

From False Confession to Wrongful Conviction: Seven Psychological Processes

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Abstract: A steadily increasing tide of literature has documented the existence and causes of false confession as well as the link between false confession and wrongful conviction of the innocent. This literature has primarily addressed three issues: the manner in which false confessions are generated by police interrogation, individual differences in susceptibility to interrogative influence, and the role false confessions have played in documented wrongful convictions of the innocent. Although the specific mechanisms through which interrogation tactics can induce false confessions, and through which they can exert enhanced influence on vulnerable individuals, have been widely addressed in this literature, the processes through which false confessions, once obtained by police, may lead to wrongful conviction have remained largely unaddressed. This article addresses this gap in the literature, examining seven psychological processes linking false confession to wrongful conviction and failures of post-conviction relief: (1) powerful biasing effects of the confession itself, including incorporated “misleading specialized knowledge” (inside crime-relevant knowledge displayed by the suspect in the false confession, but acquired through outside sources (such as the interrogator) rather than in the course of the commission of the crime); (2) tunnel vision and confirmation biases, (3) motivational biases, (4) emotional influences on thinking and behavior; (5) institutional influences on evidence production and decision making; and inadequate context for evaluation of claims of innocence, including (6) inadequate or incorrect relevant knowledge, and (7) progressively constricting relevant evidence. We discuss reciprocal influences of these mechanisms

and their biasing impact on the perceptions and behaviors of suspects, investigators, prosecution and defense attorneys, juries, and trial and appellate judges.

Introduction

All Evidence to the Contrary...

On July 10, 1997, Danial Williams was arrested and charged with the brutal rape and murder of his neighbor Billy Bosko's wife, Michelle. Two days earlier, after debarking from his navy ship the *USS Simpson*, Billy Bosko had come home to find her lying in a pool of blood on their bedroom floor, naked from the waist down and dead from strangulation and multiple stab wounds to her chest (Wells & Leo, 2008).

Police soon embarked on a remarkably flawed "investigation" of the case that eventually led to the wrongful accusation and incarceration of seven men, an investigation and prosecution described by one writer as "the present-day equivalent of such insanities as the Salem 'witch trials' of the 1690s..." (Connery, 2008; see Wells & Leo, 2008 for a full account of the case). Detectives elicited false confessions from four men—Danial Williams, Joseph Dick, Eric Wilson and Derek Tice—who would later come to be known as the Norfolk Four. Three of these men (Williams, Dick and Tice) remain incarcerated to this day serving life sentences, despite DNA exculpations, the identification of the true perpetrator (Omar Ballard), his corroborated confession, and the match of his DNA to the semen found in the victim. The fourth, Eric Wilson—who, unlike the others, had falsely confessed only to rape instead of both rape and murder—served more than seven years before being released from prison in 2005. Three other additional innocents (Richard Pauley, Geoffrey Farris and John Danser) were also arrested—but did not confess. Each served 7 to 10 months in jail before capital murder charges against them were dismissed.

In this article, we begin by briefly recounting how and why police detectives initially targeted the innocent suspects in the Norfolk-Four case and then elicited four false confessions. We then identify seven psychological processes that are often involved when false confessions lead to wrongful conviction, using the case of the Norfolk Four to illustrate the way in which these psychological processes may affect the post-confession thinking and actions of those involved in producing a wrongful conviction—from defendants, investigators and attorneys, through trial judges and juries, to the rulings of appellate courts.

The Norfolk Four: From Crime to False Confession

When Billy Bosko found his wife Michelle dead at mid-afternoon on July 8, 1997, he ran to his neighbor Danial William's house to borrow a phone to call 911. Williams called, and then he, his wife Nicole and his visiting parents went back with Billy to his apartment. Williams helped Billy cover his wife's body with a blanket, and then waited with him for police to arrive.

As police began to question neighbors about what they might have witnessed and who might have committed the crime, they encountered Michelle's friend, Tamika Taylor. Asked who may have had any reason to kill Michelle, Taylor pointed to Williams, saying that she thought he seemed obsessed with Michelle in a creepy and sexual way (Wells and Leo, 2008: 14). Ironically, Taylor also suggested that police investigate her friend Omar Ballard, the true perpetrator. They and others had all partied together at Michelle's apartment only four nights earlier, and Taylor said that Williams had danced in a sexually suggestive manner, while allegedly "leering" at Michelle.

This was sufficient for Detective Maureen Evans to conclude that Danial Williams was the person who raped and killed Michelle Bosko. Omar Ballard was never investigated until he confessed to the crime in a letter provided to police by Tamika Taylor's mother on February 22, 1999—almost 19 months after the murder. Had he been investigated, police would have discovered a very troubling and suspicious history. Only two weeks before Michelle Bosko's murder, Ballard had assaulted a girl named Melissa Morse, who lived in the same block. An arrest warrant was issued against Ballard for this assault on the same evening that Danial Williams was interrogated. Ballard had proceeded to rape a 14-year-old girl in the neighborhood only 10 days after Michelle's murder, and had been identified and arrested for that crime a week later. He was known to stay with Tamika Taylor, and Taylor had reported to police that Ballard had become friends with the Boskos, that he spent time with Michelle when Billy was at sea, and that he had partied with her, Danial, and the others at Michelle's place a few days before the murder. Yet police never pursued any investigation of Ballard as a suspect in Michelle's murder.

In contrast, Danial Williams—who had no police record—would seem to be an unlikely suspect. He had been married for only ten days, to a wife who was suffering from cancer, and his parents had been visiting for the last several days. His wife told police that he had been sleeping with her at the time of the murder. Nevertheless, initially police focused only on Danial Williams. He became the primary suspect within the very first hour of the investigation, based solely on Taylor's statement about his alleged sexual interest in Michelle. Detective Evans asked him to come to the police station to talk further with her and Detective Halverson about the case.

