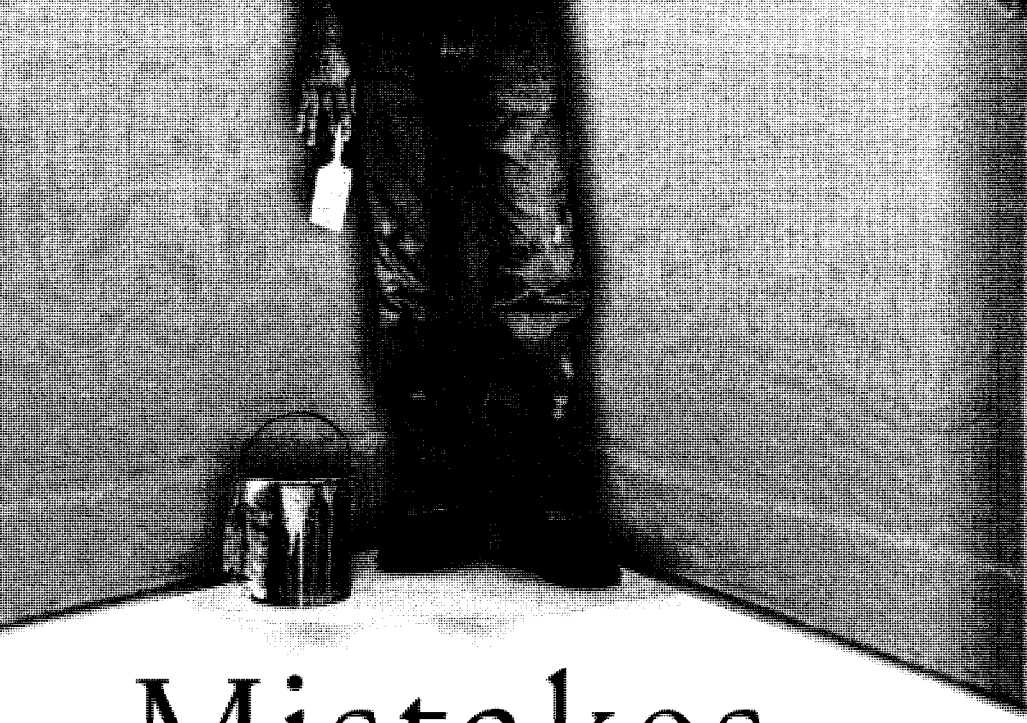

Mistakes Were Made (but not by *me*)

Why We Justify Foolish Beliefs, Bad Decisions, and Hurtful Acts

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E G I K J H F

To Ronan, my Wonderful O'
—Carol Tavris

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To Vera, of course
—Elliot Aronson

three people. . . . The pain in these parents' faces was so obvious. And the unique thread was that their daughters had gone to [recovered-memory] therapy. I didn't feel very proud of myself or my profession that day."

After that meeting, Ross said, she would frequently wake up in the middle of the night "in terror and anguish" as the cocoon began to crack open. She worried about being sued, but most of the time she "just thought about those mothers and fathers who wanted their children back." She called her former clients, trying to undo the damage she had caused, and she changed the way she practices therapy. In an interview on National Public Radio's *This American Life* with Alix Spiegel, Ross told of accompanying one of her clients to a meeting with the woman's parents, whose home had been dismantled by police trying to find evidence of a dead body that their daughter had claimed to remember in therapy.[41] There was no dead body, any more than there were underground torture chambers at the McMartin Preschool. "So I had a chance to tell them the part that I played," said Ross. "And to tell them that I completely understood that they would find it difficult for the rest of their lives to be able to find a place to forgive me, but that I was certainly aware that I was in need of their forgiveness."

At the end of the interview, Alix Spiegel said: "There are almost no people like Linda Ross, practicing therapists who have come forward to talk publicly about their experience, to admit culpability, or try to figure out how this happened. The experts, for once, are strangely silent."

CHAPTER 5

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Law and Disorder

> I guess it's really difficult for any prosecutor [to acknowledge errors and] to say, "Gee, we had 25 years of this guy's life. That's enough."
>
> —Dale M. Rubin, lawyer for Thomas Lee Goldstein

THOMAS LEE GOLDSTEIN, a college student and ex-Marine, was convicted in 1980 of a murder he did not commit, and spent the next twenty-four years in prison. His only crime was being in the wrong place at the wrong time. Although he lived near the murder victim, the police found no physical evidence linking Goldstein to the crime: no gun, no fingerprints, no blood. He had no motive. He was convicted on the testimony of a jailhouse informant, improbably named Edward Fink, who had been arrested thirty-five times, had three felony convictions and a heroin habit, and had testified in ten different cases that the defendant had confessed to him while sharing a jail cell. (A prison counselor had described Fink as "a con man who tends to handle the facts as if they were elastic.") Fink lied

under oath, denying that he had been given a reduced sentence in exchange for his testimony. The prosecution's only other support for its case was an eyewitness, Loran Campbell, who identified Goldstein as the killer after the police falsely assured him that Goldstein had failed a lie-detector test. None of the other five eyewitnesses identified Goldstein, and four of them said the killer was "black or Mexican." Campbell recanted his testimony later, saying he had been "a little overanxious" to help the police by telling them what they wanted to hear. It was too late. Goldstein was sentenced to twenty-seven years to life for the murder.

Over the years, five federal judges agreed that prosecutors had denied Goldstein his right to a fair trial by failing to tell the defense about their deal with Fink, but Goldstein remained in prison. Finally, in February 2004, a California Superior Court judge dismissed the case "in furtherance of justice," citing its lack of evidence and its "cancerous nature"—its reliance on a professional informer who perjured himself. Even then, the Los Angeles District Attorney's office refused to acknowledge that they might have made a mistake. Within hours, they filed new charges against Goldstein, set bail at $1 million, and announced they would retry him for the murder. "I am very confident we have the right guy," Deputy District Attorney Patrick Connolly said. Two months later, the DA's office conceded it had no case against Goldstein and released him.

