

To Walk in Their Shoes: The Problem of Missing, Misunderstood, and Misrepresented Context in Judging Criminal Confessions

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*"Don't judge a man until you have walked a mile in his shoes."*¹

*"You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it."*²

*"Once these false confessions were obtained, why didn't judges and juries reject them?"*³

INTRODUCTION

Why indeed?! Perhaps the answer lies largely in our inability to walk in the skin and shoes of the accused: to truly understand the forces facing them, the personal context in which those forces operate on them, and the mechanisms through which these forces exert their effects. In his insightful book, *Convicting the Innocent*, and in his recent *Stanford Law Review* article,⁴ Brandon Garrett chose an aspect of this problem as the centerpiece of his work on false confessions. That is, how can innocent persons who actually played no role in a crime provide fully developed and detailed false confessions, including information they

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¹ JEFFREY WATTLES, *THE GOLDEN RULE* 194 n.12 (1996) (discussing the origin and development of this motto).

² HARPER LEE, *TO KILL A MOCKINGBIRD* 36 (Harper & Row 1960).

³ BRANDON L. GARRETT, *CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG* 36 (2011).

⁴ Brandon L. Garrett, *The Substance of False Confessions*, 62 *STAN. L. REV.* 1051, 1066 (2010).

seemingly could only have known if they were the true perpetrators of the crime? How were these confessions, and the processes through which they were generated, litigated and described at trial? And, what role did the incriminating details play in the failures of police, prosecutors, judges, and juries to recognize the confessions as false?

Garrett's analysis of the Innocence Project exonerations involving false confessions addressed other issues as well: such as how interrogations can induce false confessions, outcomes of false confessors upon appeal, the role of expert witnesses in litigating confession cases, and suggested interrogation reforms. Here, however, we focus on the issue of failures to detect false confessions when they occur. In particular, we address the issue of police contamination,⁵ which Garrett described as his own primary focus and which is where we believe Garrett has made his most valuable contribution to confession scholarship. We review some of Garrett's most important findings, considering them in light of our own model of pathways from false confession to wrongful conviction.⁶

We have identified seven psychological processes linking false confessions to wrongful conviction and failures of post-conviction relief: (1) powerful biasing effects of the confession itself, particularly those incorporating "misleading specialized knowledge";⁷ (2) tunnel-vision and confirmation biases; (3) motivational biases; (4) emotional influences on thinking and behavior; (5) institutional influences on evidence production

⁵ "Contamination is the process whereby police suggest facts to the suspect that he did not already know, or the suspect learns facts about the crime from news media or information leaked, rumored or disseminated in the community." Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 438 n.24 (1998) [hereinafter Leo & Ofshe, *Consequences of False Confessions*].

⁶ See Deborah Davis & Richard A. Leo, *The Problem of Police-Induced False Confession: Sources of Failure in Prevention and Detection*, in STEVEN MOREWITZ & MARK GOLDSTEIN, *HANDBOOK OF FORENSIC SOCIOLOGY AND PSYCHOLOGY* (forthcoming 2012) (manuscript at 32) [hereinafter Davis & Leo, *Failure in Prevention and Detection*]; see generally Deborah Davis, *Lies, Damned Lies, and the Path From Police Interrogation to Wrongful Conviction*, in *THE SCIENTIST AND THE HUMANIST: A Festschrift in Honor of Elliott Aronson* (Marti Hope Gonzalez et al., eds. 2010); Richard A. Leo & Deborah Davis, *From False Confession to Wrongful Conviction: Seven Psychological Processes*, 38 J. PSYCHIATRY & L. 9, 9 (2010) (examining seven psychological processes linking false confessions to wrongful convictions and failures of post-conviction relief) [hereinafter Leo & Davis, *Seven Psychological Processes*].

⁷ This term refers to inside, crime-relevant knowledge displayed by the suspect in the false confession, but acquired through outside sources rather than in the course of the commission of the crime. See Richard A. Leo & Steven Drizin, *The Three Errors: Pathways to False Confessions and Wrongful Convictions*, in *POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE AND POLICY RECOMMENDATIONS* 22-23 (G. Daniel Lassiter & Christian Meissner eds., 2010).

and decision making; and inadequate context for evaluation of claims of innocence, including (6) incorrect relevant knowledge; and (7) progressively constricting relevant evidence. In short, these processes have the cumulative effect of providing incomplete or inaccurate contextual information for evaluating the validity of confessions and interfere with the rational analysis of the information that is available.

I. Diagnosing the Validity of Confessions: What Does One Need to Know?

Why are false confessions difficult to detect? To put this question in context, it is important to consider what information one would need to know in order to maximize accuracy in judging the validity of a confession. What is necessary to get into the skin and shoes of the confessor? Unfortunately, in most cases, what is “necessary” will be significantly outweighed by what is “available.”

At least four categories of factual information are needed to assess the validity of a confession: (1) relevant case evidence (other than the confession); (2) relevant personal context of the confessor that could affect reactions to the interrogation (such as mental and physical condition and level of relevant knowledge and understanding); (3) the nature of the interrogation; and (4) the content of the confession. Moreover, understanding of the implications of this information among those who must judge is crucial: such as how the confessor’s personal characteristics or acute condition could affect his ability to resist the pressures of the interrogation; the nature of the pressures facing the suspect; how interrogations are conducted and the processes through which they can influence the suspect to confess; how to interpret other case facts and forensic evidence; how to assess the truthfulness of witnesses and the confessor; and much more. Finally, those judging must weigh all information appropriately to arrive at their judgments, while avoiding biasing influences of personal motivations and emotions (such as the desire to close the case or to justify the prosecution of the suspect, anger toward the (presumed) perpetrator, desire to satisfy the family of victims, and many others). Quite an order!

Not surprisingly, failures can occur at all levels. Relevant information can be missing, misunderstood, or misrepresented, and biasing influences can go unchecked—with particularly disastrous consequences for the innocent. Though Garrett’s work involves only false confessors who were convicted or pleaded guilty, other studies of samples of false confessors have found that those whose cases went to trial were convicted seventy-three percent to eight-one percent of the time.⁸ Seventeen of Garrett’s

⁸ Steven Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82

exonerees were sentenced to death!⁹

In subsequent sections we consider specific failures of availability and understanding of needed information, with particular emphasis on those covered in Garrett's book. We begin in the next section with the issue of missing relevant information. We then proceed in later sections to consider misunderstanding and finally misrepresentation of evidence.

II. Missing Information

It goes without saying that one cannot accurately judge the validity of a confession without access to relevant facts. Nevertheless, a significant problem in perhaps most cases entailing confessions is hidden or missing context. This may include missing relevant information in each of the above four categories: case evidence, the nature of the interrogation, the personal context of the confessor, and the content of the confession.

A. Relevant Case Evidence

Police investigations are selective by necessity—focusing on some lines of inquiry and investigation in preference to, and at the expense of, others. But when a confession is obtained, a powerful presumption of guilt is set in motion that biases the investigation and use of evidence from that point forward.¹⁰ The first effect of this presumption of guilt is on the investigation of the crime itself. Once a confession is obtained, an investigation that would otherwise be more complete and wide ranging is likely to be cut short.¹¹ Since a confession is typically sufficient to ensure conviction, investigations tend to close when a confession is obtained—or become restricted to gathering evidence supporting the suspect's guilt—and police commonly redeploy scarce resources elsewhere.¹² Tunnel vision

N.C. L. Rev. 891, 960 (2004) [hereinafter Drizin & Leo, *The Problem of False Confessions*]; Leo & Ofshe, *The Consequences of False Confessions*, *supra* note 5, at 483. The rate of wrongful imprisonment rises to seventy-eight percent to eighty-five percent if false guilty pleas are included. See Davis & Leo, *Seven Psychological Processes*, *supra* note 6, at 25.

⁹ GARRETT, *supra* note 3, at 5.

¹⁰ See Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 *STUD. L. POL. & SOC'Y* 189, 193-94 (1997). We have referred to this process as the first of seven pathways from false confession to wrongful conviction. See Leo & Davis, *Seven Psychological Processes*, *supra* note 6, at 19-20.

¹¹ See Leo & Ofshe, *Consequences of False Confessions*, *supra* note 5, at 440-41 ("Once a confession is obtained, investigation often ceases, and convicting the defendant becomes the only goal of both investigators and prosecutors.").

