

Posted 3/26/20

## WHEN *SHOULD* COPS LIE?

***NYPD detectives tweak an old approach. But lying is still lying.***

*For Police Issues by Julius (Jay) Wachtel.* When it comes to the human costs of violent crime it doesn't get much worse than what happened in a Harlem-area park during the evening hours of December 11, 2019. Three young hoodlums – one only thirteen, his accomplices a mere fourteen – [approached a college freshman](#), Tessa Majors, 18, and demanded she give up her cell phone. And when she refused, one of the 14-year olds stabbed her to death.

Park video images depict three boys trailing a man, and, later, running off. Using additional videos [detectives tracked the suspects](#) to their homes. Officers subsequently spotted the youngest on the street, and when he tried to elude them by darting into a nearby building they arrested him for trespassing. After consulting with prosecutors, police summoned the boy's uncle. In his presence they questioned the teen on video.

[He initially denied everything.](#) "I don't know about the stabbing. I don't know about the stabbing," the youth protested. So the detective told some fibs:

Then Detective Wilfredo Acevedo leans over and says the police have video footage and other evidence that puts the boy and two middle school friends at the park when Ms. Majors was killed. "I'm going to be asking questions," Detective Acevedo says. "I already know the answers."

Detective Acevedo didn't simply act the tough guy. He reassured the boy that he didn't consider him "a bad kid" and asked whether his uncle had taught him right from wrong. Lying to police, he cautioned, would bring on "a lot, a lot of trouble."

In time the artfulness paid off and the boy talked. He and two classmates, both fourteen, went to the park to rob someone. But he didn't stab the victim: one of the fourteen-year olds did that. Throughout, his confession was directed at the uncle. That, as Detective Acevedo later testified, was reassuring. "His response was to his uncle, not to me. I felt it was more forthcoming, more truthful." That proved of scant comfort to the boy's public defender, who protested that the uncle was ill-suited to oversee the interrogation, as he couldn't be expected to know that the detective could legally lie. But the officer brushed concerns about the voluntariness of the statement and the child's credibility aside. "I just wanted him to tell me what occurred in the park. That's all. We can lie, yes."

## POLICEISSUES.ORG

After two months of accumulating a veritable “trove of evidence,” including the murder weapon, a DNA match, and of course, an evildoers’ own words, prosecutors charged the three boys with robbery and murder: the 13-year old, as a juvenile, and his 14-year old companions as adults, as New York law allows in exceptional cases. Trials are pending.

---

This isn’t the first time that New York’s finest lied to kids to get them to fess up. A particularly notorious episode, the “[Central Park Five](#),” took place in 1989. In the end, five teens ranging in age from fourteen to sixteen were convicted of assaulting and brutally raping a woman who had been jogging through the landmark Manhattan park. [We reported on the fiasco](#) nearly six years ago, on the same day that the [City of New York awarded](#) the five wrongfully convicted boys a total of \$41 million, “about \$1 million for each year of their imprisonment.”

No, the five weren’t total innocents. They were among several dozen young miscreants who were roaming the park that evening, assaulting and robbing innocent persons. Several of the five were also convicted in a couple of those crimes. But none were involved in the woman’s brutal rape and beating. As it turns out, the real culprit remained unmolested and went on to commit other rapes and a murder. It was only years later, after he was caught, convicted and sentenced to life on those crimes, that a guilty conscience led him to admit he alone committed the Central Park rape. He had no connection with any of the five boys, and his confession was confirmed through DNA.

Given the lack of witnesses or physical evidence tying them to the crime, how were the five convicted? By their own false admissions, in which they falsely pointed fingers at each other. Interrogators exerted subtle and not-so-subtle pressures to fess up. [One boy was told](#) that his cooperation might bring on leniency or even transform him from a defendant into a witness. Raymond Santana, the youngest, was told that police “had evidence” against fifteen-year old Kevin Richardson. But they wanted more, and if Santana “just helped them build a case against Richardson by placing himself into the crime scene, he’d get to go home.”

[Officers also flat-out lied](#) about the evidence they had. During the trial of Yusef Salaam, NYPD Det. Thomas McKenna testified that when the youth was first questioned he repeatedly denied having been in the park. So Det. McKenna warned him that if the “satiny and smooth” fingerprints found on the jogger’s pants matched his, “you’re going for rape.” That lie – in fact, no fingerprints were found – changed Salaam’s tune. “Yes, I was there but I didn’t rape her,” the fifteen-year old said.

## POLICEISSUES.ORG

Over the years, psychological methods of interrogation have become increasingly sophisticated, employing ever-more subtle forms of manipulation, deception, and coercion. It's no longer as apparent why innocent persons may falsely confess to crimes that carry the possibility of lengthy prison sentences or execution. New York's detectives took an approach that closely resembles [the popular "Reid" interrogation technique](#) that we wrote about in "[False Confessions Don't Just Happen](#)." Among other things, Reid encourages officers to suggest "themes or reasons" that allow suspects to retain a sense of self-worth as they confess. Far removed from the nasty, old-fashioned "third degree" of T.V. and the movies, [this method's subtlety](#) helps further the belief that the confessions it produces must be true.

---

As one might expect, detectives investigating the more recent Harlem attack [quickly tried to distance their case](#) from the Central Park fiasco. Prosecutors were promptly called in, and interrogators didn't wait for arrestees to change their tune before they turned on the tapes. So we should feel better about this case. Right?

Perhaps. This time, jurors will actually hear the police lies and blandishments and have a better basis for considering any possible ill effects. There is also a lot of other evidence suggestive of the boys' guilt. On the one hand, that's a relief. On the other, it complicates things, as the corroborative effects of other evidence could distract jurors from considering the possible ill effects of manipulative questioning.