Never imagining that he was a suspect, Williams willingly followed them to the police station, arriving at 6:30 p.m.. Police kept him waiting while they followed up with other witnesses until about 8 p.m., when they undertook an interrogation that would last through the night, until after 7 a.m. the next morning. Williams, who was exhausted and had not eaten since breakfast at around 9 a.m., maintained his innocence for the first ten hours as he was interrogated by three different detectives. He agreed to take a polygraph, and he was falsely told that he had "failed." He was relentlessly accused of having sexual interest in Michelle and of raping and murdering her; he was accused of lying about his reported memories of his relationship with Michelle and his activities at the time of the murder; and he was told, falsely, that an eyewitness had seen him leave Michelle's apartment around the time of the murder. As the interrogation continued into the wee hours of the morning, Williams became increasingly exhausted and sleep-

deprived; at one point when he put his head down on the table to rest, the interrogators told him to pick it back up.

As Williams continued to deny involvement, the interrogators began to suggest that he could have “repressed” his memories of the crime—that he could have blacked out, or been sleepwalking, that he could have amnesia. Even though he had begun to doubt his own memory and to wonder if he had somehow committed the crime, he continued to resist their repeated accusations. But at around 4:50 a.m., a new interrogator was brought in—Detective Robert Glenn Ford. Ford was known for his aggressive interrogation techniques, and his frequent success in inducing confessions. But he was also known for some more shady techniques, many known to enhance the risk of false confession, and had already been demoted once for coercing false confessions from three teenagers in 1990. Subsequently, he induced known false confessions in at least two more cases in 1994 and 1997 (Wells & Leo, 2008: 30).

Danial Williams reported that during the next hour Ford yelled at him, poked him in the chest, got in his face and told him he knew Williams had murdered Michelle, and—as occurred in the interrogations of all the subsequent suspects—threatened Williams with the death penalty if he refused to confess. Ford stressed that Williams was facing capital murder charges, but that Ford could help him get a lesser charge if he confessed.

At about 5:50 a.m., after almost 12 hours in the police station, Williams gave in, and began to concoct a story of his involvement. He later reported that he was exhausted, confused, not feeling well, and finally just couldn’t take the pressure anymore as he came to believe that he might have actually committed the crime—so he told the detectives what they wanted to hear because he just wanted the questioning to end. He made up a story that was inconsistent in many respects with the evidence, in which he admitted to things that the detectives acknowledged they had made up. He was influenced to change his story to better fit the evidence to some degree over the next hour, and at 7 a.m. the detectives had Williams give an audiotaped confession. This would be the first of many coerced false confessions that Detective Ford and his colleagues elicited over the next couple of years.

By 11 a.m., having found that the autopsy report was inconsistent with many of the details in Williams’ taped confession, Detective Evans brought him back into the interrogation room to confront him about the glaring major inaccuracies and educate him about the correct details, and soon elicited a changed story and second, revised, taped confession. This sequence—coerced confession, discovery that it couldn’t be true, coerced revisions—occurred repeatedly as each coerced story proved false and police targeted more and more innocent young men, a total of 12 before the case was over.

In December of 1997, the DNA analyses came back with a shocker for police. Danial Williams was excluded as Michelle Bosko’s rapist. Assuming that Williams’ roommate Joseph Dick must have somehow been involved with Williams in the crime as a co-

perpetrator, Detective Ford and his colleague Detective Wray hauled Dick in for questioning and—after nine hours of accusatory interrogation that involved lies about evidence, including false reports of a failed polygraph, and death-penalty threats—coerced a false confession from him as well. Police arrested Dick on January 15, 1998, only to again discover in March that Dick’s semen did not match that of the perpetrator.

[Police used similar interrogation tactics to elicit confessions from other men, Eric Wilson and Derek Tice, (acquaintances of Williams and Dick). Please see the full article, to be published in 2010 in [*The Journal of Psychiatry & Law*](#).]

. . . Seven innocent young men were now in jail for the rape and murder of Michelle Bosko—with none of their DNA matching that of the semen found in her body.

In February of 1999, Ballard’s letter to Tamika Taylor found its way to police. When interrogated, he admitted the crime within 20 minutes of questioning and maintained that he had acted alone. His statement contained accurate details of the crime not mentioned in those of any of the other defendants. But police and prosecutors did not believe he acted alone—despite the fact that only he had a violent criminal record, only his DNA had been deposited in Michelle Bosko, and only he could provide accurate crime details—but instead believed, absurdly, that they had finally located the missing member of an eight-man gang-rape murder. They offered Ballard a plea contingent on his implicating the others, which he accepted to avoid the death penalty. To maintain this agreement, he provided a new confession also implicating the others, which he later retracted. But police and prosecutors never chose to believe him, preferring instead to believe the far-fetched scenario that, against all physical evidence and logic, he somehow acted in concert with the other seven defendants to brutally rape and murder Michelle Bosko.

Danial Williams and Joe Dick pled guilty to avoid receiving the death penalty, which their lawyers had convinced them was almost certain if they went to trial. Eric Wilson and Derek Tice were found guilty at their separate jury trials, and, after his appeal of the first verdict was granted, Tice was found guilty again at a second jury trial. Although Wilson was released after finishing his sentence for rape, Williams, Dick and Tice have been incarcerated for more than 11 years for a crime they did not commit.

Why were these multiple false confessions viewed as so compelling and so impossible to discount? Why did police, prosecutors and defense attorneys fail to believe the Norfolk Four’s retractions, despite the DNA exculpations, lack of physical evidence, the presence of alibis, the evidence of police coercion, the mountain of inconsistencies, inaccuracies and contradictions in their accounts, their failures to implicate others in their initial confessions (despite the obvious human tendency to distribute blame), the apprehension and confession of the true perpetrator, and many other facts inconsistent with guilt? In the next sections, we identify seven psychological processes often involved in cases where false confessions lead to wrongful conviction and where innocent defendants fail to receive post-conviction relief, and we note their role in the case of the Norfolk Four.