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On the night of April 19, 1989, the woman who came to be known as the Central Park Jogger was brutally raped and bludgeoned. The police quickly arrested five black and Hispanic teenagers from Harlem who had been in the park "wilding," randomly attacking and roughing up passersby. The police, not unreasonably, saw them as likely suspects for the attack on the jogger. They kept the teenagers in custody and interrogated them intensively for fourteen to thirty hours. The boys, ages fourteen to sixteen, finally confessed to the

crime, but they did more than admit guilt: They reported lurid details of what they had done. One boy demonstrated how he had pulled off the jogger's pants. One told how her shirt was cut off with a knife, and how one of the gang repeatedly struck her head with a rock. Another expressed remorse for his "first rape," saying he had felt pressured by the other guys to do it, and promising he would never do it again. Although there was no physical evidence linking the teenagers to the crime—no matching semen, blood, or DNA—their confessions persuaded the police, the jury, forensic experts, and the public that the perpetrators had been caught. Donald Trump spent $80,000 on newspaper ads calling for them to get the death penalty.[1]

And yet the teenagers were innocent. Thirteen years later, a felon named Matias Reyes, in prison for three rape-robberies and one rape-murder, admitted that he, and he alone, had committed the crime. He revealed details that no one else knew, and his DNA matched the DNA taken from semen found in the victim and on her sock. The Manhattan District Attorney's office, headed by Robert M. Morgenthau, investigated for nearly a year and could find no connection between Reyes and the boys who had been convicted. The DA's office supported the defense motion to vacate the boys' convictions, and in 2002 the motion was granted. But Morgenthau's decision was angrily denounced by former prosecutors in his office and by the police officers who had been involved in the original investigation, who refused to believe that the boys were innocent.[2] After all, they had confessed.

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In 1932, Yale law professor Edwin Borchard published *Convicting the Innocent: Sixty-five Actual Errors of Criminal Justice.* Of those sixty-five cases that Borchard had investigated, eight involved defendants convicted of murder, even though the supposed victim turned up later, very much alive. You'd think that might be fairly convincing proof that police and prosecutors had made some serious mistakes, yet one

prosecutor told Borchard, "Innocent men are never convicted. Don't worry about it, it never happens . . . It is a physical impossibility."

Then came DNA. Ever since 1989, the first year in which DNA testing resulted in the release of an innocent prisoner, the public has been repeatedly confronted with evidence that far from being an impossibility, convicting the innocent is much more common than we feared. The Innocence Project, founded by Barry Scheck and Peter J. Neufeld, keeps a running record on its Web site of the hundreds of men and women imprisoned for murder or rape who have been cleared, most often by DNA testing but also by other kinds of evidence, such as mistaken eyewitness identifications.[3] Death-row exonerations, of course, get the greatest public attention, but the number of wrongful convictions for lesser crimes is also alarming. After a comprehensive study of criminal cases in which the convicted person was indisputably exonerated, law professor Samuel R. Gross and his associates concluded that "if we reviewed prison sentences with the same level of care that we devote to death sentences, there would have been *over 28,500 non-death-row exonerations in the past 15 years* rather than the 255 that have in fact occurred."[4]

This is uncomfortably dissonant information for anyone who wants to believe that the system works. Resolving it is hard enough for the average citizen, but if you are a participant in the justice system, your motivation to justify its mistakes, let alone yours, will be immense. Social psychologist Richard Ofshe, an expert on the psychology of false confessions, once observed that convicting the wrong person is "one of the worst professional errors you can make—like a physician amputating the wrong arm."[5]

Suppose that you are presented with evidence that you did amputate the wrong arm: that you helped send the wrong person to prison. What do you do? Your first impulse will be to deny your mistake for the obvious reason of protecting your job, reputation, and colleagues. Besides, if you release someone who later commits a serious crime, or free someone who is innocent but who was erroneously imprisoned for a heinous crime such as child molesting, an outraged public may nail you for it; you have been "soft on crime."[6] You have plenty of such external incentives for denying that you made a mistake, but you have a greater internal one: You want to think of yourself as an honorable, competent person who would never convict the wrong guy. But how can you possibly think you got the right guy in the face of the new evidence to the contrary? Because, you convince yourself, the evidence is lousy, and look, he's a bad guy; even if he didn't commit this particular crime, he undoubtedly committed another one. The alternative, that you sent an innocent man to prison for fifteen years, is so antithetical to your view of your competence that you will go through mental hoops to convince yourself that you couldn't possibly have made such a blunder.

With every innocent person freed from years in prison through DNA testing, the public can almost hear the mental machinations of prosecutors, police, and judges who are busy resolving dissonance. One strategy is to claim that most of those cases don't reflect wrongful *convictions* but wrongful *pardons:* Just because a prisoner is exonerated doesn't mean he or she is innocent. And if the person really is innocent, well, that's a shame, but wrongful convictions are extremely rare, a reasonable price to pay for the superb system we already have in place. The real problem is that too many criminals get off on technicalities or escape justice because they are rich enough to buy a high-priced defense team. As Joshua Marquis, an Oregon district attorney and something of a professional defender of the criminal-justice system, put it, "Americans should be far more worried about the wrongfully freed than the wrongfully convicted."[7] When the nonpartisan Center for Public Integrity published its report of 2,012 cases of documented prosecutorial misconduct that had led to wrongful convictions, Marquis dismissed the numbers and report's implication that the problem might be "epidemic."

"The truth is that such misconduct is better described as episodic," he wrote, "those few cases being rare enough to merit considerable attention by both the courts and the media."

When mistakes or misconduct occur, Marquis added, the system has many self-correcting procedures in place to fix them immediately. In fact, he worries, if we start tinkering with the system to make corrections designed to reduce the rate of wrongful convictions, we will end up freeing too many guilty people. This claim reflects the perverted logic of self-justification. When an innocent person is falsely convicted, the *real* guilty party remains on the streets. "Alone among the legal profession," Marquis claims, "a prosecutor's sole allegiance is to the truth—even if that means torpedoing the prosecutor's own case."[8] That is an admirable, dissonance-reducing sentiment, one that reveals the underlying problem more than Marquis realizes. It is precisely because prosecutors believe they are pursuing the truth that they do not torpedo their own cases when they need to; because, thanks to self-justification, they rarely think they need to.

You do not have to be a scurrilous, corrupt DA to think this way. Rob Warden, executive director of the Center on Wrongful Convictions at Northwestern University's law school, has observed dissonance at work among prosecutors whom he considers "fundamentally good" and honorable people who want to do the right thing. When one exoneration took place, Jack O'Malley, the prosecutor on the case, kept saying to Warden, "How could this be? How could this happen?" Warden said, "He didn't get it. He didn't understand. He really didn't. And Jack O'Malley was a good man." Yet prosecutors cannot get beyond seeing themselves and the cops as good guys, and defendants as bad guys. "You get in the system," Warden says, "and you become very cynical. People are lying to you all over the place. Then you develop a theory of the crime, and it leads to what we call tunnel vision. Years later overwhelming evidence comes out that the guy was innocent. And you're sitting there thinking, 'Wait a minute. Either this overwhelming evidence is wrong or I was wrong—and I couldn't have been wrong because I'm a good guy.' That's a psychological phenomenon I have seen over and over."[9]

That phenomenon is self-justification. Over and over, as the two of us read the research on wrongful convictions in American history, we saw how self-justification can escalate the likelihood of injustice at every step of the process from capture to conviction. The police and prosecutors use methods gleaned from a lifetime of experience to identify a suspect and build a case for conviction. Usually, they are right. Unfortunately, those same methods increase their risks of pursuing the wrong suspect, ignoring evidence that might implicate another, increasing their commitment to a wrong decision, and, later, refusing to admit their error. As the process rolls along, those who are caught up in the effort to convict the original suspect often become more certain that they have the perpetrator and more committed to getting a conviction. Once that person goes to jail, *that fact alone justifies what we did to put him there.* Besides, the judge and jury agreed with us, didn't they? Self-justification not only puts innocent people in prison, but sees to it that they stay there.

