

EFFECTIVE ASSISTANCE OF COUNSEL? AN
EMPIRICAL STUDY OF DEFENSE ATTORNEYS'
DECISION-MAKING IN FALSE-CONFESSION CASES

Sara C. Appleby[†] & *Hadley R. McCartin*^{*}

Although there is considerable literature on the causes of false confessions and the effects confession evidence has on juror decision-making, little research has examined attorneys' decision-making in disputed confession cases. As the intervening step between when the confession is elicited and the case is resolved, it is crucial that research examine effects of confession evidence on this population. The current studies investigate defense attorneys' knowledge and perception of key

[†] Ph.D. Psychology, The Graduate Center, City University of New York (2015); M.A., Boston University (2006); B.A. *with honors*, Rhodes College (2003). Dr. Appleby is an Assistant Professor of Psychology in the College of Liberal Arts at Mercer University in Macon, GA. Professor Appleby's research focuses on distinguishing between true and false confessions and the effects of confession evidence on legal decision-making. She also conducts research on how suspect factors, such as race and socioeconomic status (SES), affect police interrogations. Her research has been funded by the National Science Foundation and the American Psychology-Law Society. The authors would like to thank the many undergraduate research assistants who helped with this project, including Molly Duda, Natalie Ross, Alice Yoon, and Angela Bonds. Also, we would like to thank Zachary Silver for his help editing and cite-checking this Article.

^{*} Sociology B.A. & Psychology B.S., *summa cum laude*, honors college, Mercer University (2019). Hadley McCartin presented research on attitudes toward the death penalty at the 2018 Southern Sociological Society conference and research on attorney decision-making at the 2019 American Psychology-Law Society conference. She is now Dr. Morton Ann Gernsbacher's laboratory manager at the University of Wisconsin-Madison, researching communication, learning, and autism.

interrogation and confession issues as well as their decision-making in a disputed confession case. Overall, results show that defense attorneys are knowledgeable about key interrogation and confession issues and are aware of how powerful confession evidence is at trial. Regarding trial strategies, however, defense attorneys focused more on highlighting the lack of non-confession evidence than discounting the confession. Implications for future research and practice are discussed.

TABLE OF CONTENTS

I. INTRODUCTION	125
II. THE PROBLEM OF FALSE CONFESSIONS	126
A. <i>Dispositional Vulnerabilities</i>	127
1. Suspect Age	127
2. Mental Impairment	128
B. <i>Situational Pressures</i>	130
1. Custody and Isolation	131
2. Minimization and False Evidence	133
III. THE POWER OF CONFESSION EVIDENCE	135
IV. PERCEPTIONS OF INTERROGATIONS AND CONFESSIONS	136
V. THE ROLE OF ATTORNEY KNOWLEDGE AND DECISION-MAKING	138
A. <i>Can Attorneys' Decisions Be Contaminated by Confession Evidence?</i>	139
VI. CURRENT STUDIES.....	144
A. <i>Study 1</i>	145
1. Participants	145
2. Measures.....	147
a. Perception	147
b. Knowledge.....	150
B. <i>Study 2</i>	152
1. Participants	153
2. Procedure and Study Design.....	155
3. Study Materials.....	155
a. Case Summary	155
b. Confession Manipulation.....	155
c. Evidence Manipulation	156
4. Measures.....	156
a. Perceptions of the Case.....	156
b. Trial Strategy	158
c. Perceptions of the Confession	160

VII. CONCLUSIONS	162
A. <i>Summary of Results</i>	162
B. <i>Limitations</i>	163
C. <i>Future Research</i>	163
D. <i>Recommendations for Practice</i>	164

I. INTRODUCTION

Confessions from perpetrators help solve crimes in an efficient manner, eliminating strain on an overburdened criminal justice system. However, approximately 13% to 30% of all DNA exoneration cases involve confessions from innocent suspects.¹ Even though the courts have implemented numerous safeguards to ensure that confessions are voluntary, research shows that, when exposed to standard police interrogation techniques, innocent suspects are vulnerable to confessing to crimes they did not commit.² Furthermore, once confession cases proceed to trial, confession evidence is so powerful that the defendant stands little chance of being acquitted,³ and even exculpatory DNA evidence is not always powerful enough to surmount confession evidence at trial.⁴ Although there is considerable literature on the causes of false confessions and on the effects confessions have on mock jurors, no empirical research to date has examined attorneys’—neither prosecution nor defense—knowledge and perceptions of interrogations and confession issues, nor their decision-making in disputed-confession cases. As the intervening step between when the confession is made and the case is tried, it is crucial that researchers examine the effects of confession evidence on these populations. The current study reports

¹ See Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1052 (2010); *Exoneration Statistics and Databases*, INNOCENCE PROJECT, <http://www.innocenceproject.org/exoneration-statistics-and-databases> [https://perma.cc/7DXE-G99M]; Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 4 (2010).

² See Kassin et al., *supra* note 1, at 14–23.

³ See Saul M. Kassin & Katherine Neumann, *On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis*, 21 LAW & HUM. BEHAV. 469, 475–76 (1997); Saul M. Kassin & Holly Sukel, *Coerced Confessions and the Jury: An Experimental Test of the “Harmless Error” Rule*, 21 LAW & HUM. BEHAV. 27, 35–36 (1997); Saul M. Kassin & Lawrence S. Wrightsman, *Prior Confessions and Mock Juror Verdicts*, 10 J. APPLIED SOC. PSYCHOL. 133, 140–43 (1980).

⁴ See Sara C. Appleby & Saul M. Kassin, *When Self-Report Trumps Science: Effects of Confessions, DNA, and Prosecutorial Theories on Perceptions of Guilt*, 22 PSYCHOL. PUB. POL’Y & L. 127, 132–34 (2016).

relevant defense attorney data taken from a larger study of prosecution and defense attorneys regarding disputed confessions.

II. THE PROBLEM OF FALSE CONFESSIONS

Standard police interrogation procedures can lead people to confess to crimes they did not commit.⁵ In fact, of the Innocence Project's 367 documented DNA exonerations, confessions were a contributing cause in 27.8% ($n = 102$) of cases.⁶ Although it is impossible to know the precise rate of false confessions, recent estimates suggest that they are a contributing factor in 13% to 30% of all post-conviction DNA exonerations.⁷ This number, however, only represents the tip of the iceberg of false confessions, as many cases may not have exculpatory DNA evidence, may be dismissed before trial, may be minor crimes that are not heavily scrutinized, or may be juvenile offenses for which records are sealed.⁸

Researchers have identified two main reasons why people confess to crimes they did not commit: dispositional vulnerabilities and situational pressures.⁹ Dispositional vulnerabilities include the suspect's age, mental illness, intellectual impairment, and certain personality characteristics that relate to compliance and suggestibility.¹⁰ Situational pressures include the inherent pressure of an interrogation, the length of the interrogation, and a number of specific tactics used by police officers during the interrogation.¹¹

⁵ Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 PSYCHOL. SCI. PUB. INT. 33, 48–50 (2004).

⁶ *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states> [https://perma.cc/CQR9-HATE].

⁷ See Garrett, *supra* note 1, at 1052; *Exoneration Statistics and Databases*, *supra* note 1; Kassin et al., *supra* note 1, at 4; see also Samuel Gross and Maurice Possley, *For 50 Years, You've Had "The Right to Remain Silent"*, NAT'L REGISTRY OF EXONERATIONS (June 12, 2016), <http://www.law.umich.edu/special/exoneration/Pages/false-confessions-.aspx> [https://perma.cc/NT56-5AYY].

⁸ Kassin et al., *supra* note 1, at 3.

⁹ Kassin & Gudjonsson, *supra* note 5, at 51–56; Kassin et al., *supra* note 1, at 16–22.

¹⁰ Kassin & Gudjonsson, *supra* note 5, at 51; see GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 360–414 (2003).

¹¹ Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, 17 CURRENT DIRECTIONS PSYCHOL. SCI. 249, 250–51 (2008); see RICHARD A. LEO, *POLICE INTERROGATION AND AMERICAN JUSTICE* 195–236 (2009).

A. Dispositional Vulnerabilities

Under enough pressure anyone is at risk of confessing to a crime they did not commit, but certain groups of people are more vulnerable than others. These groups include juvenile suspects, intellectually disabled suspects, and mentally ill suspects.

1. Suspect Age

An analysis of the first 215 DNA exonerations found that more than one-third of DNA exonerees were between the ages of fourteen and twenty-two when they were arrested, and together spent 947 years in jail for crimes they did not commit.¹² Of these 215 DNA exonerations, approximately 25% of innocent defendants made incriminating statements, confessed, or pled guilty, largely as a result of police pressure.¹³

A review of known false-confession cases has shown juveniles to be particularly susceptible to the pressures of interrogation. A later examination of 340 exonerations showed that 42% of juvenile suspects falsely confessed (compared to 13% percent of adults); and of these juvenile cases, 69% of the youngest juveniles—those aged twelve to fifteen—falsely confessed.¹⁴ In sum, age is a significant risk factor for false confession.¹⁵

Three key reasons why juveniles are over-represented in false-confession cases are (1) lack of knowledge, (2) lower cognitive ability,

¹² *947 Years They Can Never Get Back*, INNOCENCE PROJECT (Apr. 2, 2008), <https://www.innocenceproject.org/947-years-they-can-never-get-back> [<https://perma.cc/VMQ5-RYJP>].

¹³ *See All Cases*, INNOCENCE PROJECT, <https://www.innocenceproject.org/all-cases/#false-confessions-or-admissions,custom-exonorate-year-1989,custom-exonorate-year-1990,custom-exonorate-year-1991,custom-exonorate-year-1992,custom-exonorate-year-1993,custom-exonorate-year-1994,custom-exonorate-year-1995,custom-exonorate-year-1996,custom-exonorate-year-1997,custom-exonorate-year-1998,custom-exonorate-year-1999,custom-exonorate-year-2000,custom-exonorate-year-2001,custom-exonorate-year-2002,custom-exonorate-year-2003,custom-exonorate-year-2004,custom-exonorate-year-2005,custom-exonorate-year-2006,custom-exonorate-year-2007> [<https://perma.cc/SP33-X8Y6>].

¹⁴ Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 (2005).

¹⁵ SAMUEL R. GROSS & MICHAEL SHAFFER, NAT'L REGISTRY OF EXONERATIONS, EXONERATIONS IN THE UNITED STATES, 1989–2012, at 59 (2012), https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf [<https://perma.cc/U4KY-CTHGJ>]; Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 963 (2004); Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 148 (2003).

and (3) lower psycho-social maturity.¹⁶ For example, numerous studies show that suspects under the age of fifteen are unable to fully understand their *Miranda* rights.¹⁷ Similarly, adolescents under the age of sixteen have been shown to have reduced cognitive abilities as compared to adults.¹⁸

Cognitive ability, however, is merely one aspect of judgment and decision-making.¹⁹ Developmental psychologists argue that while cognitive capacity shapes the process of making a decision, the psycho-social factors—such as impulse control and future planning—affect the outcome of the decision.²⁰ For example, an adolescent who possesses average to above-average intelligence may have the cognitive capability to make a decision, such as the one to waive her *Miranda* rights, but may also have a tendency to discount the future and weigh short-term rewards more heavily than long-term consequences, especially when the gains are more immediate.²¹ This can lead a juvenile suspect to favor falsely confessing in order to end an unpleasant interrogation (short-term reward) over the risk of being tried and convicted of a crime (long-term consequence).

2. Mental Impairment

In addition to juveniles, people with intellectual disabilities and mental illnesses are over-represented in false-confession cases.²² Twenty-eight of the 125 proven false-confession cases analyzed by Drizin and Leo involved individuals with intellectual disabilities—a number that is

¹⁶ Cf. Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 476–77 (2009) (showing these factors affected a study's results on juvenile competence to stand trial).

¹⁷ See, e.g., THOMAS GRISSO, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 73–75 (1981); Allison D. Redlich et al., *Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393, 399–406 (2003); Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 364 (2003); Jodi L. Viljoen et al., *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 BEHAV. SCI. & L. 1, 9–11 (2007).

¹⁸ Steinberg, *supra* note 16, at 479.

¹⁹ See Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1011 (2003).

²⁰ See *id.* at 1012.

²¹ See Lita Furby & Ruth Beyth-Marom, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 DEVELOPMENTAL REV. 1, 18–19 (1992); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 36 (2009).

²² Kassir et al., *supra* note 1, at 19; see GUDJONSSON, *supra* note 10, at 316–19; Kassir & Gudjonsson, *supra* note 5, at 49.

likely an undercount, as intelligence test results were not available in the majority of cases.²³ Like juveniles, people with intellectual disabilities show poor comprehension and application of their *Miranda* rights²⁴ and of the consequences of confession.²⁵ Specifically, people with mental retardation have been shown to think that having an attorney will negatively affect their case²⁶ and that their confession could be easily retracted.²⁷ In addition to poor comprehension of the legal system, people with intellectual disabilities show increased suggestibility²⁸ and compliance with authority figures.²⁹ This increased susceptibility to social pressures, combined with a decreased understanding of the complex legal proceedings going on around them, creates a perfect storm of risk factors for false confession.

