

Debunking the myths that lead to wrongful convictions

Roman Zadorov is just one of many defendants worldwide who was convicted on the basis of a confession he later recanted. False confessions take place for many different reasons, and don't necessarily require violence

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Anyone familiar with the interrogation, confession, prosecution and trials and tribulations of Roman Zadorov can bear witness to a classic chain of events that too often culminates in wrongful convictions – in the United States, in Israel and everywhere else that aspires to be governed by the rule of law.

As depicted in the 2016 documentary TV series “Shadow of Truth,” the Zadorov story began with the brutal 2006 stabbing death of 13-year-old Ta’ir Rada in a stall in the girls’ bathroom at her school in the Golan Heights town of Katzrin. At that time, Roman Zadorov – a young Ukrainian immigrant living with his wife and son and temporarily working at the school – answered a police request to come to the station to assist in the investigation. He had no idea that he was a suspect. Two days later, he was arrested.

Over several days of on-and-off interrogation, during which time Zadorov was questioned – alone, without a lawyer present – police repeatedly lied to him regarding DNA, bloodstains, an eyewitness and other evidence. These were big lies. Disorienting lies. At the end of each day, he was returned to his jail cell. “Can they falsify evidence?” a confused Zadorov asked his cellmate. “No, they wouldn’t do that,” the man assured him. “Israel isn’t communist. This isn’t Russia!” That cellmate was an informant working for the police.

Right after Zadorov broke down and confessed, police took him to the crime scene so he could reenact his alleged actions. When he ascended a flight of stairs at the school, he turned, incorrectly, to his right, the opposite direction from the murder scene. His escorts nonchalantly steered him left toward the girls’ restroom, where he “demonstrated” how he had supposedly climbed out of the locked stall where Ta’ir’s body was found. Zadorov’s reenactment may sound incriminating, but all the details needed were derivable from information police had communicated during his interrogations (for example, that the stall door was locked after the murder, so the killer must have climbed out).

Based on his oral confession and follow-up reenactment, which he soon recanted, and alleged physical evidence that would later become

controversial, Zadorov was convicted, in 2010. Granted a retrial, he is now in court once again.

The Zadorov case is just one high-profile example of a disputed confession. There are numerous other examples worldwide, often involving individuals later proved innocent. Only a fraction of these cases are identified – as occurred in Israel last summer, when the Shin Bet security service took confessions from two Israeli Arabs who confessed to the beating of an Israel Defense Forces soldier. Both statements later proved to be false.

We write this article not to argue for any particular conviction or acquittal, in Zadorov's case or others, but, more generally, to correct two dangerous misconceptions common in Israel and elsewhere. These myths can lead to wrongful convictions.

The first myth is that "I would never confess to a crime I did not commit." Yes, you might. Over the course of modern legal history, long preceding the birth of the State of Israel, countless innocent people have confessed to crimes they did not commit. In the United States, the Innocence Project, founded in 1992, reports that an astonishing 29 percent of its 375 post-conviction DNA exonerations involved false confessions in evidence. That number increases to over 60 percent in homicide cases, where the sentencing stakes are the highest – risking life imprisonment, or worse, execution. It happens with a frequency that no one had anticipated.

The problem is more consequential than you might imagine. In more than half of these Innocence Project exonerations, DNA went on to identify the actual perpetrator – years later, of course. More often than not, that person had gone on to commit one or more additional violent offenses. When an innocent person is convicted and the case closed, the real offender remains free to harm others.

Whereas some false confessions are spontaneous and voluntary, most are extracted during the process of police interrogation. In these instances, the innocent person may yield as an act of compliance, in order to escape a stressful in-custody situation; to satisfy a need for sleep, food, water or contact with a loved one; to avoid harm or punishment; or to gain a promised or implied reward. In other instances, the innocent confessor is rendered vulnerable to manipulation and confronted with false evidence, becoming confused, losing their grip on reality, and internalizing the belief in their own guilt, sometimes confabulating false memories in the process.

Research on the personal and situational factors that increase the risk is abundant and the subject of widespread agreement within the scientific community. In a 2018 survey of 87 confession researchers from all over the world, 94 percent endorsed as highly reliable the proposition that

“presentations of false incriminating evidence during interrogation increase the risk that an innocent suspect would confess.” A full 100 percent also agreed that “misinformation about an event can alter a person’s memory for that event.” False confessions do not necessarily come about through “coercion.” Various forms of chicanery may be sufficient to dupe the naïve suspect.