The Investigators

On the morning of January 21, 1998, in Escondido, California, twelve-year-old Stephanie Crowe was found in her bedroom, stabbed to death. The night before, neighbors had called 911 to report their fears about a vagrant in the neighborhood who was behaving strangely—a man named Richard Tuite, who suffered from schizophrenia and had a history of stalking young women and breaking into their houses. But Escondido detectives and a team from the FBI's Behavioral Analysis Unit concluded almost immediately that the killing was an inside job. They knew that most murder victims are killed by someone related to them, not by crazy intruders.

Accordingly, the detectives, primarily Ralph Claytor and Chris McDonough, turned their attention to Stephanie's brother, Michael, then age fourteen. Michael, who was sick with a fever, was interrogated, without his parents' knowledge, for three hours at one sitting and then for another six hours, without a break. The detectives lied to him: They said they found Stephanie's blood in his room, that she had strands of his hair in her hand, that someone inside the house had to have killed her because all the doors and windows were locked, that Stephanie's blood was all over his clothes, and that he had failed the computerized Voice Stress Analyzer. (This is a pseudoscientific technique that allegedly identifies liars by measuring "microtremors" in their voices. No one has scientifically demonstrated the existence of microtremors or the validity of this method.[10]) Although Michael repeatedly told them he had no memory of the crime and provided no details, such as where he put the murder weapon, he finally confessed that he had killed her in a jealous rage. Within days, the police also arrested Michael's friends Joshua Treadway and Aaron Houser, both fifteen. Joshua Treadway, after two interrogations that lasted twenty-two hours, produced an elaborate story of how the three of them had conspired to murder Stephanie.

On the eve of the trial, in a dramatic turn of events, Stephanie's blood was discovered on the sweatshirt that the vagrant, Richard Tuite, had been wearing the night of her murder. This evidence forced then–District Attorney Paul Pfingst to dismiss the charges against the teenagers, although, he said, he remained convinced of their guilt because of their confessions and would therefore not indict Tuite. The detectives who had pursued the boys, Claytor and McDonough, never gave up their certainty that they had nabbed the real killers. They self-published a book to justify their procedures and beliefs. In it, they claimed that Richard Tuite was just a fall guy, a scapegoat, a drifter who had been used as a pawn by politicians, the press, celebrities, and the criminal and civil lawyers hired by the boys' families to "shift blame from their clients and transfer it to him instead."[11]

The teenagers were released and the case was handed over to another detective in the department, Vic Caloca, to dispose of. Despite opposition by the police and the district attorneys, Caloca reopened the investigation on his own. Other cops stopped talking to him; a judge scolded him for making waves; the prosecutors ignored his requests for assistance. He had to get a court order to get evidence he sought from a crime lab. Caloca persisted, eventually compiling a 300-page report listing the "speculations, misjudgments and inconclusive evidence" used in the case against Michael Crowe and his friends. Because Caloca was not part of the original investigating team, and had not jumped to the wrong conclusion, the evidence implicating Tuite was not dissonant for him. It was simply evidence.

Caloca bypassed the local DA's office and took that evidence to the California State Attorney General's office in Sacramento. There, Assistant Attorney General David Druliner agreed to prosecute Tuite. In May 2004, six years after he had been ruled out by the investigating detectives as being nothing more than a bungling prowler, Richard Tuite was convicted of the murder of Stephanie Crowe. Druliner was highly critical of the initial investigation by the Escondido detectives. "They went off completely in the wrong direction to everyone's detriment," he said. "The lack of focus on Mr. Tuite—we could not understand that."[12]

Yet by now the rest of us can. It does seem ludicrous that the detectives did not change their minds, or at least entertain a moment of doubt, when Stephanie's blood turned up on Tuite's sweater. But once the detectives had convinced themselves that Michael and his friends were guilty, they started down the decision pyramid, self-justifying every bump to the bottom.

Let's begin at the top, with the initial process of identifying a suspect. Many detectives do just what the rest of us are inclined to do when we first hear about a crime: impulsively decide we know what happened and then fit the evidence to support our conclusion, ignoring or discounting evidence that contradicts it. Social psychologists

have studied this phenomenon extensively by putting people in the role of jurors and seeing what factors influence their decisions. In one experiment, jurors listened to an audiotaped reenactment of an actual murder trial and then said how they would have voted and why. Instead of considering and weighing possible verdicts in light of the evidence, most people immediately constructed a story about what had happened and then, as evidence was presented during the mock trial, they accepted only the evidence that supported their preconceived version of what had happened. Those who jumped to a conclusion early on were also the most confident in their decision and were most likely to justify it by voting for an extreme verdict.[13] This is normal; it's also alarming.

In their first interview with a suspect, detectives tend to make a snap decision: Is this guy guilty or innocent? Over time and with experience, the police learn to pursue certain leads and reject others, eventually becoming certain of their accuracy. Their confidence is partly a result of experience and partly a result of training techniques that reward speed and certainty over caution and doubt. Jack Kirsch, a former chief of the FBI's Behavioral Science Unit, told an interviewer that visiting police officers would come up to his team members with difficult cases and ask for advice. "As impromptu as it was, we weren't afraid to shoot from the hip and we usually hit our targets," he said. "We did this thousands of times."[14]

This confidence is often well placed, because usually the police are dealing with confirming cases, the people who are guilty. Yet it also raises the risk of mislabeling the innocent as being guilty and of shutting the door on other possible suspects too soon. Once that door closes, so does the mind. Thus, the detectives didn't even try using their fancy voice analyzer on Tuite, as they had on Crowe. Detective McDonough explained that "since Tuite had a history of mental illness and drug use, and might still be both mentally ill and using drugs currently, the voice stress testing might not be valid."[15] In other words, let's use our unreliable gizmo only on suspects we already believe are guilty, because whatever they do, it will confirm our belief; we won't use it on suspects we believe are innocent, because it won't work on them anyway.