Similarly, a study of 1249 offenders with serious mental illness in the United States found that nearly a quarter of respondents reported having falsely confessed to crimes they did not commit.³⁰ People with mental illness often show distorted perception and reality monitoring along with poor judgement and self-control, all of which can increase the risk of false confession.³¹ Additionally, like those with intellectual disabilities, people with psychotic disorders show decreased

²³ Drizin & Leo, *supra* note 15, at 971 & n.452.

²⁴ Caroline Everington & Solomon M. Fulero, *Competence to Confess: Measuring Understanding and Suggestibility of Defendants with Mental Retardation*, 37 MENTAL RETARDATION 212, 216 (1999); Solomon M. Fulero & Caroline Everington, *Mental Retardation, Competency to Waive Miranda Rights, and False Confessions*, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 163, 172 (G. Daniel Lassiter ed., 2004); Michael J. O'Connell et al., *Miranda Comprehension in Adults with Mental Retardation and the Effects of Feedback Style on Suggestibility*, 29 LAW & HUM. BEHAV. 359, 367 (2005).

²⁵ Isabel C.H. Clare & Gisli H. Gudjonsson, *The Vulnerability of Suspects with Intellectual Disabilities During Police Interviews: A Review and Experimental Study of Decision-Making*, 8 MENTAL HANDICAP RES. 110, 119–21 (1995).

²⁶ See Morgan Cloud et al., *Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. CHI. L. REV. 495, 557 (2002).

²⁷ See Clare & Gudjonsson, *supra* note 25, at 120–21.

²⁸ Everington & Fulero, *supra* note 24, at 217; see also Gisli H. Gudjonsson & Lucy Henry, *Child and Adult Witnesses with Intellectual Disability: The Importance of Suggestibility*, 8 LEGAL & CRIMINOLOGICAL PSYCHOL. 241, 245 (2003).

²⁹ See Kenneth L. Appelbaum & Paul S. Appelbaum, *Criminal-Justice-Related Competencies in Defendants with Mental Retardation*, 22 J. PSYCHIATRY & L. 483, 489–90 (1994).

³⁰ Allison D. Redlich et al., *Self-Reported False Confessions and False Guilty Pleas Among Offenders with Mental Illness*, 34 LAW & HUM. BEHAV. 79, 83 (2010).

³¹ See GUDJONSSON, *supra* note 10, at 317; Allison D. Redlich, *Mental Illness, Police Interrogations, and the Potential for False Confession*, 55 PSYCHIATRIC SERVS. 19, 20 (2004); see also Deborah Davis & William T. O'Donohue, *The Road to Perdition: Extreme Influence Tactics in the Interrogation Room*, in HANDBOOK OF FORENSIC PSYCHOLOGY 897, 963–67 (William O'Donohue & Eric Levensky eds., 2004).

understanding of their constitutional rights,³² and people with autism show increased compliance with authority figures.³³ Taken together, the research on juveniles, people with intellectual disabilities, and people with mental illness show that, due to reduced cognitive capacities and increased susceptibility to social pressures, the standard police interrogation puts many suspects at risk for false confession.

B. *Situational Pressures*

The standard police interrogation not only puts suspects from vulnerable populations at risk of falsely confessing, but it also puts average adults at risk of doing so. While vulnerable populations are over-represented in false-confession cases, there are many documented cases of psychologically normal adults falsely confessing. To understand how this can happen, one must understand the standard police interrogation.

A police interrogation is typically a two-step process.³⁴ Police first conduct a pre-interrogation interview, a non-confrontational process which aims at determining whether a suspect is innocent or guilty. For the suspect, this police-citizen interaction is often the critical moment that determines whether she will be subject to further interrogation.³⁵ Unfortunately, police officers often make mistakes when attempting to establish veracity. In fact, police officers consistently obtain hit rates near chance, and are not more accurate than lay people in detecting deception.³⁶ To this end, innocent suspects are sometimes interrogated for crimes they did not commit and placed in situations that increase their risk of falsely confessing. Once a suspect has been identified as guilty, the interrogation begins. The interrogation is an accusatorial process during which investigators try to elicit a confession from a suspect they already believe to be guilty.³⁷ A false confession is thus the result of incorrect veracity assessments in step one of the interrogation and of the

³² Jodi L. Viljoen et al., *An Examination of the Relationship Between Competency to Stand Trial, Competency to Waive Interrogation Rights, and Psychopathology*, 26 *LAW & HUM. BEHAV.* 481, 492–93 (2002).

³³ Alice S. North et al., *High Functioning Autism Spectrum Disorders: An Investigation of Psychological Vulnerabilities During Interrogative Interview*, 19 *J. FORENSIC PSYCHIATRY & PSYCHOL.* 323, 328–31 (2008).

³⁴ See FRED EDWARD INBAU ET AL., *CRIMINAL INTERROGATION AND CONFESSIONS* 3–7 (5th ed. 2013).

³⁵ Kassin & Gudjonsson, *supra* note 5, at 36.

³⁶ See ALDERT VRIJ, *DETECTING LIES AND DECEIT: PITFALLS AND OPPORTUNITIES* 160 (2d ed. 2008); Aldert Vrij et al., *Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection*, 11 *PSYCHOL. SCI. PUB. INT.* 89, 101–02 (2010).

³⁷ See GUDJONSSON, *supra* note 10, at 10; Kassin et al., *supra* note 1, at 6–7.

subsequent exposure of innocent suspects to manipulative and psychologically coercive interrogation techniques in step two.³⁸

The effectiveness of these commonly employed interrogation techniques in accomplishing the goal of eliciting confessions is undisputed. Some examples of commonly employed interrogation techniques include custody and isolation, excessive use of time, lying and bluffing about evidence, and the use of themes that minimize the seriousness of the crime and thus imply leniency.³⁹

1. Custody and Isolation

Popular police interrogation manuals (*e.g.*, the Reid Technique) advise isolating the suspect in a small windowless room.⁴⁰ The goal of this isolation is to create an uncomfortable situation that the suspect is eager to get out of—and the only way to do so is to confess. Although isolation is effective at eliciting true confessions, it can also lead innocent suspects to confess when used in conjunction with other tactics.⁴¹

According to surveys of North American police officers, the average police interrogation lasts an average of 1.60 hours,⁴² and the Reid Technique advises practitioners not to exceed four hours.⁴³ Legally, however, there is no time limit on interrogations.⁴⁴ Consequently, an analysis of 125 proven false-confession cases found that, for cases in which interrogation time was recorded, the mean interrogation length was 16.3 hours, with 34% lasting six to twelve hours and 39% lasting twelve to twenty-four hours.⁴⁵ Basic psychological research shows that prolonged periods of isolation are stressful⁴⁶ and can incentivize people to take actions to remove themselves from the source of the stress,⁴⁷ even those that go against self-interest like falsely confessing to a crime. In

³⁸ See Saul M. Kassir, *False Confessions: Causes, Consequences, and Implications for Reform*, 17 CURRENT DIRECTIONS PSYCHOL. SCI. 249, 250 (2008).

³⁹ LEO, *supra* note 11, at 134–62; Kassir, *supra* note 38, at 250–51. For a full review, see Kassir et al., *supra* note 1, at 16–19.

⁴⁰ INBAU ET AL., *supra* note 34, at 47.

⁴¹ Saul M. Kassir, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 AM. PSYCHOLOGIST 215, 221 (2005); Kassir et al., *supra* note 1, at 16.

⁴² Saul M. Kassir et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 392 (2007).

⁴³ INBAU ET AL., *supra* note 34, at 347.

⁴⁴ See *id.* (“The length at which an interrogation approaches the level of duress associated with an involuntary confession is individually defined.”); see also Kassir et al., *supra* note 1, at 28.

⁴⁵ Drizin & Leo, *supra* note 15, at 948–49.

⁴⁶ Kassir et al., *supra* note 1, at 16.

⁴⁷ *Id.*

sum, research has shown that as the negative effects of a situation become more extreme, escape motives become central to behavior.⁴⁸

For example, consider the case of Todd Johnson. On December 19, 1998, at approximately 3:30 AM, the police arrived at Mr. Johnson's home to investigate the death of his wife.⁴⁹ Once there, the police had Mr. Johnson sit in the police car until around 7:00 AM, at which point they transported him to the local police station. Once at the police station, investigators began interrogating Mr. Johnson.⁵⁰ Between 9:15 PM and 10:00 PM on December 19, 1998, Mr. Johnson signed a typed statement, after nearly nineteen hours of a constant police presence and nearly fifteen hours of interrogation.⁵¹ This length of time, by all accounts, is extreme, and likely contributed to Mr. Johnson's false confession.⁵²

Hand-in-hand with lengthy interrogations comes sleep deprivation. Basic psychological research shows that sleep deprivation can impair cognitive function and decision-making ability,⁵³ making it difficult for sleep-deprived suspects to resist the social pressures inherent in a police interrogation. Both laboratory and field studies show reduced cognitive function and increased susceptibility to social influence as a result of sleep deprivation. For example, studies of medical interns,⁵⁴ motorists,⁵⁵

⁴⁸ Craig A. Anderson, *Temperature and Aggression: Ubiquitous Effects of Heat on Occurrence of Human Violence*, 106 PSYCHOL. BULL. 74, 75 (1989).

⁴⁹ See Statement of Todd M. Johnson to Kansas City Police Department at 3 (Dec. 19, 1998) (on file with author) [hereinafter Johnson Statement] (explaining Johnson arrived home around 3:00 AM and called the police after finding his wife dead).

⁵⁰ See *Murdered Woman's Parents Win \$30M Vs. Son-in-Law—Husband Was Acquitted in Criminal Trial*, MO. LAW. WKLY. (June 7, 2004) [hereinafter *Parents Win \$30M*], <https://molawyersmedia.com/2004/06/07/murdered-womans-parents-win-30m-vs-soninlaw-husband-was-acquitted-in-criminal-trial> [<https://perma.cc/6PBS-ZQGF>] (noting police began interrogating Johnson at the police station around 7:30 AM).

⁵¹ Johnson Statement, *supra* note 49, at 1 (noting the statement was taken at 9:15 PM); Kassin *supra* note 41, at 224; see Kassin, *supra* note 41, at 224; Jennifer T. Perillo & Saul M. Kassin, *Inside Interrogation: The Lie, the Bluff, and False Confessions*, 35 LAW & HUM. BEHAV. 327, 328–29 (2010); see also *Parents Win \$30M*, *supra* note 50.

⁵² *Parents Win \$30M*, *supra* note 50 (“[A] defense expert testified that Johnson had been suffering from sleep deprivation and was unable to think clearly when he wrote out his confession. The jury acquitted Johnson in a December 2001 trial.”).

⁵³ June J. Pilcher & Allen I. Huffcutt, *Effects of Sleep Deprivation on Performance: A Meta-Analysis*, 19 SLEEP 318, 321–25 (1996); see also Yvonne Harrison & James A. Horne, *The Impact of Sleep Deprivation on Decision Making: A Review*, 6 J. EXPERIMENTAL PSYCHOL. 236, 241–45 (2000).

⁵⁴ Matthew B. Weinger & Sonia Ancoli-Israel, *Sleep Deprivation and Clinical Performance*, 287 J. AM. MED. ASS'N 955 (2002); see Sigrid Veasey et al., *Sleep Loss and Fatigue in Residency Training*, 288 J. AM. MED. ASS'N 1116, 1121–22 (2002).

⁵⁵ See James M. Lyznicki et al., *Sleepiness, Driving, and Motor Vehicle Crashes*, 279 J. AM. MED. ASS'N 1908, 1909 (1998).

and fighter pilots⁵⁶ all show performance impairments as a result of sleep deprivation.

Recently, laboratory experiments have extended these findings to interrogations specifically. Combining standard laboratory paradigms for studying false confessions with standard sleep research, a group of researchers showed that sleep-deprived participants were significantly more likely to falsely confess (50%) than non-sleep-deprived participants (18%).⁵⁷ Returning to the case of Todd Johnson, as noted above, the police arrived at Mr. Johnson's home around 3:30 AM on December 19. By all accounts, Mr. Johnson had been awake since around 9:00 AM on December 18; thus, by the time Mr. Johnson had signed his statement at 10:00 PM on December 19, he had been awake for nearly thirty-seven hours. At this point, there is no question that Mr. Johnson was sleep deprived and at increased risk of falsely confessing.

