

THE DECISION TO CONFESS FALSELY TWENTY-FIVE YEARS
LATER: WINDOWS AND WALLS IN EMPIRICAL
PSYCHOLOGICAL AND LEGAL SCHOLARSHIP

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In 1997 Richard Ofshe and I published *The Decision to Confess Falsely: Rational Choice and Irrational Action* in the *Denver Law Review* as part of an interdisciplinary symposium on coercion, exploitation, and the law.¹ This article has since been downloaded over 1,600 times from my SSRN webpage² and cited numerous times in legal scholarship,³ psychological scholarship,⁴ and published appellate court opinions.⁵ *The Decision to Confess Falsely* is a seminal article that broke new ground in the social scientific study of police interrogation influence and suspect

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1. Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997).

2. See Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1134046 (last visited Mar. 12, 2023).

3. See, e.g., Eve Brensike Primus, *The Future of Confession Law: Toward Rules for the Voluntariness Test*, 114 MICH. L. REV. 1, 44 n.240–41 (2015); Susan R. Klein, *Identifying and (Re)formulating Prophylactic Rules, Safe Harbors, and Incidental Rights in Constitutional Criminal Procedure*, 99 MICH. L. REV. 1030, 1075 n.202 (2001); George C. Thomas III, *The End of the Road for Miranda v. Arizona?: On the History and Future of Rules for Police Interrogation*, 37 AM. CRIM. L. REV. 1, 18 n.81 (2000).

4. See, e.g., Wendy Paton, Stella A. Bain, Lynsey Gozna, Elizabeth Gilchrist, Derek Heim, Euan Gardner, David Cairns, Paul McGranaghan, & Rico Fischer, *The Combined Effects of Questioning Technique and Interviewer Manner on False Confessions*, 15 J. INVESTIGATIVE PSYCH. & OFFENDER PROFILING 335, 337 (2018); Melissa B. Russano, Fadia M. Narchet, Steven M. Kleinman, & Christian A. Meissner, *Structured Interviews of Experienced HUMINT Interrogators*, 28 APPLIED COGNITIVE PSYCH. 847, 847 (2014); Krista D. Forrest, William Douglas Woody, Sara E. Brady, Keller C. Batterman, Bradley J. Stastny, & Jennifer A. Bruns, *False-Evidence Ploys and Interrogations: Mock Jurors' Perceptions of False-Evidence Ploy Type, Deception, Coercion, and Justification*, 30 BEHAV. SCIS. & L. 342, 344, 346–47, 360 (2012).

5. See, e.g., Bell v. Ercole, No. 05 CV 4532(ERK), 2011 U.S. Dist. LEXIS 122314, at *40, *44 (E.D.N.Y. Oct. 21, 2011); Commonwealth v. DiGiambattista, 813 N.E.2d 516, 523, 525 (Mass. 2004); Commonwealth v. Harrell, 65 A.3d 420, 447 (Pa. Super. Ct. 2013); Commonwealth v. Scoggins, 789 N.E.2d 1080, 1084 (Mass. 2003); Commonwealth v. Wright, 14 A.3d 798, 816 n.16 (Pa. 2011); Dorsey v. United States, 60 A.3d 1171, 1203 n.108 (D.C. 2013); Harris v. City of Chicago, No. 14 C 4391, 2017 U.S. Dist. LEXIS 85548, at *9 (N.D. Ill. June 5, 2017); *In re Elias V.*, 237 Cal. App. 4th 568, 578 n.6 (Cal. Ct. App. 2015); People v. Linton, 302 P.3d 927, 955–56 (Cal. 2013); People v. Rosario, 862 N.Y.S.2d 719, 725 (N.Y. Sup. Ct. 2008); People v. Shayne, C039622, 2003 Cal. App. Unpub. LEXIS 107, at *8–9 (Cal. Ct. App. Jan. 7, 2003); People v. Valle, 939 N.E.2d 10, 21 (Ill. App. Ct. 2010); Scott v. State, 165 S.W.3d 27, 54 n.14 (Tex. App. 2005); Singletary v. Fischer, 365 F. Supp. 2d 328, 336 (E.D.N.Y. 2005); State v. Baker, 465 P.3d 860, 873 n.17, 877–78 (Haw. 2020); State v. Fernandez-Torres, 337 P.3d 691, 702 (Kan. Ct. App. 2014); State v. Gonzalez, 268 A.3d 329, 345 (N.J. 2022); State v. Jerrell C.J., 674 N.W.2d 607, 614 (Wis. Ct. App. 2003); State v. Lawrence, 920 A.2d 236, 272 n.10 (Conn. 2007); State v. Mauchley, 67 P.3d 477, 483 (Utah 2003); State v. Rettenberger, 984 P.2d 1009, 1016 (Utah 1999); United States v. Begay, 497 F. Supp. 3d 1025, 1072–73 (D.N.M. 2020); United States v. Monroe, 264 F. Supp. 3d 376, 392 n.147 (D.R.I. 2017); United States v. Rodgers, 186 F. Supp. 2d 971, 977–78 (E.D. Wis. 2002).

