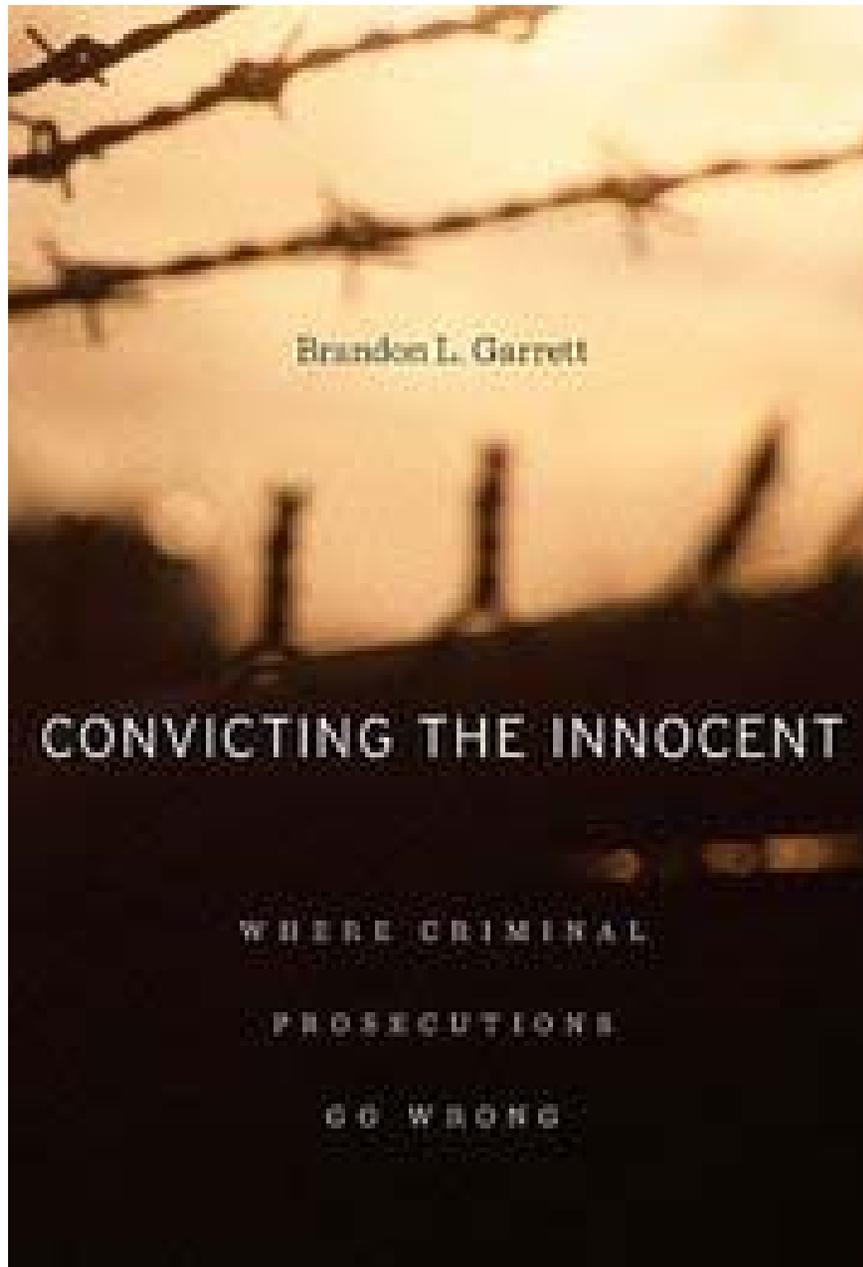


Convicting the Innocent: Interrogations and the Problem of Confession Contamination

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A Confession





Brandon L.
Garrett

Convicting
the Innocent

Where Criminal
Prosecutions
Go Wrong

(Harvard
University
Press 2011)

“Convicting the Innocent” Resource Websites

Data webpage :