2. Minimization and False Evidence

In addition to isolating the suspect, there are specific psychologically coercive maneuvers that police use during the interrogation that put innocent suspects at risk of falsely confessing.⁵⁸ It is important to note that these techniques are all considered non-coercive in the eyes of the law since they do not involve physical force, explicit threats or promises, or deprivations of any kind.⁵⁹ Furthermore, the courts assume that innocent suspects—from non-vulnerable populations—will not confess when exposed to these legal interrogation techniques. Laboratory research on these techniques, however, shows this not to be the case.⁶⁰

One way interrogators attempt to convince the suspect that it is in her best interest to confess is to try to change the perceived consequences of confessing (or continuing to deny) without outright promising leniency to or threatening the suspect, commonly referred to “minimization” and

⁵⁶ John A. Caldwell et al., *The Effects of 37 Hours of Continuous Wakefulness on the Physiological Arousal, Cognitive Performance, Self-Reported Mood, and Simulator Flight Performance of F-117A Pilots*, 16 MIL. PSYCHOL. 163, 169–70 (2004).

⁵⁷ Steven J. Frenda et al., *Sleep Deprivation and False Confessions*, 113 PROC. NAT'L ACAD. SCI. U.S. 2047, 2048 (2016).

⁵⁸ See Kassin, *supra* note 41, at 219–22.

⁵⁹ See *id.* at 222; see also Kassin et al., *supra* note 1, at 11 (noting the U.S. Supreme Court has “designate[d] certain interrogation methods—including physical force, threats of harm or punishment, lengthy or incommunicado questioning, solitary confinement, denial of food or sleep, and promises of leniency—as presumptively coercive and therefore unconstitutional”).

⁶⁰ See Kassin et al., *supra* note 1, at 16–19.

“maximization,” respectively.⁶¹ Maximization involves the use of scare tactics and is designed to communicate the interrogator’s belief in the suspect’s guilt and that there will be harsher consequences for repeated denials.⁶² In contrast, minimization is designed to reduce the anxiety associated with confession by normalizing and minimizing the moral seriousness of the offense.⁶³ This tactic, while effective at obtaining true confessions, also puts innocent suspects at risk to make false confessions by implying leniency.⁶⁴ The use of minimization has been shown to increase the rate of false confessions.⁶⁵ Importantly, observers do not view the use of minimization tactics during interrogation as coercive.⁶⁶

Of the permissible interrogation tactics, one of the most controversial is the false-evidence ploy, in which interrogators tell the suspect they have evidence of her guilt (*e.g.*, DNA, blood, an eyewitness, or a failed polygraph) when that evidence does not really exist. Police training manuals, such as the Reid Technique,⁶⁷ recommend using this tactic under certain circumstances, and police officers report sometimes using it.⁶⁸ Lying about evidence has been shown to increase false confession rates by making suspects feel trapped or by making suspects doubt their own memory.⁶⁹

An alternative to the false-evidence ploy is the bluff. Here, police pretend to have evidence in the case but do not claim that it implicates the suspect; for example, the police might say, “We have DNA that we are going to test.” The bluff has been shown to increase the rate of false

⁶¹ See Saul M. Kassin & Karlyn McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15 LAW & HUM. BEHAV. 233, 233 (1991).

⁶² Richard A. Leo & Richard J. Ofshe, *The Truth About False Confessions and Advocacy Scholarship*, 37 CRIM. L. BULL. 293, 365 (2001); Melissa B. Russano et al., *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 PSYCHOL. SCI. 481, 482 (2005).

⁶³ See Russano et al., *supra* note 62, at 482; see also Leo & Ofshe, *supra* note 62, at 365.

⁶⁴ See Allyson J. Horgan et al., *Minimization and Maximization Techniques: Assessing the Perceived Consequences of Confessing and Confession Diagnosticity*, 18 PSYCHOL. CRIME & L. 65, 75 (2011); Jessica R. Klaver et al., *Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm*, 14 LEGAL & CRIMINOLOGICAL PSYCHOL. 71, 79 (2010); Fadia M. Narchet et al., *Modeling the Influence of Investigator Bias on the Elicitation of True and False Confessions*, 35 LAW & HUM. BEHAV. 452, 453 (2011); Russano et al., *supra* note 62, at 484.

⁶⁵ Klaver et al., *supra* note 64, at 79; Russano et al., *supra* note 62, at 484.

⁶⁶ Kassin & McNall, *supra* note 61, at 238.

⁶⁷ INBAU ET AL., *supra* note 34, at 172–73.

⁶⁸ Kassin et al., *supra* note 42, at 394.

⁶⁹ See Robert Horselenberg et al., *Individual Differences and False Confessions: A Conceptual Replication of Kassin and Kiechel*, 9 PSYCHOL. CRIME & L. 1, 5 (2003); Saul M. Kassin & Katherine L. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 PSYCHOL. SCI. 125, 127 (1996); Redlich & Goodman, *supra* note 15, at 149–50.

confessions by paradoxically playing on a suspect's trust in the power of his innocence to prevail, thereby anticipating future exoneration from the alleged evidence.⁷⁰ However, because this evidence does not exist, the suspect cannot be exonerated and has now confessed to the crime in question. In sum, police interrogation methods are skillfully designed to elicit confessions through a number of channels, but they are non-diagnostic and can often elicit confessions from innocent suspects as well as guilty suspects.

III. THE POWER OF CONFESSION EVIDENCE

Once a confession case goes to trial, the odds of conviction are very high, as demonstrated by both real-world examples and laboratory research. When false confessors plead "not guilty" and proceed to trial, conviction rates range from 73%⁷¹ to 81%.⁷² Notably, approximately 85% of the convictions occurred when there was little or no corroborating evidence, when the confessions were inconsistent, or when they were contradicted by other evidence.⁷³

Results of controlled laboratory studies confirm the tremendous impact of confession evidence implied by these real-world examples. Confession evidence has been found to increase mock jurors' conviction rates and probability-of-commission ratings more than both eyewitness testimony and character testimony across a variety of different crimes.⁷⁴ Jurors even favor confession evidence over exculpatory DNA evidence when the prosecution offers an explanatory theory for the contradictory evidence, as compared to when no explanation is presented.⁷⁵ Furthermore, the presence of a confession increases mock jurors' conviction rates and probability-of-commission ratings over a no-confession control group, even when the confession was elicited by high-pressure interrogation tactics or ruled inadmissible by a judge.⁷⁶ This effect occurred even when participants claimed not to have considered the confession as evidence.⁷⁷ The presence of a secondary confession—a confession provided by someone other than the suspect (*e.g.*, a jailhouse

⁷⁰ Perillo & Kassin, *supra* note 51, at 330–31.

⁷¹ *E.g.*, Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 480–81 (1998).

⁷² *E.g.*, Drizin & Leo, *supra* note 15, at 960.

⁷³ *Id.* at 961.

⁷⁴ Kassin & Neuman, *supra* note 3, at 481–82.

⁷⁵ Appleby & Kassin, *supra* note 4, at 136–37.

⁷⁶ Kassin & Sukel, *supra* note 3, at 42.

⁷⁷ *Id.*

informant)—has even been shown to increase conviction rates over a no-witness control group.⁷⁸ Additionally, recanted confessions create perceptions of guilt, even when the mock jurors are told that the confessor suffered from mental illness or that the interrogation induced stress.⁷⁹ Studies on juvenile defendants have found similar results.⁸⁰

Similar persuasive and biasing effects have been found for judges. In the only known study looking specifically at judges and their evaluations of confession evidence, 132 judges from three states read a confession case and conducted a harmless-error analysis. Although the judges in the high-pressure condition were able to properly conduct the harmless-error analysis and judge the confession as coerced, their perceptions of guilt were not immune from the biasing effects of the confession. Demonstrating the biasing effect of a confession, the judges in the high-pressure interrogation condition, as compared to the no-confession control group, convicted more often and rated the other case evidence as stronger.⁸¹ Thus, it is not just lay people who are swayed by the power of confessions. If judges are biased by confessions, it stands to reason that attorneys will fall prey to similar biases in decision-making.

IV. PERCEPTIONS OF INTERROGATIONS AND CONFESSIONS

Once a defendant has confessed—and if the defendant disputes the confession—the defendant’s fate is in the hands of attorneys, judges, and juries. Thus, it is important to know what fact finders know and understand about interrogations and confessions. The majority of research in this domain has focused on what lay people—*i.e.*, potential jurors—know about the subject matter. The results suggest that the average juror is relatively uninformed. For example, a survey of potential jurors found that that only 43% of participants knew that police officers could lie to suspects in an interrogation,⁸² only 55% knew that they could downplay the seriousness of a crime,⁸³ and, importantly, only 12% knew

⁷⁸ Jeffrey S. Neuschatz et al., *The Effects of Accomplice Witnesses and Jailhouse Informants on Jury Decision Making*, 32 LAW & HUM. BEHAV. 137, 141 (2008).

⁷⁹ Linda A. Henkel, *Jurors’ Reactions to Recanted Confessions: Do the Defendant’s Personal and Dispositional Characteristics Play a Role?*, 14 PSYCHOL. CRIME & L. 565, 570 (2008).

⁸⁰ See Allison D. Redlich et al., *Perceptions of Children During a Police Interrogation: Guilt, Confessions, and Interview Fairness*, 14 PSYCHOL. CRIME & L. 201, 208–16 (2008); Allison D. Redlich et al., *Perceptions of Children During a Police Interview: A Comparison of Alleged Victims and Suspects*, 38 J. APPLIED SOC. PSYCHOL. 705, 714–21 (2008).

⁸¹ D. Brian Wallace & Saul M. Kassin, *Harmless Error Analysis: How do Judges Respond to Confession Errors?*, 36 LAW & HUM. BEHAV. 151, 153–56 (2012).

⁸² Danielle E. Chojnacki et al., *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 ARIZ. ST. L.J. 1, 38 (2008).

⁸³ *Id.*

that police officers are not better than lay people at detecting deception.⁸⁴ Additionally, 81% believed that jurors were not knowledgeable enough about interrogation tactics and confessions to make informed judgments about confession evidence at trial.⁸⁵

Surveys of the perceived coerciveness of interrogation tactics have shown a similar lack of knowledge. Although potential jurors recognize police interrogation tactics (*e.g.*, implicit promises of leniency, presentations of false evidence, and challenging denials) as coercive, they see them as more likely to elicit true confessions than false ones.⁸⁶

Very little is known about attorneys' knowledge and perceptions of interrogations and confessions. One Swedish study examined prosecutors' and judges' beliefs about deception. The results showed that prosecutors are relatively uniformed about deception, but that they are more knowledgeable than police officers on some aspects of deception detection, such as verbal versus nonverbal cues to deception.⁸⁷ Compared to lay people, attorneys' legal and professional educations presumably make them more knowledgeable about what police officers can and cannot do during an interrogation. There are, however, many aspects of interrogations and confessions (*e.g.*, distinguishing between true and false confession, and suspect vulnerability) that attorneys may not be exposed to in law school or even throughout their legal practice; we therefore anticipate them being no more knowledgeable about these issues than lay people are. Additionally, attorneys and lay people are likely to have similar perceptions of the coerciveness of common interrogation tactics due to a lack of knowledge on the topic and to general biases in cognition.

Regarding other common causes of wrongful convictions, research shows that, compared to prosecutors, defense attorneys are more sensitive to the problems inherent in eyewitness testimony.⁸⁸ But recent research suggests this gap in eyewitness knowledge may be closing.⁸⁹ Eyewitness testimony has received a considerable amount of attention in psycho-legal research—more so than confessions evidence—yet, attorneys are

⁸⁴ *Id.* at 31.

⁸⁵ *Id.* at 43.

⁸⁶ Iris Blandón-Gitlin et al., *Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?*, 17 *PSYCHOL. CRIME & L.* 239, 243–48 (2010); Richard A. Leo & Brittany Liu, *What do Jurors Know About Police Interrogation Techniques and False Confessions?*, 27 *BEHAV. SCI. & L.* 381, 387–90 (2009).

⁸⁷ See Leif A. Strömwall & Pär Anders Granhag, *How to Detect Deception? Arresting the Beliefs of Police Officers, Prosecutors and Judges*, 9 *PSYCHOL. CRIME & L.* 19, 22–28 (2003).

⁸⁸ Richard A. Wise et al., *What US Prosecutors and Defence Attorneys Know and Believe About Eyewitness Testimony*, 23 *APPLIED COGNITIVE PSYCHOL.* 1266, 1272 (2009).

⁸⁹ See Kathy Pezdek & Matthew O'Brien, *Plea Bargaining and Appraisals of Eyewitness Evidence by Prosecutors and Defense Attorneys*, 20 *PSYCHOL. CRIME & L.* 222, 236 (2013).

still relatively uninformed about the numerous factors that influence eyewitness testimony. This unfamiliarity by attorneys of eyewitness issues would suggest a similar unfamiliarity of confession issues.

V. THE ROLE OF ATTORNEY KNOWLEDGE AND DECISION-MAKING

Compared to jury decision-making, there is limited research on attorney decision-making. This is noteworthy because the majority of cases never make it to trial, with 90% to 95% of all criminal cases in the United States being settled by plea bargain.⁹⁰ Stated differently, the majority of criminal cases in the United States are resolved outside of a courtroom via negotiation between attorneys,⁹¹ and there is a dearth of knowledge about how attorneys, who are key actors in the criminal justice system, evaluate evidence and make decisions.