decision-making, psychological coercion, and false confessions. In this brief Note, I discuss how *The Decision to Confess Falsely* has made enduring contributions to research literature on the psychology of police interrogation, coercion, and confessions in the last twenty-five years. I will also discuss how the article has been received (and sometimes ignored) in empirical psychological and legal scholarship. And I will discuss the importance of the article for future empirical and social scientific research on the psychology and effects of police interrogation practices, as well as the prevention of wrongful convictions based on false confession evidence.

The Decision to Confess Falsely set out, as the first two sentences of the article indicate, to answer two fundamental questions: "How do police elicit confessions from the innocent? Why do the innocent confess to crimes that carry lengthy prison sentences, life imprisonment[,] or execution?"⁶ To do so theoretically, we drew on microeconomic game theory,⁷ the social psychology of influence,⁸ and the earlier work of Barrie Irving and Linden Hilgendorf⁹ to develop: (1) a process model of how American police interrogations sequentially unfold; (2) the psychological goals police interrogators seek to accomplish; (3) the interrogation techniques American police use; (4) the psychological effects of these techniques on innocent suspects; and (5) how and why these interrogation techniques sometimes lead innocent suspects to make or agree to false confessions. Empirically, we illustrated the step-by-step process of psychological influence during interrogation, and its effect on innocent suspects' decision-making, using transcripts of recorded interrogations and case materials that Richard Ofshe and I had collected from 1987 to 1997.

The Decision to Confess Falsely empirically explained and illustrated how police interrogators successfully move (presumed guilty but factually innocent)¹⁰ suspects from denial to admission.¹¹ To accomplish this goal, American police interrogators first seek to break down suspects' confidence in their denials of guilt by causing them to perceive that they are caught, that no one will believe their assertions of innocence, and that

6. Ofshe & Leo, *supra* note 1, at 981.

7. See generally JOHN VON NEUMANN & OSKAR MORGENTHAU, *THEORY OF GAMES AND ECONOMIC BEHAVIOR* (1944).

8. See generally ELLIOT ARONSON, *THE SOCIAL ANIMAL* (9th ed. 2004); ROBERT B. CIALDINI, *INFLUENCE: THE PSYCHOLOGY OF PERSUASION* (1983).

9. Barrie Irving & Linden Hilgendorf, *Police Interrogation: A Case Study of Current Practice*, ROYAL COMM'N ON CRIM. PROC., Research Study No. 2 (1980); Barrie L. Irving & Linden Hilgendorf, *Police Interrogation: The Psychological Approach*, ROYAL COMM'N ON CRIM. PROC., Research Study No. 1 (1980); E. Linden Hilgendorf & Barrie Irving, *A Decision-Making Model of Confessions*, in *PSYCHOLOGY IN LEGAL CONTEXTS: APPLICATIONS AND LIMITATIONS* 67 (Sally M. A. Lloyd-Bostock ed., 1981) (presenting a decision-making model of confessions after an extensive empirical examination of police interrogations in England that was commissioned by the Royal Commission on Criminal Procedure).

10. In *The Decision to Confess Falsely*, we focused primarily on the innocent. Ofshe & Leo, *supra* note 1, at 985 n.35 ("For purposes of this paper, however, we focus almost exclusively on false confessions.").