The initial decision about a suspect's guilt or innocence appears obvious and rational at first: The suspect may fit a description given by the victim or an eyewitness, or the suspect fits a statistically likely category. Follow the trail of love and money, and the force is with you. Thus, in the case of most murders, the most probable killer is the victim's lover, spouse, ex-spouse, relative, or beneficiary. When a young woman is murdered, said Lieutenant Ralph M. Lacer, "the number one person you're going to look for is her significant other. You're not going to be looking for some dude out in a van." Lacer was justifying his certainty that a Chinese-American college student named Bibi Lee had been killed by her boyfriend, Bradley Page, which was why he did not follow up on testimony from eyewitnesses who had seen a man near the crime scene push a young "Oriental" woman into a van and drive away.[16] However, as attorney Steven Drizin observes, "Family members may be a legitimate starting point for an investigation but that's all they are. Instead of trying to prove the murder was intra-family, police need to explore all possible alternatives. All too often they do not."[17]

Once a detective decides that he or she has found the killer, the confirmation bias sees to it that the prime suspect becomes the only suspect. And once that happens, an innocent defendant is on the ropes. In the case of Patrick Dunn of Bakersfield, California, which we mentioned in the introduction, the police chose to believe the uncorroborated account of a career criminal, which supported their theory that Dunn was guilty, rather than corroborated statements by an impartial witness, which would have exonerated him. This decision was unbelievable to the defendant, who asked his lawyer, Stan Simrin, "But don't they want the truth?" "Yes," Simrin said, "and they are convinced they have found it. They believe the truth is you are guilty. And now they will do whatever it takes to convict you."[18]

Doing whatever it takes to convict leads to ignoring or discounting evidence that would require officers to change their minds about a suspect. In extreme cases, it can tempt individual officers and even entire departments to cross the line from legal to illegal actions. The Rampart Division of the Los Angeles Police Department set up an antigang unit in which dozens of officers were eventually charged with making false arrests, giving perjured testimony, and framing innocent people; nearly one hundred convictions that had been attained using these illegal methods were eventually overturned. And in New York, a state investigation in 1989 found that the Suffolk County Police Department had botched a number of major cases by brutalizing suspects, illegally tapping phones, and losing or faking crucial evidence.

Corrupt officers like these are made, not born. They are led down the slope of the pyramid by the culture of the police department and by their own loyalty to its goals. Law professor Andrew McClurg has traced the process that leads many officers to eventually behave in ways they never would have imagined when they started out as idealistic rookies. Being called on to lie in the course of their official duties at first creates dissonance: "I'm here to uphold the law" versus "And here I am, I'm breaking it myself." Over time, observes McClurg, they "learn to smother their dissonance under a protective mattress of self-justification." Once officers believe that lying is defensible and even an essential aspect of the job, he adds, "dissonant feelings of hypocrisy no longer arise. The officer learns to rationalize lying as a moral act or at least as not an immoral act. Thus, his self-concept as a decent, moral person is not substantially compromised."[19]

Let's say you're a cop serving a search warrant on a rock house, where crack cocaine is sold. You chase one guy to the bathroom, hoping to catch him before he flushes the dope, and your case, down the drain. You're too late. There you are, revved up, adrenaline flowing, you've put yourself in harm's way—and this bastard is going to

get away? Here you are in a rock house, everyone knows what is going on, and these scumbags are going to walk? They are going to get a slick lawyer, and they will be out in a heartbeat. All that work, all that risk, all that danger, for nothing? Why not take a little cocaine out of your pocket and drop it on the floor of that bathroom, and nail the perp with it. All you'd have to say is, "Some of that crack fell out of his pocket before he could flush it all."[20]

It's easy to understand why you would do this, under the circumstances. It's because you want to do your job. You know it's illegal to plant evidence, but it seems so justifiable. The first time you do it, you tell yourself, "The guy is *guilty!*" This experience will make it easier for you to do the same thing again; in fact, you will be strongly motivated to repeat the behavior, because to do otherwise is to admit, if only to yourself, that it was wrong the first time you did it. Before long, you are breaking the rules in more ambiguous situations. Because police culture generally supports these justifications, it becomes even harder for an individual officer to resist breaking (or bending) the rules. Eventually, many cops will take the next steps, proselytizing other officers, persuading them to behave as they have, and shunning or sabotaging officers who do not go along. They are a reminder of the moral road not taken.

And, in fact, the 1992 Mollen Commission, reporting on patterns of corruption in the New York Police Department, concluded that the practice of police falsification of evidence is "so common in certain precincts that it has spawned its own word: 'testilying.' "[21] In such police cultures, police routinely lie to justify searching anyone they suspect of having drugs or guns, swearing in court that they stopped a suspect because his car ran a red light, because they saw drugs changing hands, or because the suspect dropped the drugs as the officer approached, giving him probable cause to arrest and search the guy. Norm Stamper, a police officer for thirty-four years and former chief of the Seattle Police Department, has written that there isn't a major police force in the country that has escaped the problem of

officers who convert drugs to their own use, planting them on suspects or robbing and extorting pushers.[22] The most common justification for lying and planting evidence is that the end justifies the means. One officer told the Mollen Commission investigators that he was "doing God's work." Another said, "If we're going to catch these guys, fuck the Constitution." When one officer was arrested on charges of perjury, he asked in disbelief, "What's wrong with that? They're guilty."[23]

What's "wrong with that" is that there is nothing to prevent the police from planting evidence and committing perjury to convict someone they believe is guilty—someone who is innocent. Corrupt cops are certainly a danger to the public, but so are many of the well-intentioned ones who would never dream of railroading an innocent person into prison. In a sense, honest cops are even more dangerous than corrupt cops, because they are far more numerous and harder to detect. The problem is that once they have decided on a likely suspect, they don't think it's possible that he or she is innocent. And then they behave in ways to confirm that initial judgment, justifying the techniques they use in the belief that only guilty people will be vulnerable to them.

The Interrogators

The most powerful piece of evidence a detective can produce in an investigation is a confession, because it is the one thing most likely to convince a prosecutor, jury, and judge of a person's guilt. Accordingly, police interrogators are trained to get it, even if that means lying to the suspect and using, as one detective proudly admitted to a reporter, "trickery and deceit."[24] Most people are surprised to learn that this is entirely legal. Detectives are proud of their ability to trick a suspect into confessing; it's a mark of how well they have learned their trade. The greater their confidence, the greater the dissonance

they will feel if confronted with evidence that they were wrong, and the greater the need to reject that evidence.