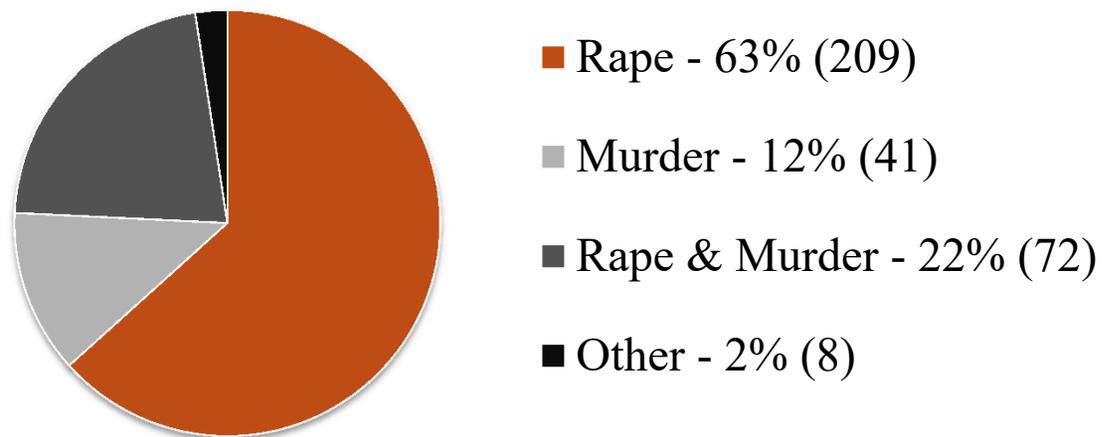
<http://www.convictingtheinnocent.com/>

Old page :

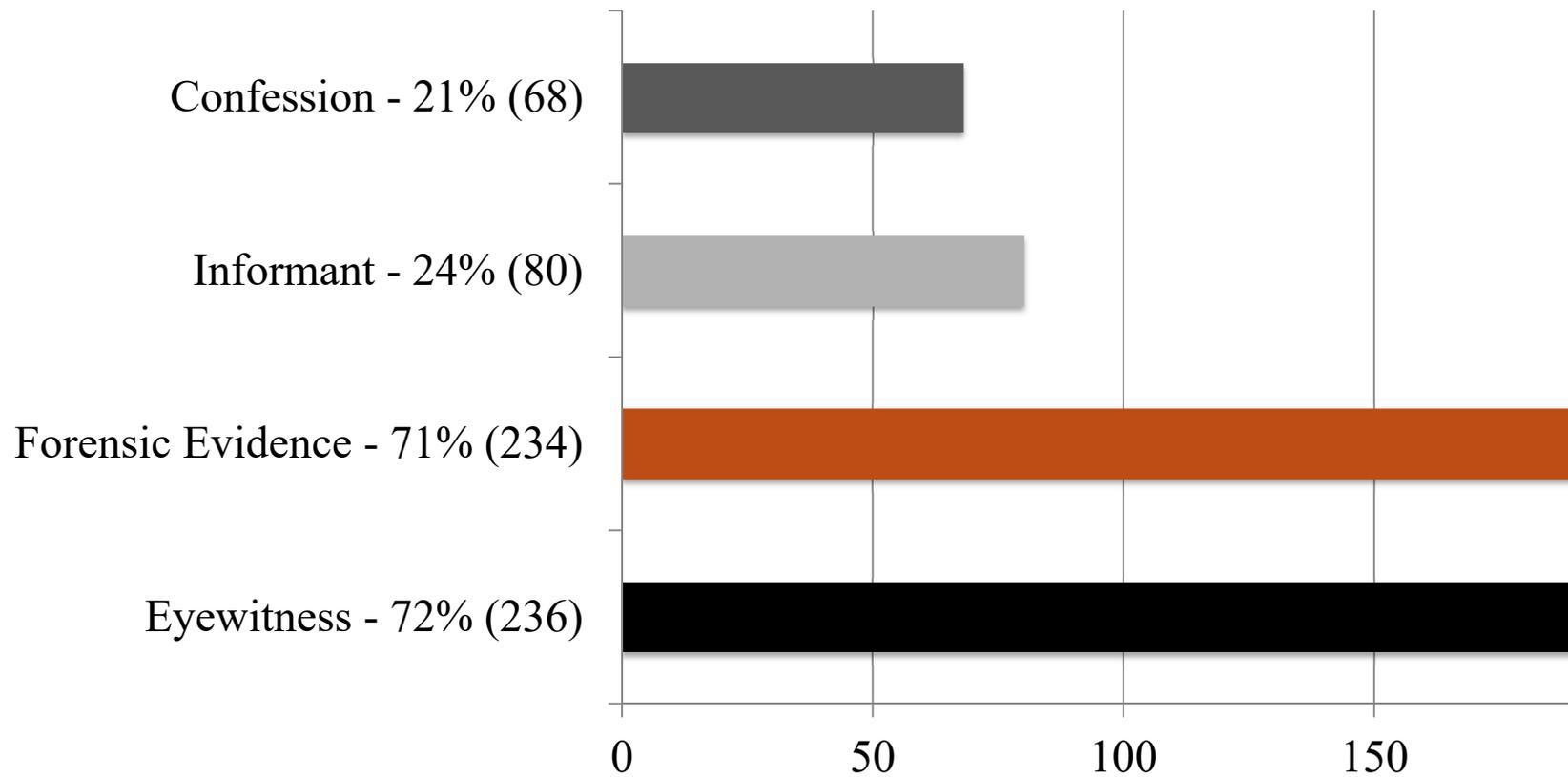
• http://www.law.virginia.edu/html/librarysite/garrett_innocent.htm