11. See generally Ofshe & Leo, *supra* note 1.

resisting the interrogators' accusations is therefore futile.¹² Second, interrogators seek to induce or incentivize suspects to believe that, given the available options for someone in their situation, it is in their best short-term and long-term interests to stop denying the interrogators' accusations and comply with the interrogators' demands and requests.¹³ In addition, *The Decision to Confess Falsely* analyzed the psychology and cumulative significance of numerous time-sequenced and goal-directed interrogation techniques (e.g., accusations,¹⁴ "false evidence ploys,"¹⁵ "the accident scenario technique,"¹⁶ and threats and promises¹⁷); the post-admission interrogation process through which interrogators format or script the suspect's confession narrative;¹⁸ and the significance and logic of the post-admission narrative for evaluating the reliability of interrogation-induced confession evidence.¹⁹ In addition, in *The Decision to Confess Falsely*, we proposed a modification of Saul Kassin and Lawrence Wrightsman's 1985 taxonomy of psychological types of false confession,²⁰ extending it to be a more empirically and analytically inclusive five-fold taxonomy.²¹ Through the interrogation transcript and case of Edgar Garrett,²² we illustrated the highly counterintuitive step-by-step process of influence and decision-making that leads suspects to make a "persuaded" false confession—a factually false confession given by someone who has lost confidence in the reliability of their memory but has nevertheless come to believe that they most likely committed the crime in question²³—and its defining characteristics.²⁴

Building on our extensive empirical and psychological analysis of real-world interrogation transcripts, as well as on my earlier published research and writing,²⁵ *The Decision to Confess Falsely* advocated that police be required to electronically record all interrogations in their entirety to provide criminal justice investigators, officials, and decision-makers (police, prosecutors, defense attorneys, judges, and juries) with an objective, comprehensive, and reviewable record of what occurred during this crucial, and often disputed, evidence-gathering process.²⁶ Specifically, a

12. *See id.* at 1004, 1041–51.

13. *Id.* at 985–86.

14. *Id.* at 1004.

15. *Id.* at 1008.

16. *Id.* at 1088.

17. Ofshe & Leo, *supra* note 1, at 1060–64, 1072, 1077.

18. *Id.* at 1096–99.

19. *Id.* at 990–94.

20. Saul M. Kassin & Lawrence S. Wrightsman, *Confession Evidence*, in *THE PSYCHOLOGY OF EVIDENCE AND TRIAL PROCEDURE* 76 (Saul M. Kassin & Lawrence S. Wrightsman eds., 1985) [hereinafter *Confession Evidence*].

21. Ofshe & Leo, *supra* note 1, at 997.

22. *Id.* at 1110–14.

23. *Id.* at 1107–08; *see also* RICHARD A. LEO, *POLICE INTERROGATION AND AMERICAN JUSTICE* 210 (2008) [hereinafter *POLICE INTERROGATION*].

24. Ofshe & Leo, *supra* note 1, at 1107–10.

25. Richard A. Leo, *Criminal Law: The Impact of Miranda Revisited*, 86. *J. CRIM. L. & CRIMINOLOGY* 621, 681 (1996).

26. Ofshe & Leo, *supra* note 1, at 1120.

full electronic recording of police interrogations would allow criminal justice officials and decision-makers to objectively resolve disputes about what police and suspects said and did during an interrogation; whether improper or high-risk interrogation techniques such as implied or explicit threats and promises were used; and whether investigators contaminated (i.e., leaked or disclosed nonpublic details) to the suspect that were then incorporated into the suspect's confession statement, as so often happens in police-induced false confessions that lead to wrongful conviction.²⁷ Indeed, it was the very existence of recorded interrogation transcripts that made the analysis and illustration of police interrogation practices and suspect decision-making in *The Decision to Confess Falsely* possible in the first place. When *The Decision to Confess Falsely* was published, only two states (Alaska²⁸ and Minnesota²⁹) required that police interrogations be electronically recorded. At the time of this writing in 2022, the number has risen to thirty.³⁰