¹² RICHARD A. LEO, *POLICE INTERROGATION AND AMERICAN JUSTICE* 249 (2008) [hereinafter LEO, *POLICE INTERROGATION AND AMERICAN JUSTICE*]; TOM WELLS & RICHARD A. LEO, *THE WRONG GUYS: MURDER, FALSE CONFESSIONS AND THE NORFOLK FOUR* 152 (2008) [hereinafter WELLS & LEO, *THE WRONG GUYS*]; Leo & Davis, *Seven Psychological Processes*, *supra* note 6, at

and confirmation biases are likely to take hold,¹³ such that other leads, suspects, and evidence may go uninvestigated. Also, little to no effort is made to collect or examine potentially exonerating information for the suspect.¹⁴ Indeed, Garrett's analyses revealed a significant contribution of early truncation of case investigations to failures to detect false confessions.¹⁵

This progressive restriction of available evidence is crucial. Confessions are judged in the context of other evidence,¹⁶ and in some cases other relevant evidence would cast doubt on the confession if viewed objectively. But unfortunately, the powerful presumption of guilt triggered by the confession can be so compelling that it overwhelms what should be persuasive, exonerating evidence.¹⁷ Garrett provided a number of examples of just this phenomenon.¹⁸ However, in some of the cases Garrett reviewed, the presumption of guilt led police to avoid even the initial production of such evidence. For example, after Earl Washington Jr.'s confession, police affirmatively instructed their lab *not* to test hairs that could have excluded him.¹⁹ Likewise, police refused to conduct DNA tests that could have excluded Lafonso Rollins because he had confessed.²⁰

Prosecutors may later contribute to the toll of hidden evidence by failing to turn over exculpatory evidence to the defense when there has been a confession.²¹ This occurred repeatedly, for example, in the case of the "Norfolk Four" (four false confessors who were wrongfully prosecuted for the rape and murder of a young Navy wife).²² Such *Brady* violations may be deliberate attempts to support the prosecution of the defendants,

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¹³ Confirmation bias represents our second psychological pathway to wrongful conviction. Leo & Davis, *Seven Psychological Processes*, *supra* note 6, at 20.

¹⁴ See generally Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 350 (discussing the cognitive biases and institutional pressures at the root of tunnel-vision and confirmation biases and proposing various strategies to address these problems).

¹⁵ GARRETT, *supra* note 3, at 35-36.

¹⁶ Constriction of evidence is our seventh pathway to wrongful conviction. Leo & Davis, *Seven Psychological Processes*, *supra* note 6, at 46.

¹⁷ See Saul M. Kassin, *Why Confessions Trump Innocence*, AM. PSYCHOL. (forthcoming 2012) (manuscript at 3) (on file with the *New England Law Review*); Leo & Ofshe, *Consequences of False Confessions*, *supra* note 5, at 487-88.

¹⁸ GARRETT, *supra* note 3, at 16-17, 25, 29-30, 40-41.

¹⁹ *Id.* at 35.

²⁰ *Id.*

²¹ See *id.* at 168.

²² WELLS & LEO, *THE WRONG GUYS*, *supra* note 12, at 14-15 (describing how the police failed to pursue witnesses that would exculpate Danial Williams, one of the Norfolk Boys).

but may also be unintended, but honest, consequences of the tunnel vision and confirmation biases that affect interpretation of evidence inconsistent with the confession.²³ In other words, prosecutors may sometimes honestly fail to view the evidence as exculpatory.²⁴

Even defense attorneys contribute to the black hole of missing evidence. Often convinced by the confession that their clients are guilty, they may fail to pursue exculpatory evidence or fail to provide known exculpatory evidence to judges and juries.²⁵ False confessor Joseph Dick's (of the Norfolk Four) attorney Michael Fasanaro never investigated his provable alibi that he was at sea during the murder.²⁶ At Danial Williams's (also of the Norfolk Four) suppression hearing, his attorneys never raised the possibility that his confession was false and failed to discuss inconsistencies between his confession and the physical evidence.²⁷

This selective pursuit and use of evidence is a central process leading from false confession to wrongful conviction. Moreover, a progressive constriction and distortion in the field of available evidence occurs as the case proceeds from initial investigation through post-conviction appeal. The initial investigation is necessarily selective such that from the first moments information can be forever lost. But as the case moves forward, even available information can be selectively presented or misrepresented. Even if police do initially have other suspects or theories of the crime, these are often not presented or considered at all by the time the case reaches trial, where the suspect and evidence related to his guilt are the focus. Thus, actors at each level come to rely on the selective and potentially inaccurate information that actors at the previous level choose to disclose or present. The net result is that judges and juries must assess the voluntariness or validity of a confession based on a selective and incomplete subset of the relevant evidence.

In support of this proposed process, Saul Kassin and colleagues conducted an archival analysis of Innocence Project cases to examine the hypothesis that wrongful convictions in which there had been a confession would also include more errors of other kinds than those that did not involve a confession.²⁸ They reported that additional errors—such as mistaken eyewitness, improper forensic science, or deceptive snitches—

²³ See GARRETT, *supra* note 3, at 168.

²⁴ See *id.*

²⁵ See *id.* at 165, 167.

²⁶ WELLS & LEO, *THE WRONG GUYS*, *supra* note 12, at 89.

²⁷ *Id.* at 47.

²⁸ Saul M. Kassin et al., *Confessions That Corrupt: Evidence from the DNA Exoneration Case Files*, 23 PSYCHOL. SCI. 41, 42 (2012); Danielle E. Chojnacki et al., *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 ARIZ. ST. L.J. 1, 15-19 (2008).

were present more often for the cases involving false confessions. Presumably, the biases set in motion by the confession encouraged the other errors. Moreover, Kassin and Kukucka found that of the first 273 Innocence Project exonerations, instances of “bad defense lawyering” (9.09% vs. 3.38%) and “government misconduct” (21.21% vs. 15.46%) were more likely in cases involving false confessions than in those that did not.²⁹

B. *Hidden Characteristics of the Interrogation*

Perhaps the most important contextual information for judging the voluntariness of a confession is the nature of the interrogation strategies, techniques, and environments that produced the confession, in combination with the chronic and acute characteristics of the suspect that might affect his or her vulnerability to those pressures.³⁰ In this section we consider the interrogation itself and turn next to the vulnerabilities of the suspect. Unfortunately, both can be hidden or unavailable to those who must judge the voluntariness or validity of the confession—as was pervasively the case for the false confessions Garrett reviewed.³¹

Because the interrogations were not fully recorded, two crucial aspects of the interrogations themselves tended to be mostly hidden in these cases: (1) the nature and magnitude of the pressures exerted to lead the suspect to confess, and (2) the way in which the confessions were contaminated by suggestion and the feeding of crucial case facts to the suspects.

1. The Pressures of the Interrogation

As Garrett repeatedly notes throughout his chapter on false confessions, the natural tendency of the observer is to believe that people simply do not falsely confess—at least not in the absence of strong, blatant, physical, or emotional coercion.³² This makes it especially important that any influences that could have contributed to a false confession be

²⁹ Saul M. Kassin & J. Kukucka, *Confession Errors as “Structural Defects”*, Poster Presented at the Annual Meeting of the American Psychology-Law Society, San Juan, Puerto Rico (2012).

³⁰ See generally Deborah Davis & Richard A. Leo, “Interrogation-Related Regulatory Decline:” *Ego-Depletion, Self-Regulation Failure, and the Decision to Confess*, PSYCHOL. PUB. POL’Y & L. (forthcoming 2012) (on file with authors).

³¹ In Garrett’s collection of forty false confessions cases, none were fully recorded. Twenty-three (fifty-eight percent) were partially recorded; the others generally only recorded the final confession statement. GARRETT, *supra* note 3, at 32. Because the interrogations were not fully recorded, two crucial aspects of the interrogations themselves tended to be mostly hidden in these cases: the nature and magnitude of the pressures exerted to lead the suspect to confess, and the way in which the confessions were contaminated by suggestion and the feeding of crucial case facts to the suspects.

³² See *id.* at 18, 35.

available for scrutiny. Without awareness of what happened in the interrogation, there is little chance observers will believe a confession to be coerced or false. Unfortunately, even if such evidence is available, the impact of many interrogation-related forces of influence will tend to be underestimated and misunderstood.³³

A number of potential influences are important. These include the following: (1) the methods, techniques, and strategies police use to interrogate (e.g., lies about evidence, implicit or explicit promises, and threats);³⁴ (2) the length of the interrogation;³⁵ (3) physical discomfort due to uncomfortable seating or temperature, deprivation of refreshments or toilet facilities;³⁶ (4) physical abuse or coercion;³⁷ and (5) demeanor of the interrogator(s).³⁸ Audio recordings would reveal some of these important influences—such as what was said—while identification of other influences—such as demeanor or physical abuse—would require the addition of video. However, some influences are unlikely to be revealed by either, such as the physical comfort of seating or temperature. In the event that full recordings of the interrogation are unavailable—as was the case for all of the cases Garrett reviewed³⁹—the written records and oral testimony of the officers who conducted the interrogation are the only remaining sources of relevant information.

Unfortunately, written or oral reports are often incomplete and lack crucial information such as the length of the interrogation or whether the suspect requested or was granted toilet visits, food, drink, or cigarettes. In addition, such reports are subject to both vagaries of memory and deliberate misrepresentation. Such problems were the main focus of Garrett's analysis of contamination in the false confessions he studied.⁴⁰

³³ See *infra* Part II.

³⁴ See Chojnacki et al., *supra* note 28, at 18; see generally Richard A. Leo & Deborah Davis, *The Problem of Police-Induced False Confession: Sources of Failure in Prevention and Detection*, in HANDBOOK OF FORENSIC SOCIOLOGY AND PSYCHOLOGY (S. Morewitz & M. L. Goldstein eds., 2012); LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12; Davis & Leo, *supra* note 30.

³⁵ Chojnacki et al., *supra* note 28, at 17.

