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## A RAILROAD JOB?

### *Dueling experts and manipulative interrogation cast a shadow over a conviction*

*By Julius (Jay) Wachtel.* In November 2009, following a two-week trial, [a New York judge sentenced](#) Adrian Thomas, 27, a father of seven, to the maximum term of 25 years to life for second-degree murder in the death of his 4-month old son thirteen months earlier. Thomas was largely convicted on the basis of his admission, after nearly nine hours of interrogation, that he flung the infant onto a mattress to stop him from crying on three successive days, including the day of the boy's death. Thomas said he was frustrated over being jobless and hounded by his wife and in-laws.

At trial, prosecution [medical experts testified](#) that the acts described by Thomas caused the child to suffer severe brain trauma, leading to death. Defense experts disagreed. They said that the boy's death resulted from septic shock caused by a serious bacterial infection. While there was no disagreement that a serious infection was indeed present – the coroner listed it as a secondary cause of death – [the prosecutor criticized the defense experts](#) as being bought and paid for. (Click [here](#) for an appeals decision that discusses the case in depth.)

Dueling experts are nothing new, and we'll have more to say about controversies surrounding the diagnosis of traumatic brain injuries in children later. What makes this case stand out were the circumstances of Thomas' interrogation, which was videotaped in its entirety. (To watch two extracts that precede the one linked above click [here](#) and [here](#).)

Police isolated Thomas in an interview room. Once he waived Miranda officers interviewed him twice; shortly after his son was hospitalized, for two hours, then on the following day for seven hours. Thomas was relentlessly manipulated using techniques that seem to have come straight out of the "Reid" playbook. Commercially marketed to police agencies, the system instructs detectives to counter all attempts to deny guilt while encouraging suspects to shift blame for their actions and to "bond" with interrogators. Here are some examples from the [above clip](#):

Detective: I thought we had something going on here, I thought we had a little trust-relationship going on...The chief wanted me to arrest you and I convinced the chief that I wasn't going to arrest you...I said "hold on, I dealt with this guy [accused] last night and I think he's telling the truth." I put my ass on the line for you...

(Thomas insists he's telling the truth. Detective gets angry, stands up, talks about the baby's severe head swelling, accuses Thomas of lying.)

Detective: It's a lot worse than you make it out to be, a lot worse...You're lying to me, I know it...Adrian, maybe you didn't throw the baby against the wall, maybe you took the baby and went like that (demonstrates with notebook) and threw him in the crib. Maybe you did that...Maybe it wasn't five or six inches, maybe it was five or six feet....Maybe when that baby was crying the other night, maybe you picked that baby up and you slammed it on the bed like that (demonstrates with notebook)...

(Thomas denies it.)

Detective: Remember I told you about post-partum depression...men can go through that too...you've got seven kids and two four-month old babies...you're feeling severe depression right now, you went to the hospital night and said about killing yourself...

(Detective suggests that depression and pressure from family members to get a job might be responsible for what happened. Detective again demonstrates dropping the baby on the bed.)

Thomas: But that's intentional...

Detective: That's not intentional. Maybe you did what you did intentionally, but it's not intentionally to cause the injury that you caused...Adrian, you already admitted that you caused an injury...you threw the baby on the bed Saturday night...

Thomas: It was an accident...

(Detective keeps interrupting Thomas' protests, doesn't let him finish a sentence)

Detective: Look, Adrian, we're trying to make a relationship here...you're lying to me, you're lying to me!

(Detective hands Thomas the notebook and tells him to demonstrate how he threw baby on the bed. Thomas does so. Detective says he did it harder and has him do it again. Thomas does so.)

Thomas: I didn't do it on purpose, man...

Detective: I didn't say you did it on purpose...

Thomas: What I told you was the truth...

Detective: But there was more to the story...You was afraid to tell me about it because you were afraid I was going to judge you...you were afraid I was going to come after you for that – I'm not. I'm here because you lied to me, Adrian...From day one I said it was an accident...are you suffering from depression?

(Thomas says a bit.)

Detective: We're trying to keep Matthew alive because of what you did...I put my neck on the line to keep you out of jail, all right? I think you owe that to me...

(Thomas says all he did was throw the baby on the bed once.)

Detective: I'm sure that did, but there's more to the story...there's more stuff that I need to know about that caused the severe injury to your son's brain...extreme acceleration, consistent with a 60-mile per hour vehicle crash...you know damned well that [what Thomas admitted to] didn't

cause his injury, man...you know that there's more severe acts that you committed against this kid that put him in the hospital...

(Thomas keeps denying but is continuously interrupted.)

Detective: There's going to come a time when someone's going to say "is this man criminally responsible for what happened to that child," are you criminally responsible for it or was it an accident? Did you mean to try to kill this boy?...you know what, I'm your only hope now...you ain't got that many people left on your side, man...I'm the guy that's gonna stick up for you, I'm the guy that's gonna say, "You know what, you've got some psychological problems, all right, and he hurt his kid real bad, but he feels remorseful and he feels sorry"...I'm the one that's going to talk to the District Attorney for you, all right, you ain't got anyone left going to talk to the District Attorney for you...

