecutors. As



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Harris notes, the traditional police procedures "are not just lessons from books; they are, rather, the wisdom received from the initiated members of the profession, the combined lessons of experience handed down from generation to generation of police officers. They constitute, in every sense, the special inheritance of every police officer." Law enforcement is not just being asked to change certain procedures; they are being asked to turn their backs on their endowment — "the unquestioned wisdom of the profession."

As for the institutional and political barriers, Harris contends that the primary goals of police and prosecutors are arrests and convictions, respectively. Any proposal to seriously change the sta-

tus quo is bound to be met by suspicion that this will adversely impact their ability to attain their professional goals.

So how can change occur? Harris says it is time that reformers focus on the future, not the past: "The main portion of our effort must target prospective reform, not retrospective correction." Of course, this does not mean that the search for those unjustly convicted should end.

What it does mean is that it is counterproductive if police and prosecutors feel they are being blamed for convicting the innocent. The focus, rather, should be on enlisting the support of police and prosecutors in an effort to create a better system in the future. And Harris is blunt in his insistence that "police and prosecutors must lead the effort."

It is important for reformers to emphasize the common ground they share with law enforcement: Everyone agrees that the guilty should be convicted and the innocent acquitted. Harris concludes the book by providing real-life examples of police, prosecutors and judges throughout America who have spearheaded movements to bring change to police investigations and the use of forensic science.

Will it work? Or is Harris being too optimistic? Go back to Kelly's comments rejecting the proposal that confessions be videotaped. Kelly's comments make Harris look like a naive academic.

But in late September — three weeks after the book was published — Kelly made an announcement. He said the NYPD would adopt a broad policy of videotaping custodial interrogations in murder, serious sex crime and felony assault cases. Kelly noted that taping "can aid not only the innocent, the defense and the prosecution, but also enhance public confidence in the criminal justice system by increasing transparency as to what was said and done."

You can only hope that, however slowly, criminal justice is changing — for the better.

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