

# A STANDARD BEYOND REASON: URGING STATES TO CHANGE THEIR CONFESSION LAW

**Abstract:** Coercive police interrogation tactics create psychological pressures that are known to lead to false confessions. False confessions in turn produce the potential for wrongful convictions, imprisoning innocent people for crimes they did not commit. The current legal doctrine surrounding how courts analyze the validity of a suspect's confession rests on whether the confession was voluntarily made. In making this determination, most courts use a preponderance of the evidence standard, validating a confession upon a finding that it was more likely than not voluntarily given. By implementing a higher standard, such as beyond a reasonable doubt, judges would be forced to more carefully view the circumstances surrounding a confession. Theoretically, a higher standard would lead to fewer confessions being admitted into evidence, which would be especially impactful in cases where a false confession is the only evidence the prosecution has against the defendant. This Note argues that a change is imperative and that state courts must raise their voluntariness standard to limit the number of wrongful incarcerations. Some states, like Massachusetts, have already done this. Additionally, this paper argues that the Massachusetts rule is the best equipped at attacking this issue because it provides multiple barriers to the admission of such evidence and forces members of the jury to more intensely consider the confession and its surrounding circumstances.

## INTRODUCTION

In the spring of 1989, Trisha Meili, a successful twenty-eight-year-old white woman living in New York, was found raped and beaten—but alive—on the ground in Central Park in New York City.<sup>1</sup> Five young boys between the ages of fourteen and sixteen, none of whom were white, were arrested for the crime.<sup>2</sup> Soon after, they were interrogated for hours on end by members of the New York City Police Department.<sup>3</sup> While questioned, they were separated from their friends and family, threatened, lied to, and promised leniency for their confessions.<sup>4</sup> These interrogation tactics worked as intended and led to

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<sup>1</sup> THE CENTRAL PARK FIVE, PBS, at 00:02:11 (Sundance Selects 2012).

<sup>2</sup> *Id.* at 01:14:42. The five boys were Kevin Richardson, Raymond Santana, Antron McCray, Yusef Salaam, and Korey Wise. *Id.* at 01:45:46. Two of them were arrested that night for assaults on the opposite side of Central Park from where Meili's beaten body was found. *Id.* at 00:36:52.

<sup>3</sup> *Id.* at 00:39:53.

<sup>4</sup> *See id.* at 00:23:29 (having each of the Exonerated Five tell their story as to what happened while they were interrogated). The officers told the boys that their fingerprints were on Trisha Meili's pants, even though that was not true. *Id.* at 00:39:01. The interrogating officers had no physical evi-

four distinct video-taped confessions by the boys, none of which matched the others.<sup>5</sup> The five were tried and convicted of the assault, despite the discrepancies in their stories and the fact that they all recanted their confessions soon after making them.<sup>6</sup> This group of young men became known as the “Central Park Five.”<sup>7</sup> Eventually, the true perpetrator of Trisha Meili’s rape and assault was convicted of another crime.<sup>8</sup> In 2001, while in prison, he confessed, ultimately leading to the Five’s exoneration thirteen years after the assault.<sup>9</sup>

The case of the Central Park Five, now known as “the Exonerated Five,” is demonstrative of a larger issue in the American criminal justice system: false confessions leading to wrongful convictions.<sup>10</sup> Although the boys confessed to

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dence linking the boys to the crime other than the fact that they were in Central Park that night. *Id.* at 01:18:24. The tactics the police utilized were intended to elicit confessions from the boys, as they had no other evidence. *See id.* at 01:10:04 (demonstrating that the officers had no evidence, outside of the confessions, linking the boys to the crime); INGE SEBYAN BLACK & LAWRENCE J. FENNELLY, *Overview of the Interview and Interrogation Process* (explaining how the Reid Technique is used and how police officers reach their goal of obtaining a confession), in INVESTIGATIONS AND THE ART OF THE INTERVIEW 75, 76–77 (Elizabeth Brown & Tracy Tufaga eds., 2021). In the case of the Central Park Five, the officers employed many aspects of the Reid Technique—an interrogation method intended to elicit confessions. *See* THE CENTRAL PARK FIVE, *supra* note 1, at 00:29:40 (detailing the confessions of the five young boys). These methods included isolating the boys from their support systems, confronting them with their supposed guilt, lying to them about evidence, and giving them an opportunity to confess. *Id.* at 00:28:35; BLACK & FENNELLY, *supra*.

<sup>5</sup> THE CENTRAL PARK FIVE, *supra* note 1, at 00:44:04. The boys claimed different roles in their confessions. *Id.* Each boy stated that he was not the one who raped and beat Meili but that one of the others had done so and all he did was help hold her down. *Id.* Each one also declared that a different person raped her. *Id.* Despite the differences in the boys’ stories, the police officers accepted the confessions as true and provided them to the prosecution to help incarcerate the boys. *See id.* (showing the differences in the boys’ confessions that were eventually brought into evidence at trial).

<sup>6</sup> *See id.* at 01:20:50 (recounting a juror’s reluctance to vote guilty). Only one juror seemingly had an issue with the inconsistencies in the boys’ confessions, but it was not enough to avoid their convictions. *Id.* at 01:20:22. Meanwhile, the true perpetrator, Matias Reyes, was still on the streets raping more women and even killing one of his victims. *Id.* at 01:51:42. The New York City Police Department might have avoided these additional crimes if the police went after the true perpetrator rather than the five young boys they targeted. *See id.* (demonstrating that the incarceration of the five boys kept the real perpetrator out of prison for some time).

<sup>7</sup> *Id.* at 1:43:56.

<sup>8</sup> *Id.* at 01:38:09. Reyes, the real perpetrator, was a serial rapist that had been suspected of raping wealthy white women in New York City around the time of the attack on Meili, yet he was not interrogated regarding her assault. *Id.* at 01:09:32.

<sup>9</sup> *Id.* at 01:40:02. DNA evidence corroborated his confession and ultimately served as proper grounds for exonerating the Five in 2002. *Id.* at 01:42:51. Despite such convincing evidence of Reyes’s guilt, there was public backlash regarding their exonerations. *Id.* at 00:58:34. Prominent social figures, such as Donald Trump, called for the boys to be sent back to prison to cleanse the streets. *See id.* (showing ads in the newspaper that Mr. Trump took out advocating for the death penalty for the Central Park Five after their exoneration). Many others had similar beliefs and called for the same action, refusing to believe that the boys did not rape and assault Trisha Meili. *See id.* at 01:01:00 (showcasing the public backlash that occurred after the five boys—at this point, young men—were exonerated).

<sup>10</sup> Bella Bromberg, *From Injustice to Influence: The Enduring Legacy of the Exonerated Five*, INNOCENCE PROJECT (Dec. 18, 2025), <https://innocenceproject.org/news/from-injustice-to-influence->

assaulting Trisha Meili, none of them actually committed the crime.<sup>11</sup> They were victims of deceptive police interrogation practices and were pressured into confessing, feeling as if it was their only means of escaping the psychologically stressful situation in which they were placed.<sup>12</sup> Unfortunately, this happens frequently in our current system.<sup>13</sup> Despite allowing police officers to use deceptive interrogation techniques, the judicial system's safeguards often fail to prevent false confessions from being admitted at trial.<sup>14</sup>

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the-enduring-legacy-of-the-exonerated-five/ [perma.cc/U9C9-5HJ6]; see THE CENTRAL PARK FIVE, *supra* note 1, at 00:43:25 (documenting what truly happened regarding the Exonerated Five and their innocence and demonstrating how the police influenced these young boys, leading to their false confessions). Although wrongful convictions in and of themselves are concerning, the story of the Exonerated Five illustrates how false confessions, even those not induced through physical coercion, are influential to a jury regardless of their (in)consistency with the actual facts of the crime. See *id.* at 01:49:34 (demonstrating how the five boys' confessions influenced the jury to vote guilty). As demonstrated there, this is especially prevalent when the only evidence linking suspects to the crime of which they were accused is their confession. See *id.* (showing how the prosecution did not have any physical evidence outside the boys' confessions).

<sup>11</sup> THE CENTRAL PARK FIVE, *supra* note 1, at 01:51:37.

<sup>12</sup> See *id.* at 00:44:04 (showcasing, through stories told by the boys and videos of the confessions themselves, how the boys felt as though they had to confess to the crime to escape the stress created by the police interrogation tactics).

<sup>13</sup> See Victor Rosario, THE NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/12299> [perma.cc/56AA-EJUB] (Mar. 3, 2023) (explaining the case of Victor Rosario, a Massachusetts resident who confessed to a crime he did not commit, ultimately leading to his wrongful conviction); Christopher Abernathy, THE NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/11758> [perma.cc/9WPH-DLHJ] (Jan. 8, 2020) (outlining the case of Christopher Abernathy who was wrongfully convicted in part due to a false confession); Eruby Abrego, THE NAT'L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/13374> [perma.cc/B2SK-C8CM] (Apr. 21, 2024) (detailing the case of Eruby Abrego, a twenty-year-old Hispanic male wrongfully convicted of murder due to a mistaken eyewitness identification and a false confession).

