

## HOW CAN CONFIRMATION BIAS LEAD TO WRONGFUL CONVICTIONS?

Eisner Gorin LLP Blog

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The criminal justice system has many checks, balances, and safeguards in place, all intended to ensure justice is administered appropriately, that defendants are truly considered innocent until proven guilty, and to prevent wrongful convictions whenever possible.

However, the system itself is imperfect, and so are the humans working within it, which means mistakes happen. Despite every effort to ensure neutrality, we humans are biased by nature, and sometimes confirmation bias works itself undetected into criminal cases—often resulting in unwarranted charges, wrongful convictions, or both.

Confirmation bias is people's tendency to interpret information consistent with their beliefs.

Generally speaking, confirmation bias is people's **tendency** to process information by looking for or interpreting information consistent with their beliefs. Confirmation bias is often called "**tunnel vision**," which can cause federal law enforcement agents to take shortcuts to filter through evidence and build a **criminal case** against a suspect.

This biased approach to decision-making is mostly unintentional, and it results in someone **ignoring information that is inconsistent with their beliefs**. This could include their expectations in a given situation and their predictions about a particular outcome.

People are more likely to process information to support their beliefs when an issue is highly important or self-relevant. Research has shown that confirmation bias is widespread and occurs in several contexts.

In the context of decision-making, once someone makes a decision, they will look for information that supports it. Any information that conflicts with their decision might cause discomfort, and they will either ignore it or give it little consideration. Most people give special treatment to information that supports their personal beliefs.

Let's discuss confirmation bias, how it infiltrates the various stages of a federal criminal case and trial, and, most importantly, what to do if you suspect it has negatively impacted your case.

### WHAT IS CONFIRMATION BIAS?

Confirmation bias is a cognitive bias that causes people to **favor information** confirming their pre-existing beliefs while subtly disregarding evidence that contradicts them.

In the context of a criminal case, individuals involved in the **investigation**, prosecution, and adjudication of a case may unconsciously interpret evidence in a way that substantiates their initial assumptions about the guilt or innocence of an accused person.

It should be emphasized that confirmation bias is not overt, conscious bias. It occurs subconsciously, which means it happens "under the radar" without a person knowing it's affecting them.

Thus, even people making a conscious effort to remain open and neutral regarding the facts of a case can still be impacted by confirmation bias without knowing it. Cognitive bias is various **inadvertent mental tendencies** that can impact perception, memory, reasoning, and behavior. These tendencies are universal, and everybody has them.

## WHAT IS THE IMPACT OF CONFIRMATION BIAS ON A FEDERAL CRIMINAL CASE?

From the moment an investigation begins, confirmation bias can start to skew perceptions. For instance, if a law enforcement officer is strongly suspected that a particular individual committed a crime, they may subconsciously focus on gathering evidence supporting this theory.

Confirmation bias can lead to downplaying other potential leads or exculpatory evidence.

This could lead to **ignoring or downplaying** other potential leads or exculpatory evidence. Prosecutors are not immune to this bias, either. Once they form an initial hypothesis about who is guilty, they may unknowingly prioritize evidence that reinforces this belief, both before filing charges and during the trial.

They might also dismiss alternative explanations or theories of the case that contradict their initial views. Perhaps more to the point, the confirmation bias of prosecutors can adversely affect which evidence they present at trial and how that evidence is presented. In extreme cases, it can also result in prosecutors wrongfully concealing exculpatory evidence, which is against the law.

Judges, who are responsible for overseeing the fairness of a trial, can also fall prey to confirmation bias. It might manifest in how they rule on objections, their instructions to the jury, or even their sentencing decisions.

## HOW CAN CONFIRMATION BIAS AFFECT JURY TRIALS AND DUE PROCESS?

Jurors, being human, can also be susceptible to confirmation bias. If they form an opinion about the guilt or innocence of the accused early in the trial, they may unconsciously pay more attention to the evidence that confirms this belief. This can lead to a skewed interpretation of the facts, potentially resulting in a wrongful conviction.

The impact of confirmation bias on due process cannot be overstated. Every accused person has the right to a fair and impartial trial. However, if confirmation bias influences the people responsible for determining the outcome of a case, it undermines this fundamental principle.

## WHAT IS THE ROLE OF A DEFENSE ATTORNEY IN COMBATING CONFIRMATION BIAS?

While bias does not always result in a wrongful conviction, confirmation bias can infiltrate a case in so many ways that it is statistically impossible for it not to exist at some level.

The person most responsible for identifying and exposing confirmation bias is your defense attorney —which means your choice of a federal criminal defense attorney is one of the most important decisions you will make when you're charged with a federal crime. A good attorney can:

- **Educate the Jury:** The attorney can use voir dire (the process of jury selection) or opening statements to inform the jury about confirmation bias and the importance of impartiality.

- **Challenge Biased Decisions and Information:** The power of raising objections during trial is an important tool in exposing bias. Likewise, suppose there are indications of confirmation bias in the decisions made during the trial, like rulings on objections or admissibility of certain evidence. In that case, the defense attorney should challenge these decisions at the time they're made or on **appeal**.
- **Present Alternative Theories:** By presenting alternate explanations for the evidence, the defense can challenge the prosecution's narrative and encourage jurors to consider all possibilities.
- **Highlight Inconsistencies and Weaknesses in the Prosecution's Case:** The defense should emphasize any holes or inconsistencies in the prosecution's case, which can help jurors question their initial beliefs.
- **Use Expert Testimony:** Experts can provide objective insights into the evidence and help counteract any biases in interpreting the evidence.
- **Appeal to Reason and Logic in Closing Arguments:** The closing argument is a crucial opportunity to reinforce the idea of reasonable doubt and remind jurors not to rely on their initial impressions.
- **Prepare for an Appeal:** If a conviction occurs and there is reason to believe that confirmation bias played a role, the defense attorney should be prepared to appeal the decision, highlighting the impact of the bias on the trial outcome.

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<https://www.thefederalcriminalattorneys.com/confirmation-bias#:~:text=From%20the%20moment%20an%20investigation,gathering%20evidence%20supporting%20this%20theory.>