Inducing an innocent person to confess is obviously one of the most dangerous mistakes that can occur in police interrogation, but most detectives, prosecutors, and judges don't think it is possible. "The idea that somebody can be induced to falsely confess is ludicrous," says Joshua Marquis. "It's the Twinkie defense of [our time]. It's junk science at its worst."[25] Most people agree, because we can't imagine ourselves admitting to a crime if we were innocent. We'd protest. We'd stand firm. We'd call for our lawyer . . . wouldn't we? Yet studies of unequivocally exonerated prisoners have found that between 15 to 25 percent of them had confessed to a crime they had not committed. Social scientists and criminologists have analyzed these cases and conducted experimental research to demonstrate how this can happen.

The bible of interrogation methods is *Criminal Interrogation and Confessions,* written by Fred E. Inbau, John E. Reid, Joseph P. Buckley, and Brian C. Jayne. John E. Reid and Associates offers training programs, seminars, and videotapes on the 9-Step Reid Technique, and on their Web site they claim that they have trained more than 300,000 law-enforcement workers in the most effective ways of eliciting confessions. The manual starts right off reassuring readers that "none of the steps is apt to make an innocent person confess, and that all the steps are legally as well as morally justifiable"[26]:

> It is our clear position that merely introducing fictitious evidence during an interrogation would not cause an innocent person to confess. It is absurd to believe that a suspect who knows he did not commit a crime would place greater weight and credibility on alleged evidence than his own knowledge of his innocence. Under this circumstance, the *natural human reaction* would be one of anger and mistrust toward the investigator. The net effect would be the suspect's further resolution to maintain his innocence.[27]

Wrong. The "natural human reaction" is usually not anger and mistrust but confusion and hopelessness—dissonance—because most innocent suspects trust the investigator not to lie to them. The interrogator, however, is biased from the start. Whereas an interview is a conversation designed to get general information from a person, an interrogation is designed to get a suspect to admit guilt. (The suspect is often unaware of the difference.) The manual states this explicitly: "An interrogation is conducted only when the investigator is reasonably certain of the suspect's guilt." The danger of that attitude is that once the investigator is "reasonably certain," the suspect cannot dislodge that certainty. On the contrary, anything the suspect does will be interpreted as evidence of lying, denial, and evading the truth, including repeated claims of innocence. Interrogators are explicitly instructed to think this way. They are taught to adopt the attitude "Don't lie; we know you are guilty," and to reject the suspect's denials. We've seen this self-justifying loop before, in the way some therapists and social workers interview children they believe have been molested. Once an interrogation like this has begun, there is no such thing as disconfirming evidence.[28]

Promulgators of the Reid Technique have an intuitive understanding of how dissonance works (at least in other people). They realize that if a suspect is given the chance to protest his innocence, he will have made a public commitment and it will be harder for him to back down and later admit guilt. "The more the suspect denies his involvement," writes Louis Senese, vice president of Reid and Associates, "the more difficult it becomes for him to admit that he committed the crime"—precisely, because of dissonance. Therefore, Senese advises interrogators to be prepared for the suspect's denials and head them off at the pass. Interrogators, he says, should watch for nonverbal signs that the suspect is about to deny culpability ("holding his hand up or shaking his head no or making eye contact"), and if the suspect says, straight out, "Could I say something?," interrogators should respond with a command, using the suspect's first name ("Jim, hold on for just a minute") and then return to their questioning.[29]

The interrogator's presumption of guilt creates a self-fulfilling prophecy. It makes the interrogator more aggressive, which in turn makes innocent suspects behave more suspiciously. In one experiment, social psychologist Saul Kassin and his colleagues paired individuals who were either guilty or innocent of theft with interrogators who were told they were guilty or innocent. There were therefore four possible combinations of suspect and interrogator: You're innocent and he thinks you're innocent; you're innocent and he thinks you're guilty; you're guilty and he thinks you're innocent; or you're guilty and he thinks you're guilty. The deadliest combination, the one that produced the greatest degree of pressure and coercion by the interviewer, was the one that paired an interrogator convinced of a suspect's guilt with a suspect who was actually innocent. In such circumstances, the more the suspect denied guilt, the more certain the interrogator became that the suspect was lying, and he upped the pressure accordingly.

Kassin lectures widely to detectives and police officers to show them how their techniques of interrogation can backfire. They always nod knowingly, he says, and agree with him that false confessions are to be avoided; but then they immediately add that they themselves have never coerced anyone into a false confession. "How do you know?" Kassin asked one cop. "Because I never interrogate innocent people," he said. Kassin found that this certainty of infallibility starts at the top. "I was at an International Police Interviewing conference in Quebec, on a debate panel with Joe Buckley, president of the Reid School," he told us. "After his presentation, someone from the audience asked whether he was concerned that innocent people might confess in response to his techniques. Son of a gun if he didn't say it, word for word; I was so surprised at his

overt display of such arrogance that I wrote down the quote and the date on which he said it: 'No, because we don't interrogate innocent people.' "[30]

In the next phase of training, detectives learn to become confident of their ability to read the suspect's nonverbal cues: eye contact, body language, posture, hand gestures, and vehemence of denials. If the person won't look you in the eye, the manual explains, that's a sign of lying. If the person slouches (or sits rigidly), those are signs of lying. If the person denies guilt, that's a sign of lying. Yet the Reid Technique advises interrogators to "deny suspect eye contact." Deny a suspect the direct eye contact that they themselves regard as evidence of innocence?

The Reid Technique is thus a closed loop: How do I know a suspect is guilty? Because he's nervous and sweating (or too controlled) and because he won't look me in the eye (and I wouldn't let him if he wanted to). So my partners and I interrogate him for twelve hours using the Reid Technique, and he confesses. Therefore, because innocent people never confess, his confession confirms my belief that his being nervous and sweating (or too controlled), or looking me in the eye (or not) is a sign of guilt. By the logic of this system, the only error the detective can make is failing to get a confession.

The manual is written in an authoritative tone as if it were the voice of God revealing indisputable truths, but in fact it fails to teach its readers a core principle of scientific thinking: the importance of examining and ruling out other possible explanations for a person's behavior before deciding which one is the most likely. Saul Kassin, for example, was involved in a military case in which investigators had relentlessly interrogated a defendant against whom there was no hard evidence. (Kassin believed the man to be innocent, and indeed he was acquitted.) When one of the investigators was asked why he pursued the defendant so aggressively, he said: "We gathered that he was not telling us the whole truth. Some examples of body language

is that he tried to remain calm, but you could tell that he was nervous and every time we tried to ask him a question his eyes would roam and he would not make direct contact, and at times he would act pretty sporadic and he started to cry at one time."