<sup>14</sup> See Eve Brensike Primus, *The Future of Confession Law: Toward Rules for the Voluntariness Test*, 114 MICH. L. REV. 1, 28 n.170 (2015) (quoting CHARLES T. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE 232 (1954)) (stating that getting a confession through deceiving a suspect does not impair its legal validity unless the interrogators' trickery was designed to get the suspect to falsely confess). Professor Primus explains in depth how the voluntariness standard came into consideration and that it has not changed much since its inauguration in the 1930s. See *id.* at 11–12 (outlining the voluntariness test for confessions and its history, along with its shortcomings and inability to properly safeguard against false confessions, partially due to its broad nature and the low standard by which confessions are to be analyzed). Although scholars argue that the voluntariness standard is innately flawed and that it should either be split into multiple parts or wholly abolished, it seems as though it is here to stay. See *id.* at 23, 24 (describing that, despite scholars having concerns as to the voluntariness doctrine itself, confession law has largely swung back into the voluntariness test). Because of its inability to successfully do what it sets out to do, some scholars argue that the voluntariness test should be a harder hurdle to overcome. See *id.* at 50 (arguing that, when interrogating officers use tactics that increase the risk of the suspect falsely confessing, courts should require the state to prove by clear and convincing evidence—a higher standard than that of a preponderance of the evidence—that the confession was voluntarily made). Rather than using a preponderance of the evidence standard in its analysis, scholars argue that the standard by which it is interpreted should be raised. See *id.* (arguing that the standard should be raised from a preponderance of the evidence to clear and convincing evidence).

The American court system relies on the voluntariness test of the Fourteenth Amendment's Due Process Clause to determine a confession's admissibility.<sup>15</sup> Although the Due Process Clause does not specifically address confessions, the U.S. Supreme Court has interpreted the Clause to mean that involuntary confessions, whether the product of physical or psychological coercion, are not admissible in court.<sup>16</sup> Despite this ruling, lower courts are not given much guidance on how they are to assess these confessions.<sup>17</sup> The low preponderance of the evidence standard is problematic because confession evidence is highly influential to juries, who often fall victim to the myth that only guilty people confess.<sup>18</sup>

When presented with a confession, jurors are more inclined to trust it over the defendant's testimony at trial, regardless of its inconsistencies with the facts of the crime or with the confessions of any co-defendants.<sup>19</sup> This is be-

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<sup>15</sup> U.S. CONST. amend. XIV, § 1; see Primus, *supra* note 14, at 10 (explaining the voluntariness standard and the Fourteenth Amendment's Due Process Clause with relation to the illegality of coerced confessions); Frederic I. Lederer, *The Law of Confession—The Voluntariness Doctrine*, 74 MIL. L. REV. 67, 91 (1976) (explaining the voluntariness doctrine and how courts use it in their determinations of the admissibility of confessions into evidence).

<sup>16</sup> See Primus, *supra* note 14, at 10–11 (giving an overview of the voluntariness doctrine and its relation to the Due Process Clause of the Fourteenth Amendment).

<sup>17</sup> See *id.* at 23 (stating that state courts are not given guidance on how to apply the voluntariness test and that the Supreme Court has not added to this test's clarity). Historically, the voluntariness test has been unclear in how it is to be applied, as it simply states that involuntary confessions are not to be admitted. See *id.* (noting the difficulty of articulating the concept of voluntariness); Jackson v. Denno, 378 U.S. 368, 385 (1964) (stating that involuntary confessions are not to be admitted into evidence). The Supreme Court has also found that lower courts are to use a totality of the circumstances analysis in their determinations of the voluntariness of confessions. See Primus, *supra* note 14, at 11, 14. Further, despite being around since the 1930s, the voluntariness test is still what we use to determine whether a confession is to be admitted into evidence. *Id.*

<sup>18</sup> See Primus, *supra* note 14, at 50 (analyzing the preponderance of the evidence standard with respect to the voluntariness test); Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, 17 CURRENT DIRECTIONS PSYCH. SCI. 249, 249 (2008) (countering the myth that only guilty people confess by offering evidence that twenty to twenty-five percent of all exonerations based on DNA evidence are of prisoners who falsely confessed). Professor Primus argues that the standard regarding the voluntariness of confessions should be raised to that of clear and convincing evidence. Primus, *supra* note 14, at 50. She urges courts to raise their standards so that confession evidence is not so easily admitted to juries, decreasing the number wrongful convictions based on these confessions. See *id.* (arguing the need for a higher burden of proof in assessing the voluntariness of a confession when police officers use tactics known to increase the likelihood that the suspect will falsely confess).

<sup>19</sup> See Amanda Beltrani, *Confessions and Police Interrogations*, PALO ALTO UNIV., <https://concept.paloaltou.edu/resources/business-of-practice-blog/confessions-and-police-interrogations> [perma.cc/RR8H-LL2A] (describing confessions as so persuasive that the lead to police departments closing investigations; witnesses being biased; and prosecutors, judges, and juries presuming the defendant guilty); THE CENTRAL PARK FIVE, *supra* note 1, at 01:49:34 (documenting the case of the Exonerated Five as an example of how false confessions lead to wrongful convictions). In the case of the Exonerated Five, the boys gave differing confessions, each of which stated different roles for each boy, clearly inconsistent with each other's statement of the facts of the case. See THE CENTRAL PARK FIVE, *supra* note 1, at 00:44:04 (showing the boys' differing confessions).

cause people do not generally believe that someone would make such self-incriminating statements if they were not true.<sup>20</sup> Therein lies the issue with judges deciding, based on a preponderance of the evidence, whether a confession was voluntarily made.<sup>21</sup> The confession itself is often determinative of the outcome of a criminal trial.<sup>22</sup>

A fairer and more probative rule would require judges to make this determination based on a beyond a reasonable doubt standard, the same standard by which the jury determines the guilt of the accused.<sup>23</sup> Numerous states have already aligned themselves with this ideal and raised their standards regarding

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<sup>20</sup> See Kassir, *supra* note 18, at 249 (explaining the common misconception that people do not confess to actions they have not committed). Kassir's analysis of the misconception dates back to the Salem witch trials in the late seventeenth century where people confessed to being a witch and then were wrongfully convicted or executed due to that confession. See *id.* (using the Salem witch trials as an example for how confessions are so damning). Because of this belief, juries rarely consider the reliability of a confession and naturally assume the guilt of the accused simply because they had previously confessed. See Beltrani, *supra* note 19 (stating that confessions lead juries to presume guilt despite the circumstances surrounding the confession).

<sup>21</sup> See Beltrani, *supra* note 19 (explaining that confessions are so inherently persuasive that police officers, judges, and juries are likely to presume the defendant guilty regardless of the other evidence, or lack thereof, surrounding the prosecution's case-in-chief); Lederer, *supra* note 15, at 90–91 (explaining the issues with the voluntariness doctrine and noting different states that have raised standards from that of a preponderance of the evidence to that of beyond a reasonable doubt). Lederer analyzes how certain states have already raised their standards, demonstrating that it is possible for other states to do so and that they should, given how ineffective the preponderance of the evidence standard is with regard to the voluntariness test. See *id.* (showing multiple states that have raised their voluntariness standard).

<sup>22</sup> See Beltrani, *supra* note 19 (reciting how influential confession evidence is and that it allows jury members to presume the confessor's guilt rather than presuming their innocence, thereby greatly influencing the outcome of the case); Kassir, *supra* note 18, at 249 (explaining the common misconception that only guilty people confess to crimes and that if the accused was truly innocent, they would have maintained their innocence and not confessed, which is not always the case).

<sup>23</sup> See Lederer, *supra* note 15, at 90–91 (outlining the states that have already raised the standard to that of beyond a reasonable doubt and explaining the differences between the Massachusetts rule and the orthodox rule). It is important for states to make this change as the federal government made its decision regarding the voluntariness test clear in the precedential 1972 case of *Lego v. Twomey*. See 404 U.S. 477, 489 (1972) (ruling that the voluntariness of a confession is to be determined by a preponderance of the evidence in federal law). In *Lego*, the Supreme Court stated that “the prosecution must prove at least by a preponderance of the evidence that the confession was voluntary.” *Id.* at 489. The Court also noted, however, that states are free to raise their standards with regard to the voluntariness of confessions. *Id.*

Massachusetts Supreme Judicial Court Justice Scott Kafker wrote: “State courts are fully empowered and expected to interpret independently analogous provisions in their state constitutions and thereby provide greater protections of individual rights, if they so conclude, and likely to do so if presented with revisions or retrenchments with which they do not agree.” Scott L. Kafker, *State Constitutional Law Declares Its Independence: Double Protecting Rights During a Time of Federal Constitutional Upheaval*, 49 HASTINGS CONST. L.Q. 115, 116 (2022). U.S. Supreme Court Justice William Brennan has also argued the importance of state courts' interpretations of their constitutions, urging states to elevate the protections of individuals' rights over the protections given by the federal government and court systems. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977).

the voluntariness test.<sup>24</sup> Still, the Massachusetts Humane Practice rule (“Massachusetts rule”) is the most protective way that courts deal with involuntary confessions.<sup>25</sup> The Massachusetts rule requires both the judge and jury to determine a confession was voluntary beyond a reasonable doubt.<sup>26</sup>

Despite the theoretical benefits of raising the standard, there are still some potential criticisms of this reform.<sup>27</sup> First, wrongful convictions based on false confessions still occur in the states that have raised their standard to that of beyond a reasonable doubt.<sup>28</sup> Second, there is a deeper fundamental issue with how the doctrine works in that it should focus on the reliability of the confession rather than its voluntariness.<sup>29</sup>

Part I of this Note provides an overview of the Due Process Clause with respect to confession law, coercive police interrogation tactics, and the law in states that have raised their voluntariness standard.<sup>30</sup> Part II discusses the standard as well as how police interrogation tactics elicit false yet admissible

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<sup>24</sup> See Lederer, *supra* note 15, at 90–91 (mentioning states that have raised their standard).