³⁶ See *id.* (explaining how the use of sleep deprivation and other factors influence the validity of confession).

³⁷ See GARRETT, *supra* note 3, at 22 (explaining that when direct confrontation of the suspect does not work the police may use more elaborate and "heavy-handed" tactics).

³⁸ See *id.* at 15, 18, 22.

³⁹ See *id.* at 18-19, 32.

⁴⁰ See *id.* at 19-21.

2. Suggestion and Contamination

Garrett chose to focus much of his effort on the issue of what shapes the content of false confessions. He “wondered what people who we now know are innocent reportedly said when they confessed.”⁴¹ Like most would naturally assume, Garrett expected to find the confessions to be brief and lacking much content. After all, how would an innocent person know what to include? He expected to find that a few false confessions might correspond to details of the crime, in what he assumed would be relatively rare instances where the false confessor was fed content by police. To his surprise, Garrett discovered that in the vast majority of cases (thirty-eight of forty) the false confessors had provided detailed confessions including inside information that should have been known only by the true culprit.⁴²

Moreover, Garrett reported that:

[In] 95% of the false confessions studied (thirty-eight of forty cases), detectives claimed that the suspects volunteered key details about the crime, including facts that matched the crime scene evidence, or scientific evidence, or accounts by the victim. Police officers went farther and also claimed they assiduously avoided contaminating the confession by not asking leading questions, but rather allowing the suspect to volunteer each of the crucial facts.⁴³

The police officers made such claims under oath in twenty-seven of thirty cases that went to trial.⁴⁴ Moreover, the detective in Jeffrey Deskovic’s case testified that he himself did not know the key *misleading specialized knowledge* he claimed that Deskovic volunteered, adding seeming credibility to his claim that the information *could not have been* fed to Deskovic.⁴⁵

In many ways, we believe this is the most important aspect of Garrett’s analyses of the cases involving false confession. False confessors who have been fed such information during their interrogations suffer a debilitating, and almost universally fatal, disadvantage as their cases go forward. As Garrett illustrates in his book, and as documented by a chorus of interrogation scholars, the inclusion of *misleading specialized knowledge* shatters the defense and becomes the centerpiece of the prosecution’s case. These incriminating details cause defense attorneys to disbelieve their own clients’ claims of innocence, become the focus of the state’s case and

⁴¹ *Id.* at 18.

⁴² *Id.* at 19-20.

⁴³ GARRETT, *supra* note 3, at 20.

⁴⁴ *Id.* at 28.

⁴⁵ *Id.* at 15-17.

arguments to the jury, and cause appellate courts to deny post-conviction appeals.⁴⁶ When faced with the claims of police officers that the incriminating information was volunteered, that the officers were well trained and professional, and that they carefully avoided feeding information to the suspect versus those of a suspect who confessed and only belatedly retracted the confession and called foul, who are attorneys, judges, and juries likely to believe?

Garrett's work documenting the discrepancies between what police claim occurred and what necessarily must have occurred in order to produce confessions contaminated by inside knowledge is invaluable to future defendants, their attorneys, and expert witnesses. However, police suggestion does not begin or end with *misleading specialized knowledge*. Rather, suggestion is often pervasive in police interrogation from beginning to end.

a. "Theme Development"

Many, and perhaps most, of the interrogations in the cases Garrett reviewed crossed the line of proper interrogation technique through the use of explicit threats and promises, feeding suspects crime facts, and/or other coercive practices. However, even if modern interrogations are conducted "by the book," they remain pervasively suggestive and provide a wealth of incorrect information that may eventually be incorporated into the final confession.⁴⁷ Perhaps the most suggestive process is "theme development"—step two of the pervasively taught and widely used Reid Nine-Step Method.⁴⁸

Step one of the method entails confronting the suspect with a confident accusation that he committed the crime and providing various true or false forms of "evidence" of guilt. This is intended to instill a sense of hopelessness in the suspect that he might establish his innocence. Against this backdrop, theme development is intended to suggest that despite the suspect's clearly established guilt, there may nevertheless be a way to minimize the consequences. Theme development refers to the process by which the interrogator begins to offer scenarios of how and why the crime

⁴⁶ Leo & Davis, *Seven Psychological Processes*, *supra* note 6, at 26-27; Leo & Drizin, *supra* note 7, at 9, 22.

⁴⁷ Davis & Leo, *Failure in Prevention and Detection*, *supra* note 6, (manuscript at 32); LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 106-07.

⁴⁸ FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 93 (3d ed. 1986). Step one of the method entails confronting the suspect with a confident accusation that he committed the crime and providing various true or false forms of "evidence" of guilt. This is intended to instill a sense of hopelessness in the suspect that he might establish his innocence. *Id.* at 84-85; *see also* *Miranda v. Arizona*, 384 U.S. 436, 455 (1966).

was committed with the intention of lowering the perceived costs of confession.⁴⁹ In the initial versions, the scenario will make the act in question appear justifiable and often noncriminal. For example, an interrogator may tell a rape suspect that he doesn't believe the suspect is a predator but rather that the "victim" behaved in such a provocative manner that anyone would have done the same thing—and that he "can understand that." Alternatively, an interrogator may suggest that the "victim" attacked the suspect, and the suspect killed him in self defense. If the interrogator successfully induces the suspect to agree to this "minimized" scenario, he will then confront the suspect with "evidence" or arguments as to why that version cannot be right—and then suggest a new, somewhat more serious version. The process repeats as needed until an interrogator has shaped the account to fit what he believes is the true version of the crime.⁵⁰ In the process, many details of how and why the crime was committed are first suggested by the interrogator. The suspect's own accounts are challenged, argued with, corrected, and replaced by the suggestions of the interrogator.⁵¹ The interrogator may lie about "evidence" that does not exist, further shaping the details that can end up in the confession.⁵² Though interrogators are cautioned not to mention crucial facts that only the perpetrator could know, theme development involves a very delicate and careful dance to keep the suggestions necessary for theme development separate from those entailing crucial incriminating facts. No wonder they creep in!

b. *Selective Reinforcement*

For many suspects, the suggestions themselves might be sufficient to shape the content of the confession. But the incorporation of suggestive content is further promoted by the use of selective reinforcement of suspect responses. That is, an interrogator is likely to reinforce a suspect's statement when the interrogator believes the statement to be true; but to accuse the suspect of lying when the suspect offers denials or less believable accounts, thus selectively shaping and reinforcing the interrogator's preferred account of the crime and the suspect's role in it.⁵³

In order to support charges or counts he believes appropriate, an interrogator may also insist that a suspect provide specific details such as

⁴⁹ LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 152.

⁵⁰ *Id.* at 154-55.

⁵¹ See Leo & Drizin, *supra* note 7, at 20; see generally Davis, *supra* note 6, at 211-47.

⁵² LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 192-93.

⁵³ Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 18 (2010).

how many times he committed an offense.⁵⁴ As this process unfolds, the interrogator will remind the suspect that he can't "help" him if he fails to tell the "truth"—in reality the truth *as the interrogator perceives it*. The accusations, implied threats and promises, and selective reinforcement of the suspect's answers continue until the suspect provides an account that the interrogator approves of or assumes is the best he can get. Through this process many details of the confession are likely to become inaccurate, even if the suspect did commit the crime. Moreover, many different versions of the suspect's story are typically produced, further increasing the difficulty of evaluating the confession or its specific details.

3. Surviving Challenges to Voluntariness

Detectives are also trained to take confessions in such a way that they will survive any challenges to voluntariness that might lead to suppression and yet also appear sufficiently detailed and incriminating as to ensure that they will be believed and lead to conviction. Specifically, police are trained to avoid feeding actual specialized case facts to suspects—though clearly this prohibition can be violated—but are simultaneously taught to ensure that the confession contains important and incriminating details (again a situation that makes it difficult to maintain clear separation of the two).

Detectives endeavor to ensure that all confessions contain at least five elements that will make it sufficiently compelling to ensure conviction: "(1) a coherent, believable story line, (2) motives and explanations, (3) crime knowledge (both general and specific), (4) expressions of emotion, and (5) acknowledgements of voluntariness."⁵⁵ These elements provide a full narrative story of the crime that is coherent and compelling and that includes elements such as use of detail, intense expressions of emotions and remorse, statements of apology to the victims, and others that promote perceptions of sincerity and truth. They further promote perceptions that the confession is voluntary through the inclusion of direct statements that the confession is voluntarily given or through explanations for the confession such as feelings of guilt or need for forgiveness. In these ways, even false confessions may be very compelling, sometimes entailing elaborate acting out and demonstrations of the crime by the false confessor.

Garrett focused on the inclusion of seemingly specialized knowledge that should have been known only by the true perpetrator as the centerpiece of the State's case and a primary cause of the impact of the confession on judges and juries. However, it is important to note that other features of confessions are vitally important and persuasive. Those who cry

⁵⁴ For example, in cases involving the sexual assault of a minor, an interrogator might ask about specific instances that the suspect touched or penetrated a child's privates.