The empirical, psychological, and social scientific study of police interrogation and false confessions dates back to 1908.³¹ This field was advanced in the 1960s and 1970s by well-known empirical researchers such as Philip Zimbardo,³² Daryl Bem,³³ and Christina Maslach,³⁴ among others,³⁵ and it was modernized in the early to mid-1980s by the pioneering research of Saul Kassin, Lawrence Wrightsman, and Gísli Guðjónsson.³⁶ By 1997, the empirical, criminological, and psychological study of police interrogation, psychological coercion, and false confessions was well-established and generally accepted in social science.³⁷ In the twenty-five years since then, the field has exploded with hundreds of experimental,

27. Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1113 (2010) [hereinafter *False Confessions*]; Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 397, 408–09, 417, 420 (2015) [hereinafter *Contaminated Confessions*].

28. *Stephan v. State*, 711 P.2d 1156, 1158, 1162 (Alaska 1985).

29. *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994).

30. See SAUL KASSIN, DUPED: WHY INNOCENT PEOPLE CONFESS—AND WHY WE BELIEVE THEIR CONFESSIONS 373–74 (2022) [hereinafter DUPED].

31. HUGO MÜNSTERBERG, ON THE WITNESS STAND: ESSAYS ON PSYCHOLOGY AND CRIME 142–45 (1908).

32. Philip Zimbardo, *Coercion & Compliance: The Psychology of Police Confessions, circa 1971*, STAN. LIBRARIES, <https://exhibits.stanford.edu/spe/catalog/jd990yz9930> (last visited Mar. 13, 2023).

33. Daryl J. Bem, *Inducing Belief in False Confessions*, 3 J. PERSONALITY & SOC. PSYCH. 707, 707 (1966).

34. Christina Maslach, *The “Truth” About False Confessions*, 20 J. PERSONALITY & SOC. PSYCH. 141, 141 (1971).

35. Edwin D. Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 42, 44 (1968).

36. Saul M. Kassin & Lawrence S. Wrightsman, *Prior Confessions and Mock Juror Verdicts*, 10 J. APPLIED SOC. PSYCH. 133, 136 (1980); Saul M. Kassin & Lawrence S. Wrightsman, *Coerced Confessions, Judicial Instruction, and Mock Juror Verdicts*, 11 J. APPLIED SOC. PSYCH. 489, 490–91 (1981); *Confession Evidence*, supra note 20, at 72; GÍSLI H. GUÐJÓNSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK 2 (Graham Davies & Ray Bull eds., 1992) (for a review of Gísli Guðjónsson's early published articles in the 1980s).

37. Saul M. Kassin, *The Psychology of Confession Evidence*, 52 AM. PSYCH. 221, 230 (1997) [hereinafter *Psychology*].

field, archival and documentary, survey, vignette, and interview-based studies, articles, and books.³⁸

The Decision to Confess Falsely was a seminal contribution to this robust research literature in 1997 and remains so today for several reasons.

First, *The Decision to Confess Falsely* was the first article to analyze and illustrate the social psychology of police interrogation practices and the elicitation of confession statements using transcripts of recorded police interrogations. In its famous *Miranda v. Arizona*³⁹ decision in 1966, the United States Supreme Court stated that there was no direct way to empirically study police interrogations in America, and therefore relied on police interrogation training manuals in their analysis as an indirect proxy for what actually occurs during police interrogation.⁴⁰ Since the *Miranda* decision, several researchers, including myself, have directly (qualitatively and quantitatively) studied the interrogation process by observing police interrogations in real time.⁴¹ But few scholars have relied on recorded interrogation transcripts,⁴² an excellent source of real-world data that has been underutilized by contemporary empirical psychological and criminological researchers who instead tend to rely on experimental data and the analysis of secondary data sources in their studies of interrogation and confession.⁴³ Fewer still have systematically analyzed recorded interrogations in the aggregate.⁴⁴ Twenty-five years after it was published, *The Decision to Confess Falsely* remains the most thoroughgoing, article-length study of interrogation and confession based on transcripts of recorded interrogations, which are arguably the best source of data available to understand the psychological effects of police practices and

38. There is substantial empirical research literature on the scientific study of police interrogation; psychological coercion; and false statements, admissions, and/or confessions. For reviews of this literature see DUPED, *supra* note 30; Gísli H. Guðjónsson, *The Science-Based Pathways to Understanding False Confessions and Wrongful Convictions*, 12 FRONTIERS PSYCH. 1, 3 (2021); WILLIAM DOUGLAS WOODY & KRISTA D. FORREST, UNDERSTANDING POLICE INTERROGATION: CONFESSIONS AND CONSEQUENCES (2020) [hereinafter UNDERSTANDING POLICE INTERROGATION]; GÍSLI GUÐJÓNSSON, THE PSYCHOLOGY OF FALSE CONFESSIONS (Graham M. Davies & Ray Bull eds., 2018).