Research to date suggests that, like jury decisions,⁹² evidence strength is the driving factor in attorneys' plea-bargaining recommendations.⁹³ Regarding confession cases specifically, available evidence shows that prosecutors are less likely to initiate a plea bargain,⁹⁴ tend to charge the defendant with the highest number and types of offenses,⁹⁵ and tend to set bail higher⁹⁶ than in non-confession cases. This observed decrease in prosecutor-initiated plea bargains in confession cases suggests that prosecutors are aware of the power of confession evidence. Specifically, confession evidence is considered the most powerful non-scientific form of evidence;⁹⁷ thus, in confession cases, even when the confession is disputed—and when other evidence is lacking—prosecutors may be more certain of the case and more willing

⁹⁰ Pezdek & O'Brien, *supra* note 89, at 222 ("90% of cases are resolved through plea bargaining." (citation omitted)); Allison D. Redlich et al., *The Psychology of Defendant Plea Decision Making*, 72 AM. PSYCHOLOGIST 339, 339 (2017) ("Roughly 95% of federal and state convictions . . . result from guilty pleas.").

⁹¹ Pezdek & O'Brien, *supra* note 89, at 222 (quoting *Lafler v. Cooper*, 566 U.S. 156, 170 (2012)).

⁹² HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* 149–62 (1966)

⁹³ See Alafair S. Burke, *Prosecutorial Passion, Cognitive Bias, and Plea Bargaining*, 91 MARQ. L. REV. 183, 184 (2007); Martha A. Myers & John Hagan, *Private and Public Trouble: Prosecutors and the Allocation of Court Resources*, 26 SOC. PROBS. 439, 444 (1979); Pezdek & O'Brien, *supra* note 89, at 232–34; see also David Pritchard, *Homicide and Bargained Justice: The Agenda-Setting Effect of Crime News on Prosecutors*, 50 PUB. OPINION Q. 143, 150 (1986).

⁹⁴ See Paul G. Cassell & Bret S. Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda*, 43 UCLA L. REV. 839, 907–09 (1996).

⁹⁵ See *id.* at 909–12.

⁹⁶ See Drizin & Leo, *supra* note 15, at 907.

⁹⁷ See Joel D. Lieberman et al., *Gold Versus Platinum: Do Jurors Recognize the Superiority and Limitations of DNA Evidence Compared to Other Types of Forensic Evidence?*, 14 PSYCHOL. PUB. POL'Y & L. 27, 37 (2008); see also Kassir & Sukel, *supra* note 3, at 36–37.

to proceed to trial based on the persuasive power of the confession. The same available evidence suggests that defense attorneys in confession cases are more likely to suggest that their clients accept a guilty plea to a lesser charge.⁹⁸ There is also evidence, however, that other factors, such as the defendant's race⁹⁹ and prior arrest history,¹⁰⁰ as well as attorney over-confidence,¹⁰¹ can affect plea recommendations.

Research regarding attorneys' trial strategies is even more limited than research on plea decisions. Moreover, the little research there is mostly ignores the factors that lead to wrongful convictions. One study of how eyewitness testimony affects trial strategy showed that, while defense attorneys were more aware than prosecutors of the problems associated with eyewitness testimony, this awareness did not lead to more interventions during trial, such as filing motions to suppress and calling eyewitness experts.¹⁰² There is no rigorous empirical research, however, on how criminal attorneys approach disputed-confession cases. Of particular interest for this paper is (1) how attorneys weigh the manner in which the confession was obtained, (2) how attorneys weigh pieces of contradictory evidence in the case, (3) how these factors play into their decisions to go to trial, and (4) what strategies attorneys pursue at trial with this information in mind.

A. *Can Attorneys' Decisions Be Contaminated by Confession Evidence?*

In 2010, the Center for Wrongful Convictions identified nineteen cases in which confessors to rape or murder were tried and convicted, despite having been excluded by DNA tests of key biological materials;¹⁰³ since that time, additional cases have been reported and critiqued.¹⁰⁴ For example, in New York's infamous 1989 Central Park

⁹⁸ Drizin & Leo, *supra* note 15, at 922; *see also* Leo & Ofshe, *supra* note 71, at 478–81.

⁹⁹ Vanessa A. Edkins, *Defense Attorney Plea Recommendations and Client Race: Does Zealous Representation Apply Equally to All?*, 35 LAW & HUM. BEHAV. 413, 419 (2011); Besiki Luka Kutateladze & Victoria Z. Lawson, *How Bad Arrests Lead to Bad Prosecution: Exploring the Impact of Prior Arrests on Plea Bargaining*, 37 CARDOZO L. REV. 973, 984–87 (2016).

¹⁰⁰ Kutateladze & Lawson, *supra* note 99, at 984.

¹⁰¹ *See* Jane Goodman-Delahunty et al., *Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes*, 16 PSYCHOL. PUB. POL'Y & L. 133, 140–41 (2010).

¹⁰² Susanne M. Mumby, Preliminary Research on the Evaluation of Eyewitness Testimony by Defense Attorneys and Prosecutors in Juvenile Transfer Cases 35–36 (Aug. 30, 2014) (unpublished Ph.D. dissertation, The Chicago School of Professional Psychology) (on file with ProQuest Dissertations Publishing, Publication No. 3743763).

¹⁰³ Appleby & Kassin, *supra* note 4, at 128.

¹⁰⁴ *E.g.*, Steven A. Drizin & Hannah Riley, *Knox and Sollecito: Victims of a Prosecutor's 'Conspiracy Theories' to Explain Away DNA*, HUFFPOST (Feb. 12, 2015, 12:45 PM), <https://>

Jogger case, five teenage boys confessed after lengthy and intense interrogations.¹⁰⁵ DNA testing of the semen recovered from the victim excluded all five boys before trial,¹⁰⁶ yet they were still prosecuted and convicted,¹⁰⁷ with the prosecuting attorneys arguing that there was a sixth unidentified accomplice that the boys either could not or would not identify.¹⁰⁸ The boys were officially exonerated thirteen years later when the real perpetrator, a serial rapist who was already in prison, confessed—a confession that was supported by DNA.¹⁰⁹ Cases like these raise questions about the decisions prosecutors make from the moment they receive a confession case through the conclusion of the trial. Many have attributed prosecutors' decisions to go to trial despite corroborating evidence, or in the face of exculpatory evidence, to bad intentions or prosecutorial misconduct.¹¹⁰ However, when dealing with disputed-confession cases, perhaps prosecutors are not being malicious, but are simply uninformed and falling prey to the many cognitive biases that a confession sets in motion.

Conversely, in their analysis of 125 proven false confession cases Drizin and Leo documented fourteen false guilty pleas.¹¹¹ One infamous example of a false guilty plea after a false confession is that of Christopher Ochoa. After confessing to police about his involvement in a 1988 rape and murder of a fellow Pizza Hut employee, Ochoa, in an effort to avoid a death sentence, not only pled guilty, but also testified at trial against his close friend Richard Danzinger—all at the advice of his attorney. Ochoa and Danzinger were exonerated fourteen years later by DNA when the real perpetrator, who was already in prison, confessed—again a confession supported by DNA.¹¹² Research indicates that defense attorneys are more likely to recommend a plea agreement when the

www.huffpost.com/entry/amanda-knox-and-raffaele_b_4757435 [https://perma.cc/UY5J-UPHU]; Erica Goode, *When DNA Evidence Suggests 'Innocent,' Some Prosecutors Cling to 'Maybe'*, N.Y. TIMES (Nov. 15, 2011), <https://www.nytimes.com/2011/11/16/us/dna-evidence-of-innocence-rejected-by-some-prosecutors.html> [https://perma.cc/SY7Y-98MD]; Andrew Martin, *The Prosecution's Case Against DNA*, N.Y. TIMES MAG. (Nov. 25, 2011), <https://www.nytimes.com/2011/11/27/magazine/dna-evidence-lake-county.html> [https://perma.cc/8W4A-JYGX].

¹⁰⁵ SARAH BURNS, *THE CENTRAL PARK FIVE: A CHRONICLE OF A CITY WILDING* 28–65 (2011).

¹⁰⁶ *Id.* at 95–97, 103, 113–14.

¹⁰⁷ *Id.* at 129–77.

¹⁰⁸ *Id.* at 124.

¹⁰⁹ *Id.* at 188–93.

¹¹⁰ See Alafair Burke, *Neutralizing Cognitive Bias: An Invitation to Prosecutors*, 2 N.Y.U. J.L. & LIBERTY 512, 515 (2007).

¹¹¹ Drizin & Leo, *supra* note 15, at 957.

¹¹² *Christopher Ochoa*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/christopher-ochoa> [https://perma.cc/5QXZ-QUUM].

incriminating evidence against the defendant is strong.¹¹³ When the defendant is innocent, however, it raises the question of whether this is simply a cost-benefit analysis or whether defense attorneys are also falling prey to the cognitive biases that a confession sets in motion, potentially overlooking contradictory or exculpatory evidence and presuming guilt.

A number of social-cognitive factors are likely to contribute to the persuasive power of a confession through mental contamination. Mental contamination is the process whereby a person makes an unwanted judgment as the result of highly adaptive unconscious or uncontrollable mental processes gone awry and, even if she is aware of this, is unable to fully correct her judgment.¹¹⁴ For example, teachers do not necessarily want to give higher grades to more attractive students, and may even try not to, but numerous studies have found a similar halo effect in many domains.¹¹⁵ Although there are a number of automatic mental processes that can contribute to mental contamination, the one most likely at play in the problem of false confessions is called the “initial acceptance of propositions,” which includes both the truth bias and the fundamental attribution error.¹¹⁶

The truth bias is the tendency to believe a proposition, independent of the statement’s actual veracity.¹¹⁷ This effect occurs even when there is no evidence to support the statements¹¹⁸ and even when the statements are clearly labeled as false.¹¹⁹ This happens when people initially accept the statements as true in an effort to comprehend them, but then fail to discount or disbelieve the information—if necessary—once it has been

¹¹³ Greg M. Kramer et al., *Plea Bargaining Recommendations by Criminal Defense Attorneys: Evidence Strength, Potential Sentence, and Defendant Preference*, 25 BEHAV. SCI. & L. 573, 579 (2007).

¹¹⁴ Timothy D. Wilson & Nancy Brekke, *Mental Contamination and Mental Correction: Unwanted Influences on Judgments and Evaluations*, 116 PSYCHOL. BULL. 117, 119–22 (1994).

¹¹⁵ See, e.g., William H. Cooper, *Ubiquitous Halo*, 90 PSYCHOL. BULL. 218, 219–20 (1981); David Landy & Harold Sigall, *Beauty is Talent: Task Evaluation as a Function of the Performer’s Physical Attractiveness*, 29 J. PERSONALITY & SOC. PSYCHOL. 299, 301–04 (1974).

¹¹⁶ See Wilson & Brekke, *supra* note 114, at 127.

¹¹⁷ VRIJ, *supra* note 36, at 148; Charles F. Bond, Jr. & Bella M. DePaulo, *Accuracy of Deception Judgments*, 10 PERSONALITY & SOC. PSYCHOL. REV. 214, 217 (2006); Timothy R. Levine et al., *Deception Detection Accuracy is a Predictable Linear Function of Message Veracity Base-Rate: A Formal Test of Park and Levine’s Probability Model*, 73 COMM. MONOGRAPHS 243, 245 (2006).

¹¹⁸ See Hal R. Arkes et al., *The Generality of the Relation Between Familiarity and Judged Validity*, 2 J. BEHAV. DECISION MAKING 81, 84–85 (1989) (“[R]epetition influences validity ratings identically whether the statement is initially perceived to be true, false, or neutral.”); see also Daniel T. Gilbert, *How Mental Systems Believe*, 46 AM. PSYCHOL. 107, 111 (1991) (“Not only does doubt seem to be the last operation to emerge, but it also seems to be the first to disappear.”).

¹¹⁹ Daniel T. Gilbert et al., *You Can’t Not Believe Everything You Read*, 65 J. PERSONALITY & SOC. PSYCHOL. 221, 230 (1993); Daniel M. Wegner et al., *The Transparency of Denial: Briefing in the Debriefing Paradigm*, 49 J. PERSONALITY & SOC. PSYCHOL. 338, 342–44 (1985).

processed.¹²⁰ The truth bias is likely to be magnified in the case of a confession because of a strong tendency, as noted by many attribution theorists, for people to trust statements against self-interest.¹²¹ As a result, people are more likely to believe a suspect's admissions of guilt than her denials.¹²² The truth bias suggests that once people hear a confession, they will tend to believe it, even when evidence suggests they should not.