"What he described," says Kassin, "is a person under stress." Students of the Reid Technique generally do not learn that being nervous, fidgeting, avoiding eye contact, and slouching uncomfortably might be signs of something other than guilt. They might be signs of nervousness, adolescence, cultural norms, deference to authority—or anxiety about being falsely accused.

Promoters of the manual claim that their method trains investigators to determine whether someone is telling the truth or lying with an 80 to 85 percent level of accuracy. There is simply no scientific support for this claim. As with the psychotherapists we discussed in chapter 4, training does not increase accuracy; it increases people's confidence in their accuracy. In one of numerous studies that have documented the false-confidence phenomenon, Kassin and his colleague Christina Fong trained a group of students in the Reid Technique. They watched the Reid training videos, read the manual, and were tested on what they had learned to make sure they got it. Then they were asked to watch videotapes of people being interviewed by an experienced police officer. The taped suspects were either guilty of a crime but denying it, or were denying it because they were innocent. The training did not improve the students' accuracy by an iota. They did no better than chance, but it did make them feel more confident of their abilities. Still, they were only college students, not professionals. So Kassin and Fong asked forty-four professional detectives in Florida and Ontario, Canada, to watch the tapes. These professionals averaged nearly fourteen years of experience each, and two-thirds had had special training, many in the Reid Technique. Like the students, they did no better than chance, yet they were convinced that their accuracy rate was close to 100 percent. Their experience and training did not improve their

performance. Their experience and training simply increased their belief that it did.[31]

Nonetheless, why doesn't an innocent suspect just keep denying guilt? Why doesn't the target get angry at the interrogator, as the manual says any innocent person would do? Let's say you are an innocent person who is called in for questioning, perhaps to "help the police in their investigation." You have no idea that you are a prime suspect. You trust the police and want to be helpful. Yet here is a detective telling you that your fingerprints are on the murder weapon. That you failed a lie detection test. That your blood was found on the victim, or the victim's blood was on your clothes. These claims will create considerable cognitive dissonance:

> Cognition 1: I was not there. I didn't commit the crime. I have no memory of it.
>
> Cognition 2: Reliable and trustworthy people in authority tell me that my fingerprints are on the murder weapon, the victim's blood was on my shirt, and an eyewitness saw me in a place where I am sure I've never been.

How will you resolve this dissonance? If you are strong enough, wealthy enough, or have had enough experience with the police to know that you are being set up, you will say the four magic words: "I want a lawyer." But many people believe they don't need a lawyer if they are innocent.[32] Believing as they do that the police are not allowed to lie to them, they are astonished to hear that there is evidence against them that they cannot explain. And what damning evidence at that—their fingerprints! The manual claims that the "self-preservation instincts of an innocent person during an interrogation" will override anything an interrogator does, but for vulnerable people, the need to make sense of what is happening to them even trumps the need for self-preservation.

> *Bradley Page:* Is it possible that I could have done this terrible thing and blanked it out?
>
> *Lieutenant Lacer:* Oh, yes. It happens all the time.

And now the police offer you an explanation that makes sense, a way to resolve your dissonance: You don't remember because you blanked it out; you were drunk and lost consciousness; you repressed the memory; you didn't know that you have multiple personality disorder, and one of your other personalities did it. This is what the detectives did in their interrogations of Michael Crowe. They told him that there might have been "two Michaels," a good one and a bad one, and the bad Michael committed the crime without the good Michael even being aware of it.

Sure, you might say, Michael was fourteen; no wonder the police could scare him into confessing. It is true that juveniles and the mentally ill are particularly vulnerable to these tactics, but so are healthy adults. In a close examination of 125 cases in which prisoners were later exonerated despite having given false confessions, Steven Drizin and Richard Leo found that forty were minors, twenty-eight were mentally retarded, and fifty-seven were competent adults. Of the cases in which length of interrogation could be determined, more than 80 percent of the false confessors had been grilled for more than six hours straight, half for more than twelve hours, and some almost nonstop for two days.[33]

That was what happened to the teenagers arrested on the night the Central Park Jogger was attacked. When social scientists and legal scholars were able to examine the videotapes of four of the five teenagers (the fifth was not taped), and when District Attorney Robert Morgenthau's office reexamined this evidence starting from the assumption that the boys might be innocent rather than guilty, the dramatic persuasiveness of their confessions melted in the light. Their statements turned out to be full of contradictions, factual

errors, guesses, and information planted by the interrogator's biased questions.[34] And contrary to the public impression that all of them confessed, in fact none of the defendants ever admitted that he personally raped the jogger. One said he "grabbed at" her. Another stated that he "felt her tits." One said he "held and fondled her leg." The district attorney's motion to vacate their convictions observed that "the accounts given by the five defendants differed from one another on the specific details of virtually every major aspect of the crime—who initiated the attack, who knocked the victim down, who undressed her, who struck her, who held her, who raped her, what weapons were used in the course of the assault, and when in the sequence of events the attack took place."[35]

After long hours of interrogation, wanting nothing more than to be allowed to go home, the exhausted suspect accepts the explanation the interrogators offer as the only one possible, the only one that makes sense. And confesses. Usually, the moment the pressure is over and the target gets a night's sleep, he or she immediately retracts the confession. It will be too late.

The Prosecutors

In that splendid film *The Bridge on the River Kwai,* Alec Guinness and his soldiers, prisoners of the Japanese in World War II, build a railway bridge that will aid the enemy's war effort. Guinness agrees to this demand by his captors as a way of building unity and restoring morale among his men, but once he builds it, it becomes *his*—a source of pride and satisfaction. When, at the end of the film, Guinness finds the wires revealing that the bridge has been mined and realizes that Allied commandoes are planning to blow it up, his first reaction is, in effect: "You can't! It's *my* bridge. How dare you destroy it!" To the horror of the watching commandoes, he tries to cut the wires to protect the bridge. Only at the very last moment does Guinness cry, "What have I done?," realizing that he was about to sabotage his own side's goal of victory to preserve his magnificent creation.

In the same way, many prosecutors end up being prepared to sabotage their own side's goal of justice to preserve their convictions, in both meanings of the word. By the time prosecutors go to trial, they often find themselves in the real-world equivalent of a justification-of-effort experiment. They have selected this case out of many because they are convinced the suspect is guilty and that they have the evidence to convict. They often have invested many months on a case. They have worked intensely with police, witnesses, and the victim's shattered, often vengeful family. In the case of crimes that have roused public emotions, they are under enormous pressure to get a conviction quickly. Any doubts they might have are drowned in the satisfaction of feeling that they are representing the forces of good against a vile criminal. And so, with a clear conscience, prosecutors end up saying to a jury: "This defendant is subhuman, a monster. Do the right thing. Convict." Occasionally they have so thoroughly convinced themselves that they have a monster that they, like the police, go too far: coaching witnesses, offering deals to jailhouse informants, or failing to give the defense all the information they are legally obliged to hand over.