Seven Psychological Processes

I. Confession and the Role of Misleading Specialized Knowledge

Confessions are universally viewed as extraordinarily persuasive evidence of guilt, particularly when they contain a plausible story line, a description of motives, explanations, crime knowledge, emotional expressions and acknowledgements of voluntariness (Leo, 2008, chapter 5). Former U.S. Supreme Court Justice William Brennan's observation that "no other class of evidence is so profoundly prejudicial" (*Colorado v. Connelly*, 1986: 182) is amply supported by social-science research (Miller & Boster, 1977; Kassin & Sukel, 1997; Kassin & Neumann, 1997; Leo & Ofshe, 1998; Drizin & Leo, 2004). Confessions strongly bias the perceptions and decision making of criminal-justice officials and jurors alike because most people assume that a confession—especially a detailed one—is, by its very nature, true. Confession evidence therefore tends to define the case against a defendant, usually overriding any contradictory information or evidence of innocence (Leo & Ofshe, 1998). If introduced against a defendant at trial, false confessions are highly likely to lead to wrongful convictions—even when they are elicited by questionable interrogation methods and are not supported by other case evidence. False confessions have contributed not only to erroneous jury verdicts, but also to the entry of false guilty pleas (Redlich, in press), as occurred in the Norfolk-Four case. Because self-incriminating statements are viewed as such inherently compelling evidence of guilt, false confessions are a leading cause of wrongful conviction. In aggregated case studies, they have accounted for 14% to 60% of documented wrongful convictions (Warden, 2003; Bedau & Radelet, 1987; Scheck, Neufeld, & Dwyer, 2000; Gross et al., 2005; Garrett, 2008).

A confession sets in motion a seemingly irrefutable presumption of guilt among justice officials, the media, the public, and jurors (Leo & Ofshe, 1998). This chain of events, in effect, leads each part of the system to be stacked against the confessor; he will be treated more harshly at every stage of the investigative and trial process (Leo, 1996). He is significantly more likely to be incarcerated prior to trial, charged, pressured to plead guilty, and convicted. Moreover, the presence of a confession creates its own set of confirmatory and cross-contaminating biases (Findley & Scott, 2006), leading both officials and jurors to interpret all other case information in the worst possible light for the defendant. For example, a weak and ambiguous eyewitness identification that might have been quickly dismissed in the absence of a confession will instead be treated as corroboration of the confession's validity (Castelle & Loftus, 2001). As the case against a false confessor moves from one stage to the next in the criminal-justice system, it gathers more force and the error becomes increasingly difficult to reverse.

This process typically starts with the police. Once they obtain a confession, they typically close their investigation, deem the case solved, and make no effort to pursue any exculpatory evidence or other possible leads—even if the confession is internally inconsistent, contradicted by external evidence, or the result of coercive interrogation (Leo, 1996; Ofshe & Leo, 1997a, b)—for once they elicit a confession it serves to confirm their presumption of guilt. In order to maintain their presumption of guilt, police

will disregard or misinterpret evidence of innocence. Even if other case evidence emerges suggesting or even demonstrating that the confession is false, police almost always continue to believe in the suspect's guilt and the accuracy of the confession (Leo & Ofshe, 1998; Drizin & Leo, 2004).

The presumption of guilt and the tendency to treat more harshly those who confess extend to prosecutors. Like police, prosecutors rarely consider the possibility that an innocent suspect has falsely confessed. Some are so skeptical of the idea of police-induced false confessions that they stubbornly refuse to admit that one occurred even after DNA evidence has unequivocally established the defendant's innocence (Kassin & Gudjonsson, 2004). Once a suspect has confessed, prosecutors tend to charge him with the highest number and types of offenses (Cassell & Hayman, 1996), set his bail higher (Leo & Ofshe, 1998) (especially in serious or high-profile cases), and are far less likely to initiate or accept a plea bargain to a reduced charge (Leo & Ofshe, 1998). The confession becomes the centerpiece of the prosecution's case, and they aggressively prosecute the defendant. When they have confession evidence, prosecutors rarely back down, even in the face of considerable exculpatory evidence.

Like the police detectives in the Norfolk-Four case, the prosecutors presumed each confessor must be guilty simply because he had confessed—"innocent people do not confess" prosecutor Valerie Bowen would tell the jury in Eric Wilson's trial—despite the factual errors and inconsistencies in each of the confessions, the DNA and physical evidence that did not support the confessions, and the logic and factual evidence that eventually established Ballard as the sole perpetrator of the rape and murder of Michelle Bosko. Instead, like the police detectives, prosecutors repeatedly disregarded and misinterpreted evidence, including rock-solid-alibi evidence of innocence. They also repeatedly failed to turn over exculpatory evidence to defense counsel, who accused them of making blatantly false representations on the record to support the prosecution of the innocent men.

Even defense attorneys tend to presume confessors are guilty and treat them more harshly. As the California Supreme Court has noted, "the confession operates as a kind of evidentiary bombshell which shatters the defense" (*People v. Cahill*, 1993: 497). As a result, defense attorneys often pressure confessors to accept a guilty plea to a lesser charge in order to avoid the higher sentence that will inevitably follow from a jury conviction (Nardulli, Eisenstein & Fleming, 1988). In the Norfolk-Four case, the attorneys for Danial Williams—Danny Shipley and Robert Frank—assumed he must be guilty because he had confessed and took to calling him "Denial"—to his face, to his family, and one time even at a court hearing—every time he asserted his innocence. At Williams' suppression hearing, Shipley and Frank never raised the possibility that Williams' confession was false nor did they point out any of the blatant discrepancies between it and the physical evidence.

