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Journal of Cold Case Review

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The *Journal of Cold Case Review* is the official publication of The American Investigative Society of Cold Cases published biannually. The *Journal of Cold Case Review* was created to publish research and information about cold cases and related concepts, ideas, technology, and cases related to cold case investigation, forensic science, behavioral science, medicolegal death investigation, law, society, policy, and practice.

Journal of Cold Case Review

Editorial Review Board

Editorial

Welcome to the New Year and the fifth issue of the Journal of Cold Case Review (JCCR). After the great success of the previous issues, it is an honor and pleasure to present the interesting set of articles from the pens of acclaimed researchers, practitioners, and authors contained in this selection. It is the objective of the publisher, The American Association of Cold Case Investigations, or AISOCC, to present everyone active or interested in cold case investigations with cutting edge information to improve the knowledge and practice guidelines in the field, as well as to raise awareness of the importance of solving cold cases.

This issue of the Journal of Cold Case Review offers articles by a range of esteemed experts in different areas relevant to cold case investigations. The first article is by Deena Clawar, a Medicolegal Forensic Consultant and Licensed Investigator, explores death investigations and offers ideas for improvement. In the second article, Daniel Robb, a retired special agent of Homeland Security, reviews the use of assertive questioning in the psychological assessment interview and how it can be used to minimize or prevent false confessions. Then, Marika Henneberg, a senior lecturer at the Institute of Criminal Justice Studies, University of Portsmouth, UK, discusses differences between cold case reviews and investigations into alleged wrongful convictions in England and Wales. In the final article of the current JCCR issue, Jolene van Nevel, a PhD candidate at Walden University, follows up on the outcome of the Jacob Wetterling cold case and why closure is important for those involved.

I am sure that you—our loyal readers and supporters—will join me in congratulating AISOCC and all its contributors for a job well done to ensure that cold cases receive the attention that it deserves, both in study and practice.

Joan Swart, PsyD
Editor-in-Chief

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Death Investigations: Is There Room for Improvement?

By Deena Clawar, MS, LPI, VSM

Abstract

As a professional medicolegal death investigator with more than 20 years' experience in investigations, research and academia, I am concerned at the reported number of flawed investigations into deaths across the nation, which in some cases have led to miscarriages of justice, prolonged trials and caused unnecessary suffering to the relatives of the deceased. The media have repeatedly highlighted flaws within the criminal justice system and evidentiary process as a whole. We are now witnessing many more instances of and reading more articles about the flawed system of death investigations. However, we often only hear about these issues when things go awry during high profile cases. Witness the reports questioning the handling of investigations into the sudden death of Supreme Court Judge Antonin Scalia in February this year. The judge was found dead in a room at a hunting lodge. No death investigator was called, no autopsy was carried out and a local justice of the peace reportedly pronounced death by natural causes without having viewed the body but having been assured by police there was no sign of foul play – a process allowed under Texas law (Moravec., Horwitz, & Markon, 2016; Melinek, 2016; Karas, 2016). In my view the current system of both investigating deaths and training those whose task it is to assist in determining death, is flawed and lacks cohesion. I would like to see a common policy and for the government to set standards for both investigating deaths and for training those who investigate deaths. When one asks "So what actually occurs during a death investigation" the old adage "It depends…" truly applies. I will outline why "it depends," and address the issues surrounding death investigations. Much of the discussion, particularly of any mishaps that may have occurred, has focused on the actions of the police departments, crime scene investigators, and/or laboratories. Just as with investigations themselves, these discussions are merely identifying and dealing with the tip of the iceberg. One reason that the role of death investigations and death investigators, are not reviewed and highlighted, good or bad, is that the role of these investigators is not clear and is poorly understood.

Keywords: death investigation, criminal justice, evidentiary process, autopsy, crime scene, coroner, medical examiner

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Deena Clawar, MS, LPI, VSM is a Medicolegal Forensic Consultant and Licensed Investigator with more than 20 years' experience in investigations, research, and academia. Her career began as a Police/Narcotics officer in Philadelphia and later became a Forensic Investigator for the State of Delaware. She has successfully handled thousands of investigations, aspects of which include assessing the cause and manner of death, crime scene analysis, narcotics and cold case investigations. Her field experience includes working as a Forensic Technician on the World Trade Center Recovery Project. Deena holds a Master's degree in Forensic Medicine from Philadelphia College of Osteopathic Medicine, additional and specialized studies in Criminology, Physiology, and Forensic Anthropology and a BS in Biology. Additionally, she is an Adjunct Professor, a VIDOCQ Society member, Medicolegal Consulting Committee member and Victim and Family Outreach Committee Member for the American Investigative Society of Cold Cases (AISOCC), Executive Board Member of the Pennsylvania Association of Licensed Investigators (PALI), member of INTEL-

LENET, and was a Diplomate of the American board of Medicolegal Death Investigators (ABMDI). In 2013, Deena formed her own company – which specializes in medicolegal forensic and criminal investigations.

A Misunderstood Role

After many years in the investigation field, even I misunderstood what death investigators do. At first I thought it might be a good job for someone who mostly avoided dealing with the living.

Two questions I am most often asked are: "How could you work with dead people?" and "doesn't that bother you?" To which I often reply: "I've been much more bothered by the living." However, as I came to find out, and eventually learned to enjoy, Medicolegal/Death Investigators are not just interacting with the dead. In fact, our job mostly involves interacting with 'the living' who can often, in turn, speak for the dead.

Our job involves sorting out what information is material and pertinent - to provide those answers for the dead. In performing this role, we need to embrace all disciplines: educator, psychologist, therapist, chaplain, medical consultant, interrogator, mediator, crisis intervention specialist, liaison, and so on.

Though the public is inundated with, and addicted to, shows like CSI or NCIS, the shows all too often offer a misleading view of reality; what occurs both at a scene and in the aftermath, and more specifically, the roles of the professionals processing the scene.

The question I am most often asked is, "is it like CSI?" My answer depends on the length of conversation I am willing to endure. The media has had a feeding frenzy with the public's fascination. Between the multitude of crime scene shows and the media, what occurs day to day in police departments and coroner or medical examiners offices is about as clear as mud.

I have watched shows that misrepresent the roles of everyone involved from medical examiners, to forensic experts and the police and they often fail to realistically portray, or fail to portray entirely, forensic/medicolegal/death investigators. I watched a television show a few years back which was supposedly based on Philadelphia's Medical Examiner's office, they showed the Medical Examiner doing everything from scene investigation, to laboratory testing, to interrogation of suspects – none of which a medical examiner does.

Even more problematic is that many of those who work around the field of death investigation itself do not understand what the job involves; many of the people I worked with on a daily basis - including many of the wonderful law enforcement officers – completely lacked an understanding of the depth and intricacies of our jobs. Some called us "The Body Snatchers", and thought we were overpaid, glorified body-picker-uppers. One Detective, with whom I often worked, stopped in my office one day and was surprised to see me writing one of the fifteen reports then piled up on my desk. He said, "You guys actually write reports?" If I hadn't been convinced previously that our jobs were misunderstood, I was then.

Now that I have left government employment, I have become still more aware of the lack of understanding of death investigations. When I first opened my business, and told people I was a Forensic Investigator, they thought I was a forensic accountant or a computer forensic expert. One Private Investigator, whom I got to know well, would introduce me as a DNA expert. Many still think the term 'death investigation' has to do with "who done it" as opposed to the investigation of a crime beginning with "what and how was it done". I

have continued to realize that I have an uphill educational battle on my hands. It has taken time to educate myself and others on the how and why these terms and roles are so poorly understood.

Coroner vs. Medical Examiner?

Depending on the local statute, investigations into unexplained deaths in the U.S. are dealt with either by the Coroner or the Medical Examiner (ME).

Coroners are elected. They do not have to be, and frequently are not, physicians, let alone Board Certified Forensic Pathologists. In fact, I have seen quite a few instances where the elected Coroner had no medical/forensic training. Unless they are Forensic Pathologists, they will not be the individuals performing autopsies. This is not to say that there are not highly educated and competent coroners. The coroner system is historical; the word "coroner" came from the word "crowner" and dates back to when there were kings. Many would argue this is an outdated system.

The other, more contemporary counterpart is the medical examiner system. The Chief Medical Examiner is an appointed position. ME's are physicians, and often are Board Certified Forensic Pathologists.

A few states have state run medical examiner systems (Delaware, for example). However, most states are divided into county jurisdictions and each county determines if they elect a coroner or appoint a medical examiner.

Under the Coroner or the Medical Examiner there are often death investigators who are the 'eyes and ears' of the Coroner/ME. Death Investigators perform all the leg-work of the case, including scene work.

The synopsis of all their investigative work is utilized to assist with determining the cause and manner of death and is presented to the ME for either final approval of release of a body, or for an external examination or autopsy. However, their work is not complete once a body is released and/or examined; there are more investigative duties to follow.

The investigators have a wide variety of titles: Medicolegal Death Investigator, Forensic Investigator, Deputy Coroner, Death Investigator, Medicolegal Investigator, Coroner Investigator, and more. While the titles may be interchangeable, their duties are often not. Depending on the ME or Coroner's office where an investigator is employed, there can be wide variations in some duties and functions. For example, there is a big variation in the level of autonomy given to investigators and this governs the way they perform investigations and make case decisions.

Duties may include, but are not be limited to: fielding calls, determining jurisdiction, responding to scenes, interviewing of police, physicians, families, etc.; photographing the body and scene; examining the body, and related evidence; collecting, and possibly transporting evidence; reviewing medical history, and records; following chain of evidence procedures; answering family's questions; directing law enforcement; coordination with tissue procurement agencies; identification of the decedent; autopsy photography, and related evidentiary duties; written, and oral reports of findings; and many more investigative follow up types of procedures.

The Medical Examiner and Coroner's office should ideally be an entirely separate entity from a law enforcement agency – a critical separation so that investigations are performed in an unbiased fashion.

Unfortunately, this is not always the case. Recently, it was reported that Santa Clara County was thinking of taking oversight of the Coroner's office away from the Sherriff's department after claims there had been times the

Sherriff's office had impeded the work of the "Medical Examiner" (Kurhi, 2016).

Medico-legal, as the two words imply, combines medical and legal knowledge, and understanding. Basic medical knowledge is crucial for the job as the investigator is often fielding calls from physicians and nurses or reviewing hundreds of pages of medical records, but to be an adequate death investigator one needs additional specialized forensic medical knowledge. One must understand what happens physiologically to a body near, at, and after death. One also must know how to perform an investigation.