Crime of Exoneree Conviction



Evidence Supporting Exonerees' Convictions



A Confession

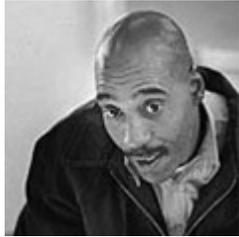


Inside Information

- The location of the murder
- The victim's clothing
- She had been wearing “a purple top, maybe two-toned, and dark pants.”
- A bb gun was found at the scene.

Sterling's Confession

- “Truthful? How does the defendant know it's a purple jacket or purple top? A guess? ... [The police] never released to the media ... the purple jacket.”
- On appeal, the judge said: “Only Sterling had a motive. ... Only Sterling knew facts that had not been publicized.”



Earl Washington, Jr.

Hart: Did you leave any of your clothing in the apartment?

Washington: My shirt.

Hart: The shirt that has been shown you, it is the one you left in apartment?

Washington: Yes sir.

Hart: How do you know it is yours?

Washington: That is the shirt I wore.

Hart: What makes it stand out?

Washington: A patch had been removed from the top of the pocket.

Hart: Why did you leave the shirt in the apartment.

Washington: It had blood on it and I didn't want to wear it back out.

Wilmore: Where did you put it when you left?

Washington: Laid it on top of dresser drawer in bedroom.

Washington Trial Closings

- The prosecutor emphasized Washington knew “the patch was missing over the left top pocket.”
- He continued:
“Now, how does somebody make all that up, unless they were actually there and actually did it? I would submit to you that there can’t be any question in your mind about it, the fact that this happened and the fact that Earl Washington Junior did it.”

The Confession Post-Trial

- Direct Appeal – 1984 – Virginia Supreme Court:
“Here, the defendant identified the shirt as his own by pointing out a unique characteristic he recognized, a place where a patch had been ripped from a pocket.”
- **Federal habeas – 1993 – Fourth Circuit:**
“The strength of the prosecution’s case, however, lies beyond the mere voluntariness of the confessions. It rests in **the numerous details of the crime** that Washington provided to the officers as they talked with him. **[P]etitioner knew so much about this crime that the jury could afford his confessions substantial probative weight.**”