39. 384 U.S. 436 (1966).

40. *Id.* at 448 (“Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms.”). The *Miranda* Court went on to discuss interrogation training manuals for seven pages. *Id.* at 448–55.

41. For example, see generally JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY (1966); Michael Wald, Richard Ayres, David W. Hess, Mark Schantz, & Charles H. Whitebread, II, *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519, 1521–22 (1967); Richard A. Leo, *Criminal Law: Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 268 (1996) [hereinafter *Criminal Law: Inside the Interrogation Room*]; H. RICHARD UVILLER, TEMPERED ZEAL: A COLUMBIA LAW PROFESSOR’S YEAR ON THE STREETS WITH THE NEW YORK CITY POLICE (1988); BARRY C. FELD, KIDS, COPS, AND CONFESSIONS: INSIDE THE INTERROGATION ROOM (2013).

42. See Christopher E. Kelly, Melissa B. Russano, Jeanée C. Miller, & Allison D. Redlich, *On the Road (To Admission): Engaging Suspects with Minimization*, 25 PSYCH. PUB. POL’Y & L. 166, 177 (2019) (recent counterexample).

43. See Saul M. Kassir, Steven A. Drizin, Thomas Grisso, Gísli H. Guðjónsson, Richard A. Leo, & Allison D. Redlich, *Police-Induced Confessions, Risk Factors, and Recommendations: Looking Ahead*, 34 L. & HUM. BEHAV. 49 (2010) (reviewing the field).

44. See, e.g., FELD, *supra* note 41.

techniques on suspect behavior, decision-making, and statements in the interrogation room.⁴⁵

Second, *The Decision to Confess Falsely* innovatively put forward a social psychological process model to identify, analyze, and explain the step-by-step influence process of police interrogation and its psychological effects on suspects. This was a substantial empirical and theoretical advance over most research on police interrogation and confessions present in 1997, and even now. Most empirical research on police interrogation and confessions is atheoretical and variable-centered, treats interrogations as static, and reports granular findings based on narrow research questions.⁴⁶ To be sure, this is how the day-in and day-out empirical research of normal science proceeds in other scientific disciplines as well.⁴⁷ *The Decision to Confess Falsely* stands out because it developed an empirically driven conceptual model that treated police interrogation influence and suspect decision-making as a dynamic psychological process that is sequential, cumulative, interactive, iterative and reiterative, time-sensitive, and goal-driven. *The Decision to Confess Falsely* created the blueprint for future process-oriented empirical studies of the social psychology of police interrogation and suspect confessions.⁴⁸ The field would benefit from more process-oriented (rather than only variable-oriented) empirical studies of the psychology, causes, correlates, and consequences of the decision to confess, and especially from process-oriented studies of interrogation-induced false confessions.

Third, *The Decision to Confess Falsely* introduced several foundational terms and concepts into the social science research literature on police interrogation and false confession. Significantly, in *The Decision to Confess Falsely*, Richard Ofshe and I coined the terms “false evidence ploy” (the standard and widely used⁴⁹ interrogation technique of confronting a suspect with false or fabricated evidence),⁵⁰ “contamination” (the interrogation practice of educating the suspect about nonpublic crime details),⁵¹ and the “post-admission narrative” (the account of how and why the suspect likely committed the crime).⁵² The term false evidence ploy (sometimes abbreviated by other scholars as FEP)⁵³ was immediately and universally adopted and integrated into the social science research literature on police interrogation by scholars, and it has been the subject of

45. See also POLICE INTERROGATION, *supra* note 23, at 119–94.

46. *Id.* at 10.