⁵⁵ LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 249.

in seeming remorse;⁵⁶ who provide detailed and vivid reenactments of the crime;⁵⁷ who offer highly emotional, taped apologies to their victims;⁵⁸ or who provide detailed and believable explanations of motives and methods⁵⁹ very effectively persuade juries of their guilt. After all, how could a suspect show such apparently sincere remorse or provide such detailed reenactments, unless the he or she actually committed the crime?

Given this situation, it is no surprise that judges rarely suppress confessions as involuntary and juries rarely acquit those who have confessed. Garrett's cases entailed those who were convicted by juries or took plea agreements.⁶⁰ But he also noted that defense lawyers tried to challenge almost all of the confessions he studied as involuntary, and judges nevertheless admitted them.⁶¹ Moreover, Garrett described the pervasive influence of the detailed confessions as the case moved through the legal process:

The nonpublic facts contained in confession statements then became the centerpiece of the State's case. The facts were typically the focus of the State's closing arguments to the jury. Even after DNA testing excluded these people, judges sometimes initially denied relief, relying on the seeming reliability of these confessions. These false confessions were so persuasive, detailed, and believable that judges repeatedly upheld the convictions during appeals and habeas review.⁶²

Garrett also noted that in some cases it was known that *misleading specialized knowledge* had been fed to the suspect, and nevertheless the confessions were compelling. Three innocent alleged co-perpetrators among the "Beatrice Six" (who were accused of the rape and murder of an elderly woman) falsely confessed themselves and then testified against Joseph White (who did not confess).⁶³ Each admitted that they had been fed key facts, and they had not remembered this information before their interrogations.⁶⁴ One of these individuals, Ada JoAnn Taylor, testified that police had shown her videos of the crime scene, given her the statements of

⁵⁶ See GARRETT, *supra* note 3, at 15; LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 173.

⁵⁷ See GARRETT, *supra* note 3, at 15; LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 171.

⁵⁸ See LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 173.

⁵⁹ See GARRETT, *supra* note 3, at 15, 36; LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 170-71.

⁶⁰ See GARRETT, *supra* note 3, at 20, 36.

⁶¹ *Id.* at 20.

⁶² *Id.* at 20-21.

⁶³ *Id.* at 26.

⁶⁴ *Id.*

other defendants to read, and told her key, detailed facts.⁶⁵

In all of Garrett's cases there were no full recordings of the interrogation leading to the recorded or written (or reported by police) confession.⁶⁶ Clearly the tape recorder was turned on only when the confession was already elicited, shaped, and readied for recording. In the case of Chris Ochoa, police reportedly stopped the tape when Ochoa got a fact wrong, corrected him with photos of the crime scene or autopsy or simply verbally corrected him, and then restarted the tape.⁶⁷

Such practices leave observers to judge the validity of suspects' confessions wholly without the context of the suggestive content of the interrogations that elicited and shaped them into their misleading but compelling final versions. Instead, observers had the claims of police that they had assiduously avoided any contamination of the confessions, and that, on the contrary, the defendants had freely offered the information only the perpetrator should have known. But, as Garrett asked, what if the judges and juries had been able to see the defendant reluctantly nod "yes" to a series of leading questions?⁶⁸ What if observers had seen the detective tell the suspect how he thought the crime was committed before the suspect offered his own first account? What would they have thought if they had access to a full video recording of the entire interrogation?

This crucial evidence is lost when interrogations are not recorded and neither the nature of the pressures facing the suspect nor the way in which detailed crime facts may have been fed or conveyed to the suspect are available for direct scrutiny. Instead, those to come must rely on the reports of police and suspects, which are subject to the vagaries of memory⁶⁹ as well as to motivated distortions in memory or reports. It is also important to note that while this missing context poses considerable difficulty for those who must evaluate a criminal confession for voluntariness or validity, this difficulty is magnified substantially when not only the interrogation, but the confession itself, is not recorded, but is instead is only reported by police who allegedly took the confession. Judges and juries must rely on alleged confessions based on police accounts, which are subject to the same vagaries of memory and motivated distortions as accounts of the content interrogations.

⁶⁵ *Id.* at 26-27.

⁶⁶ GARRETT, *supra* note 3, at 32.

⁶⁷ *Id.*

⁶⁸ *See id.* at 23.

⁶⁹ *See generally* Deborah Davis & Richard D. Friedman, *Memory for Conversation: The Orphan Child of Witness Memory Researchers*, in 1 THE HANDBOOK OF EYEWITNESS PSYCHOLOGY (Michael P. Toglia et al. eds., 2007).

Finally, other case evidence can provide context that magnifies the credibility of the *misleading specialized knowledge* and other details of the suspects' confessions. Garrett noted, for example, that expert testimony often bolstered the credibility of the suspect's confession, and the specific credibility and importance of the *misleading specialized knowledge*.⁷⁰ He gave the example of coroner reports that verified the specific mechanism of death included in the defendant's confession.⁷¹ Substantial research has documented the tendency of humans to overestimate the significance of what is simply coincidental and to assume a meaningful (often causal) connection.⁷² Though some or all of the elements may be flawed, their co-occurrence lends greater credibility to the significance of each, or promotes the illusion of causality between them—a process known as "Corroboration Inflation."⁷³ Clearly, those who must judge it do not view evidence at trial independently. It is viewed as part of a picture that must be fit together to make sense of the whole. When all the elements appear to fit together and cross-corroborate one another, it is easy to forget or fail to weigh indications that each may be separately flawed and biased by the same forces of distortion—such as a biased, and guilt-presumptive investigation and trial presentation.

Unfortunately, it is also all too easy to dismiss inconsistent facts when they fail to fit with the whole. As Garrett noted, in at least seventy-five percent of the cases the defendants' confessions included facts blatantly inconsistent with the actual facts of the crime. Sometimes the extent of the inconsistencies should have made it perfectly clear the defendant knew nothing about the crime,⁷⁴ such as the case of Earl Washington.⁷⁵ Yet this crucial warning sign that the confessions could be false was not heeded. Instead, the inconsistencies went unnoticed, were dismissed as part and parcel of a liar's strategy, or were outweighed by the presence of crucial *misleading specialized knowledge* that should be known only to the perpetrator.

More startlingly, even DNA exclusions were dismissed or reinterpreted to maintain perceptions of guilt. Garrett reported that in eight cases DNA excluded the suspect before trial.⁷⁶ Nevertheless, they were

⁷⁰ GARRETT, *supra* note 3, at 27.

⁷¹ *Id.*

⁷² BRUCE HOOD, *SUPERSENSE: WHY WE BELIEVE IN THE UNBELIEVABLE* 231 (2009); MICHAEL SHERMER, *THE BELIEVING BRAIN: FROM GHOSTS AND GODS TO POLITICS AND CONSPIRACIES—HOW WE CONSTRUCT BELIEFS AND REINFORCE THEM AS TRUTHS* 207-10 (2011).

⁷³ See Kassin, *supra* note 17 (manuscript at 10-11).

⁷⁴ GARRETT, *supra* note 3, at 33-35.

⁷⁵ See *id.* at 10, 29-31, 33-35, 42.

⁷⁶ See *id.* at 35.

prosecuted and convicted—and the actual source of the DNA was not investigated. Instead, prosecutors presented a variety of “unindicted co-ejaculator theories” without supporting evidence—such as a boyfriend who had sex with the victim before the rape or murder.⁷⁷ Among the most startling examples of rampant dismissal of evidence inconsistent with the content of confessions is the widely recounted case of the Norfolk Four, navy men who falsely confessed to the rape and murder of a fellow sailor’s wife.⁷⁸ DNA analysis excluded each of the four false confessors before trial.⁷⁹ Each confession was pervasively inconsistent with the evidence despite the inclusion of some consistent facts fed to the suspects by police.⁸⁰ DNA identified the true perpetrator, who testified that he committed the crime alone.⁸¹ Yet, the prosecutions proceeded and those who went to trial were convicted. All the inconsistent evidence was dismissed in favor of the power of the confessions. As jury foreman Randall McFarlane explained, defendant Derek Tice’s confession “just washed everything else away That was the supernova circumstance of the entire trial. It overwhelmed everything else.”⁸²

As Garrett noted, even judges—who should know better—fall prey to this same confession-induced blindness.⁸³ He cited the ruling of the judge in the Nathaniel Hatchett bench trial, who explained that despite the DNA exclusion of the defendant, “[I]n this case there is an abundance of corroboration for the statements made by Mr. Hatchett to the police after his arrest, about what happened during the assault.”⁸⁴ The judge indicated that the confession was of “overwhelming importance” in determining his verdict.⁸⁵

The ability of confession to trump DNA evidence has also been demonstrated experimentally by Appleby and Kassin. In a mock jury study, the authors found that if participants were exposed to a case with both a confession and exculpatory DNA, mock jurors recognized the implications of the DNA accurately and few voted to convict. If, however, the prosecutor offered an “explanation” to reconcile the presence of

⁷⁷ See *id.* at 35-36.

⁷⁸ See generally WELLS & LEO, *THE WRONG GUYS*, *supra* note 12.

⁷⁹ See *id.* at 54-56, 95-96, 125, 127, 163, 225, 227.

⁸⁰ See *id.* at 36-37, 69-73, 110-13, 151-54, 165.

⁸¹ See *id.* at 187, 195, 200-01.