Joseph Dick's attorney, Michael Fasanaro, accused his client of lying when he told him he was innocent, and told Dick's parents, "without a doubt, Joe was involved in every aspect of the case" (Wells and Leo, 2008: 84). This persuaded Dick's family members

that he was guilty, and as a result they also pressured Dick to accept responsibility for the crime, enter into a plea agreement and testify against the other defendants in order to avoid the death penalty (Williams' attorneys had also persuaded his family that he too was guilty). Fasanaro, who never investigated Dick's provable alibi that he was out to sea at the time the murder had occurred, dismissed the inconsistencies and blatant errors in Dick's many confessions as meaningless and predictable for a criminal defendant. Alan Zaleski, Tice's first lawyer, also assumed his client was guilty because he couldn't understand why Tice would confess if he was not (Wells & Leo, 2008).

American judges also tend to presume that confessors are guilty and treat them more punitively. Conditioned to disbelieve defendants' claims of innocence or police misconduct, judges rarely suppress confessions, even highly questionable ones (Givelber, 2000). Thus, if the case does go to trial, the jury is highly likely to learn of the confession, as they did in the trials of Tice and Wilson. Even in the absence of other inculpatory evidence, and even if elicited through a clearly coercive interrogation, as was the case for the Norfolk Four, false confessions are highly likely to lead to wrongful convictions if introduced against a defendant at trial, as they did for Wilson and Tice. In their study of 60 false confessions, Leo and Ofshe (1998, 2001) found that 73% of the false confessors whose cases went to trial were erroneously convicted; 81% were in Drizin and Leo's (2004) study of 125 false confessions. This rate of wrongful conviction becomes even larger when incorporating the number of false confessors who plead guilty rather than take their cases to trial (78% and 85%, for the two studies, respectively). Despite their demonstrably false confessions, both Williams and Dick pled guilty to the rape and murder of Michelle Bosko to avoid the death penalty.

The findings from the studies of aggregated false confessions cases are consistent with those from experiments and public-opinion surveys (Leo, 2008). They all point to the same conclusion: that a confession is "uniquely potent" (Kassin & Neumann, 1997: 469) in its ability to bias the trier of fact in favor of the prosecution and lead to a wrongful conviction (Leo and Ofshe, 1998).

Despite the use of DNA to exonerate innocent prisoners in the last two decades, and the increasing number of documented, proven wrongful convictions (with and without DNA), criminal-justice officials and courts still tend to presume the validity of confession-based convictions. To this day, police and prosecutors in the Norfolk-Four case continue to insist that Williams, Dick, Wilson and Tice (as well as Farris, Pauley and Danser) all raped and murdered Michelle Bosko, despite the overwhelming mountain of physical and logical evidence to the contrary.

The Role of "Misleading Specialized Knowledge"

The use of misleading specialized knowledge (MSK) occurs when police investigators feed the suspect unique nonpublic crime facts—facts that are not likely guessed by chance—and then insist that these facts originated with the suspect (Gudjonsson, 2003; Leo, 2008). Sometimes referred to as "guilty" or "inside" knowledge, such facts may include the nature of the murder weapon, the location of wounds, placement of objects within the crime scene, and other unique nonpublic details of the crime (See Leo, Drizin,

Neufeld, Hall and Vatner, 2006). When included in the suspect's post-admission narrative, the facts are believed to reveal that he possesses information that only the true perpetrator would know and therefore he must be guilty. The inclusion of such "guilty" or "inside" knowledge would seemingly be possible only if the suspect had participated in or fully committed the crime, and they therefore lead observers to conclude he must be guilty. In fact, such MSK details are typically incorporated into the statements of innocent defendants because during the interrogation(s) police mention them, show them crime scene photos, or actively argue with the suspect that the crime occurred in a particular way (Leo, 2008).

Although true "guilty knowledge" can be a useful aid for conviction of the guilty, MSK is a truly pernicious influence, in that it so effectively implicates the innocent in the eyes of those who investigate and judge him. Police rely on MSK to convince prosecutors of the validity of the confession, who in turn rely on it to convince jurors of the defendant's guilt. Judicial rulings on the voluntariness and admissibility of the confession can be prejudiced by judges' views of its validity, as judges are loath to suppress a confession that may be the only means of conviction of a person they believe to be clearly guilty. Defense attorneys are influenced by MSK to believe their clients are guilty and then use it to pressure their clients to plead. And finally, appellate courts may rely in part on MSK in support of decisions to uphold trial convictions (Leo, 2008).

The dangers of MSK are particularly severe when the interrogation is unrecorded. In the case of the Norfolk Four, the detectives failed to record their lengthy interrogations of Williams, Dick, Wilson and Tice, but recorded a brief confession statement at the very end of each. The defendants alleged that detectives educated them about the crime scene facts during each of these interrogations. Each of the Norfolk Four incorporated multiple instances of MSK into their confessions. Ford and the other detectives had shown them crime scene photos, offered their own theories of the case, told the suspects what they "already knew," and coerced them into repeatedly changing their accounts to fit the detectives' current understandings of the facts. The result was that the confessions included details that—absent contamination by the detectives during the unrecorded interrogations—would ordinarily seem to corroborate inside knowledge of a crime. The fact that the defendants had given detailed confessions, however, was taken as further evidence of their guilt. In addition to being fed facts, however, some of the defendants had also learned of details of the crime prior to their interrogation. For example, by the time Tice was interrogated, he already knew details he had acquired from listening to news accounts, attending Williams' preliminary hearing, and visiting Williams in jail. Unfortunately, neither the detectives nor prosecutors realized the source of the four suspects' knowledge of the crime and, instead, attributed it, misleadingly, to inside guilty knowledge. Because there were no recordings to show the process through which detectives had contaminated the suspects with these facts, the prosecutors and juries mistakenly interpreted the details in the confessions to corroborate their veracity.

II. Tunnel Vision and Confirmation Biases

“Tunnel vision” refers to the tendency to selectively focus attention on one target to the exclusion of all others. In the criminal-justice system, tunnel vision has been used to refer to the tendency to focus attention on one suspect (or group of suspected co-perpetrators), and on evidence relevant to his (or their) guilt. We suggest that the problem of tunnel vision extends farther within the legal system, such as, for example, when a defense attorney may become focused on one legal goal (for example, preventing a client’s execution), ignoring evidence and lines of defense relevant to the goal of exoneration.