A second way to explain the persuasive nature of a confession is the fundamental attribution error,¹²³ or correspondence bias.¹²⁴ The fundamental attribution error is the pervasive tendency to underestimate the impact of the situation on a person's behavior and, consequently, to attribute the behavior to dispositional factors. The fundamental attribution error often stems from an initial quick attribution of personal factors to the actor's behavior, and then a failure to correct or adjust for situational factors.¹²⁵

A great deal of research on the fundamental attribution error shows that, for a number of reasons, it is a hard tendency to overcome. This includes the invisibility problem, which states that observers have trouble seeing an actor's situation as that actor sees it (*e.g.*, a coercive interrogation), impairing their ability to consider how the situation influenced the actor's decisions.¹²⁶ A good example of the invisibility problem in the problem of false confessions can be seen in a study by Kassir and McNall on the impact of commonly used interrogation tactics. Results showed that when a popular interrogation technique was used (minimization), outside observers viewed it as non-coercive, viewed the interrogator as friendlier and less eager for a confession, and viewed the situation as less coercive overall. Participants also estimated that relatively few suspects, especially innocent suspects, would confess to the crime.¹²⁷ These results suggest both jurors and legal professionals may be falling prey to the invisibility problem when assessing an interrogation and the subsequent false confession, making them prone to committing the fundamental attribution error.

¹²⁰ Gilbert et al., *supra* note 119, at 224.

¹²¹ *E.g.*, Edward E. Jones & Keith E. Davis, *From Acts to Dispositions: The Attribution Process in Person Perception*, 2 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 219, 246 (1965).

¹²² Timothy R. Levine et al., *(In)accuracy at Detecting True and False Confessions and Denials: An Initial Test of a Projected Motive Model of Veracity Judgments*, 36 HUM. COMM. RES. 82, 90 (2010).

¹²³ Lee Ross, *The Intuitive Psychologist and His Shortcomings: Distortions in the Attribution Process*, 10 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 173, 184 (1977).

¹²⁴ Daniel T. Gilbert & Patrick S. Malone, *The Correspondence Bias*, 117 PSYCHOL. BULL. 21, 22 (1995).

¹²⁵ *See* Gilbert et al., *supra* note 119, at 230–31.

¹²⁶ Gilbert & Malone, *supra* note 124, at 25.

¹²⁷ *See* Kassir & McNall, *supra* note 61, at 238–39.

Another way in which judgment becomes contaminated is through biased hypothesis testing, a form of confirmation bias by which people seek, interpret, and create information in ways that support their prior beliefs.¹²⁸ This process can occur in two ways. First, when a perceiver forms an initial impression and then hears ambiguous evidence, they often seek information confirming their hypothesis.¹²⁹ Secondly, when information that does not confirm the perceiver's position is brought to their attention, it is either ignored,¹³⁰ discounted,¹³¹ assimilated,¹³² or recalled in a manner that supports their initial position.¹³³ This process of biased hypothesis testing would suggest that once a confession has been introduced, subsequent evaluations of other evidence may be distorted or discounted, providing further evidence in the mind of the fact finder that the defendant committed the crime.

An analysis of 241 DNA exoneration cases showed that confession cases, compared to eyewitness cases, were more likely to contain multiple evidentiary errors, and, in these cases, the confessions were more likely to be taken first, rather than later in the investigation.¹³⁴ Although the mechanism of influence is not known in these anecdotal cases, laboratory research has shown how confessions can change other case evidence. When fingerprint experts were re-presented with pairs of fingerprints from a previous case and told either that the suspect had confessed (suggesting guilt) or was in custody at the time of the crime (suggesting innocence), these experts changed their previously correct decisions almost 17% of the time.¹³⁵ Similarly, Hasel and Kassin found that upon hearing that a suspect had confessed, nearly 61% of eyewitnesses changed their lineup identification choices to the reported confessor, and

¹²⁸ See Mark Snyder & William B. Swann, Jr., *Hypothesis-Testing Processes in Social Interaction*, 36 J. PERSONALITY & SOC. PSYCHOL. 1202, 1210 (1978).

¹²⁹ See *id.*

¹³⁰ See Susan M. Belmore, *Determinants of Attention During Impression Formation*, 13 J. EXPERIMENTAL PSYCHOL.: LEARNING MEMORY & COGNITION 480, 486 (1987).

¹³¹ See James A. Kulik, *Confirmatory Attribution and the Perpetuation of Social Beliefs*, 44 J. PERSONALITY & SOC. PSYCHOL. 1171, 1175 (1983); Charles G. Lord et al., *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 J. PERSONALITY & SOC. PSYCHOL. 2098, 2101–05 (1979).

¹³² See David L. Hamilton & Mark P. Zanna, *Context Effects in Impression Formation: Changes in Connotative Meaning*, 29 J. PERSONALITY & SOC. PSYCHOL. 649, 652–53 (1974); Teresa Hayden & Walter Mischel, *Maintaining Trait Consistency in the Resolution of Behavioral Inconsistency: The Wolf in Sheep's Clothing?*, 44 J. PERSONALITY 109, 126–30 (1976).

¹³³ See William B. Swann, Jr. & Stephen J. Read, *Acquiring Self-Knowledge: The Search for Feedback That Fits*, 41 J. PERSONALITY & SOC. PSYCHOL. 1119, 1124 (1981).

¹³⁴ Saul M. Kassin et al., *Confessions That Corrupt: Evidence From the DNA Exoneration Case Files*, 23 PSYCHOL. SCI. 41, 42–43 (2011).

¹³⁵ Itiel E. Dror and David Charlton, *Why Experts Make Errors*, 56 J. FORENSIC IDENTIFICATION 600, 610 (2006).

50% of initial non-choosers changed their decision and chose the confessor.¹³⁶ Kukucka and Kassin found a similar pattern of results with handwriting evidence.¹³⁷ These findings suggest that once people hear that a defendant has confessed, their evaluations of subsequent evidence, even something as powerful as DNA, may be distorted.

Unfortunately, the processes of mental contamination are not easy to avoid. This is primarily because people not only have difficulty detecting mental contamination, but even when they are aware that their biases may be affecting their judgments, people often are not able to recognize the impact of the biases and fully correct their judgments.¹³⁸ In a disputed-confession case, it is possible that one or more of these biases is affecting an attorney's decision-making concerning whether to take the case to trial and what strategies they will employ at trial by biasing their evaluations of the interrogation, confession, and other evidence in the case.

VI. CURRENT STUDIES

The research reviewed shows that, when exposed to standard police interrogation techniques, innocent people are vulnerable to confessing to crimes they did not commit. Moreover, once a confession case goes to trial, research suggests that the impact of a confession is so great that the defendant stands little chance of being acquitted, even if there is little or contradictory other evidence in the case. Furthermore, the research shows that many of the safeguards set up to protect the innocent—including DNA testing of evidence—may not be immune to the powerful effects of a confession. Because attorneys are the intervening step between when the confession is taken and the case verdict is read, it is crucial that both their understanding of interrogations and confessions and their decision-making in disputed-confession cases be examined. Research has indicated that confessions have biasing effects in the judgments of both lay people and judges; it is plausible that attorneys will show the same tendencies. Thus, prosecutors may be more likely to prosecute disputed-confession cases—even in the face of contradictory evidence—while defense attorneys may be more likely to plead out disputed-confession cases when compared to similar non-confession cases. The current studies examine defense attorneys' knowledge and perceptions of

¹³⁶ Lisa E. Hasel & Saul M. Kassin, *On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications?*, 20 *PSYCHOL. SCI.* 122, 124–25 (2009).

¹³⁷ See Jeff Kukucka & Saul M. Kassin, *Do Confessions Taint Perceptions of Handwriting Evidence? An Empirical Test of the Forensic Confirmation Bias*, 38 *LAW & HUM. BEHAV.* 256, 258–65 (2014).

¹³⁸ Wilson & Brekke, *supra* note 114, at 121–22.

interrogations and confessions, as well as their decision-making in a disputed-confession case.

Study 1 uses a survey of defense attorneys to assess both their *knowledge* and *perceptions* about interrogations and confessions, including *Miranda* comprehension, police officers' abilities to detect deception, and the ability to distinguish between true and false confessions. In addition, it will assess their perception of the coerciveness of numerous interrogation tactics ranging from minimally coercive (asking the suspect to repeat his statement) to extremely coercive (threatening the suspect with harm) and the likelihood that they elicit both true and false confessions. Study 2 will vary the level of coercion under which the confession was obtained as well as the presence or absence of exculpatory DNA evidence to test if attorneys' decisions are contaminated by confession evidence, examine what factors influence their decisions to go to trial with a disputed-confession case, and their strategies at trial.

A. *Study 1*

The first study surveys defense attorneys to assess their knowledge about various aspects of interrogations and confessions such as *Miranda* comprehension, police officers' deception detection abilities, and the ability to distinguish between true and false confessions. It also assesses their perceptions of the coerciveness of a wide range of interrogation tactics, ranging from minimally coercive (asking the suspect to repeat his statement) to extremely coercive (threatening the suspect with harm), and the likelihood that they elicit both true and false confessions. We predict that, compared to the general population, defense attorneys will be more knowledgeable about police interrogation tactics, but that they will be less informed about aspects outside of their typical legal education, such as *Miranda* rights comprehension. Finally, we predict that they will underestimate the ability of interrogation tactics to elicit false confessions.

1. Participants

Recruited via email for an online survey of "Perceptions of Police Investigations," fifty-six defense attorneys completed a survey designed to assess both their *perceptions* about police interrogations, *knowledge* of false-confession risk factors, and knowledge of false confessions in general. As a comparison sample, 189 U.S. Citizen community members, recruited from Amazon's Mechanical Turk, were recruited for a "Legal System Survey." Participation took approximately thirty minutes;

attorney participants were compensated with thirty dollars cash for their time, while community participants were compensated with fifty cents cash for their time.

Attorney participants were predominantly White (82.1%), with an equal gender distribution (51.8% male; 48.2% female). Participants reported an average of 11.70 ($SD = 11.79$) years of experience (range: 1–45). Participants reported practicing in five states (Florida, Georgia, Massachusetts, New Hampshire, and Vermont), with the majority practicing in Massachusetts (55.36%) and Georgia (33.93%). About half of the sample (53.6%) had served as lead council on at least one disputed-confession case. Table 1 shows the full demographics for the attorney participants:

Table 1. *Demographic Characteristics of Study 1 Attorney Participants*
($N = 56$)

	N	%	Mean	SD	Range
<i>Sex</i>					
Male	29	51.8	-	-	-
Female	27	48.2	-	-	-
<i>Race/Ethnicity</i>					
African American	3	5.4	-	-	-
Asian American	1	1.8	-	-	-
Hispanic/Latinx American	4	7.1	-	-	-
Multi-Racial	2	3.6	-	-	-
Native American/American Indian	0	0	-	-	-
Non-Hispanic Caucasian	46	82.1	-	-	-
Other	0	0	-	-	-
<i>State</i>					
Florida	3	5.4	-	-	-
Georgia	19	33.9	-	-	-
Massachusetts	31	55.4	-	-	-
New Hampshire	1	1.8	-	-	-
Vermont	2	3.6	-	-	-
<i>Years Experience</i>	-	-	11.70	11.79	1–45

Community participants were also predominantly White (83.6%), with an equal gender distribution (52.4% male; 47.1% female). Participants ranged in age from 18 to 68 ($M = 39.92$, $SD = 13.75$) and lived in 38 different states. Table 2 shows the full demographics for the community participants:

Table 2. *Demographic Characteristics of Study 1 Community Participants (N = 189)*

	N	%	Mean	SD	Range
<i>Age</i>	-	-	33.92	13.75	18–68
<i>Sex</i>					
Male	99	52.4	-	-	-
Female	89	47.1	-	-	-
Other	1	.5	-	-	-
<i>Race/Ethnicity</i>					
African American	10	5.3	-	-	-
Asian American	10	5.3	-	-	-
Hispanic/Latinx American	2	1.1	-	-	-
Multi-Racial	5	2.6	-	-	-
Native American/Indian American	1	.5	-	-	-
Non-Hispanic Caucasian	158	83.6	-	-	-
Other	3	1.6	-	-	-

2. Measures

Via Qualtrics.com, participants completed an eighty-item questionnaire designed to assess both their *perceptions* and *knowledge* of interrogations and confessions.

a. Perception

Perception Items. Perception items focused on three topics to assess participants' beliefs regarding specific interrogation tactics: (a) their coerciveness (1 = *not at all coercive*, 7 = *extremely coercive*); (b) their likelihood to elicit a true confession (1 = *not at all likely*, 7 = *extremely likely*); and (c) their likelihood to elicit a false confession (1 = *not at all likely*, 7 = *extremely likely*). The *perception* items were based on questions used in previous juror-perception studies¹³⁹ and techniques recommended in popular police interrogation manuals,¹⁴⁰ and ranged from minimally coercive (*e.g.*, asking the suspect to take a lie detector test) to very coercive (*e.g.*, beating or assaulting the suspect). Within each subsection, items were presented in a random order. Table 3 shows the full list of items and each group of participants' average ratings of these items:

¹³⁹ See, *e.g.*, Blandón-Gitlin et al., *supra* note 86, at 244; Leo & Liu, *supra* note 86, at 386.