⁸² *Id.* at 228.

⁸³ See GARRETT, *supra* note 3, at 35 (noting that in the context of confessions where DNA evidence had exonerated the individual, judges still believed the confession over the countervailing evidence).

⁸⁴ *Id.* at 36.

⁸⁵ *Id.*

exculpatory DNA with the defendant's guilt (for example, a typical unindicted co-ejaculator theory such as the defendant failed to ejaculate, but there had been a prior consensual sex act that was the source of DNA), the conviction rate increased from ten percent to thirty-three percent in a college sample and from fourteen percent to forty-five percent in a community sample.⁸⁶

For Garrett's cases, contextual knowledge also played a significant role in the outcome of challenges to the voluntariness of the confessions. For all but one of the twenty-nine false confession cases that went to trial suppression motions were filed—and all were denied.⁸⁷ Although voluntariness is the only issue of relevance in Fourteenth-Amendment-due-process suppression hearings, it is psychologically unrealistic to believe that assumptions regarding validity will not affect judgments of voluntariness. All judgments are affected by other contextual knowledge. Thus it is likely that the seemingly compelling evidence of the detailed and incriminating confessions affected these judgments as well—overwhelming the evidence of youth, mental disability, suggestibility, unconscionably long and aversive interrogations, and other issues of vulnerability or coercion that should have rendered the confessions involuntary. In some cases, the length of the interrogation alone should have rendered the confession involuntary but did not. For example, Jerry Townsend was interrogated for thirty to forty hours over the course of a week.⁸⁸ Only ten percent of the cases had interrogations that lasted less than three hours.⁸⁹ Paula Gray, a borderline mentally retarded seventeen-year-old, was kept in hotels with seven officers over two days.⁹⁰ Yet these and other unconscionably long interrogations were not sufficient to lead judges to suppress the confessions.⁹¹

Clearly the missing context in which confessions are elicited has great impact on all who must judge them. Without this context, the confession can carry much greater weight than warranted and create a powerful presumption of guilt exerting pervasive impact from the investigation of the crime through post-conviction appeals. It is for this reason that Garrett and so many interrogation scholars have argued for mandatory recording

⁸⁶ S. Appleby & Saul Kassin, *When Confessions Trump DNA: Relative Impacts of Self-Report and DNA Evidence on Juror Decisions*, Paper Presented at the Meeting of the American Psychology-Law Society, Miami, FL (2011).

⁸⁷ *See id.* at 36.

⁸⁸ *Id.* at 38.

⁸⁹ *Id.*

⁹⁰ GARRETT, *supra* note 3, at 39.

⁹¹ *Id.* at 36, 37-40.

of all interviews and interrogations of suspects.⁹² As Garrett put it: “A lengthy and complex interrogation, the centerpiece of a criminal investigation, should not be undocumented and then recounted based on biased or fallible human memory.”⁹³ “[W]hat goes on in the interrogation room should not remain undocumented, unregulated, unreviewed, and as a result, shrouded in darkness.”⁹⁴

Though recording is unlikely to eliminate the prejudicial impact of confessions, it will at least provide the opportunity for observers to see the context in which a confession was elicited, to appreciate the nature and magnitude of the pressures brought to bear on the suspect, and to see whether, how, and what information may have been fed to suspects. Where such reforms have been enacted, even police appear to appreciate recordings that protect them from false allegations of coercion.⁹⁵

C. *Personal Context of the Confessor*

The pressures and tactics of a given interrogation are not equally influential for all suspects. The physical and mental status of the suspect can be vitally important in determining how the specific suspect will react to the forces of the interrogation. A wide range of physical and mental characteristics of the suspect is relevant for understanding whether his will may have been overborne by the interrogation, and/or why he may have falsely confessed.⁹⁶ This includes *acute* physical and mental status, due to factors preceding (such as sleep deprivation, crime-induced distress, drug use, and others) and/or during the interrogation (such as aversive tactics, length, fear, and other negative emotions).⁹⁷ It also includes *chronic* vulnerabilities such as youth; personality characteristics associated with suggestibility, compliance, or failures of impulse control; intelligence; mental or physical health; and others.⁹⁸ These include mental or physical

⁹² See, e.g., LEO, POLICE INTERROGATION AND AMERICAN JUSTICE, *supra* note 12, at 291-305; Thomas P. Sullivan, *The Wisdom of Custodial Recording*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 7, at 127; Saul Kassin et al., *Police-Induced Confessions, Risk Factors, and Recommendations: Looking Ahead*, 32 LAW & HUM. BEHAV. 49, 49 (2010).

⁹³ GARRETT, *supra* note 3, at 43.

⁹⁴ *Id.* at 44.

⁹⁵ See Sullivan, *supra* note 92, at 130-31.

⁹⁶ See *United States v. Mast*, 735 F.2d 745, 749 (2d Cir. 1984).

⁹⁷ See Davis & Leo, *supra* note 30, (manuscript at 19); see generally Deborah Davis & Richard A. Leo, *Acute Suggestibility in Police Interrogation: Self-Regulation Failure as a Primary Mechanism of Vulnerability*, in INVESTIGATIVE SUGGESTIBILITY: RESEARCH, THEORY AND APPLICATIONS (Anne Ridley ed., forthcoming 2012) (manuscript at 20-31) (on file with authors) [hereinafter Davis & Leo, *Acute Suggestibility*].

⁹⁸ See GISLI H. GUDJONSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A

characteristics affecting the ability to tolerate distress and resist strong impulses to confess just to escape the interrogation, to think clearly and to rationally evaluate the interrogator's claims and arguments, or to resist compliance with the demands of authority. As with the nature of the interrogation itself, however, relevant personal vulnerabilities may be hidden, unassessed, or unrecorded.

Those for which this is most likely to be true are acute pre-interrogation factors such as stress due to the nature and consequences of the crime, preexisting sleep-deprivation, intoxication or drug withdrawal, and other physical or mental stressors. Even if recorded, unless defense attorneys understand their import, they may not be presented to judges and juries who judge the confession.

Chronic vulnerabilities affecting the suspect's ability to resist the pressures of the interrogation are likely to be assessed and presented to judges and juries only if the defense attorney recognizes that a specific defendant may suffer some form of chronic vulnerability, recognizes how it may affect performance in interrogation, and possesses and expends the resources to conduct the assessments and present expert testimony in hearings and trial attesting to the existence and import of the vulnerabilities. Even if the defense does recognize potential vulnerabilities, whether chronic or acute, trial judges may refuse to allow expert testimony to explain the existence of the vulnerabilities, how they affect thinking, decision making and impulse control, and how they may have compromised the voluntariness or validity of the confession. Chronic vulnerabilities such as mental illness, youth, or low I.Q. are more likely to be recognized by attorneys, and expert testimony relevant to them is more likely to be allowed by judges.⁹⁹ Thus, it is often the case that some of the

HANDBOOK 311-13, 333, 345 (2003) [hereinafter GUDJONSSON, HANDBOOK]; Gisli H. Gudjonsson, *The Psychology of False Confessions: A Review of the Current Evidence*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS, *supra* note 7, at 32; William C. Follette et al., *Mental Health Status and Vulnerability to Police Interrogation Tactics*, 22 CRIM. JUST., Spring 2007, at 43, 47; Gisli H. Gudjonsson, *Psychological Vulnerabilities During Police Interviews: Why Are They Important?*, 15 LEGAL & CRIMINOLOGICAL PSYCHOL. 161, 167 (2010) [hereinafter *Psychological Vulnerabilities*]; Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 19 (2010) ("In any discussion of dispositional risk factors for false confession, the two most commonly cited concerns are a suspect's age (i.e., juvenile status) and mental impairment (i.e., mental illness, mental retardation).").

⁹⁹ See Solomon M. Fulero, *Tales from the Front: Expert Testimony on the Psychology of Interrogations and Confessions Revisited*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 7, at 221 (outlining the types of false-confession expert testimony most likely to be admitted at trial); Clarence Watson et al., *False Confessions, Expert Testimony, and Admissibility*, 38 J. AM. ACAD. PSYCHIATRY & L. 174, 183-84 (2010); cf. Welsh S. White, *What Is an Involuntary Confession Now?*, 50 RUTGERS L. REV. 2001, 2024 (1998).

most important acute suspect vulnerabilities are not presented to judges or juries.

III. Missing Relevant Knowledge

If all relevant case information is available to judges and juries, it will nevertheless be unlikely to maximize accuracy in judging the voluntariness or validity of the confession if the import of the information is not correctly understood. But to understand the import of relevant case information as it relates to the confession, one must realize that false confessions can and do occur, how they are caused, and under what conditions they are most likely to occur. This requires the observers to know how the acute and chronic characteristics of the suspect can affect reactions to police interrogation and why. It requires them to know how police interrogations are conducted and the psychological processes through which they can induce a suspect to confess. It also requires them to know what cues distinguish true from false confessions or confessors. And finally, it requires them to know how to evaluate the validity of other case evidence (such as eyewitness testimony or forensic evidence, both subject to invalidity themselves).¹⁰⁰

Most or all of this relevant knowledge is missing among police, attorneys, judges, and juries. These failures of knowledge begin with the very existence of false confession and extend to many, if not most, of the relevant issues of how and why they occur. Moreover, the presumption of guilt set in motion by the confession directly promotes misunderstanding of the import of other case evidence.