<sup>25</sup> See *id.* (stating that the Massachusetts rule provides the defendant with two separate determinations as to the voluntariness of their confession, which differs from the orthodox rule that only gives one such determination); MASS. DIST. CT., *Confessions and Admissions (Humane Practice)* (stating the Massachusetts rule is that the Commonwealth must prove “beyond a reasonable doubt that the defendant made the statement that he (she) is alleged to have made, and that he (she) made it voluntarily, freely and rationally”), in CRIMINAL MODEL JURY INSTRUCTIONS FOR USE IN THE DISTRICT COURT 1 (2018), <https://www.mass.gov/doc/3560-confessions-and-admissions-humane-practice/download#:~:text=Massachusetts%20%E2%80%9Chumane%E2%80%9D%20practice%20requires%20that,that%20the%20statement%20was%20voluntary> [perma.cc/4N3A-PQAG]. This differs from the orthodox rule, which only requires the jury to find the elements of the crime accused beyond a reasonable doubt, not the confession itself. See Lederer, *supra* note 15, at 91 (differentiating between the Massachusetts and orthodox rules).

<sup>26</sup> See MASS. DIST. CT., *supra* note 25 (instructing the jury to determine the voluntariness of a confession beyond a reasonable doubt). By requiring the jury to make this finding even after a judge determines the voluntariness of a confession beyond a reasonable doubt, multiple safeguards are put in place to protect against such false and coerced confessions. See *id.* (discussing the Massachusetts rule).

<sup>27</sup> See *infra* notes 28–29 and accompanying text (outlining potential critiques of this reform); *infra* notes 152–165 and accompanying text (explaining potential criticisms of raising the evidentiary standard for confession law).

<sup>28</sup> See Victor Rosario, *supra* note 13 (explaining the case of Victor Rosario, who had been wrongfully convicted in Massachusetts in part because of a false confession he gave to the police).

<sup>29</sup> See Richard Leo, *False Confessions and the Constitution: Problems, Possibilities and Solutions* (advocating for confession law to be based on both the reliability of the confession as well as its voluntariness because the current voluntariness test does not always equate to the reliability of the confession), in THE CONSTITUTION AND THE FUTURE OF CRIMINAL JUSTICE IN AMERICA 169, 178 (John T. Parry & L. Song Richardson eds., 2013). Leo advocates that wrongful convictions are not based on involuntary confessions but rather unreliable ones. *Id.* A confession can possibly be involuntary and reliable, or it can be voluntary and unreliable. *Id.* at 175–76. A voluntary and unreliable confession can lead to a wrongful conviction, whereas the reliable yet involuntary confession will lead to a correct conviction. See *id.* (noting the difference between reliability and voluntariness).

<sup>30</sup> See *infra* notes 33–121 and accompanying text.

confessions.<sup>31</sup> And Part III analyzes the Massachusetts rule compared to the orthodox rule, as well as potential criticism of this reform.<sup>32</sup>

## I. BACKGROUND

Section A of this Part provides an overview of the Due Process Clause and its jurisprudence as it applies to confession law.<sup>33</sup> Section B explores coercive police interrogation tactics, such as the Reid Technique, and the concerns surrounding their use.<sup>34</sup>

### *A. The Due Process Clause Jurisprudence and Confession Law*

The Due Process Clause of the Fourteenth Amendment declares that no state shall “deprive any person of life, liberty, or property, without due process of law . . . .”<sup>35</sup> Although this language does not give any specific guidance to courts when it comes to false confessions, the Supreme Court has adopted its own standard with regard to admitting a suspect’s confession to the police: whether the statement was voluntarily made or coerced.<sup>36</sup> If the confession was voluntary, regardless of its reliability, it is admissible as evidence.<sup>37</sup>

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<sup>31</sup> See *infra* notes 122–165 and accompanying text.

<sup>32</sup> See *infra* notes 166–197 and accompanying text.

<sup>33</sup> See *infra* notes 35–76 and accompanying text.

<sup>34</sup> See *infra* notes 77–121 and accompanying text.

<sup>35</sup> U.S. CONST. amend. XIV, § 1.

<sup>36</sup> See Primus, *supra* note 14, at 14 (explaining the voluntariness test as the standard by which the Supreme Court evaluates the admissibility of confessions). The voluntariness standard for confessions first came into consideration back in the 1930s. *Id.* at 10. Not much has changed in the Due Process Clause jurisprudence for confession law since then, as the test remains simply whether the confession was made voluntarily. *Id.* at 23. If the confession is deemed by a judge in an in-camera hearing to have been voluntarily made, it may be admitted to a jury for deliberation. See Lederer, *supra* note 15, at 91 (explaining the voluntariness test). In making these determinations, the judge is to decide the voluntariness of the confession by a preponderance of the evidence. Primus, *supra* note 14, at 50. The jury then will evaluate the confession as it would any other piece of evidence presented at trial in making its determination as to the guilt of the accused. Lederer, *supra* note 15, at 91. One issue touched upon by Professor Primus in her article on confession law and the voluntariness test is that “voluntariness” does not evaluate the reliability of a confession. See Primus, *supra* note 14, at 50 (noting that voluntariness does not necessarily equate to reliability). She cites to work by Professors Richard Leo and Richard Ofshe regarding how the test falls short in determining whether the confession is reliable, which, they argue, should be the question that judges need to answer before allowing in such evidence. See *id.* at 51 (citing to Professors Leo and Ofshe). See generally Leo, *supra* note 29 (examining the difference between reliable and voluntary confessions).

<sup>37</sup> See Leo, *supra* note 29, at 178 (stating that the current standard is not effective in protecting against wrongful convictions as it is not one of reliability). This is problematic in that one can give a voluntary confession that is not reliable because it was false, and one can give an involuntary confession that was reliable because it was true. See *id.* (explaining the difference between reliability and voluntariness). As Professor Leo argues, the true question is that of reliability. *Id.* If the system’s goal is accuracy, then a confession’s voluntariness is not relevant, and courts should ignore it to focus on reliability instead. See *id.* at 176 (noting that a voluntary confession is not necessarily accurate). Still, fairness in the judicial process and the way in which police interrogators are to handle themselves in

Given the logic that someone would not make such inculpatory statements unless they were true, the standard for proving this to a judge is innately low: judges need to decide by a preponderance of the evidence that the confession was voluntary.<sup>38</sup> In making this determination, the Supreme Court has stated that judges are to evaluate the confession in light of “the totality of all the surrounding circumstances.”<sup>39</sup> This allows for immense discretion on behalf of the judges deciding these cases as courts are given tremendous leeway in making case-by-case considerations.<sup>40</sup>

One major issue with the logic behind confession law is that suspects often make inculpatory statements when they feel pressured by their interrogators, whether that is because they want to be removed from the situation they are in or because they feel as if it is their only option.<sup>41</sup> The Reid Technique, a method of interrogation used by police officers to elicit confessions, often

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these situations calls for voluntariness to be part of the standard; Professor Leo appreciates this but believes that the reliability of the confession is just as, if not more, important. *See id.* (advocating for confession jurisprudence to focus on reliability rather than voluntariness).

<sup>38</sup> *See Lederer, supra* note 15, at 90 (stating the standard for making this determination is a preponderance of the evidence rather than beyond a reasonable doubt); Primus, *supra* note 14, at 50 (arguing that the standard should be raised to that of clear and convincing evidence, as the preponderance of the evidence standard is seemingly too low). Numerous states have already raised their standards to that of beyond a reasonable doubt, as the current preponderance of the evidence standard has seemed too low to the judges deciding the cases. *See Lederer, supra* note 15, at 90 (noting that multiple states have raised their standards to that of beyond a reasonable doubt); *see, e.g.,* *People v. Huntley*, 204 N.E.2d 179, 183 (N.Y. 1965) (using the standard of beyond a reasonable doubt); *State v. Thundershield*, 160 N.W.2d 408, 412 (S.D. 1968) (using the high beyond a reasonable doubt standard with regard to admitting confessions into evidence).

<sup>39</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

<sup>40</sup> *See Beltrani, supra* note 19 (explaining how influential these confessions are and how they impact juries' decisions-making). If the judge decides, more likely than not, that the confession was voluntarily given, the confession will be admitted into evidence and then heard by the jury at trial. Lederer, *supra* note 15, at 90. This demonstrates both the amount of discretion and the power that judges have in making these considerations. *See Beltrani, supra* note 19 (noting how influential confessions are to juries). Judges must decide, more likely than not, whether the most influential form of evidence can be admitted to a jury and then deliberated on to decide the guilt of the accused. *See id.* (explaining the influence confessions have on juries); Lederer, *supra* note 15, at 90 (stating the federal standard is preponderance of the evidence).