How, then, will most prosecutors react when, years later, the convicted rapist or murderer, still maintaining innocence (as, let's keep in mind, plenty of guilty felons do), demands a DNA test? Or claims that his or her confession was coerced? Or produces evidence suggesting that the eyewitness testimony that led to conviction was wrong? What if the defendant might not be a monster, after all that hard work to convince themselves and everyone else that he is? The response of prosecutors in Florida is typical. After more than 130 prisoners had been freed by DNA testing in the space of fifteen years, prosecutors decided they would respond by mounting a vigorous challenge to similar new cases. Wilton Dedge had to sue the state to have the evidence in his case retested, over the fierce objections of

prosecutors who said that the state's interest in finality and the victim's feelings should supersede concerns about Dedge's possible innocence.[36] Dedge was finally exonerated and released.

That finality and the victim's feelings should preclude justice seems an appalling argument by those we entrust to provide justice, but that's the power of self-justification. (Besides, wouldn't the victims feel better if the real murderer of their loved one had been caught and punished?) Across the country, as DNA testing has freed hundreds of prisoners, news accounts often include a quote or two from the prosecutors who originally tried them. For example, in Philadelphia, District Attorney Bruce L. Castor Jr. was asked by reporters what scientific basis he had for rejecting a DNA test that exonerated a man who had been in prison for 20 years. He replied, "I have no scientific basis. I know because I trust my detective and my tape-recorded confession."[37]

How do we know that this casual dismissal of DNA testing, which is persuasive to just about everyone else on the planet, is a sign of self-justification and not simply an honest assessment of the evidence? It's like the horse-race study we described in chapter 1: Once we have placed our bets, we don't want to entertain any information that casts doubt on that decision. That is why prosecutors will interpret the same evidence in two ways, depending on when it is discovered. Early in an investigation, the police use DNA to confirm a suspect's guilt or rule the person out. But when DNA tests are conducted after a defendant has been indicted and convicted, the prosecutors typically dismiss it as being irrelevant, not important enough to reopen the case. Texas prosecutor Michael McDougal said that the fact that the DNA found in a young rape-murder victim did not match that of Roy Criner, the man convicted of the crime, did not mean Criner was innocent. "It means that the sperm found in her was not his," he said. "It doesn't mean he didn't rape her, doesn't mean he didn't kill her."[38]

Technically, of course, McDougal is right; Criner could have raped the woman in Texas and ejaculated somewhere else—Arkansas, perhaps. But DNA evidence should be used the same way whenever it turns up; it is the need for self-justification that prevents most prosecutors from being able to do that. Defense attorney Peter J. Neufeld says that in his experience, reinterpreting the evidence to justify the original verdict is extremely common among prosecutors and judges. During the trial, the prosecutor's theory is that one person alone, the defendant, seized and raped the victim. If, after the defendant is convicted, DNA testing excludes him as the perpetrator, prosecutors miraculously come up with other theories. Our own favorite is what Neufeld calls the "unindicted co-ejaculator" theory: The convicted defendant held the woman down while a mysterious second man actually committed the rape. Or the victim was lying there helpless, and a male predator "comes along and sees an opportunity and takes it," as one prosecutor claimed.[39] Or the defendant wore a condom, and the victim had consensual sex with someone else shortly before she was raped. (When Roy Criner's case was sent to the Texas Court of Criminal Appeals, Chief Judge Sharon Keller ruled that DNA "showing the sperm was not that of a man convicted of rape was not determinative because he might have worn a condom.") If the victim protests that she has not had intercourse in the previous three days, prosecutors advance the theory—again, after the trial—that she is lying: She doesn't want to admit that she had illicit sex because her husband or boyfriend will be angry.

Self-justifications like these create a double tragedy: They keep innocent people in prison and allow the guilty to remain free. The same DNA that exonerates an innocent person can be used to identify the guilty one, but this rarely happens.[40] Of all the convictions the Innocence Project has succeeded in overturning so far, there is not a single instance in which the police later tried to find the actual perpetrator of the crime. The police and prosecutors just close the

books on the case completely, as if to obliterate its silent accusation of the mistake they made.

Jumping to Convictions

> If the system can't function fairly, if the system can't correct its own mistakes and admit that it makes mistakes and give people an opportunity to [correct] them, then the system is broken.
>
> —appellate lawyer Michael Charlton, who represented Roy Criner

All citizens have a right to expect that our criminal-justice system will have procedures in place not only to convict the guilty, but also to protect the innocent, and when mistakes are made, to remedy them with alacrity. Legal scholars and social scientists have suggested various constitutional remedies and important piecemeal improvements to reduce the risk of false confessions, unreliable eyewitness testimony, police "testilying," and so forth.[41] But from our vantage point, the greatest impediment to admitting and correcting mistakes in the criminal-justice system is that most of its members reduce dissonance by denying that there is a problem. "Our system has to create this aura of close to perfection, of certainty that we don't convict innocent people," says former prosecutor Bennett Gershman.[42] The benefit of this certainty to police officers, detectives, and prosecutors is that they do not have sleepless nights, worrying that they might have put an innocent person in prison. But a few sleepless nights are called for. Doubt is not the enemy of justice; overconfidence is.

Currently, the professional training of most police officers, detectives, judges, and attorneys includes almost no information about their own cognitive biases; how to correct for them, as much as possible; and how to manage the dissonance they will feel when their beliefs meet disconfirming evidence. On the contrary, much of what they learn about psychology comes from self-proclaimed experts

with no training in psychological science and who, as we saw, do not teach them to be more accurate in their judgments, merely more confident that they are accurate: "An innocent person would never confess." "I saw it with my own eyes; therefore I'm right." "I can tell when someone is lying; I've been doing this for years." Yet that kind of certainty is the hallmark of pseudoscience. True scientists speak in the careful language of probability—"Innocent people most certainly can be induced to confess, under particular conditions; let me explain why I think this individual's confession is likely to have been coerced"—which is why scientists' testimony is often exasperating. Many judges, jurors, and police officers prefer certainties to science. Law professor D. Michael Risinger and attorney Jeffrey L. Loop have lamented "the general failure of the law to reflect virtually any of the insights of modern research on the characteristics of human perception, cognition, memory, inference or decision under uncertainty, either in the structure of the rules of evidence themselves, or the ways in which judges are trained or instructed to administer them."[43]

Yet training that promotes the certainties of pseudoscience, rather than a humbling appreciation of our cognitive biases and blind spots, increases the chances of wrongful convictions in two ways. First, it encourages law-enforcement officials to jump to conclusions too quickly. A police officer decides that a suspect is the guilty party, and then closes the door to other possibilities. A district attorney decides impulsively to prosecute a case, especially a sensational one, without having all the evidence; she announces her decision to the media; and then finds it difficult to back down when subsequent evidence proves shaky. Second, once a case is prosecuted and a conviction won, officials will be motivated to reject any subsequent evidence of the defendant's innocence.