A. Missing Knowledge About the Causes of False Confessions

*"For those who believe, no proof is necessary. For those who don't believe, no proof is possible."*¹⁰¹

Throughout his chapter on false confessions, Garrett referred to the pervasive assumption that false confessions simply do not occur. Awareness that false confessions do occur and awareness of their causes have presumably increased in the last two decades as more cases have been documented by the Innocence Project and others. Nevertheless, many cases are adjudicated by judges and juries resistant to the reality of false confessions. Even those willing to accept that false confessions do occur can nevertheless fail to understand how a person might be led to falsely

¹⁰⁰ See Peter Kageleiry, Jr., *Psychological Police Interrogation Methods: Pseudoscience in the Interrogation Room Obscures Justice in the Courtroom*, 193 MIL. L. REV. 1, 3-5, 7 (2007).

¹⁰¹ Stuart Chase Quotes, THINKEXIST.COM, http://thinkexist.com/quotes/stuart_chase/ (last visited June 2, 2012).

confess or what might make a specific individual more vulnerable to false confession.

B. *Missing Knowledge of the Forces of Interrogation*

Modern police interrogation tactics represent a full armament of the most thoroughly tested and validated scientific techniques of social influence.¹⁰² The strategies of modern interrogation have transformed from the obvious brutal coercion of the third degree to more sophisticated and subtle forces of influence invisible to the untrained eye. They are designed to avoid legally impermissible infliction of physical or emotional distress while nevertheless more subtly promoting anxiety, distress, and the need to escape. Simultaneously, they aim to avoid the impermissible use of explicit threats and promises contingent on confession while nevertheless promoting the perception that confession is the best way to achieve the most desirable legal outcomes.

Unavoidably, these constraints render the resulting strategies deceptive, so that they are more subtle and likely to remain unrecognized by those who judge, but felt very strongly and thus are very effective among those who experience them. Indeed, these techniques are extraordinarily effective in causing a target to comply with the persuasive arguments and demands of the agent of influence. However, they are in many respects very subtle and unlikely to be recognized by an untrained observer. Every aspect of the interrogation has an important, but hidden, purpose down to the specific words used. The affiliates of John Reid Associates—the most prolific trainer of interrogators in America¹⁰³—proudly claim they elicit confessions in eighty percent or more of cases.¹⁰⁴ If true, given the obvious inadvisability of confession, this is an impressive accomplishment and a testament to the effectiveness of the techniques.

But most of the interrogators they train, and perhaps many of the trainers, remain ignorant of the power and mechanisms through which these tactics work and most of all of their potential to elicit false, as well as

¹⁰² See Deborah Davis & William T. O'Donohue, *The Road to Perdition: Extreme Influence Tactics in the Interrogation Room*, in HANDBOOK OF FORENSIC PSYCHOLOGY: RESOURCES FOR MENTAL HEALTH AND LEGAL PROFESSIONALS 904, 916 (William T. O'Donohue & Eric R. Levensky eds., 2004); Deborah Davis, *Selling Confession: The Interrogator, the Con Man, and Their Weapons of Influence*, WIS. DEFENDER, Winter/Spring 2008, at 13-15, 18, available at <http://www.wisspd.org/htm/ATPracGuides/WisDef/WinSpr08/SellCon.pdf>.

¹⁰³ See Kageleiry et al., *supra* note 100, at 6, 26; *The Reid Technique of Interviewing and Interrogation*, JOHN E. REID & ASSOCIATES, INC. (2004), <http://www.reid.com/>.

¹⁰⁴ See *Investigator Tips*, JOHN E. REID & ASSOCIATES, INC., http://www.reid.com/educational_info/r_tips.html?serial=126762771897994 (last visited June 2, 2012) ("At John E. Reid and Associates about 80% of suspects who are interrogated provide a corroborated, trustworthy confession.").

true, confessions. Indeed, the opposite message is pervasive in the Reid seminars and training manuals,¹⁰⁵ which are full of claims that if conducted according to training, their interrogation methods are highly unlikely to elicit false confessions. Reid and Associates claim their methods for detecting deception distinguish the guilty from the innocent with at least eighty-five percent accuracy—and sometimes even go so far as to claim that they simply do not interrogate innocent people.¹⁰⁶ These methods of detecting deception are soundly contradicted by science.¹⁰⁷ But to the extent interrogators believe the hype of the trainers, believe that they are interrogating only the guilty, and believe that their methods could not cause an innocent person to falsely confess, they will be unable to recognize a false confession. Instead, the false confession will only serve to strengthen the presumption of guilt.

As the case proceeds following the confession, attorneys and jurors also lack important knowledge of the nature and power of interrogation techniques. We have met almost no attorneys from either side of the bar who have taken interrogation training (which Reid and Associates and other training organizations provide for attorneys as well). Most are unfamiliar, as well, with relevant scientific literature on the existence and causes of false confessions and lack experience defending such cases. Perhaps in part due to this lack of knowledge, defense attorneys can fail to believe their client's claims of innocence, fail to investigate the case adequately, and encourage their clients to plead rather than proceed to trial. Last in line are the jurors, who are likely to possess the least knowledge and experience of those who must judge the validity of a confession. Indeed, surveys show significant gaps in juror knowledge about the nature and effects of interrogation practices, as well as about other issues regarding false confession.¹⁰⁸

We have also argued that these knowledge gaps can be exacerbated by other missing or erroneous knowledge that can lead the confession to appear more valid. These include incorrect beliefs concerning how to judge deception; mistaken assumptions concerning what could or could not be included in a false confession (such as *misleading specialized knowledge*, elaborate details, emotional displays, apologies, etc.); and mistaken

¹⁰⁵ See INBAU ET AL., *supra* note 48, at 78.

¹⁰⁶ *Behavior Analysis Interview*, JOHN E. REID & ASSOCIATES, INC., http://www.reid.com/services/r_behavior.html (last visited June 2, 2012); *Investigator Tips*, *supra* note 104.

¹⁰⁷ Aldert Vrij et al., *Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection*, 11 PSYCHOL. SCI. PUB. INT. 89, 93 (2010).

¹⁰⁸ Iris Blandon-Gitlin et al., *Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?*, 17 PSYCHOL. CRIM. & L. 239 (2011); Chojnacki et al., *supra* note 28, at 43.

assumptions concerning the type of person who could falsely confess—the topic of the next section.¹⁰⁹

The net result of these failures of knowledge is that confessions tend to be believed notwithstanding other evidence casting strong doubt on their validity. They are unlikely to be recognized and discounted as false even when the coercive features of the interrogation are recognized, when personal vulnerabilities of the suspect such as mental illness or retardation are known, or when seemingly corroborating evidence is clearly subject to doubt.¹¹⁰

C. *Missing Knowledge About Sources of Personal Vulnerability*

Earlier we discussed sources of individual vulnerability to false confession that may or may not be assessed or disclosed to those who must judge a confession. Here, we would like to note that even where such vulnerabilities are assessed and presented to judges and juries, their full import may be misunderstood as the result of absent knowledge of *how* and *how much* such vulnerabilities might play a role.

Confession scholars have identified four general pathways to interrogation-induced false confession: (1) confession to escape the aversive situation; (2) simple compliance with the demands of the interrogator (even absent severe distress or the conviction that compliance is wise); (3) being convinced by interrogation tactics that confession is actually in one's self interest; and (4) being persuaded by interrogation techniques to believe that one committed a crime for which one has no memory. Accordingly, much effort has been devoted to the identification of chronic individual differences associated with distress intolerance, failures of impulse control, enhanced compliance, and enhanced suggestibility and susceptibility to persuasion.¹¹¹ Indeed, as Garrett noted, many false confessors in his sample suffered from such vulnerabilities: fourteen mentally retarded, three mentally ill, and thirteen juveniles.¹¹²

However, although such vulnerabilities may be recognized as risk factors for false confession by judges and juries, their importance is routinely underestimated. None of the confessions were suppressed for the vulnerable exonerees in Garrett's sample, and if their cases went to trial, they were convicted. His sample is not representative, of course. But each of us has served as an expert witness in a number of cases involving mentally retarded or mentally ill confessors whose confessions were not

¹⁰⁹ Davis & Leo, *Seven Psychological Processes*, *supra* note 6, at 45-46.

¹¹⁰ See Kassir, *supra* note 17 (manuscript at 11-12).

¹¹¹ GUDJONSSON, *HANDBOOK*, *supra* note 98, at 312-13; Gudjonsson, *Review*, *supra* note 98, at 40-41; Kassir et al., *supra* note 53, at 49.

¹¹² GARRETT, *supra* note 3, at 21.

suppressed by judges (who arguably should be better able to appreciate the importance of the vulnerability). It is very difficult for a normal person to walk in the shoes of a retarded or mentally ill person or to grasp how they would think or feel in the situation or how they would be able to control their behavior. And, of course, any true appreciation one may have for these issues can be overwhelmed by the content of a confession contaminated by compelling *misleading specialized knowledge* as those in Garrett's sample were.