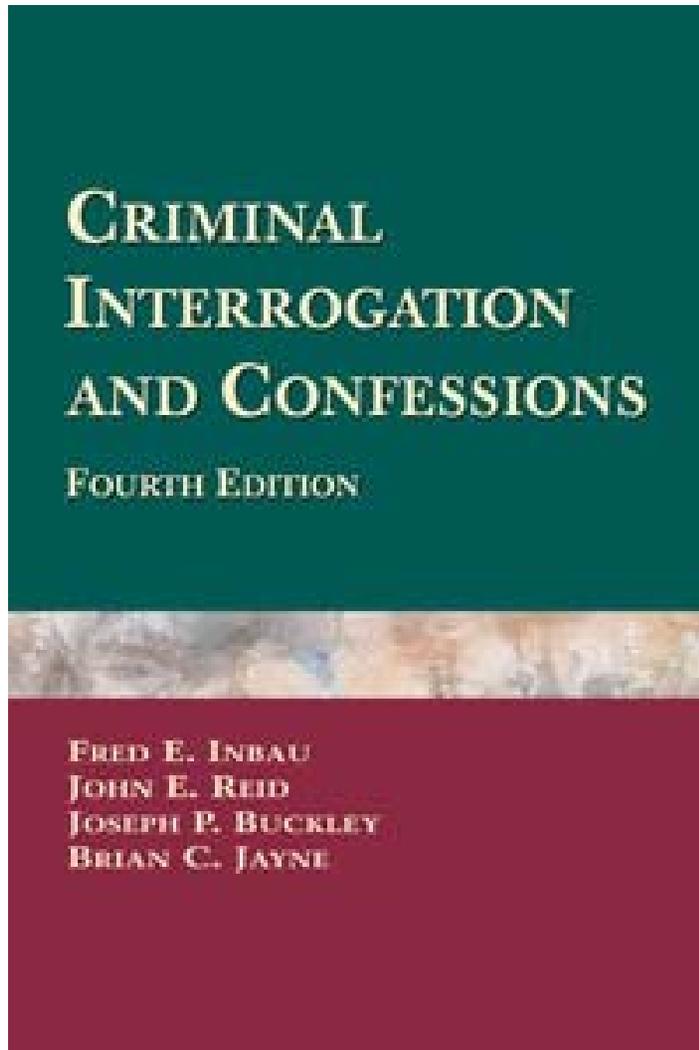
The Confession Post-Trial cont'd

- **Partial Clemency – 1994 – Gov. D. Wilder:**

“[A] review of the trial evidence, including the confessions of Earl Washington, Jr. reveals that he had knowledge of evidence relating to the crime which it can be argued only the perpetrator would have known.”

– But – during the clemency review, the detective told the Attorney General that they “must have mentioned the shirt to Washington” and “his testimony in the record did not accurately reflect that the shirt had first been mentioned by the police.”

The Inbau and Reid Manual



During an interrogation “[w]hat should be sought particularly are facts that would only be known by the guilty person.”

Police are trained to ask open questions - “What happened next?”

“[T]he truthfulness of a confession should be questioned, however, when the suspect is unable to provide any corroboration beyond the statement, ‘I did it.’”

Inbau & Reid on Feeding

- During the interrogation “[w]hat should be sought particularly are facts that would only be known by the guilty person.”
- Thus police are trained to ask open questions, like “What happened next?”
- And “the truthfulness of a confession should be questioned, however, when the suspect is unable to provide any corroboration beyond the statement, ‘I did it.’”

Public Blackout on Key Facts

- “When developing corroborative information, the investigator must be certain that the details were not somehow revealed to the suspect through the questioning process, news media, or the viewing of crime scene photographs.”
- Inbau and Reid recommend documenting in the case file which facts are to be kept confidential, “so that all investigators are aware of what information will be withheld.”

68 DNA Exonerates who Confessed

- 64 of 68 false confessions were contaminated with inside information
- Almost all (63 of 68) had interrogations lasting more than 3 hours
- **19 were excluded by DNA at the time of the conviction**
- 24 were intellectually disabled or mentally ill.
- **24 were juveniles.**

Confession Statements, e.g. M. Bradford

Bradford's transcribed statement:

Q What did Larry do after he stomped and kicked the lady?

A He picked up a ~~brick~~ CONCRETE BRICK

Q What did he do with the ~~brick~~ CONCRETE BRICK?

A He hit her with the ~~brick~~ CONCRETE BRICK. She fell back down and Calvin picked her up.

Q Was this brick a piece of concrete from the ground?

A Yes.

Bradford testifying at L. Ollins' Trial

Q. Are we talking about a house brick or some other kind of object?

A. Cement out of the ground, like a rock.

Q. Like a chunk of cement?

A. Chunk of cement

Officers testified they had found at the crime scene a piece of concrete, which they took into evidence. A crime lab analyst described analyzing stains on the piece of concrete and finding them consistent with the victim.