Having had first-hand experience with sifting through applications and training new death investigators, it is very common to find applicants with either some type of medical background (medic, nurse, etc.) or a law enforcement background. It is uncommon to find applicants with both backgrounds and even less common to find people who also have specific knowledge and experience with forensic death investigations. When I have been asked to choose between an applicant with a medical background and one with investigative skills, surprising as it may be, I say investigative skills win. The science, although complex, can be taught; having the mind of an investigator is innate.

Lack of Oversight

Unfortunately, due to a misunderstanding of the job and lack of oversight at all governmental levels, there are large variations in the qualifications required for would-be investigators. Some jurisdictions do not require applicants to have special qualifications and in these instances, appointees may have neither medical nor investigative backgrounds.

There is currently no uniform, required qualification or certification standards for Medicolegal Death Investigators. This creates a lack of uniformity in the way investigations and scene examinations are carried out. The critical evidence gathering processes, including crime scene analysis and the handling of bodies, is often being carried out by untrained, or poorly trained, investigators which can cause resulting legal problems to follow. Evidence can be overlooked, mistaken, misidentified, mishandled, the chain of custody broken, and law enforcement may be directed down an inappropriate path or steered away from an appropriate path for their impending investigation, if continued investigation even occurs.

Perhaps, most importantly, the family of the deceased can be left with inaccurate information or questions that remain unanswered indefinitely -- the beginnings of what eventually becomes a cold case.

Politics

Some jurisdictions have hiring practices which dictate that the jobs are going to those who are "connected" rather than qualified. These jobs are still, very much, political. Remember, a ME is appointed and a Coroner is elected – it's all about politics.

Some involved in the hiring process and the appointing boards, including those on the interview panels, are there, as mandated by law, because of their race and/or gender to avoid discrimination. This is great in theory, except, if they are not experienced death investigators they do not have the foggiest idea what to look for to locate and hire the most qualified applicants. Even when one possesses the education and experience, one may not be hired due to being determined "overqualified", which can in part be due to fears from existing, perhaps more senior, but less well qualified staff. This leads to identifying two more crucial traits for a medicolegal investigator: tenacity and resilience. These skills continue to be invaluable even once a job is landed, as they are required for case management as well as case follow-through.

For many years one of my greatest gripes was the low level of qualifications required by the federal government when hiring Medicolegal Death Investigators on some of our most important cases, those of our deceased military personnel who have paid the ultimate price. You might think, as I did, that the federal government would have selected only the most qualified death investigators on these cases.

However, in years past, the main requirement was that applicants were currently a federal employee, and then, somewhere down the line, after getting hired, they should obtain week long training on death investigation. This, in my opinion, was unacceptable. This appears to have been [somewhat] addressed, as they now at least require American Board of Medicolegal Death Investigator (ABMDI) certification.

However, there is a further glitch in the system -- ABMDI certification requires that you be actively employed by government entities. Allowing an independent authority, such as ABMDI, to institute their own rules and regulations can be problematic. In this instance, restricting (death) certifications only to government employees prevents independent (death) investigators and consultants from gaining or maintaining certification and most importantly, also adhering to standards.

Questions of Interpretation

The lack of common standards and the varying interpretations of laws and procedures also determine which cases are referred to the Coroner or Medical Examiner and leads to a wide variation in the way deaths are investigated and by whom.

Coroners and Medical Examiners jobs are to determine the cause and manner of death. Typically, they investigate 'other than natural' manners of death (homicides, suicides, accidents, undetermined) and natural deaths that are 'unattended'. In other words, what this means and looks like in reality is wide open to interpretation and practice. I am often asked why a coroner or medical examiner released a body, did not go to a scene, or did not perform an autopsy in a case. Even when the answer may appear clear to me, I am often told the rules and regulations are carried out in a fundamentally different way in other jurisdictions.

The way policy on handling death investigations is written and by whom also varies and affects standards. Many of those writing policy and procedures which guide investigations, while undoubtedly are professional and well intentioned, may not have experience or the credentials to be a death investigator nor have they ever performed the role and in my view this has led to policies which are unrealistic and/or unworkable.

Duties and Functions: Overworked and Underpaid

As I explained earlier, the role of a death investigator is multifaceted. One must be able to prioritize and multitask - and unfortunately, both for investigators and the public we serve, we can often work days on end with little to no sleep. Some places have appropriate manpower and scheduling, but that is often not the case. The pace of this job is often “feast or famine”. I have worked 80-hours shifts. I'm sure you can imagine the toll this can take, both physically and mentally, on the investigators, but equally as important, this lack of proper manpower leads to fatigue and often can lead to mistakes. I have seen very good investigators misidentify homicides. In addition to being overworked, it is probably even more common across the country to be highly underpaid.

The Effect of Unclear Rules, Lack of Training, and Interference

Due to lack of training, understanding and coordination there can be times when the roles of professionals at a scene are unclear – add egos to that 'simmering pot' and you have the potential for a raging inferno. In rare instances, police officers may attempt to take over the scene and make determinations they are neither qualified, nor authorized, to make.

Many law enforcement officers have told me, that in their jurisdictions, the death investigator has little to no role at the scene, other than to remove the body. Depending on the jurisdiction, this may or may not be accurate.

Within the medical examiner or coroner's office itself, there can be pressure from more senior staff to direct or even take over the investigative functions. Leaderships' promotion of teamwork among investigators can be lacking and can create rifts within the department which furthers the pressures of an already difficult job.

Coroners/Medical Examiners and Death Investigators can also come under pressures from body donation organizations who potentially try to interfere with determinations that are in the decedent's or families' best interest. These organizations often will not take "no" for an answer and work their way through the system to find the "yes". Potential evidence can therefore be compromised.

There should be a better liaison between the Medical Examiner and the District Attorney (DA) and/or Attorney General (AG). The DA or AG staff may show up on scene or at the autopsy on high profile cases and some have told me that they don't know what to do with themselves at death scenes. This is understandable due to the lack of forensic/medical knowledge. Often, they are untrained and don't know what they are looking for when attending autopsies. But even more problematic, are the times they are not present and rely on analysis and information provided by other forensically and medically untrained people for an interpretation.

I am also concerned at the lack of funding for training. When I was first hired, the state paid for my training. However, in years that followed, I was told funding was unavailable and since we were short on staff, I had to first find coverage and then fund it myself. I rarely found coverage to attend the training so often used my own time and spent thousands of dollars each year on my training.

In some jurisdictions, Death Investigators are not sufficiently trained to handle mass disasters. Law enforcement agencies in and around my jurisdiction received training for mass disaster events, but the medical examiners or death investigators were not included. I highly recommend collaborative trainings within all law enforcement agencies.

Physical, Mental, and Health Issues

Approximately 90-percent of my cases had some correlation to drugs or alcohol. Seeing 10-15 dead bodies a day and dealing with all the grieving families isn't 'normal' and can have lasting effects. Post-traumatic stress disorder is often a common diagnosis among individuals involved in this type of work - if it is diagnosed at all.

As drug addiction and the corresponding fatalities rise, so do the case numbers, their inherent investigative intricacies, and the pressures on the death investigator. It is not just the 'dead' we serve who fall prey to addiction. It is a high-pressure job which involves seeing and dealing with death, destruction, grief, etc., and mental health and addiction issues are found among these 'responders' as well. Statistics show addiction rates are double to triple for first responders compared with the general public and based on experience, my guess is that they are at least the same or higher for "last" responders. I am glad to see we are starting to discuss this issue.

For first and last responders, physical injuries are part of the job. For many death investigators, who are constantly moving bodies some of which weigh more than 300+ pounds, injury is par for the course.

Suggestions for Discussions

I write this not to condemn the profession; I love this career, the life it has given me, and the people who do it. However, I think it's our responsibility to find ways to do it better. My intention is to educate, identify the issues, and spark discussions to create solutions. I am in the business of offering solutions, not just identifying problems; how do we go about this?

I acknowledge that some changes have been made. In 1997 and 1999 the National Institute of Justice published guidelines for death investigations (Clark, 1999). In 2011 these guidelines were updated again, and for the first time began to include Medicolegal Death Investigators as part of the main panel – a huge advance.

The main issue however, is that the guidelines themselves are only suggestions for how to properly conduct investigations. They do not address the hiring practices or the quality and academic standards required of death investigators. Some who compiled the guidelines have admitted they were kept general because of the varying types of systems and personnel doing this job throughout the country. We need to change the system.

My suggestions are:

- Do away with the outdated coroner system and move toward replacement with a medical examiner system. This is a long-term process and it will take time to train large numbers of qualified MEs and qualified Death Investigators. Many areas of this country have enormous jurisdictions to cover and I often hear it said that doing away with local coroners would not be practical or possible. My response is that even a jurisdiction as vast as Alaska has a state run medical examiner system in place. Although this is a long-term recommendation, it could be phased in over time.

- Do away with jurisdictions that are currently running death investigations through law enforcement agencies.

- Follow the example of other professions and create national standards for recruiting and hiring Death Investigators and accreditation guidelines for all Death Investigators just as they do for Medical Examiners offices i.e., National Association of Medical Examiners (NAME). Interestingly NAME set out standards which should be checked for examiners and examiner's officers but the check list does not address the qualifications of investigators (Peterson & Clark, 2006).

- Create Board Certification for Death Investigators that is nationally determined, mandated, and regulated through a Board Certification process with training and testing in various locations throughout each state. Allow one who has achieved this certification to maintain it, whether in or outside of government employment.

- An accreditation board should visit each jurisdiction to ensure death investigators are appropriately qualified and cases are being handled in a manner which meets or exceeds set standards of practice. Interview panels for prospective recruits must include accredited death investigators, potentially even some from outside jurisdictions.

- Separate and/or additional guidelines written by each jurisdiction would have to comply with these national standards and be approved by the accreditation board which ideally would be a panel of nationally qualified, certified, and approved Death Investigators.
- Create and ensure collaborative mass disaster training with first responders.
- All Medical Examiner's Offices be appropriately staffed with Death Investigators and the salaries be commensurate with experience and credentials.
- Support those performing these difficult jobs by offering readily available professional mental health staff and encouraging regular visits.
- Create a system for independent enquiry into mistakes in death investigations by encouraging qualified independent medicolegal/forensic investigators and consultants. This affords counterbalances through review and identification of issues within cases that may stem from the flaws and inadequacies of our current death investigation system.
- Support and encourage, but also regulate and certify, independent death investigators/consultants who work outside of government investigations.
- Lastly, to educate, educate, educate.

