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## FALSE CONFESSIONS DON'T JUST "HAPPEN"

*When expediency is the more important value, tragedy follows*

*By Julius (Jay) Wachtel.* Forget C.S.I. Confession is the grease that keeps the wheels of American justice turning. Really, it's hard to imagine how our bursting-at-the-seams criminal justice system could function without it. What it *can* do without are false confessions. Yet these have been more commonplace than one might think. Where does the blame lie? Read on.

In a recent [journal article](#) University of Virginia law professor Brandon L. Garrett examined the cases of [thirty-nine innocent persons](#) who falsely confessed. Each was convicted and subsequently exonerated by DNA. [Douglas Warney](#) was a typical example. A sometime psychiatric inpatient with an IQ of 68, he confessed to a 1997 murder and got twenty-five years to life. Nine years later DNA from the scene was matched to the real killer. He confessed, truthfully. Warney was turned down for compensation because he wasn't physically threatened or abused during interrogation and had contributed to his own problems by confessing.

Warney appealed. New York's high court recently ruled in his favor. Police subjected Warney to "calculated manipulation," which considering his mental disability was unduly coercive. He was also fed intimate details about the crime. During oral arguments a justice pointedly asked the state's attorney how Warney could have known that the killer used a twelve-inch serrated knife and stabbed the victim fifteen times. "He may have been asked a leading question," the lawyer conceded.

Professor Garrett discovered that in all but two cases the confessions were full of insider information, making the accused look guilty as sin. That didn't happen by accident.

It's human nature to trust confessions. Why would someone falsely admit to a crime? Indeed, the law considers confessions and other "statements against interest" so credible that they are exceptions to the hearsay rule. Few know this better than [Jeffrey Deskovic](#). Ten years into a life term for a rape/murder to which he falsely confessed, he finally got a lawyer to petition for a habeas hearing in Federal court. [Alas, the attorney let a key deadline pass.](#) A two-judge panel – one member was future Supreme Court justice Sonia Sotomayor – ruled that the error (the document was filed six days late) was insufficiently "extraordinary" and turned Deskovic away. It would take another six years before DNA would identify the real killer.

Deskovic was sixteen when police picked him up. He confessed after hours of intensive interrogation because officers had promised to let him go home if he did.

"Extraordinary" aptly describes what happened to [Earl Washington](#). Questioned in 1982 about the rape/murder of a Virginia woman, he eagerly confessed to the crime and several others. He also implicated another innocent man. Washington's good work earned him the death penalty. Three years later he was within a few days of being executed when a team of pro-bono lawyers got him a last-minute

stay. It thankfully turned permanent. But Washington would serve another fourteen years before DNA finally identified the guilty party.

Oh, yes. Washington's IQ was only 69. Why did he confess? He was trying to help the police.

More than a few defendants have falsely confessed because they feared rolling the dice by going to trial. In 2005 two victims of a carjacking identified California man [James Ochoa](#) as the culprit. A bloodhound supposedly followed the scent from a baseball cap left in the vehicle to Ochoa's residence. Police found DNA on the cap and in the car's interior, but it wasn't his. Five family members also swore that Ochoa was nowhere near the crime scene. But he had a drug record, and when a judge threatened him with twenty-five years should a jury find him guilty he pled guilty and got two. Ten months later another man was arrested for another carjacking. Yes – the DNA on the cap and in the car was his. He confessed and Ochoa was released.