<sup>41</sup> *See Aldert Vrij, Interrogation and Interviewing* (explaining the psychological pressures that the Reid Technique of interrogation and other coercive interrogation techniques place on the accused), in 2 *ENCYCLOPEDIA OF APPLIED PSYCHOLOGY* 415, 421 (Charles D. Spielberger ed., 2004). These methods of interrogating often lead to confessions; whether those confessions are reliable is hard to determine. *See id.* (discussing voluntary, false, and coerced-compliant confessions). The methods police officers use in interrogating suspects lead the suspects to feeling an immense amount of psychological pressure to cooperate with the officers, causing them to confess to the crime of which they are accused, even if they know nothing about the actual facts of the crime. *See id.* (explaining the dangers of coercive police interrogation tactics).

leads to both innocent and guilty suspects confessing when accused, creating problems for the voluntariness doctrine.<sup>42</sup>

Subsection 1 of this Section discusses the constitutional standard by which confession law is ruled.<sup>43</sup> Subsection 2 covers state-level reform regarding this standard.<sup>44</sup>

## 1. The Constitutional Standard

Although the language of the Fourteenth Amendment by itself does not give courts much guidance when it comes to guarding against false confessions, the Supreme Court has made it clear that the Fourteenth Amendment's Due Process Clause forbids the inclusion of involuntary confessions as evidence in court.<sup>45</sup> In determining whether a confession was voluntary, the Supreme Court ruled that when a defendant objects to admitting a confession on the grounds that the confession was coerced, the defendant is entitled to a preliminary hearing on the matter.<sup>46</sup>

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<sup>42</sup> See *id.* (explaining that there is no one method that convinces only guilty individuals to confess); Leo, *supra* note 29, at 175–76 (arguing that the current voluntariness doctrine does not adequately address whether a confession was reliably given or falsely made). Although coercion in police interrogation practices is problematic in its own right, the accuracy of the outcome of a jury trial depends on the confession being reliable rather than voluntary. See Leo, *supra* note 29, at 175–76 (arguing that accuracy is equated more with reliability than voluntariness). The voluntariness test does not consider that many confessions may be voluntarily made but unreliable and inaccurate, which is a very real possibility given the psychological effects that legally sanctioned interrogation tactics, such as the use of deception and the Reid Technique, have on any given suspect. See *id.* at 176 (stating that confessions are only suppressed if obtained in coercive ways, not because they were false); Vrij, *supra* note 41, at 421 (noting that the Reid Technique is innately coercive as it creates a situation in which the suspect feels like confessing is the only means of escape). This is especially true for juveniles and people with mental impairments. See Emily Lambert, *Impropriety of the Reid Technique on Developing Brains*, CORN. J.L. & PUB. POL'Y, ISSUE SPOTTER (Nov. 23, 2022), <https://jlp.org/impropriety-of-the-reid-technique-on-developing-brains/> [perma.cc/V9V9-ZPWY] (explaining how the Reid Technique is more coercive when applied to juveniles and those with mental impairments).

<sup>43</sup> See *infra* notes 45–61 and accompanying text.

<sup>44</sup> See *infra* notes 62–76 and accompanying text.

<sup>45</sup> See *Jackson v. Denno*, 378 U.S. 368, 385–86 (1964) (explaining how the Fourteenth Amendment does not allow involuntary confessions into evidence); *Dassey v. Dittmann*, 877 F.3d 297, 303 (7th Cir. 2017) (explaining that the Supreme Court has not given hard guidelines as to how lower courts are to determine the voluntariness of a confession). The Supreme Court stated that Congress created this protection under the Fourteenth Amendment because coerced confessions are unreliable as evidence and may lead to inaccurate confessions, resulting in wrongful convictions. *Jackson*, 378 U.S. at 385–86. The Court also cited to the 1959 case, *Spano v. New York*, stating that, because of the engrained notion that police officers must obey the law when enforcing it, people's liberties can be extremely endangered by coerced confessions. *Id.* at 386 (citing *Spano v. New York*, 360 U.S. 315, 320–21). Juries also give immense weight to the confessions themselves and the underlying facts that surround those disputed confessions. See *id.* (noting that by telling juries of the facts of the confession, they may take the confession as innately truthful).

<sup>46</sup> See *Jackson*, 378 U.S. at 377 (ruling that a defendant deserves the right to a fair hearing establishing the voluntariness of the confession and that the court did not properly apply the New York procedure in the case at hand). The Court explains the New York rule as one in which the trial judge

Since its 1964 decision in *Jackson v. Denno*, the Supreme Court has not given a comprehensive list of rules for determining the voluntariness of a defendant's confession, besides prohibiting the use of physical force in interrogations.<sup>47</sup> Rather, courts are to consider the totality of the circumstances surrounding the confession, including potential characteristics of the suspect in deciding whether the defendant's will was overborne.<sup>48</sup> This framework allows for immense discretion on behalf of the judges presiding over these cases.<sup>49</sup> A dive into the history of this standard only solidifies its ambiguity.<sup>50</sup>

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makes an out-of-court determination as to the confession and whether it can be admitted into evidence. *Id.* If the evidence presented in such preliminary determinations poses a genuine question as to the voluntariness of the confession—one in which facts are under dispute and a jury could reasonably come to either outcome—the judge must admit the confession and leave it to the jury with proper instructions for them to determine the voluntariness of the confession on their own. *See id.* (explaining the New York rule for confession law). In *Jackson*, the trial court did not protect the defendant's right to not be convicted due to a coerced confession; therefore, his conviction could not withstand a Due Process Clause attack. *Id.* The Court also noted that “[i]t is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession . . .” *Id.* at 376 (citing *Rogers v. Richmond*, 365 U.S. 534 (1961)).

<sup>47</sup> *See id.* at 385–86 (explaining the Fourteenth Amendment's role in confession law); *Dassey*, 877 F.3d at 303 (noting that the only concrete rule that has come from the Supreme Court's confession jurisprudence is that physical coercion cannot be used to get a confession). A jury convicted Brendan Dassey, an intellectually challenged teenager and the subject of the Netflix series *Making a Murderer*, of participating in raping and killing Teresa Halbach in 2005. *See generally* MAKING A MURDERER, (Netflix, released Dec. 18, 2015) (explaining the story of Brendan Dassey); *Dassey*, 877 F.3d at 300. He made a videotaped confession that was used against him in court after the trial judge determined he made it voluntarily. *Dassey*, 877 F.3d at 300–01. The Wisconsin state courts upheld his conviction. *Id.*

<sup>48</sup> *See Dassey*, 877 F.3d at 303 (explaining that courts are to use a totality of the circumstances test in determining whether a confession was voluntarily made). Courts are to consider “the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation” in “determin[ing] whether ‘the defendant’s will was in fact overborne.’” *Id.* (first quoting *Schneekloth v. Bustamonte*, 412 U.S. 218, 226 (1973); and then quoting *Miller v. Fenton*, 474 U.S. 104, 116 (1985)).

In Dassey's case, many factors supported his argument that his confession was involuntary, such as his age, his intellectual ability, the officers' suggestions and assurances that Dassey would be given leniency if he confessed, and the inconsistencies in the confession itself. *Id.* at 301. Despite these factors, the court weighed other factors in favor of finding the confession was voluntarily made, such as the fact that Dassey voluntarily spoke with the interrogators after being given his *Miranda* warnings, his mother consenting to the questioning, the officers not raising their voices while questioning him, his interrogation spanning over a short period of time, the location of his interrogation, and the officer's lack of intimidation or physical coercion. *Id.* The Seventh Circuit Court of Appeals also pointed to the fact that Dassey confessed and gave specific details when answering open-ended questions rather than yes or no, leading questions. *Id.* After the district court granted Dassey a writ of habeas corpus, the Seventh Circuit reversed the grant and denied his claim, finding that the state trial judge's determination that Dassey's confession was voluntary was reasonable. *Id.*

<sup>49</sup> *See Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004) (stating that the more general a rule is, the more discretion and leeway judges have in making their determinations). The rule's specificity is an important factor in deciding whether a judge acted reasonably in their application of the rule: if the rule is more specific, there is not much room for the judges to make these determinations, whereas if the rule is more general, judges have much more wiggle room to make their decisions, leading to more

In 1972, in *Lego v. Twomey*, the Supreme Court ruled on a confession's voluntariness.<sup>51</sup> There, the jury convicted the defendant of an armed robbery that he confessed to.<sup>52</sup> He later claimed that the police beat this confession out of him by hitting him with the butt of a gun.<sup>53</sup> Following a pretrial hearing, the trial judge determined by a preponderance of the evidence that the confession was voluntary and admitted it into evidence, ultimately resulting in the defendant's conviction.<sup>54</sup> The case went up to the Supreme Court, which affirmed the conviction and ruled that courts are to use a preponderance of the evidence standard in deciding a confession's voluntariness.<sup>55</sup>

Although the standard remains intentionally discretionary and the Supreme Court has refused to provide meaningful guidance to aid judges in these

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discretion and making their determinations arguably more reasonable and case-specific. *See id.* (noting that judges have more room for interpretation when a rule is more general).

<sup>50</sup> *See* Primus, *supra* note 14, at 11, 14 (arguing that, although the voluntariness test originated in the 1930s, the Supreme Court has since affirmed voluntariness as the ruling doctrine for confession law). The Court has not made many specific guidelines for lower courts in determining the voluntariness of confessions, nor has it given clear factors that courts should use in making these determinations. *Id.* at 23. Because of this, the standard has remained relatively stagnant and vague over the past century. *Id.*

<sup>51</sup> 404 U.S. 477, 480–81 (1972). In *Lego's* case, the judge did not instruct the jury that it must find *Lego's* confession voluntary before determining *Lego's* innocence or guilt. *See id.* (detailing the facts of the case and the issue of voluntariness posed to the Court). Despite *Lego's* argument, the Illinois Supreme Court affirmed the ruling. *Id.* at 481. *Lego* then sought a writ of habeas corpus in the U.S. District Court for the Northern District of Illinois, arguing that the trial judge erred in not finding the confession voluntary beyond a reasonable doubt. *Id.* In its recitation of the facts and procedural history surrounding *Lego's* argument, the Supreme Court noted that Illinois law only requires a preponderance of the evidence standard for determining the voluntariness of confessions rather than the higher standard proposed by *Lego* in his writ of habeas corpus. *Id.*

Arguing in the alternative, *Lego* stated that the jury should also be able to make its own separate determination as to the voluntariness of the confession. *Id.* The U.S. District Court for the Northern District of Illinois denied relief on both arguments, a decision that was affirmed by the Court of Appeals for the Seventh Circuit. *Id.* at 482.