Tunnel vision and confirmation biases are implicated pervasively in the creation and consequences of false confessions, beginning with their influence on the necessary first step toward wrongful conviction—the misclassification of an innocent person as guilty. Among potential triggers of such misclassifications are beliefs based on gut hunches (e.g., the suspect is displaying suspicious demeanor or emotions) or erroneous assumptions (Ofshe and Leo, 1997a)—such as the assumptions that led to the targeting of Danial Williams (i.e., that a person who is sexually attracted to a victim will often kill her if rejected)—and crime-related schemas or “intuitive profiles” of likely perpetrators (e.g., women are typically murdered by their mates; Davis and Follette, 2002). Such assumptions can trigger tunnel vision and an initial assessment of enhanced probability (or a definite classification) of guilt.

Such an intuitive theory of the motivation for a rape/murder, such as Michelle Bosko’s, first guided Detective Evans to focus on Danial Williams. Later this uncorrected assumption of his guilt led to the exclusive focus on a series of others with the only probable cause being that they were acquainted or associated with Williams. They ignored Taylor’s suggestion that they investigate Ballard, given on the day of the murder discovery. They didn’t pick up on Ballard’s arrest for similar crimes in the same neighborhood. This tunnel vision kept all attention off the true suspect until he was forced upon police by his own confession letter.

Once targeted as a suspect, confirmation biases began to affect judgments of Williams’ behavior almost immediately. For example, Detective Evans interpreted his willingness to come to the station to talk to them and failure to protest as overly cooperative, and therefore suspicious. She also interpreted the bumper sticker on his car—“Sex is like pizza. When it’s good, it’s very good. When it’s bad, it’s still pretty good!”—as evidence of sexual perversion.

A second trigger of misclassification can occur during the pre-interrogation “Behavior Analysis Interview” in which the now suspected perpetrator is assessed for deception. Flawed training in behavioral analysis encourages police to use erroneous and misleading criteria for assessment of deception (see Vrij, 2008), yet to mistakenly believe that they detect deception with 85% or better accuracy (Kassin & Fong, 1999; Meissner & Kassin, 2004). But behavioral confirmation biases immediately come into play as the stressful interview and interrogation lead the suspect to display anxious behaviors investigators are erroneously trained to interpret as guilt. During the

subsequent interrogation, interrogators assume guilt, seek only confirming statements, and actively discourage and ignore exculpatory denials, verbalizations of innocence, and explanations.

Detective Evans was confronted immediately with evidence from the autopsy of Michelle Bosko that was incompatible with Williams' confession. Yet, assuming that innocent people don't confess to crimes they didn't commit, she didn't question his guilt, and instead simply assumed that he lied, forgot details, or got confused. As became standard operating procedure when the other defendants' confessions didn't fit the facts, she simply returned to confront Williams with the discrepancies and solicited a new account, feeding him facts she had learned from the autopsy and shaping his new account through several initial versions until she got one that fit her new view of what happened.

In short, the defendant is subjected to a progressing cascade of guilt-presumptive tunnel vision and confirmation biases among all who judge him. The impact of these biases becomes ever stronger as the range of contextual information that could otherwise provide the basis for more accurate evaluation of the validity of the confession shrinks. That is, much of the original information relevant to the suspect's guilt is lost as it is selectively filtered first by investigators, and later selectively reported by attorneys to judges, juries and appellate courts—and the evidence that remains is interpreted without the full relevant context for judging its validity.

III. Motivational Biases

A large body of literature addressing “motivated cognition” (e.g., *Psychological Inquiry*, 1999; Special Issue on Motivated Cognition) or “goal pursuit” (e.g., Hassin, Uleman, & Bargh, 2005; Elliot & Dweck, 2005) has examined the manner in which current goals direct attention, information search, and processing and interpretation of incoming information—as well as goal-relevant behavior. Goals can be regarded as one source of tunnel vision, in that they selectively direct attention to goal-relevant targets and information, and, like confirmation biases, promote biased processing of incoming information—but with interpretative biases that would serve the perceiver's goals, rather than simply confirm his or her expectations. Finally, goals also motivate behavior in their service, such that goal-promoting behavior becomes more likely. Goal-related biases pervade the processes leading to false confession and wrongful conviction.

The primary goal of investigators and prosecutors should be accuracy—identifying and convicting the guilty while making sure to avoid prosecution of innocents (Thomas, 2008). Unfortunately, competing personal, institutional and external sources (police supervisors, prosecutors, victims and their families, politicians, media, and the pressures of high case loads) create pressures to solve crimes quickly and efficiently, especially in serious and high-profile cases (Findley and Scott, 2006). Such pressures in turn may promote a rush to judgment and escalate the risk of misclassifying innocent persons as likely perpetrators. Once a suspect is so classified and subject to interrogation, still in the grip of these pressures, the police interrogator's goals are to

induce the suspect to provide incriminating statements (preferably a full confession) that will facilitate a certain and efficient conviction (Leo, 2008).

Once the suspect is convinced by these behaviors that establishing his innocence is hopeless, and he begins to focus on the goal of minimizing consequences, the interrogator can more effectively convince the suspect to confess—which is clearly *not* a way to establish innocence, but plausibly *can be* regarded as a way to minimize consequences (particularly in the context of the interrogator's claims regarding the need for and benefits of confession). The suspect's goal of minimizing consequences leads him to selectively search for and attend to any clues as to *how* this may be accomplished. The interrogator's good will becomes more important because, as the interrogator has strategically implied (see Kassin & McNall, 1991; Ofshe & Leo, 1997a, b; Davis, Weaver & Leo, 2007; Davis, Leo & Follette, 2008), he is often viewed as a means to achieve greater leniency. Suspects naturally assume the detective has greater knowledge and experience concerning the likely consequences of confession versus denial, and therefore give weight to his arguments and implications regarding the reasons why confession will result in greater leniency; and they rely on his explicitly stated or clearly implied desires to help the suspect achieve the best outcomes (Davis & Leo, 2006; Follette, Davis & Leo, 2007; Ofshe & Leo, 1997a, b).