Here are some recent news clips about false confessions:

- July 2011: [A hearing will be conducted](#) to determine whether DNA evidence exonerates three Arkansas men, known as the West Memphis Three, who have been imprisoned since 1993 for murdering three boys. A judge will also consider whether the confession of one, a low-IQ youth who was tried separately (he recanted, to no avail) was improperly used in finding the others guilty.
- May 2011: Seven Chicago men who were imprisoned as teens in the 1990s for two unrelated rape/murders [have been tentatively cleared by DNA tests](#) that connect others to the crimes. One match has a record for sexual assault and armed robbery; the other, who is deceased, was reportedly involved in a string of assaults and murders. Prosecutors, though, are objecting to the release of the seven, as all confessed.
- September 2010: [A Mississippi judge released and exonerated](#) Phillip Bivens, 59, and Billy Ray Dixon, 53. They had served *thirty years* for murder. Bivens, Dixon (he describes himself as a "slow learner") and a third defendant, who died in prison nine years ago, confessed and implicated each other, supposedly after threats by police. As for the real killer, who was recently identified through DNA, he's already doing life for another rape.
- August 2010: An extensive investigation by the Raleigh News-Observer accuses [North Carolina Bureau of Investigation agents](#) of extracting false confessions from innocent persons. "SBI agents have cut corners, bullied the vulnerable and twisted reports and court testimony when the truth threatened to undermine their cases." The state crime lab also caught blame for biasing its findings in favor of prosecutors.
- May 2010: Up to 12,000 persons arrested by Chicago police during 1999-2008 [will share in a \\$16.5 million settlement](#). Their claim alleged that police arrested persons without adequate cause, then used "soft torture" techniques such as withholding food and water and denying bathroom breaks to get suspects to confess.

- April 2010: New York resident [Frank Sterling](#) was freed after DNA proved that the murder to which he confessed in 1982 was in fact committed by the original suspect, Mark Christie. Sterling's confession was extracted through a relentless twelve-hour interrogation session that included the use of hypnosis. Christie was easy to find, as he is in prison for another murder that he committed two years after Sterling's arrest.

Cops, prosecutors and judges have manipulated and bullied vulnerable persons to get them to confess. But confirmed modern-day instances of beating confessions out of people seemed rare. That is, until last year. That's when the Feds convicted former Chicago police commander [Jon Burge](#), 62, of perjury for falsely denying in an earlier civil suit that in the 1980s he and his officers extracted confessions through beatings, electric shocks and suffocation.

Michael Tillman was one of Burge's victims. Freed in January 2010 after spending *23 years* in prison for a murder he didn't commit, [he collected his certificate of innocence](#) and promptly sued. Only a few days ago fifteen current Illinois inmates [petitioned the state supreme court](#) for evidentiary hearings. Their claim, which is backed by affidavits from current and former prosecutors, is that Burge and his brutal cops beat false confessions out of them, too.

Officers learn in the academy that when interviewing victims and witnesses they should avoid being suggestive or offering details that only the perpetrator would know. Yet when it comes to suspects the gloves come off, at least figuratively. How to get people to confess is an accepted component of advanced police training. One of the best known methods, [the "Reid" technique](#), urges officers to come up with "themes or reasons that allow the suspect to salvage self-respect while confessing." There are tips for overcoming denials, getting suspects to "bond" with police, "stimulating" confessions, and crafting questions that essentially trap persons into confessing.

Reid asserts that his approach is equally useful in exonerating the innocent. But academic experts disagree. After studying 125 cases of false confession, professors Richard Leo and Steven Drizin concluded that methods such as Reid's [are psychologically coercive and can induce false confessions](#), especially in juveniles and the mentally challenged.

To make arrests as expeditiously and economically as possible police have adopted interrogation techniques that, while perhaps legal, risk inducing innocent persons to confess. That may reflect a lack of technical knowledge (meaning that cops need to be retrained), a moral lapse (meaning that they ought to be reeducated), or perhaps a bit of both.

As for training, professors Leo and Drizin urge that police receive instruction on the causes of false confession, abandon pseudoscientific approaches that try to intuit deception from nonverbal cues, learn how to properly assess the reliability of confessions, and become adept at interviewing juveniles and the mentally ill.

On the other hand, if one believes that false confessions are the end result of a misguided moral crusade (e.g., the West Memphis Three; Chicago PD Commander Burge and his disciples) then something of a higher order may be called for. One could begin with your blogger's favorite all-purpose solution: a [quality-oriented approach to the craft of policing](#).