<sup>52</sup> *Id.* at 480.

<sup>53</sup> *Id.* Although *Lego* did not deny that he made the confession, he challenged its voluntariness and submitted a picture of his face after his interaction with the police, showing him bloodied and swollen. *Id.* Although the prosecution maintained that the condition of *Lego's* face was due to a fight with the robbery victim, *Lego* argued that the scuffle he had with the victim was not the cause of the bruises and blood on his face. *Id.* *Lego* testified at the trial to describe the interrogation he had with the police. *Id.* at 480–81.

<sup>54</sup> *See id.* at 480 (explaining that the judge held a pretrial hearing outside of the presence of a jury to determine the voluntariness of the confession). In this hearing, *Lego* presented evidence that the police had beaten the confession out of him, although he did not deny making the confession. *Id.* Multiple police officers took the stand and denied ever hurting the defendant and denied any knowledge that other officers had done so. *Id.* The trial judge ruled that the officers were credible and that the confession was admissible. *Id.*

<sup>55</sup> *See id.* at 489 (“[T]he prosecution must prove at least by a preponderance of the evidence that the confession was voluntary.”). The Court reiterated its decision in *Jackson* that a criminal defendant has the right to an out-of-court, pretrial hearing regarding the voluntariness of his or her confession. *Id.*; *Jackson v. Denno*, 378 U.S. 368, 377 (1964). In such a hearing, the judge is to determine whether the confession was made voluntarily. *Lego*, 404 U.S. at 489.

determinations, the Court has noted at least one baseline requirement for finding a confession involuntary: police wrongdoing.<sup>56</sup> In 1986, in *Colorado v. Connelly*, the defendant, who suffered from chronic paranoid schizophrenia, walked up to a police officer and confessed to a murder that occurred several months earlier.<sup>57</sup> Despite the fact that this confession was, by definition, voluntarily given, the Colorado Supreme Court ruled that it was involuntary due to the defendant's mental illness.<sup>58</sup> The Supreme Court, however, disagreed and overturned the decision, stating that police wrongdoing is necessary for finding a confession involuntary.<sup>59</sup> *Connelly* gave the Supreme Court an opportunity to expand the voluntariness doctrine and provide instruction to lower courts.<sup>60</sup> The Court refused, however, stating only that state laws of evidence should be used in governing reliability.<sup>61</sup>

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<sup>56</sup> See *Colorado v. Connelly*, 479 U.S. 157, 167 (1986) (holding that police coercion is necessary in finding a confession to be involuntary).

<sup>57</sup> *Id.* at 160. On August 18, 1983, the defendant walked up to a Denver police officer on the street and, without being questioned by the officer, stated that he had killed a young woman by the name of Mary Ann Junta in Denver the year prior and he wanted to talk to someone about it. *Id.* Although Connelly denied being under the influence of alcohol or narcotics, he did mention to the officer that he had been in multiple mental hospitals. *Id.* He repeatedly told the officer that he wanted to speak and clear his conscious of the murder and that he understood that he did not need to speak if he did not want to. *Id.* After speaking with the officer some more, a homicide detective came on the scene and took Connelly to the police station. *Id.* At the police station, officers found records of an unidentified female body that had been found a few months prior. *Id.* The defendant detailed this crime and offered to take the officers to the exact spot where the murder occurred. *Id.* at 160–61. The officers noted that they did not perceive that the defendant had been suffering from mental illness while speaking to them, as he outlined the crime clearly and with a sound mind. *Id.* at 161. It was only after Connelly met with the public defender's office the next morning that he seemed to become disoriented and confused, citing to voices that were speaking in his head. *Id.*

<sup>58</sup> See *People v. Connelly*, 702 P.2d 722, 729 (Colo. 1985) (affirming the suppression of the defendant's statements, ruling they were involuntary because of his psychiatric condition), *rev'd*, 479 U.S. 157 (1986); *Connelly*, 479 U.S. at 162–63 (stating that, although the Colorado Supreme Court found the confession voluntary, the defendant's mental state precluded him from waiving his constitutional rights). The Colorado Supreme Court affirmed the suppression of Connelly's statements. *Connelly*, 479 U.S. at 163.

<sup>59</sup> See *Connelly*, 479 U.S. at 167 (finding that taking Connelly's statements and admitting them into evidence did not violate the Due Process Clause of the Fourteenth Amendment with regard to voluntary confessions).

<sup>60</sup> See *id.* at 159 (posing the question to the U.S. Supreme Court whether a defendant's mental state can impact the voluntariness of his confession).

<sup>61</sup> See *id.* (holding that state rules govern the admissibility of a suspect's mental state when making a confession). The Court also reaffirmed its prior holding in *Lego* that the prosecution need only show that a confession was voluntarily made by a preponderance of the evidence rather than a higher standard. *Id.* at 168; *Lego v. Twomey*, 404 U.S. 477, 489 (1972). The Court upheld the *Lego* rule for two reasons: determining the voluntariness of a confession is irrelevant when it comes to a jury verdict's reliability, and the important nature of confession law does not require a higher standard such as that of beyond a reasonable doubt to ensure the jury verdict is reliable. *Connelly*, 479 U.S. at 168; *Lego*, 404 U.S. at 489. The Court makes this determination based mainly on the reliability of a jury's verdict rather than the reliability of the confession or how easily a confession can be admitted into

## 2. State Reform

In *Lego*, the Supreme Court noted that although the federal standard for determining the voluntariness of a confession is that of a preponderance of the evidence, states are free to choose a higher standard if they wish.<sup>62</sup> Some states have latched onto this language and done just that.<sup>63</sup> Today, states generally fall into one of three categories: (1) states that have never ruled on changing or raising the standard; (2) states that have actively decided *not* to raise the standard; and (3) states that *have* decided to raise the burden of proof.<sup>64</sup>

In the first category are states like Pennsylvania.<sup>65</sup> Notably, Pennsylvania is a common law state, meaning that courts are allowed to interpret the state constitution and create new laws through case holdings.<sup>66</sup> Although Pennsylvania courts are able to raise the burden of proof in pretrial voluntariness hearings, they have not done so, thereby leaving the standard at a preponderance of the evidence.<sup>67</sup>

States in the second category have actively decided not to raise the burden of proof.<sup>68</sup> California, for example, not only refused to raise its standard, but

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evidence. *Connelly*, 479 U.S. at 168. The Court further states in *Connelly* that it denied *Lego*'s argument for this same reason. *Id.*

<sup>62</sup> 404 U.S. at 489.

<sup>63</sup> See *State v. Janis*, 356 N.W.2d 916, 919 (S.D. 1984) (finding that courts in South Dakota are to use a standard of beyond a reasonable doubt when determining whether a confession was voluntarily made); *People v. Huntley*, 204 N.E.2d 179, 183 (N.Y. 1965) (deciding that judges must find that a confession was made voluntarily beyond a reasonable doubt in order to admit it into the record as evidence); *State v. Peters*, 315 So. 2d 678, 683 (La. 1975) (holding that the prosecution must prove beyond a reasonable doubt that the confession was made voluntarily and freely).

<sup>64</sup> See *Janis*, 356 N.W.2d at 919 (demonstrating that trial courts must use a standard of beyond a reasonable doubt when making determinations on the voluntariness of a confession); *Commonwealth ex rel. Butler v. Rundle*, 206 A.2d 283, 285 (Pa. 1965) (deciding the case before them without separately considering to alter the voluntariness standard, thereby keeping it at the constitutional standard); *People v. Markham*, 775 P.2d 1042, 1047 (Cal. 1989) (abrogating by statute prior California caselaw stating that the standard is that of beyond a reasonable doubt and lowering the standard to a preponderance of the evidence).

<sup>65</sup> See *Butler*, 206 A.2d at 285 (agreeing with Supreme Court precedent rather than creating new state law about voluntariness).

<sup>66</sup> See Stephen Wolfson, *The Purposeful Messiness of United States Caselaw*, PA. LIBRS., UNIV. OF PA. (May 22, 2024), <https://www.library.upenn.edu/news/us-caselaw#:~:text=One%20feature%20of%20common%20law,level%20courts%20change%20the%20law> [perma.cc/EK85-NRSH] (stating that Pennsylvania is a common law state in which the law develops through court decisions and caselaw).

<sup>67</sup> See Arthur A. Murphy, *Proposed Standard Instructions on Confessions and Admissions*, 75 DICK. L. REV. 560, 564 (1971) (explaining that the standard for assessing a voluntariness claim in Pennsylvania is that of a preponderance of the evidence).