Next in line are the goals of the prosecution and defense attorneys. The goals of the prosecution to secure a conviction are likely to promote guilt-presumptive tunnel vision and confirmation biases, as discussed earlier. Unfortunately, the goals of the defense attorney can likewise reflect the presumption of guilt. Defense attorneys can feel hopeless, and just as the defendant may already have done in the interrogation room, the defense attorney can shift his goals toward minimizing sentencing, rather than establishing innocence. The result is that defense attorneys may selectively focus on pursuing evidence that may minimize a suspect's potential sentence while ignoring and failing to investigate evidence that would support a claim of innocence (Wells & Leo, 2008).

In turn, jurors are affected by their own goals during trial. While many may strive to achieve the most accurate verdict, jurors can be subject to goals secondary to a presumption of guilt raised by the confession, as well as to emotions (see next section) triggered by the nature of the crime or efforts of the prosecutor to raise and exploit them—such as, for example, when goals of punishment and revenge are motivated by anger, fear or disgust, and, as a result, evidence is reviewed in a manner supporting and justifying a verdict of guilt or a punitive sentence of death (e.g., Finkel & Parrott, 2006; Jones & Fitness, 2008; *Law and Human Behavior* (2006); Special Issue: Emotion in Legal Judgment and Decision Making).

Escalating Commitment and the Roles of Self-Protection and Self-Justification

As the case proceeds, police detectives and prosecutors will have devoted more and more resources to proving the suspect's guilt, and made more and more public statements asserting that guilt and attempting to convince others of it. "Escalating commitment" (e.g., Tavis & Aronson, 2007) refers to the process by which each action

taken in support of a position or goal tends to enhance belief in its validity or importance. Evidence contradicting the validity of the belief or goal becomes increasingly more “dissonant” (Festinger, 1957) and aversive. Evidence contradicting a strongly held position may also threaten the person’s sense of competence or self-esteem, and thereby lead a person to engage in strong self-protective and self-justifying motivations (e.g., Tavris & Aronson, 2007). As a result the person may become hostile to the source of such evidence and to dismiss it as invalid.

The case of the Norfolk Four was pervaded by refusal to recognize mistakes, even in the face of overwhelming evidence of innocence. Danser, for example, had an unshakable airtight alibi, verified by multiple parties, that he had been in Philadelphia at work and other activities at times that would have made his presence in Norfolk at the time of the murder impossible. But prosecutor Valerie Bowen later falsely claimed that he could have somehow driven to Norfolk in time and that the time sheets and credit card documents verifying his alibi were “hearsay” and therefore not admissible. When the trial judge asked prosecutor D. J. Hansen at a sidebar, “You don’t really believe this man was there, do you?” Hansen replied “The commonwealth takes the position that he was there.” (Wells & Leo, 2008: 177). This was impossible. Detectives and prosecutors explained away exculpatory evidence from autopsy reports, alibis, crime scene forensics, incredible confessions, and other sources to maintain their belief in the legitimacy of their years of investigating and prosecuting men who were clearly innocent.

It was not until outside eyes began to look at the case that many who doubted the defendants’ innocence—from family members to jurors—began to question the validity of the multiple confessions. These outsiders, of course, had not been involved in the investigations and prosecutions and had no self-justification motives driving their judgments. After Tice’s second conviction, the first author (Leo) solicited the involvement of Peter Neufeld and the Innocence Project to help free the Norfolk Four. This led to a chain of events in which the case was publicized in television and news accounts, and in pleas for clemency to the Virginia governor (see Wells and Leo, 2008 for details). It wasn’t until they were exposed to these accounts that many family members, jurors, and justice officials began to believe in the Norfolk Four’s innocence. Some family members finally began to believe in the innocence of their own, and jurors began to question their earlier verdicts. In fact, in January of 2006, lawyers released a letter from nine jurors from the Wilson trial urging Virginia Governor Mark Warner to grant clemency to the Norfolk Four. The jurors wrote that after being exposed to material that hadn’t been available in trial, they now firmly believed in the innocence of all four defendants. Nevertheless, the police and prosecutors responsible for the investigations and prosecutions remained convinced of the defendants’ guilt and adamantly opposed to clemency. Even some defense attorneys couldn’t shake the forces of self-justification. Joe Dick’s attorney, Michael Fasanaro, Jr., who had always assumed him guilty, failed to investigate his alibi (which could have demonstrated that Dick was on duty the night of the murder) and never pursued evidence of innocence. He also refused to admit (or failed to remember) that Dick had ever told him he was innocent, though when asked to examine his notes, they indicated he had. And he

continues to assert that Dick is guilty of the murder despite the overwhelming evidence to the contrary.

IV. Emotion

Many actions and judgments entailed in the elicitation and consequences of a false confession occur in the context of strong emotion. This has been discussed among interrogation scholars largely with respect to the emotional state of the suspect prior to and during the interrogation. The suspect may be experiencing strong emotions such as grief, distress, or fear as a result of the crime itself, particularly when interrogated shortly after the crime, as was Danial Williams in this case. Police interrogators are trained to use emotions to their advantage. The Inbau et al., (2001) manual, for example, suggests the use of anxiety and guilt to promote confession. Interrogation scholars have identified stress-induced confession as those in which the suspect has become so distressed (tired, fearful, anxious, or distressed by the aversiveness of the interrogation) that he becomes willing to do or say anything—including giving a false confession—to escape the interrogation (Ofshe & Leo, 1997a, b; Davis & O'Donohue, 2004).