¹⁴⁰ See, *e.g.*, INBAU ET AL., *supra* note 34, at 183–328.

Table 3. Study 1 Participants' Perceptions of Interrogation Tactics

	<i>Defense Attorneys</i>			<i>Community Members</i>		
	Coercive M (SD)	Elicit True Confession M (SD)	Elicit False Confession M (SD)	Coercive M (SD)	Elicit True Confession M (SD)	Elicit False Confession M (SD)
<i>Actual or Threat of Violence</i>						
Explicitly threatening suspects with physical harm.	6.82 (.54)	5.16 (2.09)	5.93 (1.48)	6.03 (1.48)	4.65 (1.81)	4.93 (1.67)
Implicitly or indirectly threatening suspects with physical harm.	6.71 (.76)	5.00 (2.04)	5.70 (1.55)	5.76 (1.59)	4.48 (1.77)	4.80 (1.82)
Threatening suspects with physical violence.	6.82 (.81)	5.09 (2.06)	5.98 (1.48)	5.94 (1.59)	4.66 (1.81)	4.84 (1.71)
Physically beating or assaulting the suspect.	6.86 (.40)	5.25 (2.17)	6.25 (1.35)	6.17 (1.55)	4.82 (1.95)	5.31 (1.80)
<i>False Evidence</i>						
Giving suspects a lie detector test and falsely telling them that the results indicate they are lying.	6.25 (1.23)	5.27 (1.78)	4.98 (1.69)	5.42 (1.44)	4.54 (1.56)	3.95 (1.77)
Confronting the suspect with false video surveillance camera evidence.	6.38 (1.07)	5.46 (1.66)	5.00 (1.72)	5.40 (1.61)	4.68 (1.69)	4.08 (1.81)
Confronting the suspect with false DNA evidence.	6.46 (.99)	5.75 (1.47)	5.55 (1.57)	5.37 (1.69)	5.04 (1.60)	4.13 (1.79)
Confronting the suspect with false fingerprints evidence.	6.14 (1.37)	5.45 (1.50)	5.07 (1.66)	5.47 (1.59)	4.93 (1.59)	4.07 (1.78)
<i>Promise of Leniency</i>						
Explicitly promising a more lenient charge if suspect confesses.	6.30 (.99)	5.32 (1.62)	5.32 (1.53)	5.04 (1.54)	5.08 (1.47)	3.88 (1.78)
Explicitly promising a more lenient sentence if suspect confesses.	6.36 (.92)	5.43 (1.63)	5.34 (1.60)	5.05 (1.49)	5.14 (1.40)	3.94 (1.85)

Table 3. *Study 1 Participants' Perceptions of Interrogation Tactics (cont'd)*

	<i>Defense Attorneys</i>			<i>Community Members</i>		
	Coercive M (SD)	Elicit True Confession M (SD)	Elicit False Confession M (SD)	Coercive M (SD)	Elicit True Confession M (SD)	Elicit False Confession M (SD)
<i>Promise of Leniency (cont'd)</i>						
Implicitly suggesting a more lenient charge if suspect confesses.	5.86 (1.12)	5.18 (1.53)	4.84 (1.73)	4.73 (1.49)	5.86 (1.12)	5.18 (1.53)
Implicitly suggesting a more lenient sentence if suspect confesses.	5.86 (1.12)	5.23 (1.47)	4.80 (1.70)	4.66 (1.50)	4.85 (1.44)	3.83 (1.76)
<i>Accusation and Confrontation</i>						
Repeatedly accusing a suspect of committing the crime.	4.66 (1.50)	4.66 (1.50)	4.66 (1.50)	4.66 (1.50)	4.66 (1.50)	4.66 (1.50)
Repeatedly telling the suspect that his/her alibi is false.	5.02 (1.47)	4.34 (1.52)	4.14 (1.63)	4.47 (4.49)	4.08 (4.14)	3.50 (1.78)
Repeatedly cutting off the suspect's denials of guilt.	4.95 (1.53)	4.00 (1.56)	3.71 (1.59)	4.23 (1.57)	3.74 (1.65)	3.37 (1.73)
<i>Request and Presentation of Evidence</i>						
Asking the suspect to take a lie detector test.	4.11 (1.64)	3.50 (1.62)	2.82 (1.70)	3.05 (1.75)	3.86 (1.71)	2.53 (1.68)
Giving suspects a lie detector test and truthfully telling them that the results are inconclusive.	3.16 (1.76)	3.07 (1.78)	2.96 (1.81)	2.72 (1.85)	3.21 (1.75)	2.65 (1.62)
Giving suspects a lie detector test and truthfully telling them that the results indicate they are lying.	4.27 (1.86)	4.52 (1.63)	4.13 (1.75)	3.40 (2.03)	4.83 (1.68)	3.67 (1.77)

Perceptions. Defense attorneys rated fifteen out of eighteen tactics as significantly more coercive than did community members.¹⁴¹ Items that were not statistically significant were repeated accusation, repeatedly saying the suspect's alibi is false, and truthfully telling the suspect that their polygraph results are inconclusive.¹⁴²

Defense attorneys rated the majority of the tactics as equally likely to elicit both true and false confessions from suspects.¹⁴³ Unexpectedly, defense attorneys rated both implicit and explicit threats of harm, as well as actual violence, as *more* likely to elicit false confessions than true confessions.¹⁴⁴

Further, defense attorneys rated twelve out of eighteen tactics as significantly more likely to elicit a false confession than did community members.¹⁴⁵ These twelve tactics included all of the false evidence ploys, and implicit *and* explicit promises and threats. Defense attorneys also saw false-evidence ploys and implicit and explicit promises and threats as more likely to elicit true confessions than did community members.¹⁴⁶ Table 3 shows all means.

b. Knowledge

Knowledge Items. Knowledge items served to assess participants' knowledge of important psychological findings related to interrogations and confessions. These topics include: (a) deceptive behaviors; (b) deception detection; (c) suspects' *Miranda* comprehension; (d) distinguishing between true and false confessions; and (e) vulnerable individuals. Participants answered two to four questions per category to assess their knowledge. Questions were presented in a random order. Some examples of statements presented include: "Police officers are more skilled than the general public at detecting deception"; "Suspects under age 16 can satisfactorily understand *Miranda* rights"; and "When watching a videotaped statement given by a defendant, one can distinguish between true and false confessions." Participants then estimated the role that false confessions play in wrongful convictions by estimating: "Out of 100 cases of wrongful felony convictions, how many, on average, are due in part to a false confession?" Table 4 shows a full list of items and participants' average ratings of these items:

¹⁴¹ All *ps* < .028.

¹⁴² All *ps* > .090.

¹⁴³ All *ps* > .107.

¹⁴⁴ All *ps* < .042.

¹⁴⁵ All *ps* < .002.

¹⁴⁶ All *ps* < .038.

Table 4. *Knowledge of Interrogation and Confession Issues*

<i>Question</i> ¹⁴⁷	<i>Defense Attorneys</i>	<i>Community Members</i>
	M (SD)	M (SD)
<i>Deception Detection</i>		
Police officers are more skilled at detecting deception than the general population.*	3.14 (1.70)	4.76 (1.44)
Properly trained individuals can detect deception by observing a person's body language.*	3.89 (1.76)	5.40 (1.28)
How good are you at identifying when a suspect is lying or telling the truth?***	51.3% (20.3)	40.0% (21.2)
<i>Miranda Rights</i>		
The general population can satisfactorily understand <i>Miranda</i> rights.*	2.55 (1.41)	5.02 (1.44)
Suspects under age 16 can satisfactorily understand <i>Miranda</i> rights.*	1.73 (1.07)	3.42 (1.56)
Intellectually disabled suspects can satisfactorily understand <i>Miranda</i> rights.*	1.21 (.65)	2.40 (1.38)
In general, what percentage of suspects waive their <i>Miranda</i> rights?*	74.9% (15.8)	38.25% (24.6)
What percentage of guilty suspects waive their <i>Miranda</i> rights?*	68.7% (18.4)	28.8% (19.7)
<i>False Confessions</i>		
What percentage of innocent suspects waive their <i>Miranda</i> rights?*	78.3% (19.7)	44.8% (29.7)
Out of 100 cases of wrongful felony convictions, how many, on average, are due in part to a false confession?	45.1% (26.2)	29.5% (24.9)
Juvenile suspects are more likely to falsely confess than the average adult	5.77 (1.19)	5.45 (1.23)
Mentally ill suspects are more likely to falsely confess than the average adult.**	6.32 (1.01)	5.97 (1.29)
Intellectually disabled suspects are more likely to falsely confess than the average adult.**	6.30 (.97)	5.88 (1.22)
When watching a videotaped statement given by a defendant, people are able to distinguish between true and false confessions.**	3.39 (1.49)	3.90 (1.24)
False confessions will not contain facts only the true perpetrator could know.*	2.91 (1.65)	4.81 (1.54)

¹⁴⁷ A single asterisk (*) indicates significant differences at $p < .001$. A double asterisk (**) indicates significant differences at $p < .05$.

False confessions will not contain vivid details about the crime.*	2.39 (1.36)	4.07 (1.70)
I can distinguish between true and false confessions.*	2.11 (1.09)	3.50 (1.31)
Jurors can distinguish between true and false confessions.*	2.11 (1.09)	3.50 (1.31)
Judges can distinguish between true and false confessions.*	2.36 (1.26)	3.94 (1.37)

Knowledge. Regarding *Miranda*, a series of independent t-tests showed that defense attorneys were less likely than community members to think the general population, juvenile suspects, and intellectually disabled suspects understood *Miranda* rights.¹⁴⁸ Regarding the risk of false confession, a series of independent t-tests showed that defense attorneys were more likely than community members to think that intellectually disabled and mentally ill suspects were at higher risk of false confession.¹⁴⁹ However, defense attorneys and community members were equally likely to think that juveniles were at higher risk of false confession.¹⁵⁰

A series of independent t-tests showed that defense attorneys and community members expressed similar confidence in their own ability to distinguish true from false confessions,¹⁵¹ whereas community members were more likely to think that judges and juries could distinguish between true and false confessions than were defense attorneys.¹⁵² Similarly, defense attorneys were less likely than community members to think that false confessions lacked vivid details about the crime or that they contained true details that only the true perpetrator could know.¹⁵³ Table 4 shows all means.

B. Study 2

The second study uses an experimental design to examine what factors influence defense attorneys' decisions to go to trial and what strategies they employ at trial in disputed-confession cases. We manipulate interrogation pressure and evidence strength to examine defense attorneys' trial predictions and strategies in disputed-confession cases. We predict that defense attorneys will rate the high-pressure

¹⁴⁸ All $ps < .001$.

¹⁴⁹ All $ps < .05$.

¹⁵⁰ $p = .087$.

¹⁵¹ $t(243) = -.69, p = .49$.

¹⁵² All $ps < .001$.

¹⁵³ All $ps < .001$.

interrogation as more coercive than the low-pressure interrogation, but they will rate the defendants in the low- and high-pressure interrogations equally likely to have committed the crime. We also predict that participants will be equally likely to recommend a plea bargain in high- and low-pressure interrogations. However, we expect evidence strength to moderate this effect, such that when the physical evidence is inconclusive, defense attorneys will be more swayed by the presence of a confession than when it clearly suggests innocence. We also hypothesize that participants will consider confession cases as having stronger evidence of guilt and will predict a lower chance of winning—regardless of the strength of the physical evidence—than denial cases. We make no predictions about participants’ trial strategies, as those questions were primarily exploratory in nature.

1. Participants

Participants were 145 self-identified criminal defense attorneys recruited via email for an online study of “Attorney Decision-Making.” Participants were predominantly White (88.9%), with slightly more male participants (58.1% male, 41.9% female). Participants reported an average of 15.44 ($SD = 12.43$) years of experience (range: 0.67–54). Participants reported practicing in thirty-four different states, with the majority practicing in South Carolina (13.10%) and Virginia (12.41%). About half of the sample (53.1%) had served as lead counsel on at least one disputed-confession case. Table 5 shows the full demographics¹⁵⁴:

¹⁵⁴ Some participants did not provide demographic information.