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Assertive Questioning in Psychopathy Assessment Interview and Correlation with False Confession

By Daniel L. Robb, PhD

Abstract

As a response to training advocating that suggestive assertions be made to the subject of a psychological assessment interview, and that such questioning has been accepted in judicial testimony, a review of literature on interview and interrogation techniques is presented. The differing perspectives of police interrogation and psychological assessment are identified, and an argument is offered indicating that assertive questioning is inappropriate due to the evidence that it has been found to lead to false responses, based on the interviewer's perceived status unduly influencing many individuals (to potentially include judges), and that some are prone to being influenced to produce false responses, particularly those with psychopathic and antisocial traits, due to their being more likely to engage in pathological lying, attention seeking, and consequence blindness. In addition, use of assertive questioning appears to be contrary to psychological ethical considerations.

Keywords: psychological assessment, interrogation techniques, assertive questioning, false confession, psychopathy

Dr. Robb retired as a senior special agent, Office of Investigations (OI), U.S. Department of Homeland Security, previously U.S. Customs (Regional Program Manager for the Office of Internal Affairs, and within the OI: Child Exploitation Investigation Coordinator, Joint Drug Intelligence Coordinator, OCDETF Regional Coordinator, Acting Customs Attaché—Panama); with prior experience as special agent Naval Investigative Service, now Naval Criminal Investigative Service; and in enlisted and officer ranks of the U.S. Marine Corps (military police and investigations). He worked for six years as adjunct professor for the American Public University System at the graduate level. He is currently a representative of Project ALERT, a program of the National Center for Missing & Exploited Children; and is a member of the Behavioral Science section of the Consulting Committee and Educational Conference Chair of the American Investigative Society of Cold Cases. He holds a Doctorate in Human Services (specializing in Criminal Justice), and a graduate certificate in Forensic Psychology. He was certified by the Texas Commission on Law Enforcement as a peace officer (inactive) and was certified as an investigative hypnotist. He is the owner/manager/investigator of INSIGHT, Texas Department of Public Safety Certificate of Licensure No. A15531.

Introduction

On 22 and 23 February 2016, Criminogenics, LLC, sponsored a conference presented by Mary Ellen O'Toole, Ph.D. and Matt Logan, Ph.D., in Portland, Oregon, titled: Without Conscience: Understanding the Predatory Psychopath. Published course materials indicated that: Upon successful completion of the conference the participant will be able to: …

Apply the knowledge of the criminal mind to the interview process and can extract information from resistant offenders both in custodial and deposition contexts. …

Apply the scientific knowledge presented in research to case presentation in the Courts.

It is not within the scope of this essay to critique the entire two-day conference, but rather to address one point involving Dr. Logan's instruction regarding the use of assertions (i.e., leading questions) in psychological assessment interviews for the presence of psychopathy. Police interrogation tactics have been criticized in psychological and psychiatric journals as unacceptably coercive in that they have led to false confessions, therefore this essay will attempt to compare the use of assertions in psychological assessment with interrogation techniques known to precipitate false confessions.

The focus of this essay is Dr. Logan's admonishment in his classroom presentation that psychopathy assessment interviewers "must use assertions." The example provided in class consisted of a video recording wherein Dr. Logan was conducting an interview that included the assertion to the interviewee that he masturbated five times per day. The interviewee responded that he usually exceeded that number.

The presentation on the use of assertions in questioning during assessments was on the first day of the conference. On the second day, Dr. Logan was asked about the potential for eliciting a false response. He responded that claims of false confessions have resulted from officers feeding information to suspects, and that the statistics cited by the Innocence Project are questionable. In addition, Dr. Logan related that in his past expert court testimony, his use of this interview technique has never been questioned, which seemed indicative of a psychological defense mechanism.

An argument will be presented that the difference between an assertive question and a leading question seems to be more one of quantity than quality, with both suggesting that an individual engaged in a particular behavior. And there appears to be evidence that even subtle influences exerted by an interviewer can elicit false responses.

The employment positions of the conference attendees are not known; however, it appeared that social service or corrections-oriented positions were represented, and some had less than a terminal degree. The impact of this apparent error could have been moderated had there been additional discussion regarding potential problems, such as conditions conducive to elicitation of a false statement. Given the lack of admonitions, caveats, or additional information regarding the potential for leading questions to elicit false responses, instruction that assessment interviews must include assertions that the interviewee must accept or deny seems at best inappropriate. This judgement is based on the recognized traits of psychopaths and the empirical evidence of official interviews eliciting false statements.

Cognitive Error

There are multiple socio-psychological processes leading to cognitive errors. Anecdotal evidence acquired from experience is not necessarily representative of statistically significant evidence. And in police work, investigators may rely on what has worked for past investigations, rather than recognizing differing circumstances. Based on Dr. Logan's extensive experience as a retired Royal Canadian Mounted Police Hostage Negotiator as well as being a Forensic Behavioral Consultant, one could surmise that his instructional materials may reflect the availability heuristic in the application of interrogation techniques in psychological assessment.

Inferences made based on experience and opinions are subject to a number of distortions, biases and shortcomings that are associ-

ated with the frailties of human decision making. … The individual makes judgments on a probability by thinking of examples that are easily accessible to memory whilst less salient counter arguments are forgotten. (Alison & Canter, 2006, pp. 399-400)

This occupational bias is also representative of confirmation bias, which consists of seeking out, interpreting, and over-emphasizing information that meets expectations, and rejecting non-conforming information (Leo & Drizin, 2010); such rejection of disconfirming information is also conceptualized as belief perseverance (Vrij, Fisher, Mann, & Leal, 2010). "Once a belief has been formed by normal persons, they are reluctant to change it, even in the face of clearly contradictory evidence" (Maher, 2004, p. 318).

The human proclivity to succumb to conformity and compliance pressures is another cognitive error (Sauer, Brewer, & Weber, 2008). Form or content of questions can lead to the expected answer, or notify the witness of the questioner's point of view. This could consist of leading questions from, or be triggered by the mere presence of an authority figure. Dr. Logan's stature as a former police official and prominent forensic psychology consultant may induce a false response to a leading question; as well as potentially accounting for the unquestioned acceptance of his expert court testimony.

Priming is a psychological concept describing the propensity for our conscious perceptions (the explicit memory system) to be unduly influenced through prior subconscious perceptions of the implicit memory system (Eagleman, 2011). Likewise, the mere exposure effect describes the brain's susceptibility to subconscious influence wherein frequent exposure can create a preference, as employed in advertising. "Another real-world manifestation of implicit memory is known as the illusion-of-truth effect: you are more likely to believe that a statement is true if you have heard it before—whether it is actually true" (p. 65).

Still another cognitive fault is illusory correlations, consisting of the perception of non-existent relationships (Vrij et al., 2010). These psychological concepts may be related to the phenomenon of false confession. Review of police interrogations of suspects indicated that:

Reported false memories of crime were similar to false memories of noncriminal events and to true memory accounts, having the same kinds of complex descriptive and multisensory components. It appears that in the context of a highly suggestive interview, people can quite readily generate rich false memories of committing crime. (Shaw & Porter, 2015, p. 291)

Interrogation Techniques

What is acceptable for interview and interrogation has evolved with our understanding of socio-psychological pressures. In 1936, the U.S. Supreme Court ruled that confession obtained through torture was unconstitutional. That led to a law professor (Inbau) and former police officer (Reid) proposing use of psychological techniques in criminal interrogation (Scheck, Neufeld, & Dwyer, 2000). Even after review of subsequent Supreme Court decisions allowing deceit and trickery that does not "'shock the conscience' of the court or the community" (p. 486), Inbau, Reid, Buckley, and Jayne (2004) presented what is arguably a relatively conservative approach to interrogation that does not endorse coercive interrogation. The tenets of those techniques commonly referred to as the "Reid Technique," remain widely recognized in law enforcement as a guide for interviews and interrogations in the United States.

The fourth edition of Criminal Interrogation and Confessions (Inbau, et al.) elucidated elements of the interrogation process, as differ-

entiated from interview, to include, among other conceptualizations, configuration of the room, the necessity for establishing rapport, and behavioral analysis. They also provided a nine-step process for interrogation:

Step 1 … A direct, positively presented confirmation of the suspect with a statement that he is considered to be the person who committed the offense. …

Step 2 … The investigator expresses a supposition about the reason for the crime's commission. …

Step 3 … Suggested procedures for handling the initial denials of guilt. …

Step 4 … Overcoming the suspect's secondary line of defense following denial. …

Step 5 … The investigator will clearly display sincerity in what he says. …

Step 6 … Recognizing the suspect's passive mood. …

Step 7 … Utilization of an alternative question—a suggestion of a choice to be made by the suspect concerning some aspect of the crime. …

Step 8 … Having the suspect orally relate the various details about the offense that will serve ultimately to establish legal guilt.

Step 9 … Converting an oral confession into a written one. (pp. 213-214)

Several categories of false confessions are presented by Inbau et al. The coerced compliant confession involves threatened or actual assault, wherein there is true acknowledgement guilt. The voluntary false confession generally results from a desire for attention. The coerced internalized confession results from the interrogator convincing the suspect that they are guilty due to loss of memory of the event. The nonexistent confession may contain incriminating information, but does not include acceptance of guilt. Inbau et al. warned that unlawful duress, through deprivation of biological needs or lengthy interrogation can be present as an unlawful form of coercion within as short a period as 30 minutes, if protestations of the suspect are ignored.

Police interrogation is by its nature an adversarial process, and "no confession following interrogation is completely voluntary in the psychological sense of the word" (Inbau, et al., p. 417), and the extent of voluntariness is questionable based on the coercive tactics employed by the interrogator. Merely stating incontrovertible evidence does not amount to coercion. However, promises of leniency, particularly when coupled with a threat of increased punishment or even character assassination, can be construed as coercive. Appropriate interrogation involves persuasion and may incorporate incentives that are personally redemptive; such as reduction of stress associated with guilt by acceptance of repercussions, social benefits of accepting guilt, and learning from this mistake, thus avoiding future criminal behavior.

Other incentives that can be used in a legal manner include: the ability to present a confession wherein the individual can control the narrative, gain vengeance against the system, provide the ability to disprove some allegations, or offer an expectation of leniency if guilt is accepted and remorse is expressed. However, solicitation of a confession in exchange for a promise of leniency exceeds the scope legitimacy. An ambiguous statement such as: "If this is something that happened on the spur of the moment, that would be important to include in my report" (p. 420), may be considered ambiguous, and therefore coercive; although, this was not interpreted as inducement of a false confession by the authors.

Chapter 12 is titled: The Use of Specialized Questioning Techniques (Inbau, et al., p. 193),

and explains several techniques in detail. One technique is the "Baiting Technique," wherein "the bait question is non-accusatory in nature but at the same time presents to the subject a plausible probability of the existence of some evidence implicating him in the crime" (p. 193). The purpose is to elicit an alteration of a previous statement assumed to be false, and was characterized by the authors as a positive challenge. In recommending this technique, it is not intended that the interrogator confront the suspect with fabricated circumstantial or witness evidence. The difference being that a non-accusatory question would be something like: "Is there any reason your fingerprints were found;" as opposed to "your fingerprints were found."