D. *Missing Knowledge of the Importance of "Acute Vulnerabilities"*

Those in the legal system as well as interrogation scholars have focused largely on chronic suspect vulnerabilities, primarily: youth, mental illness, low I.Q., and enhanced suggestibility/compliance. However, acute vulnerabilities due to preexisting factors (e.g., stress, sleep-deprivation, fatigue, drug use, etc.) and interrogation related stressors (e.g., length, aversiveness, and negative emotions such as fear and embarrassment) play a very important role in creating enhanced vulnerability.¹¹³ The acute physical and emotional stressors prior to and inherent in interrogation are less likely to be reported or recognized as important and yet exert profound influence on the suspect's ability to resist the forces of the interrogation. This in turn, encourages confession. Indeed, published data indicates that most false confessions occur among mentally normal adults.¹¹⁴

Nevertheless, many observers assume that a normal adult should be able to withstand many hours, even days, of aversive, insulting interrogation—even when begun under severely stressful circumstances involving the death of loved ones, preexisting fatigue and sleep deprivation, and other physically or emotionally stressful conditions—and resist as long as necessary. However, modern research on failures of self regulation, and their implications for decision making and impulse control, have soundly contradicted such assumptions. This line of research has shown that even very brief tasks requiring effort, control of one's impulses or emotions, difficult decisions, and many others compromise efforts on subsequent tasks requiring effort, rational thinking, or self-control.¹¹⁵ These

¹¹³ Davis & Leo, *Acute Suggestibility*, *supra* note 97, (manuscript at 20-31); Davis & Leo, *Interrogation-Related Regulatory Decline*, *supra* note 97, (manuscript at 20-31).

¹¹⁴ See Drizin & Leo, *The Problem of False Confessions*, *supra* note 8, at 920; see also Leo & Ofshe, *The Consequences of False Confessions*, *supra* note 5, at 440-41 (discussing the problem of tunnel vision and its role in coercing innocent, mentally normal adults to make false confessions).

¹¹⁵ See Isabelle M. Bauer & Roy F. Baumeister, *Self Regulatory Strength*, in HANDBOOK OF SELF-REGULATION: RESEARCH, THEORY, AND APPLICATIONS (Kathleen V. Vohs & Roy F.

effects occur as the result of very short periods of effortful tasks lasting minutes and in response to impaired physical condition due to illness, fatigue, sleep deprivation, and others. Measureable declines occur in impulse control and rational decision making that can only be vastly greater in the stressful circumstances and across the excessive lengths of many interrogations.

E. *Missing Knowledge About the Minds of the Innocent*

Among the most important of missing knowledge is awareness of how an innocent person will think and evaluate his options when falsely accused and interrogated—dubbed “the phenomenology of innocence.”¹¹⁶ A natural assumption may be that the innocent will see no reason to falsely confess and instead would view false confession as unthinkable. However, several lines of research have shown that innocents may sometimes think in ways that directly promote, rather than inhibit, false confession.

For example, innocents may waive their rights and speak to police because they believe they have nothing to hide (and therefore nothing to lose), that they may be able to convince police of their innocence by talking, and that they may incur suspicion by refusing to talk.¹¹⁷ They may believe that they can go ahead and confess to escape an aversive interrogation because their lawyers will straighten things out or the police will soon discover their mistake with further investigation.¹¹⁸ Sometimes police lies about evidence promote such misperceptions. For example, when police tell the innocent suspect they have the perpetrator’s DNA and that it will convict the suspect, he may be encouraged that he can confess without consequences since the DNA will not be his! Generally, the misconceptions of the innocent lead them to assume that they are not at risk by talking to police and that there will be minimal consequences of confessing since their innocence will be established shortly.¹¹⁹ Such assumptions are largely hidden from judges or juries since the suspect does not always testify, or if he does testify, the suspect will not necessarily know these assumptions are important or reveal them.

Baumeister eds., 2d ed. 2011).

¹¹⁶ Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 AM. PSYCHOLOGIST 215, 218-19 (2005) [hereinafter Kassin, *Innocence*].

¹¹⁷ Deborah Davis et al., *Selling Confession: Setting the Stage with the “Sympathetic Detective with a Time-Limited Offer”*, 26 J. CONTEMP. CRIM. JUST. 441, 441-42 (2010), available at <http://ccj.sagepub.com/content/26/4/441.full.pdf>; Kassin, *Innocence*, *supra* note 116, at 218-19.

¹¹⁸ See Nadia Soree, Comment, *When the Innocent Speak: False Confessions, Constitutional Safeguards, and the Role of Expert Testimony*, 32 AM. J. CRIM. L. 191, 196 (2005); *False Confessions*, THE INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/False-Confessions.php> (last visited June 2, 2012).

¹¹⁹ See Kassin, *supra* note 116, at 218-119; *False Confessions*, *supra* note 118.

IV. The Misunderstood or Misused

Several forces operate to promote misunderstanding of available evidence. They begin with the powerful presumption of guilt set in motion by the confession—particularly if it includes incriminating *misleading specialized knowledge*. This presumption of guilt encourages three sets of factors promoting misunderstanding or misuse of relevant evidence: tunnel-vision complex and confirmation bias; motivational and emotional complex; and self-motivated or interested complex.

A. Tunnel-Vision and Confirmation Biases

First is the complex of tunnel-vision and confirmation biases that focuses the search for evidence on that which will implicate the suspect, biases interpretation of evidence as consistent with guilt, and discourages the search for or recognition of exculpatory evidence. Such biases begin when the suspect is first viewed as the likely perpetrator, and these biases play a crucial role in interrogators' failures to recognize innocence during the interrogation.¹²⁰ Once the confession is in, the greater presumption of guilt it triggers only magnifies these biases.¹²¹ In some cases, they will prevent the collection or presentation of potentially exculpatory evidence, as discussed in the previous section on missing evidence. But perhaps the more dangerous error occurs when evidence that is either not probative or actually exculpatory is misinterpreted as incriminating and presented to the jury as such.

Perhaps the most pervasive form of this is testimony to the jury by police interrogators that the Behavior Analysis Interview taught with the widely used Reid Nine-Step Interrogation Method¹²² revealed the suspect to be deceptive. All of us who serve as expert witnesses on interrogations and confessions have seen interrogators testify with absolute confidence that the suspect's behavior clearly indicated deception and that this is why the suspect was interrogated. In fact, the Behavioral Analysis Interview is based on unscientific pseudoscience directly contradicted by scientific research on the Behavioral Analysis Interview itself and on actual indicators of deception.¹²³

¹²⁰ WELLS & LEO, *THE WRONG GUYS*, *supra* note 12, at 14-15.

¹²¹ LEO, *POLICE INTERROGATION AND AMERICAN JUSTICE*, *supra* note 12, at 263-66; Davis & Leo, *Seven Psychological Processes*, *supra* note 6, at 32; Findley & Scott, *supra* note 14, at 292-93; Dianne L. Martin, *Lessons About Justice From the "Laboratory" of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. REV. 847, 848 (2002); Timothy E. Moore & C. Lindsay Fitzsimmons, *Justice Imperiled: False Confessions and the Reid Technique*, 57 CRIM. L.Q. 509, 532 (2011).

¹²² See INBAU ET AL., *supra* note 48, at 63.

¹²³ See Vrij et al., *supra* note 107, at 93. For a more in depth review of this topic see

Forensic examiners are subject to the same confirmation biases as police. Such problems were recently reviewed in detail in the report of the National Academies of Science on forensic sciences.¹²⁴ Moreover, work such as that of Itiel Dror has demonstrated the effects of emotion in examiners as well as those of expectations.¹²⁵ Dror, for example, has shown that examiners tend to make different decisions about the same set of comparison prints when expectations of a match are activated or that they are more likely to find a match when emotion-provoking evidence is presented in conjunction with the prints.¹²⁶ Some examiners in his sample changed their judgments of precisely the same pair of prints when the context in which they were judged changed.¹²⁷

Likewise, recent research has shown that some eyewitnesses will change their identifications if they learn one of the members of a lineup confessed.¹²⁸ The “elastic” nature of eyewitness evidence extends to the police who interpret it. In one study police trainees read case materials implicating a particular suspect in a homicide. After they indicated initial judgments of the strength of evidence against the suspect and likelihood of guilt, a new piece of evidence either consistent with or contradicting their initial presumption of guilt was introduced. For some participants, the evidence was either exonerating or inculcating eyewitness identification evidence. Those who got inculpatory eyewitness evidence interpreted the identification evidence as stronger than those who got exculpatory eyewitness evidence. Moreover, they interpreted the very same aspects of the eyewitness identification differently, such that even the same distance was interpreted to indicate reliability or unreliability, depending upon whether the identification was consistent or inconsistent with the initial presumption of guilt.¹²⁹ These authors and others refer to such effects as

generally ALDERT VRIJ, DETECTING LIES AND DECEIT: PITFALLS AND OPPORTUNITIES 189-200 (2d ed. 2008) (discussing some of the underlying assumptions of the Behavioral Analysis Interview and reviewing research involving the accuracy of those assumptions).