In addition to motivating escape, intense stress also impairs thinking, and can render the person more susceptible to influence. Studies of decision making under stress have shown, for example, that stress can promote a form of tunnel vision, in which attention narrows and the person relies on less and less relevant information when making the decision (see Easterbrook, 1959; Deffenbacher, Bornstein, Penrod, & McGorty, 2004; Hammond, 2000) At first, as arousal increases, attention narrows to exclude irrelevant information and to focus only on the task or decision at hand. This can result in improved performance, when distractions are ignored. But when stress and arousal continue to increase, the further narrowing of attention begins to result in the exclusion of relevant information, and decisions become poorer. Police are trained to direct the suspect's attention on themselves, their arguments and evidence, and—through accusation, confrontation, and controlling the focus of interrogation—to prevent suspects from asserting denials, verbalizing innocence or considering alternatives to confessing (such as asking for an attorney) (Ofshe & Leo, 1997a, b; Davis & O'Donohue, 2004). When the suspect is compromised by stress, he becomes even less able to think beyond the interrogator's suggestions, to retrieve relevant information from memory, and to reason with it to come to a more beneficial decision than the detective's suggestion of confession (Follette, Davis, & Leo, 2007).

But emotions also affect other parties. Exposure to the aftermath of violent crimes can likewise generate strong emotions in the police who investigate them, leading to the potential of narrowing attention to a more restricted range of suspects, and to anger against the suspects who are identified. Anger, associated with goals of punishing or removing the source (Levine & Pizzarro, 2004), can then promote other forms of tunnel vision serving these goals (proving the suspect guilty, getting a confession, and facilitating punishment).

Emotions can also affect the reasoning and goals of attorneys. For example, the attorneys defending Danial Williams and Joe Dick had recently lost death-penalty cases, and were extremely fearful of losing another client to the death penalty. Their unwavering focus on avoiding the death penalty through pursuit of plea agreements and cooperation with the police, and their failure to pursue claims or investigations of innocence, may have derived in part from this fear.

The judges and juries that hear the cases at trial and beyond also experience emotions that can affect their judgments—and indeed attorneys from both sides deliberately attempt to raise and exploit such emotions. As a trial consultant for many years, the second author (Davis) always advised clients as to strategies to make the jury *want* to find in the client's favor—for example, raising sympathy for an injured plaintiff to motivate the jury to award damages (even if the liability issues don't warrant a verdict for the plaintiff). With such motivation, evidence will be interpreted in a more favorable light, and stricter criteria of proof will be invoked for the jury to find for the opponent. Particularly if one's evidentiary case is weak, jury motivation may be the only path to victory. In the case of a heinous violent crime, the prosecutor is likely to attempt to inflame the jury's passions with horrifying accounts and exhibits of the crime, and damning depictions of the motivations, character and actions of the defendant. At minimum, such emotions, once raised, will inspire the jury to require better evidence of innocence before freeing someone who *might* be such a perpetrator (see *Law and Human Behavior*, 2006. Special issue: Emotion in legal judgment and decision making). When raised in the context of a case where the defendant has confessed, such emotions, to the extent they promote tunnel vision and confirmatory biases, will narrow attention and impair recognition of relevant contextual evidence that could have led to a false confession (e.g., Davis & Loftus, 2009).

V. Institutional Influences on Evidence-production/Decision-making

Institutional influences affect the actions of police, attorneys, and judges, often with the effect of restricting collection of, access to, or reactions to evidence. Earlier, we noted pressures to solve and prosecute crimes quickly and efficiently. For example, restricted financial resources or other financial incentives operating for the various parties can profoundly impact the collection and use of evidence. Finances can restrict funds for the original investigation of the case by police and prosecution, or the quality of attorneys hired to defend the suspect and their investigations. Financial concerns can affect the decisions of judges who must authorize defense expenditures for court-appointed attorneys and their wages, investigation, hiring of appropriate experts, performing forensic tests and examinations, and so on—or the decisions of family who must pay for a privately funded defense. As with most biases, guilt-presumptive thinking can affect such financial decisions, without the awareness of those making them. Excessive case loads can also affect the attention devoted to a specific case, as well as discourage pursuit of lines of defense viewed as more time consuming or less likely to succeed.

Defense attorneys also face unique incentives associated with case-specific payment arrangements. If the attorney receives a flat fee, he or she may be motivated to

minimize the effort and expense of the case by avoiding trial if possible, or to maximize profit by minimizing the resources devoted to trial (such as for hiring experts and investigators, ordering tests of evidence, etc.)—goals in diametric opposition to what is needed for adequate defense of a claim of false confession. Dick’s attorney, Michael Fasanaro, for example, had a flat fee arrangement with Dick’s father for \$22,500, with \$500 designated for investigation—a woefully inadequate budget for adequate defense of a capital case or a claim of false confession, and an arrangement in conflict with the position of the American Bar Association that flat fees are inappropriate in capital cases (American Bar Association, 2003).

***VI. Inadequate Context for Evaluation of Evidence:
Inadequate and/or Misleading Relevant Knowledge and Beliefs***

Clearly, to avoid false confessions in the first place, or to successfully detect them when they do occur, it is crucial to understand their existence and the manner in which they are caused. Without this knowledge, police are likely to unknowingly engage in the very behaviors that cause false confessions. And, firmly convinced that false confessions (particularly to serious crimes) simply do not occur among sane suspects of normal intelligence, they and others to follow are unlikely to even consider the possibility that a confession is false, or to engage in follow-up investigations that would verify or discredit the confession. Likewise, if they lack relevant knowledge, defense attorneys are also likely to disbelieve claims of innocence, and to be unable or unwilling to successfully mount a false-confession defense. Indeed, these are the patterns we have outlined above. In the Norfolk-Four case, the defense attorneys for Williams, Dick Wilson and Tice lacked experience litigating false-confession cases.