The second specialized technique is: "Asking an Assumptive Question" to be "phrased in such a manner that there is a strong implication that the answer is already known, when in fact it is not" (p. 199). It should be noted that this technique does not include an assertion as to the actual behavior of the suspect, and caveats are provided. "The information sought by the question should not require a full confession from the subject;" such as, "'Where did you go after you raped that lady?'" (p. 201). And, the assumptive question should only be used when guilt has been reasonably established. A third specialized technique involves feigning ignorance as to a pertinent fact and offering the suspect to opportunity to lie.

What appears to be an omission in the work of Inbau et al. is the propensity to inform on conspirators or associates in exchange for consideration pretrial and/or subsequent to conviction as provided for in Rule 35, under Title VII of the Federal Rules of Criminal Procedure for providing substantive assistance in implicating others in criminal activity. The potential for personal gain through avoiding negative consequences seems a compelling incentive for coerced confession or fabrication.

Despite the work of Inbau et al. incorporating cautionary guidelines separating appropriate and unacceptable techniques, the psychological pressures induced by the Reid Technique have been subjected to criticism, such as expressed by the Supreme Court in the 1966 Miranda v. Arizona decision, that contributed to the mandatory rights advisement for those in custody (Scheck, et al.); although, recommendations have no doubt evolved. And, Dr. David Canter, at the 17th Conference of the International Academy for Investigative Psychology (John Jay College of Criminal Justice, New York, May 14, 2016) commented that the use of Reid Technique would be unacceptable in England.

Many psychological and psychiatric professionals have become proponents of more humane interrogation, devoid of psychological techniques found to have been instrumental in the production of false statements, recognizing that false confession is a major contributor to false convictions. Scheck et al. reported that in "DNA exonerations studied by the Innocence Project, 23 percent of the convictions were based on false confessions or admissions" (p. 92). Gudjonsson cited documentation of 125 proven false confessions between 1971 and 2002, and indicated that there is empirically supported argument "that subtle coercive influences in the criminal justice system should be a top priority of legal psychology in the 21st century" (2010, p. 32). There is also evidence that the accusatorial nature of police interrogation has been responsible for several hundred identified police-induced false confessions due to three critical errors: misclassification, coercion, and contamination (Leo & Drizin, 2010).

Based on the personal experience of the author of this essay, the question can be raised as to whether these are errors precipitated by interrogation training in general, the Reid Technique, misinterpretation and misapplication of that technique, or instinctive approaches to confrontational and accusatory

questioning. Gudjonsson indicated that, despite English Courts not tolerating manipulative psychological interrogation techniques beginning in the 1980s, a study found that law prohibiting such tactics "may have had limited effect upon police behavior" (2010, p. 55), in that high priority investigations tend to increase the pressure on investigators to obtain results; thus, increasing the use of coercive interrogation practices.

Russano, Meissner, Narchet, and Kassin (2005) reported research indicating that the tactic of minimizing the offense, even without an implication of leniency, can induce true and false confessions. And, results of research conducted by Perillo and Kassin indicated "that bluffing increases false confessions comparable to the effect produced by the presentation of false evidence. … The phenomenology of innocence can lead innocents to confess even in response to relatively benign interrogation tactics" (2011, p. 327).

Leading questions suggest, 'by [their] form or content, what the answer should be, leads (the respondent) to the desired answer, or indicates questioner's point of view' (Hibberd and Worring, 1981, quoted in Milne and Bull, 1999: 25). This, of course proves especially problematic in cases where questions are based on underlying assumptions or knowledge that is inaccurate (Gudjonsson, 1992). Leading questions may interfere with individuals' ability to correctly recall events, particularly in relation to peripheral details and when the interviewer is perceived as a highly credible authority. (Alison & Howard, 2005, p. 117)

Contamination of interrogation results can stem from the postadmission narrative jointly shaped by the suspect and the interrogator. "Interrogators are adept at inventing, suggesting, or eliciting an account of the suspect's

motivation: … that the suspect agrees to and then repeats back, even if it is completely inaccurate" (Leo et al., p. 20). Perhaps of equal importance is the propensity to overestimate one's ability to discern truth from falsity, due in part to tunnel vision (subconscious elimination of other suspects) and confirmation bias, once incriminating information has been elicited.

Psychopathy

The Psychopathy Checklist-Revised (PCL-R) "has been subjected to unusually intense scrutiny and critical analysis, both conceptual and statistical" (Hare, Neumann, & Mokros, 2015, p. 3), and the Four-Factor Model of the PCL-R includes traits relevant to an increased expectation for an untruthful response to a leading question, and may extend to pathological lying (deceitfulness and manipulativeness) as included in Factor 1. Hare et al. also identified "sensation-seeking and impulsivity" as significant traits of psychopaths (p. 39), that are associated with fearlessness that can be associated with disregard of consequences.

There is also "extensive empirical evidence that antisociality is an integral part of the psychopathy construct" (Hare et al., p. 32). And, it was further indicated that "many individuals, including those who are psychopathic, would likely distort their responses—faking good or bad—in accordance with what they believe about the purpose and potential consequences of the assessment" (p. 27). Gudjonsson (2010, p. 37) indicated research has shown that "antisocial personality disorder traits and the extent and seriousness of self-reported offending were the best predictors of a history of false confession." Gudjonsson also indicated that there are those with the need to seek notoriety or social status as a deviant by admitting to criminal behavior they have not committed. Conversely, non-psychopaths may have an exaggerated sense of guilt, and may have a tendency to admit to criminal acts they have not committed.

Psychological Interviewing

The literature providing guidelines for psychological and psychiatric interview has an apparent consistency regarding a neutral approach. In a guide for evaluating psychiatric disorders, Zimmerman (2013) provided questions to be addressed in the assessment of Antisocial Personality Disorder (APD), and APD has been equated to psychopathy in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013, p. 659). Zimmerman's guidelines for questions do not include a recommendation for the use of assertions or leading questions. Carlat's (2012) guide to psychiatric interviews also provided open-ended questions for APD assessment; and identified behavioral clues, such as being excessively self-revealing, being easily influenced, or attention seeking, which would indicate the need for caution in the interpretation of responses.

It seems logical to employ the tactic of intensification of questioning as responsiveness diminishes. Even the generally recognized guidelines for the interview of children allow for intensification of methods; however, those guidelines

advocate starting with open-ended questions and proceeding to specific questions as necessary, with interviewers resorting to highly specific questioning only when "other methods of questioning have failed, when previous information warrants substantial concern, or when the child's developmental level precludes more non-directive approaches. However, responses to these questions should be carefully evaluated and weighed accordingly." (Poole & Lamb, 1998, p. 102)

Tasman, Kay, and Ursano (2013, p.13) indicated that "the psychiatric detective enters the inquiry with an attitude of unknowing and suspends prior opinion." They recommended that the interviewer elicit information through asking for clarification, and cautioned against countertransference, wherein the interviewer loses empathy for the person being assessed; as this could be a factor leading to suggestive questioning. They also raised the ethical questions of "justice" regarding "avoiding prejudicial bias" (p. 174), and point out the necessity for the adherence "to a position of neutrality" (p.183). Tasman et al. provided a table identifying "Degrees of Directiveness in the Interviewer" ranging from low interviewer direction to high:

Low:	Open-ended questions …
	Repetition …
	Restatement …
	Summarization …
	Clarification …
	Nonverbal acknowledgement …
	Attentive listening …
Moderate:	Broad-focus questions …
	Use of examples …
	Confrontation … (e.g., challenging a statement controverted by facts)
	Interpretation …
High:	Narrow-focus questions … (e.g., quantification of alcohol use)
	Question repetition …
	Redirection …
	Change of topics
	Limit setting (e.g., limiting physical movement, interrupting

> lengthy verbal discourse) (pp. 91-92)

The closest approximation of assertive questioning in this interview model appears to be the use of examples. However, limits are implied, as provided in an example: "Sometimes illness seems to be triggered by something that happens, like a change in finances or living situation, or losing someone who's close to you. Has anything like that been happening to you?" (p. 91).

Once a response to assessment questioning has been elicited, there is a responsibility to evaluate the veracity of that response. According to Vrij (2008), meta-analysis has indicated that, on average, there was no difference between police investigators and laypersons in the ability to detect lies. Vrij et al. (2010) indicated that even the micro-expression techniques of Paul Ekman appear to be insignificant, and "the act of lying per se does not result in any nonverbal or speech-related cues to deceit" (p. 97). Therefore, once any statement is elicited, it can easily be accepted as truthful, unless one evaluates the totality of circumstances, to include what the interviewer has done to influence the responses.

Ethical Considerations

Beyond the indication that assertion as to the behaviors engaged in by an individual can lead them to provide false responses, meta-analysis has indicated the potential for negative outcomes regarding the prediction of recidivism or other assessment for psychopathy, in that it differs from many clinical predictions in the obvious implications for both the individual (e.g., abridgement of personal freedoms) and society (e.g., community safety). … Given the seriousness of these psycho-legal determinations, we must recommend that clinicians and legal decision makers consider risk and protective factors beyond psychopathy when attempting to predict future behaviors. (Leistico, Salkin, DeCoster, & Rogers, 2008, p. 28)

Candilis and Neal (2014) discussed the dual role of forensic consultation, that being social justice balanced against the welfare of an individual. A conflict of interest is present for those having to opine as to the potential danger to society of an individual, while being responsible for protection of the rights of that individual. "Recognizing that Truth is an ideal in human affairs, it is procedure that matters most of all, so that if a fair process is followed, Truth can be closely approximated even if it is not attained" (p. 20). The implication is that psychological assessment is not intended to be an adversarial process. Candilis and Neal also indicated that the ethical guidelines of both the American Psychiatric Association and the American Psychological Association (APA) prioritize the rights of the individual above the rights of society.

The several elements of the Ethical Principles of Psychologists and code of Conduct of the APA (2010) appear relevant to the subject of assertive/leading questioning in psychological assessment. Section 1.03 indicates that: "Under no circumstances may this standard be used to justify or defend violating human rights." Section 2.04 indicates that such assessments shall be "based upon established scientific and professional knowledge of the discipline." In this case, a practitioner must take into consideration the professional literature documenting the potential for false responses to leading questions. Section 3.04 specifies that psychologists must take reasonable steps to avoid harm to all with whom they work where foreseeable and unavoidable; which would include the recognition that leading questions could adversely affect the subject's response. And in the case of leading questions, there is evidence of the possibility of eliciting false information, contrary to Section 9.02, which calls for psychologists to use assessment techniques "that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques." Section 9.06 specifies that a psychologist must consider personal characteris-

tics of the individual being assessed; which in this context would include the propensity of a psychopath to provide false information.