47. See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2nd ed. 1962).

48. Although I have updated and extended the social psychological analysis of the pre- and post-admission process put forth in my 2008 book POLICE INTERROGATION, *supra* note 23, at 119–94, *The Decision to Confess Falsely* created the blueprint for this type of analysis. Ofshe & Leo, *supra* note 1, at 984.

49. *Criminal Law: Inside the Interrogation Room*, *supra* note 41, at 278 (documenting that 30% of the interrogations observed involved the use of false evidence ploys).

50. Ofshe & Leo, *supra* note 1, at 1008–41.

51. *Id.* at 990–97.

52. *Id.* at 990–97, 1003.

53. See, e.g., UNDERSTANDING POLICE INTERROGATION, *supra* note 38, at 75–78.

numerous studies, analyses, and commentaries.⁵⁴ The term and concept of contamination has also been the subject of numerous studies,⁵⁵ and the term post-admission narrative is routinely used as an analytic descriptor in the research literature.⁵⁶ Prior to *The Decision to Confess Falsely*, social science researchers lacked a vocabulary for the most common types and techniques of police interrogation deception; had neither put a name on the interrogation practice of feeding details to suspects nor fully recognized its importance; and had failed to analytically distinguish or recognize the significance between the pre-admission and post-admission phases of police interrogation.⁵⁷ All three terms have become foundational concepts in the lexicon of empirical social science scholarship on police interrogation and confession-taking.

Fourth, *The Decision to Confess Falsely* modernized the study of interrogation inducements and incentives to confess—an interrogator’s appeals to self-interest that seek to persuade a suspect that they will be better off if they stop denying and start confessing and worse off if they do not. As I wrote in 1996, one year prior to the publication of *The Decision to Confess Falsely*, police interrogation consists of both “negative incentives” (“tactics that suggest the suspect should confess because no other course of action is plausible”)⁵⁸ and “positive incentives” (“tactics that suggest the suspect will in some way feel better or benefit if [they] confess”).⁵⁹ In *The Decision to Confess Falsely*, we extended the analysis of positive incentives by arraying the strength of the incentive along a continuum based on the tangibility of the benefit that was offered: from low-end inducements that offered moral, psychological, communal, or self-image benefits in exchange for confessing;⁶⁰ to mid-range or systemic inducements that suggested a suspect’s case would be processed more favorably by police, prosecutors, judges, and juries in exchange for confession;⁶¹ to high-end inducements, such as implicit guarantees and promises of leniency or freedom in exchange for confessing, and implicit or explicit threats of harsher treatment, higher charges, or longer prison sentences in the absence of confessing.⁶² Our empirical analysis demonstrated that not all inducements are created equal. Systemic inducements, especially

54. See Kassin et al., *supra* note 43, at 12–13, 16–17, 28–30.

55. See *False Confessions*, *supra* note 27, at 1051–53; see also *Contaminated Confessions*, *supra* note 27, at 397–98.

56. See, e.g., Samson J. Schatz, *Interrogated with Intellectual Disabilities: The Risks of False Confession*, 70 STAN. L. REV. 643, 646, 667, 680 (2018); see also Steven J. Frenda, Shari R. Berkowitz, Elizabeth F. Loftus, & Kimberly M. Fenn, *Sleep Deprivation and False Confessions*, 113 PROC. NAT’L ACAD. SCI. U.S.A. 2047, 2047 (2016); Timothy E. Moore & C. Lindsay Fitzsimmons, *Justice Imperiled: False Confessions and the Reid Technique*, 57 CRIM. L.Q. 509, 522, 534 (2011).

57. In a 1997 review of the literature article published the same year, but prior to *The Decision to Confess Falsely*, Saul Kassin did not mention the pre- or post-admission interrogation phases of interrogation. See *Psychology*, *supra* note 37.

58. *Criminal Law: Inside the Interrogation Room*, *supra* note 41, at 300.

59. *Id.*

60. Ofshe & Leo, *supra* note 1, at 1056–60.

61. *Id.* at 1060–61.