Table 5. *Demographic Characteristics of Study 2 Participants*

	N	%	Mean	SD	Range
<i>Sex</i>					
Male	79	58.1	-	-	-
Female	57	41.9	-	-	-
<i>Race/Ethnicity</i>					
African American	5	3.7	-	-	-
Asian American	3	2.2	-	-	-
Hispanic/Latinx American	3	2.2	-	-	-
Multi-Racial	1	0.7	-	-	-
Native American/American Indian	1	0.7	-	-	-
Non-Hispanic Caucasian	120	88.9	-	-	-
Other	2	1.5	-	-	-
<i>State</i>					
Alabama	8	5.52	-	-	-
California	13	8.97	-	-	-
Connecticut	1	0.69	-	-	-
Washington, DC	1	0.69	-	-	-
Florida	13	8.97	-	-	-
Georgia	9	6.21	-	-	-
Indiana	1	0.69	-	-	-
Kentucky	10	6.90	-	-	-
Louisiana	6	4.14	-	-	-
Maine	3	2.07	-	-	-
Maryland	7	4.82	-	-	-
Massachusetts	3	2.07	-	-	-
Michigan	1	0.69	-	-	-
Minnesota	3	2.07	-	-	-
Missouri	2	1.38	-	-	-
North Carolina	5	3.45	-	-	-
New York	3	2.07	-	-	-
New Hampshire	1	0.69	-	-	-
New Jersey	2	1.38	-	-	-
Ohio	3	2.07	-	-	-
Oklahoma	1	0.69	-	-	-
Pennsylvania	1	0.69	-	-	-
South Carolina	19	13.10	-	-	-
South Dakota	1	0.69	-	-	-
Tennessee	4	2.76	-	-	-
Virginia	4	2.76	-	-	-
<i>Years Experience</i>	-	-	15.44	12.43	.67–54

Participation took approximately forty minutes and participants received a forty-dollar Amazon.com gift card for their time.

2. Procedure and Study Design

All data were collected online via Qualtrics.com. Upon logging into the website, participants consented to participating in a study and indicated what type of attorney they were to ensure eligibility. Participants were instructed that they would read a brief case summary and answer some questions about their trial strategy and their perceptions of the evidence. They were encouraged to take notes, as they would not be able to go back during the study.

This study used an experimental design to test defense attorneys' decision-making and trial strategies in a disputed-confession case. Participants were randomly assigned to read one of six trial summaries in a 3 (Confessions: Denial, Low Pressure, High Pressure) \times 2 (Evidence: Inconclusive, Exculpatory) factorial design. Although trial summaries can create a somewhat artificial experience, the benefits of using an experimental design in which we can control and isolate the effects of the variables in question are key in initial studies of a topic.

3. Study Materials

a. Case Summary

In each condition, participants read the same one-page case summary, entitled *People v. James Wilson*. The summary described the discovery of the victim, Mary Summers, who was raped and bludgeoned to death in her apartment; her jewelry and credit cards were also missing. Witnesses reported seeing a neighbor, the defendant James Wilson, arguing with the victim several times in the weeks prior to the incident in question. In all conditions, the police arrested Mr. Wilson and took him to the station for questioning, where they noted that Wilson had a history of heavy drinking and could not account for his whereabouts on the night in question.

b. Confession Manipulation

By random assignment, participants read one of three accounts of the interrogation. In the two confession conditions, the defendant provided a written confession, modeled after a typical narrative

confession¹⁵⁵ that included a motive, crime details, and an apology. In the *denial condition*, Wilson strongly denied—in writing—that he had anything to do with the crime, stating he was at a party on the night in question. In the *low-pressure* condition, the defendant confessed after thirty minutes of interrogation. After confessing, he recanted his confession, claiming he was innocent. A videotape of the interrogation confirmed that the interrogating detectives did not threaten or mistreat the defendant. In the *high-pressure* condition, the defendant was interrogated for fifteen hours in a windowless room. After confessing, the defendant recanted his confession, saying that he only confessed because the interrogating detective repeatedly yelled at him and threatened him with the death penalty while repeatedly unholstering his gun. A videotape of the interrogation corroborated the defendant's story.

c. Evidence Manipulation

By random assignment, participants read one of two results of DNA testing. In the *inconclusive* condition, investigators tried to preform DNA testing on semen recovered from the victim, but no semen was present, only spermicide suggesting that the perpetrator used a condom. In the *exculpatory* condition, investigators performed DNA testing on the semen recovered from the victim, but the DNA profile did not match that of the defendant. In all conditions, participants read that hairs found in the victim's grasp were tested against the defendant's hair, but the test results were inconclusive, and that a search of Wilson's apartment did not find either the jewelry or Summer's credit cards.

4. Measures

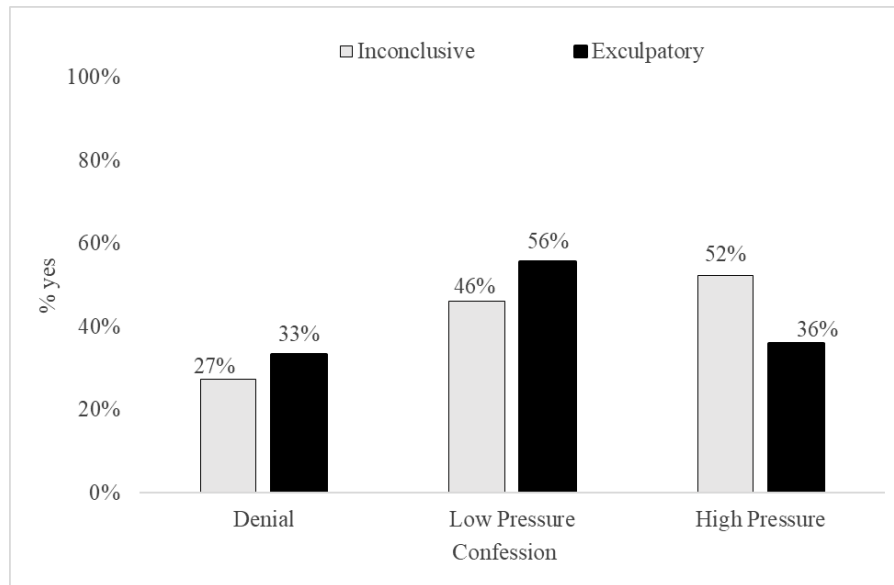
After reading the case summary, participants answered a series of questions to assess their perceptions of the evidence and their trial strategy.

a. Perceptions of the Case

First, participants indicated whether or not they would try to negotiate a plea deal for the defendant and why. Overall, participants would try to negotiate a plea bargain 40% of the time. Neither confession, evidence strength, nor the interaction term were significant predictors of whether the participants would negotiate a plea bargain¹⁵⁶:

¹⁵⁵ See generally Sara C. Appleby et al., *Police-Induced Confessions: An Empirical Analysis of Their Content and Impact*, 19 PSYCHOL. CRIME & L. 111, 115–16 (2012) (discussing the results of a survey of the contents of false confessions); Garrett, *supra* note 1, at 1066.

¹⁵⁶ $-2LL = 193.36$, $\chi^2(5, N = 149) = 8.27$, $p = .142$.

Figure 1. *Would you try to negotiate a plea bargain?*

For participants who said they would not try to negotiate a plea deal, the majority cited a lack of evidence (70%); only 17% said they would not try to negotiate a plea because the confession was coerced. For those that would try to negotiate a plea, the majority said they wanted to present their client with options (70%); only 11% said they would try to negotiate a plea because of the confession. In sum, defense attorneys endorsed negotiating a plea bargain equally across cases, regardless of interrogation pressure or evidence strength, with very few indicating the confession as their reason for doing so (or not).

Next, on a scale of 0% to 100%, participants rated the likelihood that the defendant committed the crime. Participants rated the defendant in the low-pressure ($M = 29.66$, $SD = 24.16$) and high-pressure ($M = 27.16$, $SD = 21.69$) conditions equally likely to have committed the crime ($p = .822$). Likelihood ratings for the denial condition ($M = 18.72$, $SD = 14.83$) were significantly lower than the low-pressure condition ($p = .027$), but not significantly different from the high-pressure condition ($p = .129$).¹⁵⁷ Participants rated the defendant as more likely to have committed the crime in the inconclusive condition ($M = 30.94$, $SD = 22.64$) than in the exculpatory condition ($M = 20.50$, $SD = 18.62$).¹⁵⁸ There was not a significant confession by evidence-strength interaction.¹⁵⁹ In sum, even though they did not affect the

¹⁵⁷ $F(2, 130) = 3.70$, $p = .027$, $\eta_p^2 = .05$.

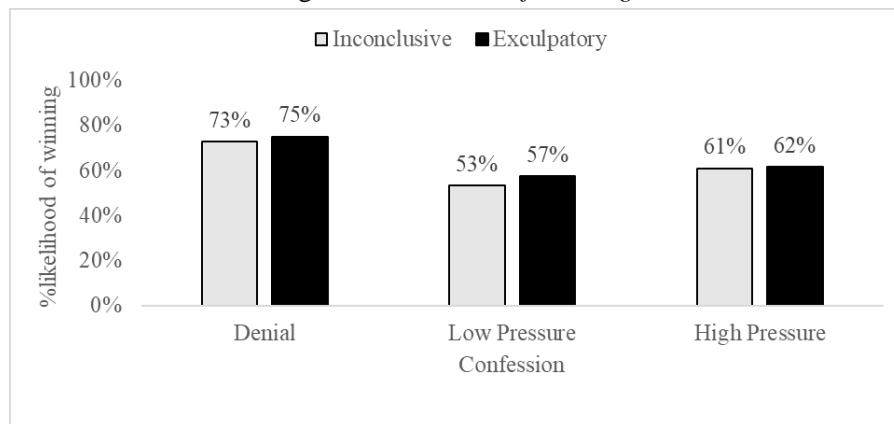
¹⁵⁸ $F(1, 130) = 8.13$, $p = .005$, $\eta_p^2 = .06$.

¹⁵⁹ $F(2, 130) = 1.89$, $p = .156$.

likelihood of negotiating a plea, both interrogation pressure and evidence strength affected defense attorneys' perceptions of guilt.

Finally, on a scale of 0% to 100%, participants rated their likelihood of winning the case at trial. Participants predicted a lower likelihood of winning in both the low-pressure ($M = 55.41$, $SD = 22.96$) and high pressure ($M = 61.42$, $SD = 20.47$) cases than in the denial case ($M = 74.07$, $SD = 18.13$).¹⁶⁰ The two confession cases did not differ from each other ($p = .336$).¹⁶¹ Evidence strength did not affect predicted likelihood of winning,¹⁶² nor was there a significant confession by evidence-strength interaction for likelihood of winning¹⁶³:

Figure 2. *Likelihood of Winning*



In sum, defense attorneys are aware that the presence of a confession decreases their likelihood of winning, even when elicited by coercive tactics.

b. Trial Strategy

Participants were asked to imagine the defendant elected to take the case to trial and to describe their general trial strategy in their own words. In the confession conditions, the three most frequent strategies suggested were to argue a general lack of evidence (29%), argue a lack of physical evidence (28%), and to dispute the confession (24%). Table 6 shows a detailed breakdown of strategies:

¹⁶⁰ All $ps < .013$.

¹⁶¹ $F(2, 137) = 9.89$, $p < .001$, $\eta_p^2 = .13$.

¹⁶² $F(1, 137) = .44$, $p = .511$.

¹⁶³ $F(2, 137) = .08$, $p = .928$.

Table 6. *What is your general trial strategy?*

<i>General Trial Strategy</i>	N	%
No Evidence	29	29
No Physical Evidence	28	28 ¹⁶⁴
Discount Confession	24	24
Attack Policing and Prosecution	17	17
Attack Interrogation	10	10
Hire Confession Expert	6	6
Try to Suppress Confession	6	6
Argue Confession Not Corroborated	4	4
Find Alibi	2	2

Notably, interrogation pressure did not affect the frequency with which participants suggested strategies.¹⁶⁵ The presence of exculpatory DNA evidence, however, did affect the frequency with which participants suggested arguing a lack of physical evidence.¹⁶⁶

Additionally, participants in the confession conditions were asked how they would address the defendant's claim that he gave a false confession. In both the high- and low-pressure interrogation conditions, the most frequently suggested strategy was to argue a lack of evidence (42.5%). The second most common response—in both the high- and low-pressure interrogation conditions—was no response (34.5%). Across both confession conditions, only 18% of participants suggested hiring a confession expert. Table 7 shows a breakdown of strategies by interrogation pressure:

Table 7. *How would you address the confession?*

	N	%
<i>High-Pressure Strategy</i>		
Lack of Evidence	19	42
No Response	15	33
Confession Expert	8	17
<i>Low-Pressure Strategy</i>		
Lack of Evidence	23	43
No Response	19	36
Confession Expert	10	19

In sum, for general trial strategy and confession-specific strategies, defense attorneys routinely failed to suggest using confession-specific interventions in court.

¹⁶⁴ Main effect of DNA, -2LL (108.16), $\chi^2(3, N = 99) = 9.77, p = .021$.

¹⁶⁵ All *ps* > .414.

¹⁶⁶ -2LL (108.16), $\chi^2(3, N = 99) = 9.77, p = .021$.

c. Perceptions of the Confession

Finally, participants in the confession conditions evaluated the interrogation of the defendant and his confession. First, participants indicated whether they thought the confession was *voluntary* or *not voluntary*. Overall, 84% of participants rated the defendant's confession as not voluntary; more granularly, 78% of participants in the low-pressure condition and 90.9% of participants in the high-pressure condition said the confession was not-voluntary. This difference was not statistically significant.¹⁶⁷ Evidence strength also did not affect voluntariness ratings.¹⁶⁸ In sum, defense attorneys viewed confessions as not voluntary regardless of interrogation pressure or evidence strength.