The basic question is: "What is the epistemologically adequate manner of obtaining psycho-diagnostic information (Nordgaard, Sass, & Parnas, 2013, p. 353)?" In other words: What is a justifiable belief, as opposed to an opinion, when it comes to obtaining personal disclosures in a psychological assessment? And that is simultaneously an ethical question, to which Nordgaard et al. indicated that the psychiatric interview should be approached with an attitude that is "neutral, non-invasive, and non-voyeuristic" (p. 360).

Conclusion

There is evidence that even subtle coercion from an assertion as to the behavior of an interviewee can lead to false responses under varied circumstances. Therefore, an argument has been presented that psychological assessment interview questions incorporating assertions are inappropriate. This conclusion is based on available evidence that the interviewer's perceived status influences many individuals, and some are prone to produce false responses, particularly those with psychopathic and antisocial traits, due to being more prone to engage in pathological lying, attention seeking, and for their tendency for consequence blindness.

Moreover, justification for the use of assertive questions in a psychological assessment based on past court acceptance suggests that conformity and compliance issues are potentially compromising the judgement of admissibility. And, leading questioning of a person being assessed psychologically regarding criminal justice matters raises an ethical question as to objectivity and propriety. It appears that the ethical requirement for a neutral perspective and objective evaluation should exclude techniques such as assertive questioning that could unduly influence the outcome of a psychological evaluation and adversely affect the individual being assessed.

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Worlds Apart: Cold Case Reviews and Investigations into Alleged Wrongful Convictions in England and Wales

By Marika Henneberg, MPhil, LLM

Abstract

The article looks at differences between cold case reviews and investigations into alleged wrongful convictions in England and Wales. Obstacles are in place post-conviction, making the reinvestigation of an alleged wrongful conviction difficult. This jurisdiction has fallen behind the US, where post-conviction access is better and some District Attorneys' offices even collaborate with innocence projects in conviction review units. It seems counterproductive for the criminal justice system to have such obstacles in place. A wrongful conviction is an event which should never happen, but clearly does, and the criminal justice system needs to accept that it is not perfect. This is common in other fields, such as within the National Health Service (NHS) where so called 'never events' are acknowledged.

Keywords: cold case reviews, investigations into alleged wrongful convictions, post-conviction access, post-conviction testing, conviction integrity

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Introduction

Undeniably, there are many similarities between cold case reviews and investigations into alleged wrongful convictions. These include that a lot of time has often passed since the crime itself took place, any leads have 'gone cold', witnesses may no longer be available and physical evidence may have been lost. However, in England and Wales there are obvious differences in how these two categories of cases are dealt with. Cold case reviews are encouraged, access is given to physical exhibits, and there is a conscious effort to 'solve' the crime – this does not happen in cases of alleged wrongful convictions. Solid obstacles have been put in place to block attempts to reinvestigate such cases.

Having these obstacles in place post-conviction is counterproductive to justice. This is particularly obvious when compared to the breakthroughs that have taken place in cold cases in England and Wales in the last year alone, largely because of physical exhibits that have been tested with advanced forensic DNA analysis. Three cold cases involving murder (dating from 1982, 1984 and 1997 respectively), that have seen the perpetrator identified through advances in DNA analysis and the increased capabilities of the National DNA Database (NDNAD), along with an

unsolved case from 1996, will be discussed to illustrate the problems faced by post-conviction cases.

Crown court proceedings are audio recorded in England and Wales. However, after five or seven years (depending on the format they have been recorded in) these recordings are automatically destroyed unless a preservation order has been put in place. Once destroyed, these important verbatim records are lost forever. Starting to piece together what has potentially gone wrong in a trial without crucial documents such as the Judge's Summing Up is extremely difficult, if not impossible. This, in combination with the general lack of post-conviction disclosure to virtually anyone other than the short staffed and severely underfunded Criminal Cases Review Commission (CCRC), the body which determines whether a case will be referred to the Court of Appeal, seriously hampers any attempts to review an alleged wrongful conviction. Lack of disclosure is particularly bothersome as many alleged wrongful convictions are based on little more than circumstantial evidence, which means that access to police logs would be vital. Case construction is a phenomenon that should not be ignored and an often-prominent feature of that is the presence of bias within the original investigation.

The case of Kevin Nunn has presented a serious obstacle for investigations into alleged wrongful convictions. In R (Nunn) v Chief Constable of Suffolk Constabulary & Anor [2014] UKSC 37, the UK Supreme Court restricted post-conviction disclosure and access to exhibits, which includes cases where, for example, a technique was not yet available (or even discovered) at the time of the conviction. The CCRC appears to have endorsed the Nunn decision and has criticized what they call 'fishing expeditions' by potential appellants, their lawyers and third parties such as innocence projects (McCartney & Speechless, 2015, p.125).

Ultimately, integrity is compromised in a system which does not acknowledge its own fallibility. The criminal justice system in England and Wales could learn from, for example, the National Health Service (NHS) which has acknowledged that despite checks and controls, what is referred to as 'never events' still happen. Within the criminal justice system, a wrongful conviction is a clear example of an event that should not happen, but they clearly do. The appeal system does not appear to be effective as post-conviction access to documentation, physical exhibits, and even in some cases the prisoners themselves are so poor that an appeal becomes impossible. Add to that the austerity cuts that have virtually abolished legal aid for criminal appeals and we have the recipe for an ongoing justice scandal.

The lack of access in England and Wales is also in stark contrast to that available in the US, where court transcripts have been provided free of charge to defendants since 1956, and there are much better systems in place for disclosure and access to physical evidence for testing. Arguably, innocence projects in the US have been successful in achieving exonerations because of such access. In recent years, several District Attorneys' offices have even started to collaborate with innocence project in so called conviction review units. The thought that the Crown Prosecution Service (CPS) would collaborate with third parties, such as innocence projects, on questionable convictions remain so unlikely that it is laughable.

Cold Case Reviews in England and Wales

Cold case reviews on a measurable scale are a relatively new phenomenon in England and Wales, with the most substantial developments taking place in the last fifteen to twenty years. This coincides with significant advances across all fields of forensic science, which have influenced the criminal justice system. In relation to cold case reviews, new and refined techniques for locating, collecting and analyz-

ing DNA has provided an opportunity (and a tool) to look again at cases that have remained unsolved. There is no official definition of what constitutes a 'cold case', and there is no formal time after which a case is determined 'cold', as all cases are different. Within the criminal justice system (and to some extent the public) it is, however, generally accepted that a case is considered cold once all viable leads in an investigation have been exhausted (Innes & Clarke, 2009). The Home Office and the now disbanded Forensic Science Service (FSS) paved the way for cold case reviews, with police forces only becoming interested "once the obvious benefits to be gained from the 'quick wins' of successful convictions became apparent" (Allsop, 2013, p.364). The allure of cold case reviews can be seen in the results of a cold case review program into stranger rapes that started in 2004, called Operation Advance, which resulted in the conviction of a total of 47 offenders for crimes committed between 1980 and 2005, for the relatively small cost of £1.75 million (Allsop, 2013). This was followed by Operation Stealth where, following a national review of 600 unsolved murders in England and Wales, over 50 cold cases were reinvestigated using new forensic techniques (Allsop, 2013).

A further reminder of the value of a cold case review is apparent in a case that has tested the limits of the legal system in England and Wales since it happened in 1993, namely the notorious racially motivated murder of black London teenager Stephen Lawrence. Stephen was fatally stabbed by a group of young white men as he was waiting with a friend at a bus stop. The police did not follow up on leads which pointed to the identities of the men in the group until weeks after the murder and only after Stephen's parents had met with Nelson Mandela in London. Members of the group were then arrested but released with no further action. After the failure of the police and the Crown Prosecution Service (CPS) to charge any of the men, the Lawrence family launched a private prosecution against the men which failed in 1996. An inquest in 1997 concluded that Stephen was unlawfully killed in what the jurors called "a completely unprovoked racist attack by five white youths" (Macpherson, 1999, para. 42.34). A judicial inquiry into the murder was launched and its report was published in 1999. The report heavily criticized the police investigation and accused the Metropolitan Police of institutional racism and it made 70 recommendations. These included a recommendation that, in cases of exceptional circumstances where new evidence had emerged of someone's guilt, it should be possible to put a defendant on trial once again even after a previous acquittal, which was not possible at the time due to the double jeopardy rule (The Law Commission, 2001). The law against double jeopardy was reformed through Part 10 of the Criminal Justice Act 2003, which entered into force in April 2005. Nevertheless, progress in the Stephen Lawrence case was still slow and it took until 2008 before things started to move forward again. This happened after a successful cold case review identified Stephen's blood on one of the main suspects' jacket (Fishleigh & Smith, 2012), and in January 2012, two men were finally convicted for the murder.

Cold case reviews of unsolved cases can have led to the identification of a previously unknown suspect if genetic material is detected which can reveal a DNA profile. There are, however, still limitations as such a profile can only be compared to profiles that are already available to the police. This would include profiles that are on the National DNA Database (NDNAD), and samples collected from a suspect in the case for comparison (Bogan & Roberts, 2011). This means that the discovery of DNA may not necessarily be a 'quick fix' to solve a case. Cold case reviews may also help to right a wrong, such as in a double jeopardy case where a suspect was acquitted at the time but new forensic techniques have uncovered new evidence that clearly point to the person's guilt, such as in the Stephen Lawrence murder. However, in both these scenar-

ios there should be a willingness to look for such evidence and the funds to carry out proposed testing of genetic material.

Advances in DNA and Cold Case Successes in England and Wales

The last year has seen a number of convictions in previously unsolved murder cases in England and Wales. This has largely been because of successful cold case reviews that led to the discovery of DNA that could verify the identity of a perpetrator.

17-year-old Yiannoulla Yianni was murdered in her home in north London on an August afternoon in 1982. There were no signs of forced entry to the house, but some struggling had taken place as pieces of her jewelry were scattered on the stairs and landing. Yiannoulla was found dead on her parents' bed, naked from the waist down and with her chest exposed. A post-mortem examination revealed that she had been raped, bitten and punched and that the cause of death was through suffocation, most likely by her neck being held in an arm-lock (BBC News, 2016a). Physical evidence was recovered from the crime scene, including semen found on the victim's body, along with finger and palm prints from the rim of the bath tub. The murder remained unsolved despite appeals in 1984, 2000 and 2003.