What does the *law* have to say about lying to suspects? According to the Supreme Court, deceptive questioning may not by itself be enough to render an otherwise admissible confession involuntary. In a leading case on point, the Court affirmed a murder conviction even though police "falsely told petitioner, who was reluctant to talk, that Rawls [his cousin] had confessed." (*Frazier v. Cupp*, 394 U.S. 731, 1969). According to the Court, voluntariness isn't determined by a single factor but by the "totality of the circumstances" (*Schneckloth v. Bustamonte*, 412 U.S. 218, 1973):

In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances -- both the characteristics of the accused and the details of the interrogation [such as] youth of the accused...low intelligence...lack of any advice to the accused of his constitutional rights...length of detention...repeated and prolonged nature of the questioning...use of physical punishment such as the deprivation of food or sleep.

States are of course free to adopt stricter standards. In *State v. Eskew* (207 MT 36, 2017) the Montana Supreme Court reviewed the conviction of a mother who allegedly

## POLICEISSUES.ORG

shook her infant to death. During a protracted interrogation, detectives got her to mimic shaking a baby after suggesting it was the only way she could help her child, whom they knew was no longer alive. Setting aside the conviction, the justices ruled that “confessions or admissions like the ones in this case, induced by deliberate psychological coercion, lies, and material misrepresentations to the suspect are not voluntary and should be excluded from evidence.” (Click [here](#) for the National Registry of Exonerations entry.)

Confronting an eerily similar set of facts, New York’s high court ruled in 2014 that local police went too far when they told a father that he could save his son by confessing. Their opinion in part reflected a state law that defines as involuntary “any promise or statement of fact [which] creates a substantial risk that the defendant might falsely incriminate himself.” Well, that seems pretty stern. We’ll have to see how it plays out in the Harlem case.

On the opposite coast, legal controls seem substantially weaker. California follows the Federal “totality of the circumstances” standard.” Here’s an extract from the California Supreme Court decision in *People v. Farnam* (28 Cal.4th., 2002):

Defendant...contends the following circumstances established the involuntariness of his confession: he was young; he had a low intelligence; he was left overnight in a cell; he was distraught; he had been smoking marijuana; and the police psychologically coerced his confession by falsely telling him his fingerprints were found on Mr. N.'s wallet...That [detective] Huff and his partner falsely informed defendant his fingerprints had been found on Mr. N.'s wallet did not render defendant's subsequent confession to the N. and Griswold crimes involuntary... Viewing the totality of the circumstances, we are satisfied that defendant's confession was the product of a rational intellect and a free will.

What’s the problem with that? “[Your Lying Eyes](#),” one of the very first posts in our “[Wrongful Conviction](#)” section, recounts the exoneration of David Allen Jones (for his National Registry entry, click [here](#)):

A mentally retarded man with an IQ of 62, [Jones] was talked by LAPD detectives into confessing to murdering four prostitutes in 1992. Although DNA recovered from the victims was not his, Jones was nonetheless tried and convicted....Nine years later, an LAPD detective working cold cases matched the four rape/murders attributed to Jones plus six more to another man already in prison for rape.

## POLICEISSUES.ORG

And for a real head-shaker check out [“Lying: the Gift That Keeps on Giving,”](#) an early post in our [“Conduct and Ethics”](#) series. In 2003, LAPD homicide detectives used a purposely altered photospread to convince a murder suspect – he wasn’t in custody – that one of his acquaintances identified him as the killer. (She hadn’t.) [So he killed her.](#)

---

Switching gears, let’s leave the law behind and take an ethical perspective. Ought law enforcement officers *ever* lie? *Ever* manipulate? *Ever* bluff? Your blogger, who spent two decades as a Fed, can offer no easy solution. His post-arrest interrogation style – and that of most his colleagues – was factual and direct. But we didn’t lie, use the “Reid” technique or employ any other special approaches; for example, such as [the FBI says it uses](#) with “high value detainees.” Our work, though, was mostly about gun trafficking. We didn’t investigate murders. It wasn’t our job to catch rapists and killers before they struck again.

Still, it seems best to not lie. And especially, to avoid pressuring individuals most likely to falsely confess, such as children and the grief-stricken. On the other hand, if someone’s safety is at risk, such as a kidnap victim who’s still missing, then lie and cheat to your heart’s content.

Police lying doesn’t just happen during interrogations. Your blogger spent a couple years working undercover, posing as a buyer of stolen property, including guns. (He was known as “Jay,” and the nickname stuck.) Jay’s job was intrinsically as a deceiver, and the better his lies, the better the results. If there was a saving grace ethics-wise, it lay in the inducements. Instead of wielding the interrogator’s hammer of the state, Jay was offering a reward – cash – to persons who were ostensibly exercising free will.

Yes, that too is morally complicated. (For more about this, check out [“From Morals to Practice,”](#) Jay’s article about the ethical dilemmas of undercover policing.) But don’t just take his word for it. Three years ago, in [“You Can’t Handle the Truth: A Primer on False Confessions,”](#) Craig J. Torcino warned, eloquently and in great detail, about the consequences of police manipulations:

There are measures to be taken to stem the tide of false confession in American courts and they are well documented. From mandatory videotaping of all interrogations to more enlightened means of interrogation beyond the Reid Technique. The causes of false confessions and their damage are known. Now is the time to stimulate efforts for remedial action.

## POLICEISSUES.ORG

Well, that's it for this round. From our home in Orange County, California, where Linda and I have hunkered down against that implacable microscopic foe, we send our best wishes. Stay well!