(Thomas becomes more agreeable.)

Detective: You've got a lot of things to worry about. You've got to worry about keeping your son alive...and give me the proper information to relay to the hospital...you think that you're getting a divorce but you know what, if you're a man and you step up and tell me what really happened, your wife may forgive you...and number three, you've got to worry about someone being on your side...if the D.A. wants to press criminal charges against you you're going to need a police officer to say, "this guy's all right..."

(Thomas says that after arguing with his wife he threw down the baby on the bed twice, once on each of two days, Wednesday and Thursday. But the detective insists that something had to have happened on Saturday, the day when the baby was brought to the hospital.)

Detective: Something had to happen on Saturday to make him to start wheezing like that...and make him start getting short of breath and have breathing difficulties...you did it on Saturday too? You was in the bedroom with him crying...

Thomas: Wednesday, Thursday...not Friday...Saturday, I did it too.

Detective: You slammed him on the bed?

(Thomas nods weakly. The detective asks why, and Thomas mumbles a long reply, that things were piling up on him.)

Detective: ...you got frustrated, and for some reason you took it out on...I don't doubt that you love your children...sometimes you hurt the person that you love the most, you know?

(Thomas repeatedly denies throwing the baby on the floor or against the wall.)

Detective: How hard did you throw him on the bed? (Detective hands Thomas his notebook.) Don't try to downplay this and make it like it's not as severe as it is, for we both know you are now finally starting to be honest...start thinking about the negative things that your wife said to

you...start thinking about them kids crying all day and all night in your ear, your mother-in-law nagging you and your wife calling you a loser, all right, and let that aggression build up, and show me how you threw Matthew on your bed...don't try to sugar-coat it and make like it wasn't that bad...show me how hard you threw him on that bed...

(Thomas raises the notebook over his head and throws it on the bed.)

Detective: All three times you did it just like that...

Thomas: Yes...honest to God, that's it...

(The detective approves.)

Detective: ...What you just showed me with how hard you threw him on the bed, that's probably what caused his injuries...on Saturday you picked him up and threw him back down, kind of like taking out your frustration...

There's no doubt that this detective played a scared, exhausted and confused man like a banjo. Of course, that doesn't prove that Thomas lied. Maybe he really did forcefully fling his son on three days, including Saturday. Or maybe after hours of relentless interrogation by a cop who insisted that he was his only remaining advocate, Thomas was ready to say anything.

At an evidentiary hearing a defense psychologist said that Thomas' admissions had been coerced. However, [he was not allowed to testify at the trial](#), as the judge agreed with prosecutors that his conclusions weren't sufficiently scientific. Thomas did testify. He said that he lied to the detective and did nothing that could have caused his son's death.

A New York State appeals court [recently affirmed](#) Thomas' conviction. It ruled that excluding the psychologist was not error, as jurors could decide from the videotapes whether Thomas was coerced. As for the interrogation tactics, the court decided that they were "not of the character as to induce a false confession and were not so deceptive that they were fundamentally unfair and deprived him of due process." [In a different, more recent case, [People v. Bedessie](#), New York's highest court ruled that psychological testimony about false confessions *can* be admitted if relevant. But like *Thomas* it upheld its exclusion, finding that given the facts it was not. See 3/30/12 update, below.]

The justices seemed far more troubled by the dueling medical testimony. In the end they didn't find sufficient grounds to disturb the jury's decision:

All of the experts offered compelling testimony, and the jury's task was difficult. However, the defense experts were not, as a factual matter, more qualified, persuasive or credible, and we cannot say that the jury erred in not finding their testimony more believable or persuasive.

That's exactly how the U.S. Supreme Court recently settled [Cavazos v. Smith](#). A child died, according to police because her grandmother shook the 7-week old infant to death. Defense medical experts insisted that the infant actually died from an accidental blow, but jurors were unconvinced and convicted Smith of

murder. Ultimately, the American Academy of Pediatrics rewrote the syndrome to reflect that blows and disease can mimic the effects of rapid deceleration trauma (click [here](#) for our prior posting.)

On appeal, the Ninth Circuit decided that medical evidence was insufficient to support a finding of guilt to the necessary certainty and reversed. But the Supreme Court reinstated the conviction, ruling that unless juries act irrationally or unreasonably, it's up to them to resolve conflicts between medical testimony.

It's impossible to conclude with any certainty that Thomas and Smith are innocent. Their situations highlight the folly of asking jurors to decide between competing scientific judgments that are to all appearances equally balanced. That was undoubtedly on California Governor Jerry Brown's mind [when he commuted Smith's sentence](#) earlier this week. We'll see whether New York Governor Mario Cuomo is sufficiently troubled by Thomas' conviction to do likewise.