This brings us to myth No. 2: “I would know a false confession if I saw one.” No you wouldn’t. In several experiments, researchers filmed true and false confessions from prison inmates and juvenile detainees. On average, lay observers could not tell the difference; neither could police officers. This type of limitation is not without consequence. Indeed, every false confession that triggers a wrongful conviction contains a post-interrogation “second act” in which the prosecutor and judge or jury see guilt beyond a reasonable doubt even after the innocent person has emphatically recanted the confession.

Empirical studies on this point are clear. Mock jurors who are presented with trial summaries often infer guilt from confession – even when they regard the interrogation that elicited it as coercive, even when told that the defendant was under duress, even when the defendant is a teenager, even when the confession was reported secondhand by an informant who had reason to lie, and even, at times, when the confession is contradicted by exculpatory DNA. Once a confession is released into evidence, almost no matter what, a guilty verdict is near certain.

New York City’s infamous Central Park jogger case of 1989 is a case in point. In two trials, lay juries convicted five boys of assault and rape solely on the basis of their confessions, four of which were on videotape, even though the juries were informed that DNA tests from the rape kit had conclusively excluded them all. Thirteen years later, all five men were exonerated when the actual perpetrator, a violent serial rapist, stepped forward from prison to admit his crime. Sure enough, the DNA was his.

There are three reasons why confessions are so blinding. The first is common sense. Based on the intuitive principle that humans are reward-seeking and avoidant of punishment, the average person reasonably believes that no one of sound mind would ever confess to a crime they did not commit. If someone confesses, it means they must be guilty.

The second reason for the persuasive power of confessions is more troubling. Analyses of the Innocence Project’s DNA case files has revealed this startling statistic: Out of 66 false confessions examined, 62 (94 percent) contained facts about the crime that were both accurate, often vividly and precisely so, and not in the public domain. As argued in courtrooms throughout the United States, these were details that “only the perpetrator could have

known.” In fact, these details were also known to police who, whether purposely or inadvertently, communicated them to the suspect.

To corroborate guilt, therefore, a confession should disclose information about the crime that is verifiable, accurate and not previously known to investigators. Better yet, it should lead police to the victim, the weapon or other evidence not already in their possession.

In addition to details about the actual crime, many false confessions also contain manufactured narratives consistent with investigators’ theory of the case that recount who, what, when, where, how and why. Many contain apologies and expressions of remorse; some are supplemented by a hand-drawn map or a physical reenactment. In many ways, confessions are like Hollywood productions – scripted, rehearsed and then performed on camera.

There’s still more to the problem. Confessions, true and false alike, increase in their impact on criminal investigations. This happens because of forensic confirmation biases – the tendency for police, forensic examiners and lay witnesses alike to seek out, perceive, interpret and recall information in ways that confirm the prior confession.

To sum up: Empirical research shatters the dual beliefs that innocent people don’t confess, and that, if they did, we’d know it. One might argue that if the public – including judges and juries – were privy to these data then, as the expression goes, “no harm, no foul.” So, what does the lay public believe?

Two weeks ago, we presented research at the American Psychology-Law Society in which we reported on an online survey of Israeli adults on a range of confession-relevant questions, to which an international sample of confession experts had previously responded. We translated the original survey from English into Hebrew. Although we did not obtain a representative national sample, we note that 63 percent of respondents were male; the average age was 47; 84 percent were Jewish; and 83 percent described themselves as secular. As a group, respondents were highly educated: 70 percent had a bachelor’s degree, or higher.

Three sets of results paint a portrait of lay beliefs. First, respondents aligned closely with the experts on the coercive power of “third degree” interrogation tactics. Over 90 percent saw physical torture and sleep deprivation as coercive enough to induce innocent people to confess; 87 percent said the same about explicit threats of harm or punishment. In contrast to near-unanimous majorities of experts, however, respondents under-appreciated the power of certain psychological tactics: Only 63 percent believed that police lies about evidence could lead innocents to confess. Only 62 percent expressed a concern about promises of leniency.

Of relevance to the myth that, "I'd know a false confession if I saw one," the third set of results revealed that respondents oversubscribed to the belief that people can distinguish between truth and lies by observing others' facial expressions, body language or other behavioral cues. Most concerning in this regard, and in sharp contrast to the experts, 72 percent endorsed the often-erroneous proposition that confessions can be verified as true by the details they contain.

The time has come to dispense with the folk wisdom that can lead to tragic mistakes of historic consequence. Whether the defendant in question is Roman Zadorov or anyone else, in Israel or anywhere else, the science of wrongful convictions has exposed the dual myths that innocent people don't confess and that we'd know a false confession if we saw one. They do, and we wouldn't.

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