A partial DNA profile had been obtained from a stain on the bedspread in 1999, and this DNA profile matched another partial profile from the victim's body. In 2003 the stains were analyzed again and with a more refined technique a near complete DNA profile was obtained from a stain on the bedspread (BBC News, 2016a). However, now there were no matches on the NDNAD so the crime remained unsolved.

In December 2015, a man was arrested for possession of indecent images of children. The suspect, 56-year-old James Warnock, had his DNA taken. It was loaded on to the NDNAD where it matched the DNA profile obtained from the bedspread, with a 1:1 billion chance of the DNA belonging to someone other than Warnock. His charges eventually included rape and murder, along with six counts of distributing indecent images of a child. In July 2016, Warnock was found guilty of the rape and murder of Yiannoulla and he was sentenced to life imprisonment with a minimum of 25 years (BBC News, 2016b). It took 34 years, advances in forensic DNA analysis, an arrest in an unrelated matter, and excellent work by scientists and homicide detectives to solve this cold case.

Another 17-year-old, Melanie Road, was murdered in Bath in 1984. The teenage girl had decided to walk home following a night out in Bath with some friends. Her body was discovered a short distance from her home the following morning, and the post-mortem examination revealed that she had been sexually assaulted and stabbed 26 times in her chest and back (Fricker, 2016). Forensic testing available at the time revealed a blood type with proteins that only matched 3% of the population, and despite a staggering 94 people being arrested between 1984 and 1989, no one was ever charged (Morris, 2016).

A DNA profile of Melanie's suspected killer had been developed in 1995, but at that time there were no matches on the NDNAD. In 2000, a more detailed DNA profile was developed and the police started to look for familial DNA matches on the NDNAD. Familial matches suggest that the individual is a blood relative of the person whose sample is being run through the system. No familial hit was made and a cold case team was set up in 2003. An appeal on Crimewatch in 2009 resulted in a number of names being suggested to the police, but these did not come to anything either and the police continued their work on the case.

Funding was obtained for a nationwide familial run and, over the following years, swabs were taken from males of an age similar to that of the killer, but there were still no matches. However, a familial run was carried out again in early 2015, to include about one million people who had been added to the system in the five years since the previous run. In May 2015, there was a familial hit to a female who had received a caution for criminal damage and had her DNA routinely taken and added to the system in 2014 (Morris, 2016). She was from Bath and her father, Christopher Hampton, had his DNA taken and it matched that from the crime scene. Although Hampton initially denied the rape and murder, he finally pleaded guilty in May 2016 and was sentenced to life imprisonment with a minimum of 22 years (Fricker, 2016). It took 32 years, the dedicated hard work by cold case investigators, the funding to run familial searches, the improved capabilities of the NDNAD, and a fluke arrest and criminal caution in an unrelated crime for Melanie's murderer to be identified and convicted.

A 25-year-old man, Abdul Samad, was murdered in north London in 1997. Samad, who worked as a curry delivery man, was lured to an address with a bogus delivery order. Once he had parked the car, two men chased him with a meat cleaver, a knife and a baseball bat. The attackers caught up with Samad who sustained fatal injuries and passed away later that night. The attack was witnessed by people living on the street (The Guardian, 2016).

As the attackers were fleeing the scene they disposed of the meat cleaver and scarves used to cover parts of their faces. In 1999, it was determined that DNA from one scarf belonged to Mohiuddin Bablu, who had fled to Bangladesh after the murder. Bablu was extradited in 2011, and the following year he was found guilty and sentenced to life imprisonment with a minimum of 18 years (BBC News, 2012).

Following Bablu's conviction, further forensic testing was carried out on items related to the murder. In this review, DNA was obtained from another scarf and fingerprints were recovered from a bag used to bring the weapons to the crime scene. Both the DNA and the fingerprints belonged to a man who had fled to the US after the murder, Foyjur Rahman, and he was extradited in January 2016. In July 2016, he was found guilty of the murder and sentenced to life imprisonment with a minimum of 18 years (The Guardian, 2016). The case is unusual in some ways, as it covers three jurisdictions and it took 20 years before both perpetrators had been extradited and tried for the murder in England and Wales. This was in large parts made possible through the discovery of DNA on pertinent items.

Not every cold case review or public appeal for information is successful, even where new DNA may have been recovered. A 25-year-old female, Melanie Hall, had disappeared in June 1996 after a night out at a nightclub in Bath. She was declared legally dead in 2004 but the disappearance / death remained unsolved. In October 2009, a black bin liner containing human bones from a female was discovered by the M5 motorway (Sims, 2016). More human remains were recovered during searches of the nearby area, along with buried and scattered items. The partial remains were analyzed and with the use of dental records it was possible to identify Melanie Hall. Although a definite cause of death could not be established, it was determined that she had suffered fractures to the skull and face, and she had been tied up with rope. Several appeals were made and these resulted in a number of arrests, but no-one was ever charged and the crime remained unsolved.

In June 2016, the police confirmed that using new techniques, they had been able to obtain DNA from an item recovered near Melanie's remains, and that they were in the process of developing a DNA profile (Evans, 2016). A few weeks later a 45-year-old man was arrest-

ed on suspicion of murder after voluntarily attending the police station. The man was released on bail and in September 2016 he was released without any charges (BBC News, 2016c).

These four cases show that not every cold case review of an unsolved murder successfully reach a conclusion in the form of a conviction when DNA is identified, at least not straight away. They do, however, show the willingness to keep looking at the cases and that there are funds available to go through with testing, and keep trying until there is a conclusive end to the case. Although Melanie Hall's murder is still not solved (despite new DNA) the work on the case continues.

Issues with Circumstantial Evidence and Case Construction in Alleged Wrongful Convictions

There are inherent problems in an adversarial system as two seemingly polarized views are presented to a group of lay persons (i.e. a jury of one's own peers) for their consideration to determine whether a defendant is guilty. Truth is not necessarily a factor within the representations given by either the prosecution or the defense. Therefore, it can be argued that the adversarial system "does not appear to be an objective 'truth-finder'" (Henneberg, 2015a, p.578), and that the "adversarial procedure is sometimes suboptimal for truth-finding" (Roberts, 2013, p.55). This becomes a terrifying issue when a case presented in court is the result of case construction and where it is largely based on circumstantial evidence.

Nearly two decades ago, Bayley (1994) suggested that criminal investigations often started with the identification of a suspect, followed by the collection of evidence, rather than the more objective approach where evidence would be collected first, and then used to identify a suspect. This fits in with what we now describe as case construction, which is a type of tunnel vision within an investigation (Innes, 2003). In brief, the guilt of a specific suspect has been decided upon by police investigators with little or no evidence to back this up. This assumption of guilt will then be maintained by only relying on evidence that supports this standpoint whereas anything which contradicts this will be mistaken, or elaborate explanations will be made to have evidence which points away from the suspect excluded. This type of tunnel vision is dangerous as it can wholly undermine the investigation and, if mistaken about the guilt of the suspect, the likelihood of identifying the real perpetrator is largely diminished (Findley & Scott, 2006).

Circumstantial evidence is not necessarily bad evidence, although "its probative value is highly variable" (Roberts & Zuckerman, 2010, p.110). It is an indirect form of proof that can have more than one explanation. Therefore, if the party presenting this 'proof' is the prosecution, they must rely on an inference to be drawn to make the specific evidence fit the narrative of their hypothesis of how the crime was committed, and why the defendant is guilty. It may be suggested that circumstantial evidence becomes stronger (and more persuasive) when there are multiple circumstantial factors presented to the jury and inferences can be drawn in the same direction from these. However, circumstantial evidence is not 'hard proof' and should never be seen as such.

Circumstantial evidence becomes highly problematic in two scenarios, and one or both of these may be present in a case. The first is where available physical evidence either points away from the person charged with the crime (and this may have been suppressed or its importance minimized during case construction), and the second is "where the lack of physical evidence actually contradicts the hypothesis presented by the prosecution" (Henneberg, 2016). The combination of a conviction based on circumstantial evidence (where jurors drew inferences from indirect 'proof') and an appeal system that requires 'new evidence' is a

nightmare for someone who has been wrongfully convicted of a crime that they did not commit. It is notoriously difficult to prove a negative, and in those cases the innocent person disappears into a legal black hole as 'I didn't do it' is not a good enough reason for the Criminal Cases Review Commission (CCRC) to accept an application, and not strong enough for the CCRC to refer the case to the Court of Appeal.

Lack of Post-Conviction Access to Information

Lack of access to information has created solid obstacles post-conviction and these require immediate attention. In December 2016, an Open Justice Charter was published, with recommendations on what should be available post-conviction to a person who has been convicted, and/or their representatives (Bolton, Burley, Henneberg, Eady & Shorter, 2016). The recommendations include access to recordings of court proceedings, access to police documentation, access to physical evidence for scientific testing, access to prisoners, and access to materials obtained or produced by the CCRC. Access to court transcripts, police documentation and physical evidence will be discussed here.

Crown court proceedings are recorded in full but deleted after an unreasonably short time of five years for audio tape recordings and seven years for digital recordings unless a preservation order is in place. In this digital age, such practice is inexcusable and has been described as "reckless and irresponsible" (Henneberg, 2016). The policy to delete crown court recordings can be found in the Crown Court Record Retention and Disposition Schedule, drafted in 1972 and updated in 2011 when the system became digital, and even covers the Judges Summing Up, a crucial document which is considered essential for an appeal (Robins, 2016b).

To illustrate the gravity of this issue, consider the case of Omar Benguit who, after three trials and two failed appeals, continues to maintain his innocence for the murder of a Korean female in Bournemouth in 2002. In the first and second trial, he was charged with murder as well as rape of the main prosecution witness after she alleged to have been gang raped by three men after the murder (Henneberg, 2015b). In those two trials, there was a co-defendant who was charged with assisting an offender and of rape of the main prosecution witness. The juries in these two trials failed to convict either Benguit or the co-defendant. The co-defendant was dropped from the case after speed camera footage showed that he was elsewhere during pertinent times of the night. Although this discovery should have been conclusive proof that the prosecution's witness was lying about the events of the night, special permission was sought from the Director of Public Prosecutions (DPP) to have a third trial against Benguit on the same murder charge. The court transcripts from these three trials would have provided invaluable information as to what happened in the court room to make the third jury finally find him guilty beyond reasonable doubt. This is particularly true as there was no physical evidence to link Benguit or his co-defendant to either the murder or the alleged gang rape (Henneberg & Loveday, 2015). It must also be mentioned that the main prosecution witness had implicated three men in the murder and in her own gang rape, but the third man had been deported to Jamaica and was never extradited to go on trial, even though he should arguably also have been tried on charges of assisting an offender and rape (Henneberg, 2015b). After three lengthy crown court trials, all that remains is the sentencing remarks (a total of four pages), it has been confirmed that everything else has been destroyed (Henneberg, 2016). In no jurisdiction, should this practice be considered safe as it creates a lack of transparency and accountability, it effectively hinders access to justice

post-conviction, and it infringes on the rule of law.