62. *Id.* at 1077–78.

high-end inducements, are almost always involved in interrogations that lead to confessions from an innocent suspect.⁶³ Further, American police interrogations that result in false confessions typically do so after a psychologically coercive negotiation where police implicitly or explicitly seek to persuade a suspect that they will receive higher charges or harsher punishment if they do not confess.⁶⁴ As we argued in *The Decision to Confess Falsely*, negative incentives (accusations, attacks on denials, and true or false evidence ploys) work to shift a suspect's perception of their situation from confident to hopeless while positive incentives (low-end, mid-range or systemic, and high-end inducements) seek to persuade a suspect that it is in their short- and long-term best interest to confess, and thus elicit the admission.⁶⁵

Fifth, *The Decision to Confess Falsely* distinguished between "coerced-internalized" false confessions and persuaded (coerced and non-coerced) false confessions. In Kassin and Wrightsman's original formulation, a coerced-internalized false confession was defined as "when the suspect—through the fatigue, pressures, and suggestiveness of the interrogation process—actually comes to believe that [they] committed the offense."⁶⁶ Further, Kassin and Wrightsman noted, "What is frightening under this stronger form of false confession is that the suspect's memory of [their] own actions may be altered, making its original contents potentially irretrievable."⁶⁷ In *The Decision to Confess Falsely*, we distinguished between "internalized belief change," which refers to the social psychological process by which individuals come to learn and accept a set of enduring values and beliefs that persist over time and across a wide variety of situations, and "persuaded belief change," which may be temporary and not persist over time or across a wide variety of situations.⁶⁸ Based on our empirical analysis of real-world cases involving persuaded false confessions, we argued that in this type of false confession, the suspect does not internalize permanently false memories, but instead they are temporarily persuaded to believe that it is *more likely than not* that they must have committed a crime they have no memory of committing. The suspect then expresses their uncertain belief state in a language of speculation, confabulation, and inferential reasoning. Hence our argument and empirical demonstration in *The Decision to Confess Falsely* that the term "persuaded false confession" more accurately captures this type of false confession than the term internalized false confession. This is because the underlying psychological process of interrogation-induced belief change in these

63. *Id.* at 1077.

64. *Id.*

65. *Id.* at 1060–61.

66. *Confession Evidence*, *supra* note 20, at 78.

67. *Id.*

68. Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 *STUD. L. POL. & SOC'Y* 189, 209, 215 (1997).

types of false confession cases more closely resembles the process of persuasion than internalization.⁶⁹

Despite these original and enduring contributions, *The Decision to Confess Falsely* has received far more attention, engagement, and citation by empirical legal scholars, law professors, lawyers, and courts than it has from social science researchers in the psychological and criminological community who empirically study and write about police interrogation and false confession. My sense is that this is true for at least two reasons. First, psychological researchers (mostly social and cognitive psychologists) are primarily trained in the experimental tradition of data-gathering, analysis, and presentation, and the empirical analysis in *The Decision to Confess Falsely* obviously did not involve an experimental or laboratory study. And second, the psychological community of interrogation and confession researchers tends to either ignore or not pay much attention to empirical scholarship that is published in law reviews. This is likely because law reviews (and non-psychology journals) are not the journals of their home field and follow many different conventions than psychology journals (e.g., length, footnote format, and peer review). To my surprise, and to the best of my knowledge, no psychological researchers have ever credited Richard Ofshe and I with coining the terms and concepts false evidence ploy, contamination, or post-admission narrative, even though these terms are widely used in the scholarly literature, have become core concepts, and are now a standard part of the lexicon. It is as if these foundational terms and concepts just emerged out of thin air in 1997 and then subsequently became a regular part of the vocabulary of concepts in the body of empirical social science research on police interrogation and confessions. I believe that had *The Decision to Confess Falsely* been published in a traditional psychology and law journal, such as *Law and Human Behavior* for example, it would have been more widely read, recognized, and cited by the social science researchers who empirically study police interrogation, psychological coercion, and confessions.⁷⁰

If my observation is correct, this raises the broader question of what we might call the windows and walls between empirical psychological scholarship on police interrogation and suspect confessions that is published in mainstream psychology and law (or cognitive psychology or social psychology) journals and empirical psychological scholarship on this subject that is published in law reviews. The importance of interdisciplinary and multidisciplinary scholarship has long been emphasized in social science and law. But an interdisciplinary or multidisciplinary approach