¹²⁴ See generally NAT’L RESEARCH COUNCIL OF THE NAT’L ACADEMIES, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD 19-33 (2009) (explaining the problems that result from forensic examiners having confirmation biases).

¹²⁵ See, e.g., Itiel E. Dror & Simon A. Cole, *The Vision in “Blind” Justice: Expert Perception, Judgment, and Visual Cognition in Forensic Pattern Recognition*, 17 PSYCHONOMIC BULL. & REV. 161 (2010).

¹²⁶ *Id.* at 164.

¹²⁷ *Id.* at 165.

¹²⁸ Lisa E. Hasel & Saul M. Kassin, *On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications?*, 20 PSYCHOL. SCI. 122, 123 (2009); see also Kassin et al., *supra* note 28, at 44.

¹²⁹ Karl Ask et al., *The ‘Elasticity’ of Criminal Evidence: A Moderator of Investigator Bias*, 22 APPLIED COGNITIVE PSYCHOL. 1245, 1245 (2008); see also Karl Ask et al., *Elasticity in Evaluations*

“asymmetrical skepticism”—meaning the tendency to more carefully scrutinize and criticize and see flaws in evidence contradicting one’s beliefs or assumptions than in confirmatory evidence.

These are only a few of countless research demonstrations of the operation of tunnel-vision or confirmation biases. Such biases affect all forms of decision making among lay persons and professionals alike. For professionals, however, training regarding their existence and effects is crucial.

B. *Motivational and Emotional Influences on Judgment*

Emotions, such as anger or disgust toward “guilty” confessors and motivations, such as desire to successfully do one’s job quickly and/or well, result in desire to solve the case and see the confessor convicted. Research on emotion, for example, has revealed emotion-specific effects on processing and use of information. In particular, anger tends to promote heuristic processing in which incoming information is less carefully analyzed and integrated with other relevant information, causing expectations provoked by existing beliefs or salient situational cues to exert stronger influence on judgments. More generally, emotions can narrow attention to emotion-specific goals, resulting in information being processed in relation to salient goals¹³⁰ such as conviction of the suspect. In effect, tunnel-vision and confirmation biases are more strongly focused as a result of strong emotion. Anger, for example, which is associated with goals of punishing or removing the source,¹³¹ can promote tunnel vision focused upon proving the suspect guilty, getting a confession, or securing a severe sentence such as death. Further, it is important to note that none of these processes are restricted to police or prosecutors. Defense attorneys can experience negative emotions and beliefs regarding their clients that distort their own goals and perceptions and bias the nature of their presentations to judges and juries.

Less emotional motivations can also exert significant effects on judgments. For example, an experiment by Ask and Granhag illustrated

of *Criminal Evidence: Exploring the Role of Cognitive Dissonance*, 16 *LEGAL CRIMINOLOGICAL PSYCHOL.* 289, 290-91 (2011).

¹³⁰ Deborah Davis & Elizabeth F. Loftus, *Expectancies, Emotion, and Memory Reports for Visual Events*, in *THE VISUAL WORLD IN MEMORY* (James Brockmole ed., 2009); Yaacov Trope et al., *Mood as a Resource in Structuring Goal Pursuit*, in *AFFECT IN SOCIAL THINKING AND BEHAVIOR* 217, 218-19 (Joseph P. Forgas ed., 2006); Joseph P. Forgas, *Feeling and Doing: Affective Influences on Interpersonal Behavior*, 13 *PSYCHOL. INQUIRY* 1,1 (2008).

¹³¹ Linda J. Levine & D.A. Pizzarro, *Emotion and Memory Research: A Grumpy Overview*, 22 *SOC. COGNITION* 530, 545 (2004).

motivational effects on use of evidence.¹³² Experienced criminal investigators evaluated the testimony of a witness either consistent or inconsistent with the investigator's initial assumptions of guilt. The experimenters varied the time pressure under which judgments were made, showing (1) that witnesses were perceived as less reliable if they contradicted the initial hypothesis, and (2) that time pressure reduced the extent to which investigators adjusted their confidence in guilt toward consistency with the witness testimony.¹³³ Such results emphasize the dangers of a "rush to judgment" under pressures to solve a case quickly, as may happen with high-profile, heinous crimes.

C. Self-Justification and Self-Interested Motives

Self-justification, self-esteem maintenance, and other self-interested motives discourage recognition, admission, or active attempts to correct errors. As a case moves forward from the interrogation of the suspect through prosecution, trial, and post-conviction appeals, police and prosecutors will have engaged in an extensive set of behaviors all directed toward the conviction of the suspect. "Escalating commitment"¹³⁴ 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. Any evidence appearing to contradict that position becomes more and more dissonant and aversive, in part because it becomes more threatening to the self-esteem and sense of competence of the person who has invested so much in the contrary position. This sense of threat can lead directly to the asymmetrical skepticism discussed earlier, causing the person to dismiss the evidence as invalid and to become hostile to the source. Such motivations are likely to play a significant role in the extreme resistance some prosecutors have displayed to admitting error in prosecution of demonstrably innocent defendants.

V. Misrepresentation of Available Evidence

Adding to the problems of unavailable, relevant information are those of available, but inaccurate, information. Criminal prosecutions, unfortunately, are no strangers to misrepresentations—innocent mistakes (such as mistaken eyewitnesses), lies (dishonest snitches), and damned lies (those of law enforcement and officers of the court). Garrett's book provides illustrations of all of these. But the most disturbing are the

¹³² See Karl Ask & Par Anders Granhag, *Motivational Bias in Criminal Investigators' Judgments of Witness Reliability*, 37 J. APPLIED SOC. PSYCHOL. 561, 566 (2007).

¹³³ See *id.* at 561, 563.

¹³⁴ See CAROL TAVRIS & ELLIOTT ARONSON, *MISTAKES WERE MADE (BUT NOT BY ME): WHY WE JUSTIFY FOOLISH BELIEFS, BAD DECISIONS, AND HURTFUL ACTS* 18 (2007).

deliberate misrepresentations of law enforcement and prosecutors who should know and do better.

Although mistakes and lies can occur in any case, cases involving false confessions seem to create a perfect storm of forces encouraging both—the same as those encouraging misinterpretation of evidence. As with misinterpretation, law enforcement and prosecutors begin with the powerful presumption of guilt set in motion by the confession—particularly if it includes incriminating *misleading specialized knowledge*. In turn, this encourages the three sets of factors promoting mistakes and lies: (1) tunnel-vision and confirmation biases; (2) emotional/motivational influences; and (3) self-esteem maintenance and self-justification. Each of these cognitive, emotional/motivational influences can separately promote mistakes and lies. These influences can also magnify one another—as when a mistaken interpretation of evidence may fuel desire to see the person convicted, or when self-interested motives discourage recognition of error and promote biased processing of evidence.

As many tales of wrongful conviction have shown, misrepresentations of evidence can be committed by all involved in the prosecution of the suspect including police, forensic examiners, expert witnesses, and attorneys. These include deliberate lies about evidence, mistakes of memory or execution of tests, withholding relevant evidence, and many others.¹³⁵ In some cases cross-contamination can occur between various actors, such as when police attempt to influence forensic scientists to either affect their initial reports or to alter existing reports inconsistent with the suspect's confession and presumed guilt.¹³⁶

CONCLUSION

The cases Garrett analyzed in his book and the subset of those cases in his chapter on confession were clearly unrepresentative. They involved only crimes such as rape and murder, where blood, semen, and other sources of DNA would be available for testing years after the events in question. They were a sample chosen by the Innocence Project based on their set of criteria for what cases the group should take. They were unevenly distributed throughout the country and police jurisdictions . . . and on and on. But we should not let the unique nature of his sample lead us to underestimate the importance of his findings.

¹³⁵ See, e.g., BARRY SCHECK ET AL., *ACTUAL INNOCENCE: FIVE DAYS TO EXECUTION AND OTHER DISPATCHES FROM THE WRONGLY CONVICTED* 90-91 (2000); TRUE STORIES OF FALSE CONFESSIONS, at vii-viii (Rob Warden & Steven A. Drizin eds., 2009).

¹³⁶ See GUDJONSSON, *HANDBOOK*, *supra* note 98, at 514; SHECK ET AL., *supra* note 135, at 90-91.

We reiterate that we believe the most important aspect of Garrett's work on false confessions was to document the extensiveness of the contamination present in proven false confessions—information that should have been known only to the perpetrator of the crime or to police who investigated it. Other than the very fact of a confession, this contaminating information is perhaps the most significant cause of failures by police, attorneys, judges, and juries to believe the defendant's claims of innocence. Because police so pervasively denied having fed such information to the suspects, the suspects' claims of where the information was acquired went unheeded.

Garrett's work does not tell us that police routinely lie or mistakenly report their role in contaminating confessions. It cannot tell us the frequency with which this happens. But it does incontrovertibly show that police can and do introduce contaminating *misleading specialized knowledge* into suspect confessions and that they can and do deny that they did so under oath, and it lends credibility to future suspects' claims that it may have happened to them. It also highlights the foibles of memory for what happened in what order, and who said what in long interrogations that stress and tire both the interrogator and suspect. It suggests more care is necessary when evaluating claims of contamination in the future.