In contrast, the National Police Chiefs' Council's retention policy for evidence in a murder case is 30 years (Robins, 2016b). However, although rules of disclosure have been identified as "a potent source of injustice" (R v Ward [1993] 1 WLR 619) and may slowly be getting better pre-trial (see e.g. Murray, 2016, on the proposed changes to the Criminal Procedure Rules), this is not the case post-conviction. McCartney and Speechless (2015, p.124) state that the ruling in R (Nunn) v Chief Constable of Suffolk Constabulary & Anor [2014] UKSC 37, "makes it clear that the Supreme Court does not consider post-conviction non-disclosure as posing equal risk, because the prisoner has already had the benefit of a full trial (and often, appeal)". This has created yet another obstacle to achieving justice for those who have been wrongfully convicted. Access to police documentation post-conviction is important and Bolton et al. (2016) recommend that, at the very minimum, this access should consist of an electronic copy of the HOLMES record where all police activity and documentation in a case is listed, and the opportunity to request and receive any document listed on HOLMES. This would contribute to a safer justice system as decisions and steps taken by the police and the CPS can be scrutinized and questioned, which is virtually impossible in this jurisdiction today as there is a general lack of transparency and accountability.

The Nunn ruling did not only present an obstacle in terms of disclosure of documents, but also to access of physical evidence for scientific testing. Kevin Nunn was convicted of the murder of his girlfriend in 2006, after her burnt body had been found by a river in 2005. There was no physical evidence found at the scene that could point to a suspect and the case was entirely circumstantial. However, four sperm cells were found on the victim but a DNA profile could not be produced from these and suggestions were made that the sperm cells could have been the result of secondary transfer after the victim used a male changing room at a sports centre (McCartney & Speechless, 2015). The sperm cells were retained to enable future testing in case technology advanced to a point where DNA could be obtained.

Saunders (2014) notes that unlimited access to case materials "would put prisoners on an equal footing" with the police, but that the police "have no incentive to have a cold case review where a prisoner protests innocence for obvious reasons". This can clearly be seen in the Nunn case. Since the conviction, the case has been on a legal obstacle course which has included Nunn being refused leave to appeal the conviction, an application to the CCRC and refusal by the relevant police constabulary to allow access to physical material for further testing, a judicial review and, subsequently, an appeal to the UK Supreme Court to determine the extent of post-conviction disclosure and access to material under current laws. It was ruled by the Supreme Court that police and prosecuting authorities should disclose any material that prima facie might cast doubt on the safety of the conviction, but that the material in Nunn's case did not meet this requirement. It stated that "The safety net in the case of disputed requests for review lies in the CCRC. That body does not, and should not; make enquiries only when reasonable prospect of a conviction being quashed is already demonstrated. It can and does in appropriate cases make enquiry to see whether such a prospect can be shown" (Nunn, para.39). This would appear to fit badly with the current test used by the CCRC to determine whether a case should be referred to the Court of Appeal.

The appeal process will not be started unless the innocent person can show new evidence that the CCRC will accept as compelling enough to satisfy "a unique threshold in the criminal process" (Kerrigan, 2010, p.168)

known as the 'real possibility' test. In accordance with Section 13(1) of the Criminal Appeal Act 1995, the CCRC should only refer a case to the Court of Appeal where there is a real possibility that the appeal will succeed. Having the resource-stretched CCRC as the "final arbiter on disclosure requests" (McCartney & Speechless, 2015, p.125), the body that only refers cases where there is a real possibility that the conviction will be overturned, means that "Prisoners who have insufficient grounds for appeal may thus be denied access to the material that could provide those grounds" (McCartney & Speechless, 2015, p.125). Furthermore, it is worth noting that grounds of appeal are limited, and issues such as innocence or that a certain witness, or witnesses, lied in court cannot be successfully raised (Justice, 2011, p.35). This is particularly problematic in cases based on circumstantial evidence.

The necessary new evidence may be impossible to find as there are few places that the wrongfully convicted person can turn to for help to work on their case, especially if legal aid is needed to cover the cost of a solicitor. Many law firms have closed their criminal law departments and only a handful of lawyers are prepared to take on poorly paid cases, especially after legal aid rates in the age of austerity have been cut down to virtually nothing (Bowcott, 2015; Robins, 2016a). These cuts have also meant that there has been a reduction in the time that can be spent on a case, including the hours dedicated to the actual review or investigation of a case. Many of the complex cases of alleged wrongful conviction, especially those where the main evidence was circumstantial, requires hours upon hours of work to even identify issues which could potentially be used as a ground of appeal. Such extensive work will not be covered by legal aid. Ironically, this then has the effect that solicitors may choose not to take on a case unless there are already some clear grounds of appeal, and where little or no investigation on their behalf is needed.

Furthermore, unless a person admits guilt and does what the system considers appropriate offending behavior courses, that person will not progress through the prison system and, therefore, end up serving sentences that are often twice as long as someone who has admitted guilt for a similar offence (Naughton, 2009; Saunders, 2014). This catch-22 situation that the innocent prisoners find themselves in is often referred to as the 'parole deal' (Naughton, 2005). Those who have been wrongfully convicted get truly stuck where they are as both the appeal system and the prison system, within which they now are trapped, work against them.

"Never Events" and Alleged Wrongful Convictions

The National Health Service (NHS) England describes never events as "serious incidents that are wholly preventable as guidance or safety recommendations that provide strong systemic protective barriers are available at a national level and should have been implemented by all healthcare providers" (NHS England, 2016). Although a drastic outcome is not required for an event to be classed as a never event, some never events do result in serious harm or even death of a patient. Per NHS England, these never events, that should not happen as robust safeguards are in place, include operating on the wrong body part or side of the body, removing the wrong body part, surgical instruments or equipment being left inside a patient after a surgical or invasive procedure, and overdoses of medication being given (NHS England, 2015/2016).

The British newspaper The Guardian reported on never events in NHS England in February 2016. In the article, Boseley reported that there had been almost 1,200 never events in a four-year period (April 2012 to December 2015), with more than 400 people having suffered 'wrong site surgery' and more than 420 having had foreign objects left inside their bodies after surgery. The then Health Secre-

tary, Jeremy Hunt, was quoted calling for openness and transparency and stating that it was important for healthcare staff to learn from their own as well as others' mistakes (Boseley, 2016).

In relation to the criminal justice system, Henneberg and Loveday (2015, p.504) have argued that "when extreme flaws within police investigations are readily accepted by the prosecuting authorities and the courts and result in convictions, these are often extremely difficult to challenge". Then, the problem with events that should not happen, such as the wrongful conviction of an innocent person, is further exacerbated in a system that displays such an unwillingness to admit that things have (or may have) gone wrong (Uglow, Dickson, Cheney & Doolin, 2002).

Never events happen, and yes, the criminal justice system includes an appeal process that should address this, but with serious obstacles in place it is obvious to see that in cases of wrongful conviction that process simply does not work.

Conviction Integrity Review Units in the US

The concept of conviction integrity / conviction review units is not a new phenomenon in the US. The first such unit was created in San Diego, California, in 2000 (Chandler, 2016), and many more have since been created in for example Dallas and Harris County in Texas, Cook County, Illinois, and New York County (Manhattan) (Boehm, 2014). Some units were created but abandoned following funding cuts, but several these units are still operating, often as collaborations between prosecutors in a District Attorney's office and defense lawyers. Chandler (2016, p.16) states that "There is no greater failure of the criminal justice system than the conviction of innocent persons. Conviction integrity/review units represent the acknowledgment of those failures by prosecutors' offices across the country, and their commitment to right the wrongs of the past and prevent similar injustices from happening in the future."

In March 2016, Brooklyn man Andre Hatchett was released from prison after serving 25 years for a murder he did not commit. Barry Scheck, co-founder and co-director of the 'original' Innocence Project (which was involved in the work to secure Hatchett's release) commented that "We are incredibly grateful to District Attorney Ken Thompson and his conviction integrity unit, without which Mr. Hatchett may never have received justice. This was a cooperative, non-adversarial search for the truth that should be a model for all who do this work. We had an information sharing agreement that allowed us access to all police records and the district attorney's file. There was a constant exchange of ideas and suggestions for investigation. Without this cooperation and open disclosure, we would have never discovered the many missteps that revealed Mr. Hatchett's innocence" (Innocence Project, 2016).

'Open file discovery' has been introduced in many state and local jurisdictions in the US, whereby a defendant should have access to the prosecution's entire file before trial, which is believed to greatly reduce the likeliness of a wrongful conviction in the first place (Gregory, 2011). Furthermore, post-conviction an important part of the work towards an appeal is access to material. Court transcripts have been provided to a defendant free of charge since 1956 (Griffin v Illinois, 351 US 12), which enables 'an autopsy' to be carried out on the trial after conviction. Lawyers may scrutinize the transcripts for legal irregularities whereas others, such as a scientific expert from a specific field, may review the parts of a transcript of relevance to their expertise. Many states allow for post-conviction viewing of evidence by a prisoner's legal and/or other representatives, so that it can be determined whether an item should be tested/retested with new or advanced forensic techniques. An

excellent example of this can be seen in the Netflix hit documentary series "Making a Murderer," when Steven Avery's defense lawyers discover a vial of blood that appears to have been tampered with inside an evidence locker. Although far from perfect as some states have limitations on how long after a conviction a person can request DNA testing, overall there is better access to evidence for testing in the US. Arguably, it is this access to both information and material that has contributed to the large number of exonerations that have taken place in the last 20 years in the US (Innocence Project, 2016b, The National Registry of Exonerations, 2016).

Conclusion

Every wrongful conviction undermines the integrity of our criminal justice system. Access to material, whether police logs or physical exhibits for testing/retesting is vital for both cold case reviews and investigations into alleged wrongful convictions. As has been seen in this article, it is counterproductive for the criminal justice system to have obstacles in place to prevent access as, for example, retesting of physical exhibits may also result in conclusive evidence of guilt – this is something that should be welcomed in questionable circumstantial convictions.

Conclusive evidence of innocence or guilt strengthens the integrity of the criminal justice system. This is something that has been acknowledged in the US where conviction integrity units have been created in places such as Brooklyn and Dallas, where District Attorneys collaborate with defense lawyers and/or innocence projects to review questionable convictions. Hell will probably freeze over before the Crown Prosecution Service (CPS) collaborates with an innocence project to reinvestigate an alleged wrongful conviction in England and Wales!