David Allen Jones's recorded interrogation

- When Jones could not state the location of a crime, police reminded him that they had earlier shown him photos of the crime scene:
- “You remember yesterday we showed you that picture” and that it was “by the water fountain” and “you remember that gate we showed you right there,” finally eliciting a response from Jones that was transcribed as:
“This right here (Untranslatable).”

- At Robert Miller’s trial, the prosecutor emphasized:

“He described the details ... details that only the killer could have known.” In response to the defense suggestion that he could have guessed such details, the prosecutor said, **“Are you kidding? Are you kidding?”** and added **“He supplied detail after detail after detail after detail.”**

Experts

- Only 4 of these exonerees had experts testify, including pre-trial
- Yet 24 were mentally disabled
- Jerry Frank Townsend had 7 experts, to the prosecutor's one non doctor – but the court ruled :
“You know, it would be good if all confessions were perfect.” “I find that Mr. Townsend was sufficiently societally, if I may use that word, and functionally intelligent to know—to know his *Miranda* rights and to significantly and sufficiently waive them” Townsend “had so much knowledge of street parlance.”

Unequivocal Denial – N. Hatchett

Q. Did you ever supply the Defendant with details, specific details of the offense so that he would be able to recite them back to you when and if he decided to give you a statement about his knowledge and involvement with these crimes?

A. I didn't.

Q. You say you didn't, so I will ask the next question: Did you hear anyone else or see anyone else provide him with the kind of details that he eventually later gave you demonstrating his knowledge and involvement in this crime?

A. No. **As a matter of fact, as lead investigator I was the only one privy to such details at this point.**

Confessions Ended Investigations

In Jeff Deskovic's case, for example, an inquiry later conducted by the District Attorney's office concluded:

- [A]ll investigation ceased after police obtained Deskovic's purported confession. The prosecution apparently did little or nothing to corroborate the theories it employed to square the scientific evidence with Deskovic's guilt. There is no evidence, for example, that much was done to locate the 'boyfriend' who was the supposed source of semen or even to document [the victim's] movements in the 24 hours before her death.



VA: Need for Model Policy on Interrogations

- Few agencies required recording of entire interrogations as a matter of policy; nine did so (some others may do so but not as a matter of policy).
- Over half, or 58 of 116 policies obtained, made recording an option, but did not encourage it or provide guidance on how to record.
- Only a handful of policies provided guidance on conducting juvenile interrogations (apart from stating that efforts be made to contact parents or guardians).

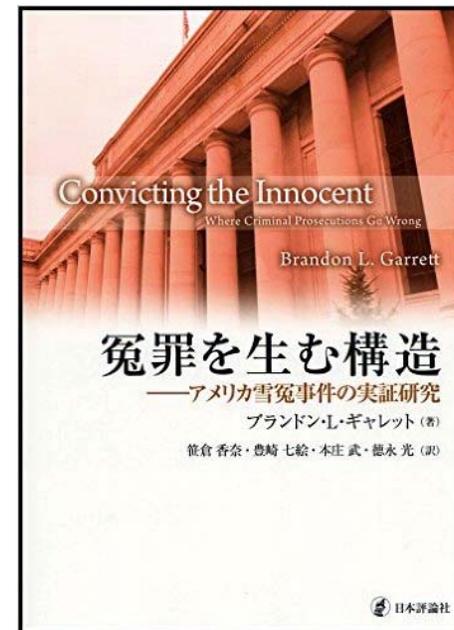
Brandon L. Garrett, *Interrogation Policies*, 49 University of Richmond Law Review 895 (2015)



Additional Flaws

- No policies contained guidance on interrogation of intellectually disabled individuals.
- Only two policies described how to properly conduct an interview, or laid parameters for doing so, such as cautioning against feeding facts through leading questions.
- About one-third of the policies, or 41 of 116, were very brief (less than a page) and chiefly noted that the Miranda warnings must be given.
- 58 agencies lacked written policies on interrogations; 15 of those were sheriff's agencies that did not conduct interrogations.

