False confessions — when innocent people admit to crimes they did not commit — occur in 1 of every 5 DNA exoneration cases. Learning why they happen and how they shape a case helps litigators challenge voluntariness and reliability of any confession evidence.

False confessions happen.
More than 350 people have been exonerated with DNA testing nationwide. **Over 68 of them falsely confessed**.[1] "[T]here is mounting empirical evidence that [] pressures can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. US*.[2] They plead guilty, too; 15% of exonerees pled.[3]

Confessions are powerful evidence.
Confessions are some of the most persuasive evidence, second only to being caught in the act.[4] **Jurors** assume no one would confess to a crime they did not commit. In at least 8 wrongful convictions, the jury had exculpatory DNA at trial, but convicted — because of a confession.[5] Awareness of a confession also subconsciously increases **judges'** willingness to convict, even after they deem the confession inadmissible.[6]

EFFECT ON INVESTIGATIONS
Police and witnesses are influenced by a suspect's confession. In 2007, **Amanda Knox** confessed to murdering her roommate in Italy. The confession was inadmissible, but the damage was already done: A suspect changed his story to accuse Knox, analysts tied Knox's DNA to a knife, and eyewitnesses came forward "remembering" seeing Knox. She was exonerated after 4 years in prison.

Investigators develop tunnel vision.
Once there is a confession, police stop looking for alternate suspects, creating an "investigative echo chamber."[7,8] If evidence does not implicate the confessor, police assume he must have had an accomplice.[9]

Confessions corrupt other evidence.
In studies, fingerprint examiners declared a match 17% more often, and eyewitnesses changed their identification 61% of the time, when told that a suspect confessed.[10] Then, **corroboration inflation** occurs: the evidence, tainted by the confession, is now used as proof that the confession was correct.

RED FLAGS: POLICE TACTICS
Police investigators use the **Reid Technique** to procure confessions when they suspect guilt.[11] Police lie-detection is based in "junk science"[12] and exhibits a "lie bias."[13]

Video clips from the 2008 interrogation of 16-year-old **Nga Truong** show how police in Worcester, Massachusetts applied the Reid Technique to produce a false confession.[14] The technique risks producing a false, involuntary, or unreliable confession when:

Police isolate the suspect for a long time.
Typical interrogations last 1.6 hours; false confessions often last 3 or more — **16 hours on average**.[15] "I wanted to get it over with, get home, and get some sleep."[16]

Police lie to the suspect about the evidence.
Police invent inculpatory evidence and insist that denials are futile. *See Commonwealth v. DiGiambattista*;[17] *cf. Commonwealth v. Scoggins*.[18] As a result, some suspects will even come to believe in their own guilt.[19,20]

Police promise leniency for confessions.
First, police **maximize** fear of punishment. *See Commonwealth v. Ortiz*.[21] Then, they express sympathy, suggest excuses for the crime, and **minimize** the consequences of confessing, implying benefits. *See DiGiambattista; Commonwealth v. Truong*.[22]

Police contaminate confessions.
95% of false confessions contain "special knowledge:" non-public details about the crime.[23] During questioning, police may teach the suspect about the crime through their questions. In some cases, police use "**formatting**:" tweaking the confession until it fits the facts. *See Commonwealth v. Rosario*;[24] *Commonwealth v. Phinney*.[25]

RED FLAGS: CLIENTS AT RISK

The caselaw recognizes that flawed interrogation tactics are more concerning when used against **vulnerable clients**.

Youth: Juveniles defer to authority and seek short-term gratification.[26] Children are **2-3 times more likely** to give in and confess.[27]

Mental Disability: People with mental disabilities misunderstand the purpose of interrogation, rely on cues from the police, and are more vulnerable to coercion.[28]

Innocence: The innocent are more likely to talk to police and **waive *Miranda*** (81%) than the guilty (36%).[29] They believe they cannot be convicted, so they are more willing to tell police what they want to hear just to make the interrogation stop.

Other: Suggestible personalities, grief/shock, drug/alcohol use, or language/culture barriers.[30] *See Rosario*.

LITIGATING A NEW TRIAL

1. Argue: **Counsel was ineffective** for:

   a. failing to adequately **investigate**. *Cf. Commonwealth v. Alcide*.[31] Counsel should investigate the client's risk factors, visit the interrogation room, research the officers, and reconstruct how the police investigation changed after the confession.

   b. failing to **suppress** the statement. Either the statement was not **voluntary**, *Commonwealth v. Monroe*,[32] not **recorded**, *DiGiambattista*, or ***Miranda*** was not waived, *Commonwealth v. A Juvenile (No. 1)*.[33]

   c. failing to consult a false confession **expert**. *Cf. Commonwealth v. Hoose*.[34]

2. Argue: False confession science is **newly available evidence**. *Cf. Hoose*.

3. Argue: The totality of the circumstances indicates that **justice may not have been done**. Mass. R. Crim. P. 30(b); *see Rosario*.

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[30] *See., e.g.* Convictions of Innocent Persons in Massachusetts, 12 B.U. Pub. Int. L.J. 1, 22 (2002) (Santos Rodriquez; Spanish language barrier).
[31] 472 Mass. 150 (2015) (not a confession case).
[32] 472 Mass. 461 (2015) (totality of circumstances).
[33] 389 Mass. 128, 133 (1983) (no *Miranda* waiver).
[34] 467 Mass. 395, 419–20 (2014) ("growing area").