<sup>68</sup> See *People v. Jimenez*, 580 P.2d 672, 675 (Cal. 1978), *overruled by* *People v. Cahill*, 853 P.2d 1037 (Cal. 1993), *abrogated by* *People v. McGee*, 9 Cal. Rptr.3d 586 (Ct. App. 2004), *superseded by* 133 P.3d 1054 (Cal. 2006) (noting that prior decisions in California Courts of Appeal establish that voluntariness must be proved beyond a reasonable doubt); *Markham*, 775 P.2d at 1047 (abrogating the *Jimenez* decision and reinstating preponderance of the evidence as the legal standard by which courts are to assess the voluntariness of a confession). In *Markham*, the court stated that, in passing Proposi-

overturned a case in which it had already done so.<sup>69</sup> In 1978, in *People v. Jimenez*, the California Supreme Court raised the burden of proof for in camera voluntariness hearings to beyond a reasonable doubt.<sup>70</sup> The court cited to *Lego* in making this determination.<sup>71</sup> In 1989, in *People v. Markham*, however, the same court changed the standard back to a preponderance of the evidence, also citing to *Lego* in this reversal.<sup>72</sup>

The last category of states includes those that have raised the standard to beyond a reasonable doubt.<sup>73</sup> In each of these states, judicial opinions and interpretations of statutory language increased the standard.<sup>74</sup> In Louisiana, courts have interpreted the statutory language of “affirmative[.]” proof that a

tion 8, the legislature intended to curtail excluding evidence based upon state grounds. 775 P.2d at 1047. Given that the U.S. Constitution only requires a preponderance of the evidence standard when determining the voluntariness of a confession, that is all California requires. *See id.*

<sup>69</sup> *See Markham*, 775 P.2d at 1047 (abrogating *Jimenez* by statute and changing the standard back from beyond a reasonable doubt to a preponderance of the evidence, in accordance with the recently passed Proposition 8).

<sup>70</sup> *See* 580 P.2d at 679 (holding that the beyond a reasonable doubt standard “reflects sound judicial policy”); *In Camera*, CORN. L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/in\\_camera](https://www.law.cornell.edu/wex/in_camera) [perma.cc/8DQB-NXC9] (Jan. 2023) (defining “in camera” as a hearing held solely before a judge). The court cited to a stricter standard for confession law benefiting the integrity of the jury’s decision and the fact-finding process without harming the prosecution of guilty criminals. *Jimenez*, 580 P.2d at 679. This would also allow for the prosecution to place controls on the interrogation process to “remove almost all doubt as to whether a confession is voluntary.” *Id.*

<sup>71</sup> *Jimenez*, 580 P.2d at 679. This case unequivocally raised the burden of proof for the prosecution in voluntariness of confession claims to beyond a reasonable doubt. *See id.*

<sup>72</sup> 775 P.2d at 1047 (citing *Lego v. Twomey*, 404 U.S. 477, 488–89 (1972); *Lego*, 404 U.S. at 489. In *Markham*, two men robbed and burglarized the Pacific Drugstore in Oxnard, California, in which one of them held a patron at knifepoint. 775 P.2d at 1043. After being arrested, the defendant admitted to the detective that he had taken some pills in the robbery but stated that he was not the one with the knife. *Id.* at 1044. The defense objected to the admission of the confession, but that was denied by the magistrate, citing to *Lego* in stating that the standard was a preponderance of the evidence rather than beyond a reasonable doubt. *Id.* (citing *Lego*, 404 U.S. at 489). The Court of Appeals affirmed, noting that the “truth-in-evidence law” (Proposition 8) applied. *People v. Markham*, 224 Cal. Rptr. 262, 272 (Ct. App. 1986), *aff’d*, 775 P.2d 1042 (Cal. 1989). The California Supreme Court affirmed as well, citing to *Lego* in stating that the proper standard for determining the voluntariness of a confession is the preponderance of the evidence rather than beyond a reasonable doubt. *Markham*, 775 P.2d at 1047; *Lego*, 404 U.S. at 489. The recently passed Proposition 8, noting that federal evidentiary standards are to be used, informed the court’s decision. *Markham*, 775 P.2d at 1045.

<sup>73</sup> *See State v. Janis*, 356 N.W.2d 916, 919 (S.D. 1984) (ruling that a confession must be found to be voluntary beyond a reasonable doubt in order to be admissible evidence); *State v. Peters*, 315 So. 2d 678, 683 (La. 1975) (stating that Louisiana law makes it clear that the standard for deciding the voluntariness of a confession is that of beyond a reasonable doubt); *State v. Bowden*, 342 A.2d 281, 285 (Me. 1975) (holding that confessions are only admissible if they have been found to be voluntary beyond a reasonable doubt).

<sup>74</sup> *See State v. Thundershield*, 160 N.W.2d 408, 412 (S.D. 1968) (conforming to the orthodox rule in South Dakota in which an independent hearing is used to determine the voluntariness of a confession and the prosecution has the burden of proving the voluntariness of the confession beyond a reasonable doubt); *Peters*, 315 So. 2d at 681 (reviewing the state’s jurisprudence to find that a confession is to be deemed voluntary beyond a reasonable doubt).

confession was voluntary to mean proof beyond a reasonable doubt.<sup>75</sup> Other states in this category, such as New York and South Dakota, judicially raised the standard despite not having a statute to interpret.<sup>76</sup>

### B. The Reid Technique and Its Criticism

The Reid Technique is a nine-step interrogation process designed to elicit confessions.<sup>77</sup> This technique involves isolating the suspect, confronting them with their accused crime, minimizing the punishment of the crime, and threatening to bring other charges if the suspect does not comply.<sup>78</sup> Each tactic has its own purpose.<sup>79</sup>

Isolating suspects, whether from their family, friends, or other support systems, creates psychological stress and vulnerability that increase pressure.<sup>80</sup> Studies have found that isolation enhances anxiety and leads to a perceived need to escape.<sup>81</sup> Suspects feel uncertain and no longer in control of their fu-

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<sup>75</sup> LA. STAT. ANN. § 15:451 (2024); see *Peters*, 315 So. 2d at 680–81 (using this language from the Louisiana Statute to justify its use of a standard of beyond a reasonable doubt).

<sup>76</sup> See *People v. Huntley*, 204 N.E.2d 179, 183 (N.Y. 1965) (stating plainly that the standard to be used is that of beyond a reasonable doubt when assessing the voluntariness of a confession); *Thundershield*, 160 N.W.2d at 412 (holding that the burden to be used in such cases is that of beyond a reasonable doubt, without the mention of any statutory language in its decision). Judges have simply decided, through caselaw, that the standard is that of beyond a reasonable doubt rather than by a preponderance of the evidence. *Huntley*, 204 N.E.2d at 183.

<sup>77</sup> Vrij, *supra* note 41, at 418. The nine steps are: “1. Engaging in a positive confrontation 2. Developing a theme 3. Handling denials 4. Overcoming objections 5. Retaining the subject’s attention 6. Handling the suspect’s mood 7. Creating an opportunity to confess 8. Obtaining an oral confession 9. Converting an oral confession into a written one.” *Id.* Steps one through nine create an environment in which a confession is expected to occur by putting stress on the suspect and giving them ample opportunity to confess. See *id.* (describing how the nine steps create an unbearable situation).

<sup>78</sup> See BLACK & FENNELLY, *supra* note 4, at 76–77 (describing how police use the Reid Technique in practice). No one method of interrogation inspires just guilty people to confess. See Vrij, *supra* note 41, at 420 (noting that interrogation methods either inspire guilty and innocent people to confess or do not inspire anyone to confess).

<sup>79</sup> See Vrij, *supra* note 41, at 421 (explaining how the use of these tactics helps create an environment that encourages confessing).

<sup>80</sup> See Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 PSYCH. SCI. PUB. INT. 33, 43, 47 (2004) (providing multiple psychological studies on inmates who confessed to crimes of which they were accused, as well as the possible psychological stressors isolation, confrontation, and minimization create). These impacts include feeling the need to escape, a sense that is formed by both internal and external stressors, namely, pressure placed on them in a custodial setting such as during an interrogation. *Id.*

<sup>81</sup> See *id.* at 48 (citing studies in which inmates who confessed to the crimes they committed stated that they did so to escape the situation they were in). It is interesting to note that these techniques are especially potent when applied to already psychologically vulnerable people. Gisli H. Gudjonsson, Jon Fridrik Sigurdsson, Bryndis Bjork Asgeirsdottir, & Inga Dora Sigfusdottir, *Custodial Interrogation, False Confession and Individual Differences: A National Study Among Icelandic Youth*, 41 PERSONALITY & INDIVIDUAL DIFFERENCES 49, 50 (2006) (hypothesizing that false confessions would be associated most “with disturbed mental state” and “poor self-esteem”).

tures, which can cause extreme psychological distress.<sup>82</sup> This isolation gnaws at the suspect's ability to resist and creates an overwhelming environment in which the suspect feels trapped and uncomfortable.<sup>83</sup>

Confronting suspects with their presumed guilt—often through deceit and lies about evidence—is also meant to influence them to confess.<sup>84</sup> This adds to both the internal and external pressures they are feeling in the moment by inducing and increasing the cognitive dissonance in their brains.<sup>85</sup> This confrontation makes suspects believe that there is strong evidence against them and that they will not prevail at trial, regardless of their actual responsibility for the crime.<sup>86</sup>

Minimizing the severity of the crime can also lead suspects to believe they will face less prison time if they confess, thereby incentivizing them to

<sup>82</sup> See Kassir & Gudjonsson, *supra* note 80, at 54 (noting that the main reactions to isolation were lack of control/autonomy and uncertainty regarding the future). All of these can be sources of distress. See *id.* (stating how these create distress in isolated individuals). This is especially problematic for cases in which suspects already suffer from anxiety disorders, as was seen in twenty percent of the cases in a study conducted by Gudjonsson. *Id.* These stressors are innately present in the custodial environment itself. *Id.* In addition to the environment, the tactics used by the interrogating officers amplify these pressures. *Id.*

<sup>83</sup> See Richard P. Conti, *The Psychology of False Confessions*, 2 J. CREDIBILITY ASSESSMENT & WITNESS PSYCH. 14, 28 (1999) (explaining that isolating the suspect adds to this feeling of despair and helplessness). Isolating and confining a suspect can lead to them losing contact with reality. *Id.* Studies also show how isolating the suspect has intense psychological impacts on those being interrogated. Kassir & Gudjonsson, *supra* note 80, at 53.