It Can Happen Anywhere that Interrogations are Used





Length of Interrogation

- When questioning a juvenile, officers shall not prolong the interview beyond what is needed in order to complete their investigation. Also, the interrogation shall be handled by one officer if at all possible in order to lessen the chance of the juvenile feeling intimidated or pressured. If an officer interrogates a juvenile of the opposite sex, the officer should request the presence of another officer if one is available. 2-29.10.

Further IACP Recommendations

- Int'l Ass'n of Chiefs of Police, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation* (2012).
- E.g. “read each warning slowly, stopping to ask the child after each individual warning to explain it back in his or her own words.”

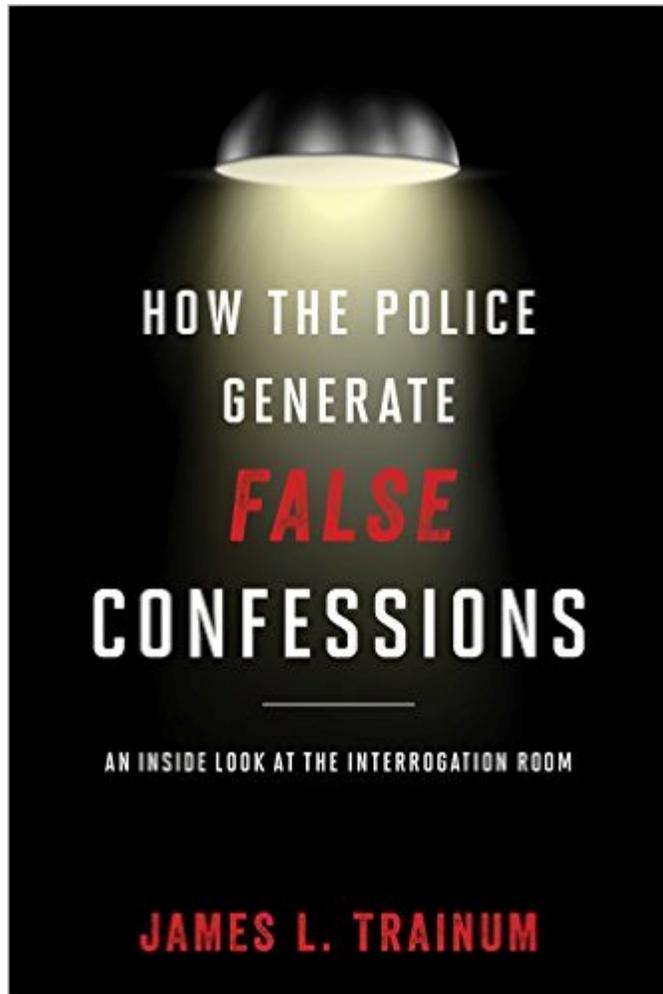




Recording

- International Association of Chief's of Police, Electronic Recording of Interrogations and Confessions Model Policy (2006)
- *“Electronic recording of custodial interviews can help law enforcement meet these demands by providing an irrefutable account of what transpired during a critical interaction between police and suspects.”*
- More than 20 states now require recording, as does the federal government

Reconsidering Coercive Interrogation Techniques



- Interview techniques that focus on letting suspect provide the information

Video is No Cure-All

Det. 1: Did she tell you to tie her hands behind her back?

Vasquez: Ah, if she did, I did.

Det. 2: Whatcha use?

Vasquez: The ropes?

Det. 2: No, not the ropes. Whatcha use?

Vasquez: Only my belt.

Det. 2: No, not your belt... Remember being out in the sunroom, the room that sits out to the back of the house? ...and what did you cut down? To use?

Vasquez: That, uh, clothesline?

Det. 2: No, it wasn't a clothesline, it was something like a clothesline. What was it? By the window? Think about the Venetian blinds, David. Remember cutting the Venetian blind cords?

Vasquez: Ah, it's the same as rope?

Det. 2: Yeah.

Det. 1: Okay, now tell us how it went, David -- tell us how you did it.

Vasquez: She told me to grab the knife, and, and, stab her, that's all.

Det. 2: (voice raised) David, no, David.

Vasquez: If it did happen, and I did it, and my fingerprints were on it...

Det. 2: (slamming his hand on the table and yelling) You hung her!

Vasquez: What?

Det. 2: You hung her!

Vasquez: Okay, so I hung her.