The antidote to these all-too-human mistakes is to ensure that in police academies and law schools, students learn about their own vulnerability to self-justification. They must learn to look for the statistically likely suspect (a jealous boyfriend) without closing their

minds to the statistically less likely suspect, if that is where some evidence leads. They need to learn that even if they are confident that they can tell if a suspect is lying, they could be wrong. They need to learn how and why innocent people can be induced to confess to a crime they did not commit, and how to distinguish confessions that are likely to be true from those that have been coerced.[44] They need to learn that the popular method of profiling, that beloved staple of the FBI and TV shows, carries significant risks of error because of the confirmation bias: When investigators start looking for elements of a crime that match a suspect's profile, they also start overlooking elements that do not match. In short, investigators need to learn to change trees once they realize they are barking up the wrong one.

Law professor Andrew McClurg would go further in the training of police. He has long advocated the application of cognitive-dissonance principles to keep highly motivated rookies from taking that first step down the pyramid in a dishonest direction, by calling on their own self-concept as good guys fighting crime and violence. He proposes a program of integrity training in dealing with ethical dilemmas, in which cadets would be instilled with the values of telling the truth and doing the right thing as a central part of their emerging professional identity. (Currently, in most jurisdictions, police trainees get one evening or a couple of hours on dealing with ethical problems.) Because such values are quickly trumped on the job by competing moral codes—"You don't rat on a fellow officer"; "In the real world, the only sure way to get a conviction is to fudge the truth"—McClurg proposes that rookies be partnered with experienced, ethical mentors who, in the manner of Alcoholics Anonymous sponsors, would help rookies maintain their honesty commitment. "The only hope of substantially reducing police lying is a preventative approach aimed at keeping good cops from turning bad," he argues. Cognitive dissonance theory offers "a potent, inexpensive, and inexhaustible tool for accomplishing this goal: the officer's own self-concept."[45]

Because no one, no matter how well trained or well intentioned, is completely immune to the confirmation bias and to his or her own cognitive blind spots, the leading social scientists who have studied wrongful conviction are unanimous in recommending safeguards, such as the videotaping of all interviews. Currently, only a handful of states require the police to electronically record their interrogations.[46] Police and prosecutors have long resisted this requirement, fearing, we suspect, the embarrassing, dissonance-generating revelations it might create. Ralph Lacer, one of the interrogators of Bradley Page, justified this position on the grounds that "a tape is inhibiting" and makes it "hard to get at the truth."[47] Suppose, he complained, the interview goes on for ten hours. The defense attorney will make the jury listen to all ten hours, instead of just the fifteen-minute confession, and the jury will be confused and overwhelmed. Yet in the Page case, the prosecution's argument rested heavily on a segment of the audiotaped interview that was missing. Lacer admitted that he had turned off the cassette player just before he said the words that convinced Page to confess. According to Page, during that missing segment, Lacer had asked him to imagine how he *might* have killed his girlfriend. (This is another maneuver recommended by the creators of the Reid Technique.) Page thought he was being asked to construct an imaginary scenario to help the police; he was stunned when Lacer used it as a legitimate confession. The jury did not hear the full context—the question that elicited the alleged confession.

In fact, in jurisdictions that do videotape interrogations, law enforcement has come to favor it. The Center on Wrongful Convictions surveyed 238 law enforcement agencies that currently record all interrogations of felony suspects, and found that virtually every officer with whom they spoke was enthusiastic about the practice. Videotaping eliminates the problem of suspects changing their stories, and it satisfies jurors that the confession was obtained honestly. And of course it permits independent experts and jurors to assess the

techniques that were used and determine whether any of them were deceptive or coercive.[48]

Reforms like these are slowly being implemented in Canada and Great Britain, which are instituting procedures to minimize the chances of wrongful convictions. But according to legal scholars and social scientists Deborah Davis and Richard Leo, American law enforcement remains steeped in its traditions, including adherence to the Reid Technique and similar procedures, maintaining "near absolute denial" that these techniques can and do produce false confessions and wrongful convictions.[49] The American criminal-justice system's unwillingness to admit fallibility compounds the injustices it creates. Most states do absolutely nothing for people who have been exonerated. They provide no compensation for the many years of life and earnings lost. They do not even offer an official apology. Cruelly, they often do not expunge the exonerated person's record, making it difficult for the person to get an apartment or a job.

From the viewpoint of dissonance theory, we can see why the victims of wrongful convictions are treated so harshly. That harshness is in direct proportion to the system's inflexibility. If you know that errors are inevitable, you will not be surprised when they happen and you will have contingencies in place to remedy them. But if you refuse to admit to yourself or the world that mistakes do happen, then every wrongfully imprisoned person is stark, humiliating evidence of how wrong you are. Apologize to them? Give them money? Don't be absurd. They got off on a technicality. Oh, the technicality was DNA? Well, they were guilty of something else.

And yet, every so often, a man or woman of integrity rises above the common impulse to sacrifice truth in the service of self-justification: A police officer blows the whistle on corruption; a detective reopens a case that was apparently solved; a district attorney owns up to a miscarriage of justice. Thomas Vanes, now an attorney in Merrillville, Indiana, was a prosecutor for thirteen years. "I was not bashful then in seeking the death penalty," he wrote.[50] "When

criminals are guilty, they deserve to be punished." But Vanes learned that mistakes are made, and he had made them, too.

> I learned that a man named Larry Mayes, whom I had prosecuted and convicted, had served more than 20 years for a rape he did not commit. How do we know? DNA testing. . . . Two decades later, when he requested a DNA retest on that rape kit, I assisted in tracking down the old evidence, convinced that the current tests would put to rest his long-standing claim of innocence. But he was right, and I was wrong.
>
> Hard facts trumped opinion and belief, as they should. It was a sobering lesson, and none of the easy-to-reach rationalizations (just doing my job, it was the jurors who convicted him, the appellate courts had upheld the conviction) completely lessen the sense of responsibility—moral, if not legal—that comes with the conviction of an innocent man.