<sup>84</sup> See Kassir & Gudjonsson, *supra* note 80, at 54 (explaining that confrontation includes interrupting denials, presenting the suspect with evidence of their guilt regardless of if it genuinely exists, and refuting the suspect's alibis). This is legally permissible in the United States, as police officers are allowed to use deception in the interrogation process to elicit a confession. See Nigel Quiroz, *Five Facts About Police Deception and Youth You Should Know*, INNOCENCE PROJECT (May 13, 2022), <https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers> [perma.cc/E2WJ-DHM6] (explaining that it is nearly always legal for law enforcement to lie during interrogations). The use of such deception in the confrontation phase can lead to suspects internalizing the idea that they committed the crime, allowing them to place blame on themselves for these outcomes that, in reality, they had nothing to do with. Kassir & Gudjonsson, *supra* note 80, at 33. One major concern is that lying may have the opposite effect, incentivizing only innocent people to confess as they do not know the actual facts of the crime. Vrij, *supra* note 41, at 419.

<sup>85</sup> See Kassir & Gudjonsson, *supra* note 80, at 47 (stating that the confrontation portion of the Reid Technique breaks down a suspect's resistance and that both internal and external pressures impact the suspect's mental impressions of what is going on); FRANCESCO GALVANO, BEHAV. ANALYSIS TEAM, THE REID TECHNIQUE CONTROVERSIES, CRITICISMS, AND EVOLVING INTERROGATION PRACTICES 2 (2023), [https://www.researchgate.net/publication/371874407\\_The\\_Reid\\_Technique\\_Controversies\\_Criticisms\\_and\\_Evolving\\_Interrogation\\_Practices](https://www.researchgate.net/publication/371874407_The_Reid_Technique_Controversies_Criticisms_and_Evolving_Interrogation_Practices) [perma.cc/4A89-4JC5] (explaining that the cognitive dissonance created by the use of lies has an extremely large impact on the suspects and their mental conditions). This is especially prevalent when the police officers "have little or no proof." Kassir & Gudjonsson, *supra* note 80, at 47. "Cognitive dissonance is a psychological phenomenon that occurs when a person holds two contradictory beliefs at the same time." Zawn Villines, *What Is Cognitive Dissonance?*, MED. NEWS TODAY, <https://www.medicalnewstoday.com/articles/326738#:~:text=Cognitive%20dissonance%20is%20the%20discomfort,beliefs%20at%20the%20same%20time> [perma.cc/4SVK-YL3T] (Jan. 15, 2024).

<sup>86</sup> See Kassir & Gudjonsson, *supra* note 80, at 60 (explaining that a suspect's decision to confess is often based on their beliefs of the consequences and what evidence the police have against them).

cooperate.<sup>87</sup> The perceived benefits of cooperating with the officers lead suspects to believe there are now fewer detriments to confessing.<sup>88</sup> This interrogation tactic creates an environment that triples the likelihood of innocent suspects confessing.<sup>89</sup>

Finally, threatening the suspect adds more psychological stress that makes them feel both uncomfortable and a sense of overwhelming guilt.<sup>90</sup> These tactics are furthered through the use of leading questions by the interrogating officers.<sup>91</sup> Leading questions provide details of the crime that the suspect other-

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<sup>87</sup> See Richard A. Leo, *Miranda's Revenge: Police Interrogation as a Confidence Game*, 30 LAW & SOC'Y REV. 259, 278–79 (1996) (noting that the interrogator claimed that a jury may sympathize with the suspect if he confessed in this stage, making the crime seem justified and therefore not as bad as the suspect initially thought). These are implied promises of leniency rather than directly stated promises. See Kassin & Gudjonsson, *supra* note 80, at 46 (differentiating between implied and direct promises of leniency). Research demonstrates that minimization can potentially lead to suspects inferring leniency, even if the interrogators did not explicitly promise leniency. *Id.* at 55. In one study examined by Kassin in this paper, overall confession rates were higher among suspects when a promise of leniency was given. See Melissa B. Russano, Christian A. Meissner, Fadia M. Narchet, & Saul M. Kassin, *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 PSYCH. SCI. 481, 485 (2005) (finding that explicit offers of leniency, as well as minimization, led to increased rates of confessions). This was also the case when there was an implicit offer rather than an explicit offer. Kassin & Gudjonsson, *supra* note 80, at 55. Although minimization in this study increased true confession rates, it also increased false confession rates. *Id.* In fact, the confession rates were higher in the minimization group than in the explicitly stated leniency group, meaning that the implied leniency resulted in higher rates of confession for both true confessions and false confessions throughout the study. *Id.* The highest rates of confession for both groups resulted from a mix of both explicitly stated leniency and minimization tactics. *Id.* Minimizations serves the function of an explicit promise of leniency without the officers making that explicit promise. *Id.* As explained by a table in this article, false confession rates tripled when the interrogating officer used minimization as compared to no tactics used at all. *Id.* at 56, tbl. 6. In this study, the false confession rate for the control group was 6%. *Id.* When officers made explicit offers of leniency, the rate of false confessions more than doubled (14%). *Id.* When using minimization—implicit offers of leniency—false confession rates tripled that of the control group (18%). *Id.* When officers used both explicit offers of leniency and minimization, the rate of false confessions increased more than seven-fold (43% of innocent suspects falsely confessed). *Id.*

<sup>88</sup> See Kassin & Gudjonsson, *supra* note 80, at 43 (explaining that, through minimization, the interrogating officer justifies the crime, which allows the suspect to infer leniency and see confessing as their best way of escaping the interrogation). By treating the suspect in this way, the interrogating officer makes the suspect incorrectly believe that confessing is a positive. See *id.* (stating that the use of minimization places the suspect in a position in which they view confessing as the preferred way of escaping the interrogation).

<sup>89</sup> See *id.* at 55–56 (stating that one study showed innocent suspects confessed 6% of the time when no tactics were used as compared to 18% of the time when minimization was used).

<sup>90</sup> See *id.* at 45 (arguing that threats and inducements, whether stated or implied, influence a suspect's decision-making ability, which makes them more likely to feel guilty regardless of their actual guilt).

<sup>91</sup> See Vrij, *supra* note 41, at 419 (explaining that police interrogation tactics include the use of leading questions).

wise did not know.<sup>92</sup> This line of questioning makes it easier for suspects to confess to what *the officers* believe happened.<sup>93</sup>

A confession is the ideal evidence for police officers to reinforce the belief that they arrested the proper suspect.<sup>94</sup> Given the high success rate of the Reid Technique in obtaining these coveted confessions, it continues to be used despite the equally high rate of criticism it has elicited from academic researchers.<sup>95</sup> The main critique is that this method of interrogation is one of the major reasons someone falsely confesses, leading to more wrongful convictions.<sup>96</sup> According to academic researchers, there are three serious pitfalls to the method and how it works in practice.<sup>97</sup>

First, the Reid Technique assumes that only guilty people confess to crimes.<sup>98</sup> This, however, is not always the case.<sup>99</sup> It has been shown that both

<sup>92</sup> See *id.* at 416 (defining leading question).

<sup>93</sup> See *id.* at 419 (discussing the problems with police officers using leading questions in interrogations). The main problem that Vrij finds is that leading questions could indirectly inform the suspect of what the officer believes to be true, even if the officer's believed facts are not what actually transpired. *Id.* He pairs his concern of leading questions with his concern of lying to suspects. See *id.* (stating his concerns with the Reid Technique and that the use of leading questions and deceit are two of his main critiques of the interrogation method). He argues that it is possible that, by using leading questions, officers tip off guilty suspects by making claims that the guilty suspects know to be impossible or factually false, leading the guilty suspects to believe that the officers have no actual evidence against them. *Id.* This causes guilty suspects to further maintain their innocence, as they now know that the officers do not have the evidence they claim to possess. *Id.* The opposite is true for innocent suspects who do not know the actual facts of the crime. *Id.* In these cases, the innocent suspect may believe that they are dead to rights and have no means of escaping the situation they are in without confessing because the leading questions lead them to believe that the officers have such damning evidence against them, even though they did not commit the crimes of which they are accused. See *id.* (explaining the potential shortcomings of using leading questions in interrogations).

<sup>94</sup> See *A Confession Is an Explicit Admission of Guilt*, LAWTEACHER (Feb. 2, 2018), <https://www.lawteacher.net/free-law-essays/criminology/a-confession-is-an-explicit-admission-of-guilt-law-essays.php#:~:text=The%20well%20known%20maxim%2C%20habemus,would%20be%20of%20two%20types> [perma.cc/F6WH-BW3L] (stating that the best evidence for prosecutors is a confession).

<sup>95</sup> See Vrij, *supra* note 41, at 418 (stating that the Reid Technique is mainly used because of its high success rate in obtaining confessions).

<sup>96</sup> See *id.* at 419 (explaining the immense criticism that the Reid Technique has faced given how it often produces false confessions). Because no one way of interrogating influences only guilty people to confess, researchers are not inclined to support the Reid Technique, as the psychological effects it has on the ones being interrogated are especially harmful to innocent suspects. See *id.* (outlining issues with the Reid Technique).

