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## Has the use of juvenile confessions finally reached a tipping point?

**T**he problems with police interrogations of juveniles were graphically illustrated in Amy Berg's recent documentary "West of Memphis."

This is the fourth film that has been made about the "West Memphis 3" — three teenagers convicted of killing three children in West Memphis, Ark., in 1993.

The mutilated bodies of the three small boys were found hogtied in a drainage canal. The genital disfigurement and odd wounds on the bodies led police to believe that the murders were the work of people in a satanic cult.

Suspicion focused on 18-year-old Damien Echols, who often dressed in black and was rumored to be interested in satanism. Police then interrogated Echols' friend, Jessie Misskelley. Misskelley was borderline mentally disabled with an IQ around 70. It took a whole day for police to finally get Misskelley to confess that he witnessed Echols and another boy, Jason Baldwin, not only kill the boys, but also use the dead boys' scrotums as cups to drink their blood as part of a satanic ritual.

During the long interrogation, police fed Misskelley many of the lurid details that he eventually claimed to remember. Even so, the mentally slow Misskelley kept changing the times of the murders from anywhere between noon and 8 p.m. Although photographic and documentary evidence supported the alibis of Echols and Baldwin, all three were convicted.

You may have guessed by now that forensic experts surmised after the conviction that the genital mutilation and odd bodily markings were not inflicted by satanic worshippers. Instead, they were probably caused by large snapping turtles in the drainage ditch after the boys were already dead.

And as the case against the boys unraveled over the years, the finger of suspicion convincingly pointed to one of the victims' stepfathers as being the likely

murderer. Last year, in a face-saving ploy, Arkansas agreed to allow the three defendants to tender *Alford* pleas in exchange for "time-served" sentences. They were released after each had served 18 years in the penitentiary.

That's 54 years of prison for crimes never committed, spawned from the overheated imaginations of police and filtered through a kid with a 70 IQ.

Seeing the film made me go back to read the Illinois Supreme Court's most recent juvenile confession case, *People v. Murdock*, 979 N.E.2d 74 (2012).

In 2001, two men exited a car in a Peoria park and shot two other men, killing one and injuring the other. They then returned to the car and drove away. Police suspected that 16-year-old Germill Murdock was the driver of the car the two shooters arrived in and left in. After hours of interrogation, Murdock agreed that the police could videotape his statement. In the videotaped statement, Murdock admitted that he drove the two men to the park, but denied that he knew they were going to shoot anyone.

Essentially, the state's case boiled down to an oral, unrecorded admission Murdock allegedly made to a police officer during his original interview at the Peoria Police Department. According to the officer, Murdock stated that he knew the gunmen were going to shoot the victims, thus implicating him in the murder plans. But this admission was not made in the videotaped statement or in any other form.

With this weak of a case, it is not surprising that the first two trials each resulted in hung juries. The state finally got its murder conviction after a third trial. The case before the Illinois Supreme Court involved a post-conviction petition which alleged that trial counsel was constitutionally ineffective for not moving to suppress Murdock's incriminating statement to the police. In a 4-3 decision, the court found that the

### CRIMINAL PROCEDURE

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statement was voluntary and thus affirmed the conviction.

Justice Anne M. Burke was joined in her dissent by Justices Charles E. Freeman and Mary Jane Theis. The dissent focused on the heightened scrutiny which courts are supposed to bring to the review of a juvenile confession. An example is a provision of the Juvenile Court Act that mandates that, prior to a custodial interrogation of a juvenile, the police must not only make a reasonable attempt to notify his parent or guardian, but also to take him to a juvenile officer. 705 ILCS 405/5-405.

In this case, at the conclusion of

the post-conviction hearing, the trial court held that the Peoria police made no attempt to fulfill either obligation. Indeed, there was testimony that, despite not hearing from the police, Murdock's grandparents came on their own to the police department and neither was provided an opportunity to see him. The dissent held that this factor alone contributed significantly toward a conclusion that the confession was involuntary.

And there is more. There was no independent "juvenile officer" present to defend Murdock's rights. Murdock lacked any experience with the criminal justice system and may have felt overwhelmed. And the long hours Murdock spent in custody with the police argued in favor of involuntariness.

Most disturbing is the fact that if this occurred two years later Murdock would have had the right under the Juvenile Court Act to have had the entire interrogation electronically recorded. 705 ILCS 405/5-401.5. Instead, the police only recorded one statement he gave — which did not even include the unrecorded oral "admission" he allegedly made hours before.

We may be reaching a tipping point on juvenile confessions. In the future, no one should even be allowed to discuss the issue without having read Barry C. Feld's new book "Kids, Cops, and Confessions: Inside the Interrogation Room" (NYU, 2013). It presents a withering case against the general acceptance of juvenile confessions. For example, one study of proven false confessions found that juveniles constituted 35 percent of all who confessed falsely and of this group, more than half were 15 or under. The book contains a wealth of empirical evidence confirming the problem.

I don't want to see another movie like "West of Memphis" and I don't want to read another decision like *Murdock*. It is time to completely reconsider juvenile confessions.

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