69. See also POLICE INTERROGATION, *supra* note 23, at 210–11.

70. For example, Saul Kassin and Karlyn McNall coined the terms “minimization” and “maximization” in 1991. See Saul M. Kassin & Karlyn McNall, *Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication*, 15 LAW & HUM. BEHAV. 233, 233 (1991). In the social science research literature on police interrogation and false confessions, Kassin and McNall are routinely cited for coining these important terms and concepts, as they should be. See Kassin et al., *supra* note 43, at 12.

requires that we not only collaborate with scholars from different backgrounds or with different disciplinary domain assumptions and methodological skills, but perhaps even more fundamentally, that we read each other's relevant journals even if they do not follow the same format, citation, and review conventions as our own. It also requires that empirical scholars in article-centered disciplines (such as psychology) read relevant books by authors in disciplines that are more book-centered (such as law, sociology, and criminology). Failing to do so results in not identifying or recognizing the source of concepts and terminology in our field of study as mentioned above; it also leads scholars to report empirical concepts and findings as entirely new and original even when they were already previously discovered and written about by other researchers, essentially reinventing a wheel without seeing the duplicative endeavor as a failure of literature review and an extension of earlier research and publication.⁷¹

Going forward, my hope is that the conceptual and empirical foundations laid in *The Decision to Confess Falsely* will continue to inform future empirical scholarship on the psychology of police interrogation and confessions, as follows. First, I hope that empirical social science and legal researchers will draw more heavily on transcripts, videos, and audios of recorded interrogations as a source of rich, varied, and ecologically valid real-world data. Second, that researchers will study interrogation and confession as a dynamic, interactive, and cumulative process rather than only as a static and variable-centered one. Third, that researchers will continue to document and analyze the role that incentives and inducements play in eliciting the decision to confess falsely and not only "minimization" and "maximization" strategies that communicate implicit promises through pragmatic implication, but also more explicit police interrogation negotiation techniques and strategies that directly communicate threats of

71. For example, in my 2008 empirically based book, *Police Interrogation and American Justice*, I wrote in great detail about the narrative content of confession statements that made false confessions credible and persuasive (e.g., a coherent and believable story line; motives and explanations; general and specific crime knowledge and details; expressions of emotion; and acknowledgments of voluntariness). POLICE INTERROGATION, *supra* note 23, at 169–81. In this discussion, I also coined the term "Error Insertion Trick." *Id.* at 175–76. (describing how it works, "In this ploy, interrogators will write out the suspect's confession (rather than letting the suspect compose it himself), intentionally inserting spelling and other trivial errors into the statement. The interrogator will then ask the suspect to correct and initial the errors so that the written confession appears not only to be the product of the suspect's free will but also reliable and correct (or at least corrected)."). Compare this with the very similar analysis found five years later in an article by Appleby, Hasel, and Kassin. See Sara C. Appleby, Lisa E. Hasel, & Saul M. Kassin, *Police-Induced Confessions: An Empirical Analysis of Their Content and Impact*, 19 PSYCH., CRIME & L. 111, 125 (2013) ("In addition to indicating the presence of visual and auditory details, our content analysis reveals that false confessions obtained in the US contain statements about jealousy, revenge, sexual frustration, alcoholic intoxication, peer pressure, and other possible crime motives; minimizing themes that provide face-saving excuses and moral justification; assurances of voluntariness; apologies and expressions of remorse; and corrected errors, the presence of which should only be known to the perpetrators. In addition, these results show that at least two common aspects of false confessions—crime details and motive statements—create complex narratives that are highly credible and highly incriminating . . ."). For another example, compare POLICE INTERROGATION, *supra* note 23, at 175–76 (coining and describing "the error insertion trick," as mentioned above), with DUPED, *supra* note 30, at 165 (describing the same concept and calling it "the error correction trick").

harsher punishment and promises of leniency to elicit the decision to confess. Finally, I hope that empirical social scientists will continue to refine our psychological understanding of the processes of influence, coercive persuasion, and suspect decision-making that explain how police elicit confessions from the innocent and why the innocent sometimes confess to crimes that carry lengthy prison sentences, life imprisonment, or execution.