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27 Years Later, Finding out the Truth and Bringing Jacob Wetterling Home – Why Closure is Important

By Jolene van Nevel

Abstract

In cases of missing, sexually assaulted adolescents, and the criminals behind them, one case sticks out most. It is known as one of the highest profiles cases in Minnesota to involve child abduction. This article reviews the history and what finally led to the finding of Jacob Wetterling 27 years after he was taken. Though the conclusion is disheartening for not only the Wetterling family, the state of Minnesota and the country, it can be said that a lot of good did come out of a bad situation. This article's purpose is to follow up from the previous article titled "The use of linkage analysis in the Jacob Wetterling Cold Case" (Van Nevel & Bayles, 2016).

Keywords: cold case reviews, child abduction, closure, criminal investigation, homicide

After her service in the Navy, Jolene Van Nevel graduated from Chapman University with a BA in Criminal Justice in 2009. She went on complete an M.S. Forensic Psychology at Walden University in 2011 where she is also currently is a Ph.D. Forensic Psychology candidate. She is a U.S. Navy Veteran who now resides in Sauk Rapids, MN with her two boys and husband. Her work can be followed on ResearchGate at https://www.researchgate.net/profile/Jolene_Van_Nevel and LinkedIn at http://www.linkedin.com/in/jolenevan-nevel-11b42289.

Brief Case History

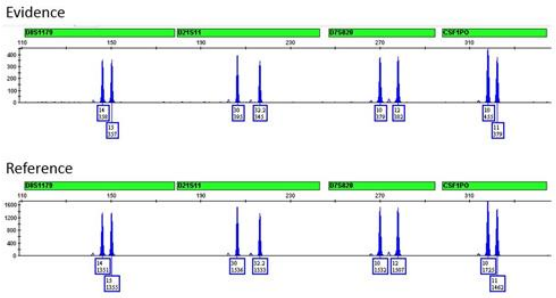
On Oct 22, 1989, 11-year-old Jacob Wetterling was walking home from a local video store in St. Joseph, Minnesota with his brother and a friend. On their way back to the Wetterling home they were stopped by an older man with a mask and held at gunpoint. It is well known that at this time the abductor asked each of the boy's ages and told them to lay face down on the ground and toss their bikes into the nearby ditch. Then Jacobs's brother and his friend were told to run and not look back. When they finally did, Jacob was gone.

October 2015: Person of Interest

In October 2015, then 52-year-old Danny Heinrich was officially named a person of interest in the abduction of Jacob Wetterling. He was arrested on criminal charges of 25 counts of child pornography for which he

pled guilty to. The DNA evidence that was found from the Cold Spring, Minnesota abduction led to the search of Heinrich's home in Annandale, Minnesota. The matching of traces of his DNA not only linked him to the Wetterling abduction, but also to another child abduction of Jared Scheierl that had occurred nine months before and was suspected to be related to the Wetterling case (Baran & Vogel, 2016). Using DNA to solve crimes has come a long way and has is becoming more and more common in solving crime. The process that was used to link Wetterling to Scheierl was that known as DNA profiling for commonly known as DNA analysis (Baran & Vogel, 2016). Below is sample DNA analysis that was used:

Figure 1: *Sample DNA Profile*



For the next 10 months, prosecutors with the FBI and the Sterns County Police department looked for ways to connect Heinrich to Wetterling.

August/September 2016: Plea Deal and Confession

Confession

In late August of 2016, a breakthrough happened in the case that led to the conclusion that Heinrich was no longer a person of interest but a suspect in the Wetterling cold case. Authorities have tried for months to get him to talk after he had been arrested on the counts of child pornography. Reportedly, he would be talkative one moment and clammed up the next. Just as they thought they were making progress, it would come to a halt, and he would keep quiet (Why Jacob Wetterling's confessed killer, 2016, Heinrich's court confession transcript, 2016). In the early part of August, a tentative agreement was drafted and given to Heinrich which required him to lead the FBI to the remains and publically confess to the series of events that lead to Jacob's abduction, sexual assault, and eventually murder. In agreement to this, he would be given a sentence of 20 years in federal prison before being transferred to a mental health facility for prisoners for the rest of his life (Dave, 2016, Ellis & Sanchez, 2016).

In late August, the Heinrich accepted the plea deal and publicly admitted to abducting, sexually assaulting, and killing Jacob Wetterling on the same day of October 22, 1989 (Why Jacob Wetterling's confessed killer, 2016, Minnesota man confesses, 2016). His confession is a long and detailed story of events. At the beginning of his formal statement, Heinrich stated it had never been his intent to kill the boy. Heinrich admitted to telling the other

two boys to run, and at this time he handcuffed Jacob and put him in the front seat of his truck. Heinrich told the jury that Jacob had asked: "What did I do wrong?" (Heinrich's court confession transcript, 2016). He drove to Paynesville, Minnesota where he sexually assaulted him. Afterward, Jacob had asked him if he was going to take him home. Heinrich has replied, "I can't take you all the way back you will have to walk some," then he stated that Jacob began to cry and he asked Jacob not to cry (Heinrich's court confession transcript, 2016). At this point during the statement, Heinrich had said that he had heard and saw a patrol car with lights and sirens nearby and he panicked. He pulled out his revolver, which he claimed had not been loaded and it had not been his intention to use it. However, he then loaded the gun and told Jacob to turn around before he shot him. The gun did not go off the first time so he pulled the trigger again and Jacob fell to the ground (Heinrich's court confession transcript, 2016).

Next, he stated that he took Jacob about 100 yards' way and buried him. He saw that he missed his shoes and threw them into the water nearby. A year later he came back to the site and saw that Jacob was visible to the naked eye so he unburied him and gathered as much as he could and placed the remains in a garbage bag and moved it across the highway. He used a Bobcat backhoe to dig a hole and tossed the remains in the bag in the hole and covered him up.

Also in late August, the authorities presented the plea agreement to the Wetterling family. They looked it over and agreed to the terms that were laid out. The next day Heinrich led the investigators to the burial site in rural Sterns County. Later in the afternoon, the investigators found the St. Cloud hockey jacket that Jacob was wearing with the Wetterling name written on the inside. This was the jacket that was described to be the one that he had been wearing when he went missing. It took two days to find the remains of Jacob and a few more to determine that the remains, in fact, belonged to Jacob Wetterling.

Plea Agreement

Under the terms of the agreement, Heinrich admitted to abducting, sexually assaulting, and killing Jacob Wetterling as well as abducting and sexually assaulting Scheierl (the Cold Spring, Minnesota boy who was taken nine months before Jacob). He also admitted to possessing between 100 and 150 child pornography images of children under the age of 12 (Dave, 2016). The agreement indicated the recommended sentence to be that of 20 years in a federal penitentiary and the rest of his life in a mental health facility after the prison time. He agreed to lead the investigators to Jacobs remains as a condition of the plea agreement. The Wetterling family agreed to it, proclaim-

ing "all we want now is to bring Jacob home" (Jacob Wetterling Resource Center, 2016).

Importance of Finding the Remains

Most investigators say that it is always important to find a murder victim's remains. The reason for this is that it allows for closure and the families to move on in some way. Without that, the family of those who has been lost can never actually move on with their life. It is not only essential to the criminal investigation but also to everyone one else involved in the case. In early September, the Ramsey County Medical Examiner alongside with a forensic odontologist identified the remains found in Paynesville to be that of Jacob Wetterling. The use of forensic identification tools and DNA analysis that was not available 27 years ago, confirmed the identity. In cold cases and others alike, it is crucial to solving the case but is not always the end result for many. In some cases, it takes years to resolve due to technology limitations which in this instance could be cleared after the availability of new and improved forensic analysis techniques after such a long time.

There have been many technological advances in the forensic analysis of remains, ranging from facial recognition software, bone mapping, DNA screening to 3D crime scene simulations and much more. All of which are now used to find and identify missing victims and provide closure to enable families and loved ones to resume their lives.

Developments after the Wetterling Case

In the months after Jacob's disappearance, the state of Minnesota was shattered, forever changing the way parents let their kids roam. His face was everywhere from milk cartons to grocery bags and flyers. Though this case changed America forever, some people say that some good has come out of it. These developments range from sex offender registration in every state and making it known to the public who they are and where they live to Megan's Law (1996), now called Adam Walsh Child Protection and Safety Act (Sample & Bray, 2006).

In the weeks since his remains were found and identified, he has been laid to rest, and the whole state of Minnesota is still in mourning. Since the beginning of September, blue lights can be seen everywhere from random bridges throughout the state to homes and businesses. Jacob was laid to rest on September 25, 2016 in St. Joseph Minnesota, 27 years after he was abducted. The Wetterling family is grieving along with the rest of Minnesota and the country, but they remain strong and vigilant in their cause to ensure that those who are taken are returned.

Cold Case Investigations and the Need for Closure

Finding a homicide victim's remains provides family and loved ones, as well as other stakeholders, with cognitive and emotional closure,

which is strengthened when the circumstances of the event and the motivations of the perpetrator's behavior is known, and appropriate justice is meted out. Although closure has always been a consideration, its importance in psychological, legal, and investigative practices has enjoyed a meteoric rise in the past decade or two, including in sentencing policies and victim support initiatives. However, the term closure continues to represent poorly differentiated views and a lack of the definition that is needed to contribute to an improved closure for survivors of homicide.

As the Wetterling and many other cases demonstrate, the lack of cognitive and emotional closure for friends, family, and the community of a victim, endures for decades after such a tragic event. Unless authorities continue to seek answers, these secondary victims must continue their suffering in silence, sometimes with little or no support. Although there are many individual differences in the need for cognitive closure (i.e. knowing what happened to a loved one), most people have some level of desire for predictability, preference for order and structure, and a discomfort with ambiguity and a lack of care (Webster & Kruglanski, 1994). These are some of the personal characteristics that drive a need for closure.

However, at the same time, there is also a responsibility on investigators and prosecutors to prevent over-zealousness created by confirmation bias that can be the result of psychological and administrative pressure to close a case (Ask & Granhag, 2005). When premature assumptions are formed, the sensitivity to alternative interpretations and the likelihood of acknowledging inconsistencies in the evidence decrease. These factors can lead to wrongful convictions, which, when later overturned, causes renewed uncertainty and trauma for family members of the victim, while also reducing the probability of the case being resolved.

Nevertheless, the Wetterling case is a good example of a continued investigative effort that eventually yielded results and brought great relief to Jacob's family and his community. It shows how critical the need for closure is and why cold cases should be vigorously pursued by using all new and improved tools at our disposal.

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