Lack of relevant knowledge concerning false confessions is pervasive among those who generate and judge them. Police receive poor and misleading training about the risks of psychological interrogation and police-induced false confessions (Leo & Ofshe, 1998; Davis and O’Donohue, 2004). Interrogation manuals have widely neglected the subject of false confessions, despite considerable published research documenting their existence and effects (Kassin & Gudjonsson, 2004; Drizin & Leo, 2004; Gudjonsson, 2003; Davis & O’Donohue, 2004; Leo & Ofshe, 1998; Ofshe & Leo, 1997a, b). The widely cited Inbau and Reid manual, for example, did not discuss the problem of police-induced false confessions until its fourth edition in 2001, when a chapter on the subject was added. Still, like every other American interrogation manual and training program, the authors continue to insist that the methods it advocates are not “apt to lead an innocent person to confess” (Inbau et al, 2001: xvi). As a result, many American police not only fail to understand the causes and effects of police-induced false confessions, but they also possess incorrect and misleading beliefs based on their training.

Some, such as erroneous beliefs about what behaviors reflect deception, lead them to inaccurately classify anxiety as deception—and therefore to misinterpret innocent behavior as reflecting guilt (Kassin & Gudjonsson, 2004; Vrij, 2008). Similar misleading or absent knowledge also appears to be pervasive among criminal-defense attorneys. Similar problems of knowledge occur in trial judges, juries, and appellate judges—perhaps most fully among jurors, who have even less exposure to the phenomenon of

false confession than those in the legal system (Chojnacki, Cicchini & White, 2008). Thus, expert testimony may become an important mechanism of education for judges and fact finders (Costanzo & Leo, 2007).

The impact of the dearth of knowledge about false confessions can be exacerbated by other misleading or missing knowledge. That is, other failures of knowledge can lead the confession to appear more valid. Prominent among these are inaccurate beliefs regarding diagnostic cues to deception and guilt. Although humans have been shown in a large scientific literature on detection of deception to perform at no better than chance levels (see Vrij, 2008 for review), they tend to believe they can accurately diagnose deception. And, although several studies have shown that observers cannot differentiate true from false confessions (see Kassin & Gudjonsson, 2004 for review), jurors and others in the justice system are faced with just such a task.

VII. Inadequate Context for Evaluation of Evidence: Progressively Constricting Relevant Information

Those who must judge the validity of a confession face constricting potential for exposure to evidence that would support a claim of false confession over time. That is, the sum of available evidence becomes progressively more selective as it becomes filtered through prior actors—as, for example, when jurors must rely on what is presented to them, as opposed to all evidence collected by all parties. To the extent that initial collection of evidence is constricted by selective search and attention, the availability of disconfirming evidence can be impaired from the very beginning of the investigation, sometimes in ways that cannot be corrected. When attention prematurely focuses exclusively on one suspect, for example, the existence of other suspects may never be investigated or recognized, leaving relevant evidence to be ignored, lost, or contaminated.

Particularly relevant for claims of false confession are all evidence regarding the initial interactions of police with the suspect, all evidence relevant to probable cause for targeting the suspect (including leads to other suspects), and all evidence regarding the interrogation itself. When interrogations are unrecorded, fact finders must rely on the original notes of the interrogators and records of the suspect's memories and reports to others. Unfortunately, such notes are often selective, and may be lost or destroyed before they can be challenged at trial or in pre-trial proceedings. For example, after taking Williams' taped confession, "Halverson and Evans would have their handwritten notes of the interrogation typed up, cleaned up to their advantage in the process, then perhaps cleaned up some more; later those handwritten notes might be thrown away so that defense attorneys could not use them as a basis for challenging what had transpired in the interrogation room. That was standard operating procedure for Norfolk detectives. . . ." (Wells & Leo, 2008: 33). The juries in the trials of Wilson and Tice may well have reached different verdicts had videotapes of the defendants' interrogations existed and had these juries been able to view them.

Moreover, even where a full recording of an interrogation is available, the full context includes not only the interrogations techniques, but also timing of the interrogation, and

the condition of the suspect (e.g., sleep deprivation, intoxication, nutrition, recent meals, emotional stress, etc.), factors which can leave a suspect more vulnerable to police pressure.

The importance of even small details of context has been demonstrated in a line of research by Daniel Lassiter and his colleagues (for a review see Lassiter, Ware, Lindberg, & Ratcliff, in press) in which they have shown that even the angle from which an interrogation is recorded can affect judgments of coercion and validity. That is, confessions tend to be judged as more valid and voluntary when the camera focuses only on the suspect than when it focuses equally on both suspect and detective, and least voluntary when it focuses only on the detective. Thus, being unable to see the full context, including both participants, tends to lead observers to focus on the causal role of the one they can see, without full appreciation of the role of the other. If such a small aspect of the context in which a confession takes place, when missing, can significantly increase judgments of voluntariness and validity, we can only imagine the magnitude of the effect of all missing contextual details.

Conclusion

To date, the social science literature on false confessions has primarily addressed three issues: the psychological methods and processes of interrogation that lead to false confession, individual susceptibilities to interrogative influence and false confession, and the role that false confessions have played in documented cases of wrongful conviction. The psychological processes through which false confessions lead to wrongful conviction have been largely unaddressed. This article has taken up this challenge, addressing this gap in the literature by examining seven psychological processes linking false confession to wrongful conviction and failures of post-conviction relief.

For those interested in preventing miscarriages of justice, it is imperative to study more closely the link between false confession and wrongful conviction. On the one hand, there is no piece of erroneous evidence that *if put before a jury* is more likely to lead to a wrongful conviction than a false confession (Kassin & Neumann, 1997; Leo & Ofshe, 1998). Criminal-justice officials and jurors treat confessions as “the crème de la crème of prosecutorial proof” (Davies, 2006), and as a result false confessors whose cases go to trial are convicted the vast majority of the time (Leo & Ofshe, 1998; Drizin & Leo, 2004). On the other hand, not all false confessions lead to the wrongful conviction of the innocent: Sometimes police do not bring confession cases to prosecutors, sometimes prosecutors drop charges, sometimes judges suppress confessions, and sometimes juries acquit false confessors. The key to preventing confession-based miscarriages of justice is therefore to better understand why some false confessions lead to wrongful convictions and others do not. This article is a first step in that direction.

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