Next, on a scale of 1 to 10 (1 = *not at all*, 10 = *very*), participants rated their confidence in their voluntariness rating. The two measures were then combined to create a scaled measure of voluntariness (-10 = *not voluntary*, 10 = *voluntary*). Participants in the high-pressure condition ($M = -7.20$, $SD = 4.30$) were more confident that the confession was not voluntary than participants in the low-pressure condition ($M = -4.76$, $SD = 5.85$).¹⁶⁹ Evidence strength did not affect scaled confidence ratings,¹⁷⁰ nor was there an interrogation-pressure by evidence-strength interaction.¹⁷¹ In sum, although their dichotomous voluntary judgments did not differ, the more sensitive measure—scaled voluntary confidence—showed distinctions in voluntariness ratings. Then, on a 1 to 10 scale (1 = *not at all*, 10 = *very*), participants evaluated the coerciveness of the interrogation. The high-pressure condition ($M = 9.02$, $SD = 1.51$) was rated as significantly more coercive than the low-pressure condition ($M = 7.18$, $SD = 1.97$, $p < .001$); the low-pressure condition was rated significantly more coercive than the denial condition ($M = 4.56$, $SD = 2.02$, $p < .001$).¹⁷² Evidence strength had no effect on coerciveness ratings,¹⁷³ nor was there a significant interrogation-pressure by evidence-strength interaction¹⁷⁴:

¹⁶⁷ $\chi^2(3, N = 94) = 2.91, p = .088, \phi = -.18$.

¹⁶⁸ $\chi^2(3, N = 94) = .21, p = .644, \phi = -.05$.

¹⁶⁹ $F(1, 90) = 5.19, p = .025, \eta_p^2 = .05$.

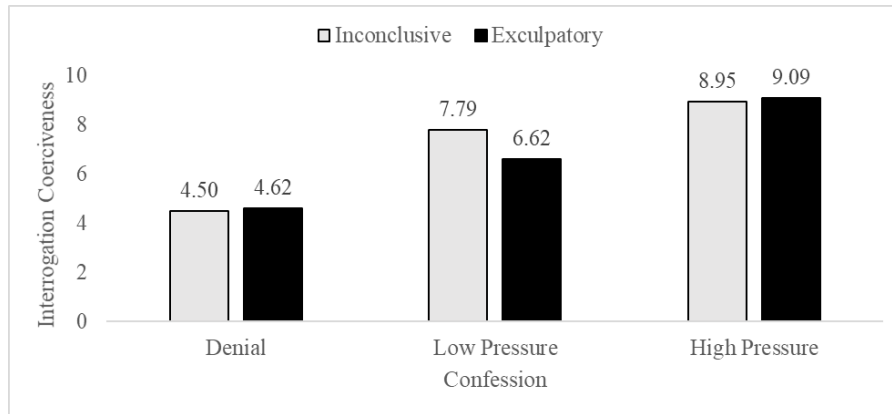
¹⁷⁰ $F(1, 90) = .35, p = .558$.

¹⁷¹ $F(1, 90) = .16, p = .69$.

¹⁷² $F(2, 131) = 71.66, p < .001, \eta_p^2 = .52$.

¹⁷³ $F(1, 131) = 1.06, p = .306$.

¹⁷⁴ $F(2, 131) = 2.21, p = .114$.

Figure 3. *Coerciveness of Interrogation*

In sum, defense attorneys were able to accurately distinguish low- and high-pressure interrogations.

Finally, participants were asked to predict how likely jurors would be to rate the confession as voluntary and how likely jurors would be to believe the confession, both on 1-to-10 scales (1 = *not at all*, 10 = *very*). Regarding voluntariness, participants in the low-pressure condition ($M = 6.56$, $SD = 2.23$) predicted jurors would be more likely to say the confession was voluntary than participants in the high-pressure condition ($M = 5.11$, $SD = 2.12$).¹⁷⁵ Evidence strength did not affect voluntariness predictions,¹⁷⁶ nor was there an interrogation-pressure by evidence-strength interaction.¹⁷⁷ Regarding believability, neither interrogation pressure,¹⁷⁸ evidence strength,¹⁷⁹ nor the interrogation-pressure by evidence-strength interaction¹⁸⁰ affected participants' predictions of jurors' believing the confession. In sum, defense attorneys expected jurors to be equally likely to believe the defendants' confession regardless of interrogation pressure or evidence strength.

¹⁷⁵ $F(1, 90) = 10.07$, $p = .002$, $\eta_p^2 = .10$.

¹⁷⁶ $F(1, 90) = .95$, $p = .331$.

¹⁷⁷ $F(1, 90) = .49$, $p = .488$.

¹⁷⁸ $F(1, 90) = 2.11$, $p = .150$.

¹⁷⁹ $F(1, 90) = .02$, $p = .888$.

¹⁸⁰ $F(1, 90) = .01$, $p = .909$.

VII. CONCLUSIONS

A. *Summary of Results*

In his 2012 article *Why Confessions Trump Innocence*, prominent confessions researcher Saul Kassin hypothesized that the presence of a confession may lead defense counsel to feel pessimistic, maybe even helpless, inadvertently reducing the quality of the defense provided to the defendant and increasing the rate of guilty pleas in confession cases.¹⁸¹ This hypothesis was based on anecdotal evidence and limited archival data. For example, an analysis of the first 273 DNA exonerations showed that false-confession cases were more likely to involve bad defense lawyering (9.09%) than non-confession cases (3.38%).¹⁸² Additionally, analysis of Innocence Project cases showed that false-confession cases were four times more likely to lead to a guilty plea than non-confession cases.¹⁸³ The current studies sought to test these hypotheses empirically by examining defense attorneys' knowledge of false-confessions issues and their trial strategies in potential false-confession cases.

Overall, results suggest that defense attorneys are more knowledgeable about false confessions than community members and that the presence of a confession does not increase their likelihood of trying to negotiate a plea bargain for their client. Results also showed that defense attorneys are aware of the power of confession evidence, predicting a lower chance of winning confession cases compared to the denial case. When asked about their trial strategies, however, the results painted a different picture. As far as their general trial strategy, even in the presence of a confession, defense attorneys reported being more likely to focus on the lack of evidence or lack of physical evidence; only approximately one-fourth of participants suggested they would try to discount the confession. Similarly, when asked specifically how they would address the confession, participants again said they would focus on the lack of evidence (42.5%) or simply did not answer the question (34.5%). Only 18% of participants suggested calling a confession expert.

¹⁸¹ Saul M. Kassin, *Why Confessions Trump Innocence*, 67 AM. PSYCHOLOGIST 431, 438–39 (2012).

¹⁸² Saul M. Kassin & Jeff Kukucka, *Confession Errors as “Structural Defects”*, Poster Presented at the Annual Meeting of the American Psychology-Law Society, San Juan, P.R. (2012), https://docs.google.com/file/d/0B75_hDMNaiYeeExvUjB4YTNITXM [<https://perma.cc/PZE4-7DL8>].

¹⁸³ Allison D. Redlich, *False Confessions, False Guilty Pleas: Similarities and Differences*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS 49, 60 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

These results support initial findings from evaluations of attorneys' strategies in eyewitness cases.¹⁸⁴

B. *Limitations*

The current studies are limited in two ways. First, attorney participants were recruited via email, likely creating a response bias. Although we made no mention of interrogations and confessions in recruitment materials, the kinds of people who respond to email surveys are inherently different than those who do not.¹⁸⁵ Thus, these studies should be replicated with a more representative sample of attorneys for generalizability. Second, in Study 2, the materials are brief and create an artificial situation in which participants were limited in their access to case information. It is well documented, however, that many attorneys have limited time with their clients before their first arraignment¹⁸⁶ or only receive discovery from prosecutors a few days before trial.¹⁸⁷ Nevertheless, replicating these studies by giving participants access to more extensive information is warranted. Given that this is the first study of defense attorneys' decision-making in disputed-confession cases, we believe that, in spite of these limitations, the data make a valuable contribution to the literature.

C. *Future Research*

Unfortunately, we do not have data on *why* participants are more focused on a general lack of evidence than confession-specific interventions. Perhaps defense attorneys are concerned that focusing attention on the confession will make it harder for jurors to discount. Or, perhaps, defense attorneys are concerned that focusing attention on the confession will cause prosecutors to redouble their efforts to prove the confession is true. Future research should examine not only defense

¹⁸⁴ See, e.g., Mumby, *supra* note 102, at 56.

¹⁸⁵ BETH MORLING, RESEARCH METHODS IN PSYCHOLOGY: EVALUATING A WORLD OF INFORMATION 187 (2d ed., 2015).

¹⁸⁶ Cf., e.g., STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, AM. BAR ASS'N, & POSTLETHWAITE & NETTERVILLE, THE LOUISIANA PROJECT: A STUDY OF THE LOUISIANA DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS 20 (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf [<https://perma.cc/64B2-6JDN>] (explaining “the Louisiana public defense system is currently deficient 1,406 FTE attorneys” and “only has the capacity to handle 21 percent of the workload” to be able to “provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Louisiana”).

¹⁸⁷ See Jenia I. Turner & Allison D. Redlich, *Two Models of Pre-Plea Discovery in Criminal Cases: An Empirical Comparison*, 73 WASH. & LEE L. REV. 285, 288 (2016).

attorneys' trial strategies in a variety of potential wrongful-conviction cases, but their motives behind their strategies. Additionally, future research should examine the effectiveness of these strategies (*e.g.*, focusing on lack of evidence versus confession interventions, or both) to provide defense attorneys with evidence-based approaches to securing their innocent client's acquittal. Research shows that the presence of a confession tends to lead to corroboration inflation (*i.e.*, the tendency for a confession to make ambiguous evidence look more incriminating), thus it may be necessary for defense attorneys to focus on both the problems with the confession and the problems with the other evidence. Finally, because prosecutors hold the majority of the power in the criminal justice system, research should also examine prosecutors' knowledge of confession issues and trial strategies in disputed-confession cases to better understand what factors affect their decisions to drop, plead, or try a disputed-confession case.

D. *Recommendations for Practice*

False confessions are a major contributing factor in wrongful-conviction cases. Consequently, researchers have devoted a significant amount of resources towards understanding why people confess to crimes they did not commit as well as why people so readily believe confessions, even when it is not logically appropriate to do so, such as when the crime-scene DNA does not match the confessor. The results of this body of research are clear: the standard police interrogation is inherently coercive, even for psychologically health adults, and, due to the persuasive power of confession evidence, once a suspect confesses, she is almost certain to be convicted. Psycho-legal researchers regularly proposed two safeguards to limit the number of false confessors wrongfully convicted: videotaping interrogations from beginning to end¹⁸⁸ and using expert testimony in court.¹⁸⁹ Early studies on the effectiveness of these safeguards are promising.¹⁹⁰ Given the tremendous power that confession evidence has over triers of fact, however, more interventions are likely needed; hence our focus on attorneys' knowledge of false confessions

¹⁸⁸ Kassin et al., *supra* note 1, at 25–27.

¹⁸⁹ Brian Cutler et al., *Expert Testimony on Interrogation and False Confession*, 82 UMKC L. REV. 589, 621–22 (2014).

¹⁹⁰ See, *e.g.*, Kelsey S. Henderson & Lora M. Levett, *Can Expert Testimony Sensitize Jurors to Variations in Confession Evidence?*, 40 LAW & HUM. BEHAV. 638, 647–48 (2016); Saul M. Kassin et al., *Does Video Recording Inhibit Crime Suspects? Evidence From a Fully Randomized Field Experiment*, 43 LAW & HUM. BEHAV. 45, 49–52 (2019); Saul M. Kassin et al., *Police Reports of Mock Suspect Interrogations: A Test of Accuracy and Perception*, 41 LAW & HUM. BEHAV. 230, 240–41 (2017).

and trial strategies in disputed-confession cases. Attorneys are the key intervening step between confession and conviction; thus, it is crucial that we increase efforts to educate both defense attorneys and prosecutors about key interrogation and confession issues. Moreover, it is paramount for psychologists and criminal attorneys to come together to create evidence-based practices for reducing wrongful convictions¹⁹¹ by testing the effectiveness of key confession interventions in pre-trial hearings and at trial. Finally, one reason why research on attorney decision-making lags behind research on jury decision-making is difficulty in recruiting attorney participants relative to community participants.¹⁹² Thus, it is also important that psycho-legal researchers and practicing attorneys work together to not only identify key research questions regarding attorney decision-making, but also identify strategies for obtaining attorney participants.

¹⁹¹ See CONVICTION OF THE INNOCENT: LESSONS FROM PSYCHOLOGICAL RESEARCH (Brian L. Cutler ed., 2012).

¹⁹² See Edkins, *supra* note 99, at 417; Pezdek & O'Brien, *supra* note 89, at 237.