<sup>97</sup> See *id.* at 419–20 (explaining that the Reid Technique has three main pitfalls). These pitfalls include: (1) it assumes only guilty people confess to crimes, (2) the use of leading questions gives the suspect ample opportunity to confess to what they believe the officers want them to confess to rather than what actually transpired, and (3) there is a real potential that lying to suspects could backfire and have the opposite result of what was intended. *Id.*

<sup>98</sup> *Id.* Vrij explains how the Reid Technique is flawed in that it assumes only guilty people confess to crimes. *Id.* This, however, is often not the case. See *id.* (noting how innocent people also confess to crimes). Unfortunately, innocent people often confess to crimes they did not commit to escape the psychologically stressful situation that police custody and interrogation has put them in. See Kassin & Gudjonsson, *supra* note 80, at 53 (explaining that people who experience extreme anxiety in

factually guilty and factually innocent individuals are incentivized to confess to crimes with the hope that they can escape the highly stressful situation the officers have placed them in throughout the interrogation process.<sup>100</sup> This intense psychological pressure can overcome the suspect's will to maintain their innocence, leading factually innocent people to confess.<sup>101</sup> Because the interrogating officers either expressly or impliedly state that confessing will get the suspect out of the situation, the suspect believes that it is the only available option.<sup>102</sup>

Second, the use of leading questions gives the suspect ample opportunity to confess to more than what they truly know about the crime.<sup>103</sup> The Exoner-

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these interrogations have been known to confess out of compliance in order to leave the stressful situation in which they have been placed). This often is seen as a common result of the methods employed by officers when using the Reid Technique. *Id.*

<sup>99</sup> See Kassir, *supra* note 18, at 249 (explaining how people have confessed to crimes they did not commit since the Salem Witch Trials). It is a common misconception that people only confess to crimes of which they are guilty; however, it is a natural response to the stressors placed on people when interrogated to confess in an attempt to escape the situation in which police officers have placed them. *Id.*; see Kassir & Gudjonsson, *supra* note 80, at 53 (showing that isolation increases the anxiety felt when in custodial interrogations, which makes the suspect feel as though they need to escape). The custodial setting in and of itself tends to put those interrogated into a heightened level of stress and anxiety. Kassir & Gudjonsson, *supra* note 80, at 53. In addition to the custodial nature of these interrogations creating such stress- and anxiety-inducing environments, the methods employed by the interrogating officers can create an environment in which confessing is the only way the suspect feels they can escape. *Id.* at 43.

<sup>100</sup> See Vrij, *supra* note 41, at 420 (explaining that no one method of interrogation induces only guilty individuals to confess to crimes). Police officers employ these methods exactly for that stated purpose. *Id.* These methods do not discern between the factually innocent and the factually guilty, as that is not necessarily possible given our current understanding of the human brain and how it works in these stressful situations. See *id.* (explaining that no one method of interrogation convinces only guilty suspects to confess).

<sup>101</sup> See Kassir & Gudjonsson, *supra* note 80, at 42 (analyzing how the Reid technique is meant to overcome all the suspect's objections).

<sup>102</sup> See *id.* at 55 (analyzing the need for suspects to escape the situation they are in and therefore confess to that which they are accused as it is seen as the only viable method of escape); Margaux Joselow, Note, *Promise-Induced False Confessions: Lessons from Promises in Another Context*, 60 B.C. L. REV. 1641, 1650 (2019) (noting that implied promises of leniency are equivalent in their impact on suspects as express promises of leniency). One study analyzed by Gudjonsson compares express and implied promises of leniency in interrogations. See Kassir & Gudjonsson, *supra* note 80, at 55–56 (examining express versus implied promises of leniency). It found that implied promises of leniency actually led to higher rates of confessions for those interrogated than did the express promises of leniency. *Id.* Notably, the lack of interrogation tactics led to 6% of innocent suspects confessing, the use of explicit leniency only led to a 14% false confession rate, the use of minimization only led to an 18% false confession rate, and the use of both explicit offers of leniency and minimization incentivized 43% of innocent suspects to confess. *Id.* Unfortunately, the study did not dive into why this could be the case; however, it did explain that the implied promises of leniency gave those interrogated a feeling as though they needed to confess to escape the situation they were in. *Id.* This was found to be true for both factually guilty and factually innocent suspects, although the rate of confessing tended to be higher for factually guilty individuals throughout the study. *Id.*

<sup>103</sup> See Vrij, *supra* note 41, at 419 (explaining the issue with leading questions in interrogations is that it gives extra information to the suspects and allows them to confess to what the interrogating officer believed happened rather than what actually transpired). This is evident in the case of the Ex-

ated Five is a perfect example of this.<sup>104</sup> Police officers interrogated each boy individually, allowing them to confess to different facts, none of which were corroborated by the actual evidence.<sup>105</sup> As the boys did not know what had happened, each of them confessed broadly to what they believed they were supposed to.<sup>106</sup>

Third, there is a real potential that lying to suspects could backfire and have the opposite result to what was intended.<sup>107</sup> Researchers note that this could potentially only incentivize innocent suspects to confess.<sup>108</sup> Under this presumption, innocent suspects are more likely to believe the lie and confess as they believe it is their only way of escaping, whereas guilty suspects would be

onerated Five. See *THE CENTRAL PARK FIVE*, *supra* note 1, at 00:44:04 (showing the confessions of the five young boys). In that case, each of the boys confessed to the set of facts that he believed happened based off what the police officers told them during the interrogation. See *id.* at 00:44:37 (demonstrating, through showing the boys' taped confessions, that the boys simply agreed with what the interrogating officers said). This was evident in that all the boys confessed to a different set of facts. See *id.* at 00:44:04 (showing the boys' confessions, placing them directly after each other to demonstrate that the boys' stories did not line up with the actual facts).

Police officers also tend to give information to the suspects during these interrogations. See Vrij, *supra* note 41, at 419 (explaining that the use of leading questions allows the suspect to confess more to what the police believe happened than to what actually occurred). This is problematic as it leads officers to believe that those interrogated know more about the crime than they actually do, when in reality they are simply restating what the officers have suggested through their leading questions. See *id.* (stating how leading questions allow suspects to confess to more than what they actually know).

<sup>104</sup> See *THE CENTRAL PARK FIVE*, *supra* note 1, at 01:49:34 (discussing the case of the Central Park Five and how their false confessions led to their wrongful convictions).

<sup>105</sup> See *id.* (showing videos of the interrogations and showcasing how each boy agreed with what the officers suggested about the crime, depicting their lack of knowledge of the actual facts). In this illustration, it appears the boys did not know what actually happened to Meili, as none of them gave the same story about the crime. See *id.* (recounting the differences among the boys' stories through both showing the boys' confessions and detailing a juror's understanding that none of the boys' stories lined up with the others given). All of them simply agreed with what the officers stated and added some details about the crime, none of which were corroborated by the actual facts or by what the other boys described. See *id.* (showing the boys' videotaped confessions).

<sup>106</sup> See *id.* (showing videos of the interrogations of the boys).

<sup>107</sup> See Vrij, *supra* note 41, at 419 (outlining the issues with police lying to suspects in an interrogation). Vrij argues that lying could potentially create the opposite results as intended and lead to innocent people confessing and guilty people maintaining their stories. *Id.*

<sup>108</sup> See *id.* (arguing that the use of deception can potentially backfire, as it may only incentivize innocent individuals to confess). Vrij gives an example of a burglary case in which the police interviewed an innocent suspect and a guilty suspect, and the innocent suspect actually confessed while the guilty suspect avoided detection. *Id.* In both cases, the interviewer told the suspect that their fingerprints were uncovered at the crime scene. *Id.* In the case of the innocent suspect, they were not sure how their fingerprints were uncovered at the scene, as they were not there. *Id.* Because of this, they started to question the strength of their own case and therefore fell victim to the lie, believing it and panicking, leading to them confessing. *Id.* In contrast, the guilty suspect knew they wore gloves and their fingerprints therefore could not have been at the scene. *Id.* Because of that inside knowledge, the guilty suspect understood that the interrogating officer's statement was a lie and that he had no real evidence against him. *Id.* Armed with this understanding, the guilty suspect adamantly maintained his innocence. *Id.*

able to discern that the officer is lying.<sup>109</sup> For example, Aldert Vrij, a psychologist writing on coerced confessions, gives a hypothetical situation where a police officer lies to burglary suspects that their fingerprints were uncovered at the scene of the crime.<sup>110</sup> Vrij ponders that guilty burglars may understand the interrogating officer's statement to mean that the officer has no actual evidence linking them to the crime because they know their fingerprints could not have been found at the scene.<sup>111</sup> This would then incentivize the guilty burglars to maintain their innocence and not confess.<sup>112</sup> On the other hand, innocent suspects would not know the actual facts of the crime and would possibly believe the officer's statement, thereby leading them to feel pressured into confessing.<sup>113</sup> The innocent suspects now think that the officer has inculpatory evidence against them.<sup>114</sup> This is especially problematic as police officer lying occurs in approximately thirty percent of police interrogations.<sup>115</sup>

The Reid Technique is also highly researched regarding its effects on juveniles and other vulnerable suspects.<sup>116</sup> Youths tend to be much more suscep-

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<sup>109</sup> See Irina Khasin, Note, *Honesty Is the Best Policy: A Case for the Limitation of Deceptive Police Interrogation Practices in the United States*, 42 VAND. J. TRANSNAT'L L. 1029, 1033 (2009) (discussing that lying to suspects can hurt both the suspect and the interrogator). Vrij believes that these deceptive police tactics are more likely to have negative implications. Vrij, *supra* note 41, at 419.

<sup>110</sup> Vrij, *supra* note 41, at 419.

<sup>111</sup> See *id.* (explaining the burglary hypothetical). In this situation, the burglars were correct in their assumptions that the interrogating officer lied because the officer had no actual evidence against them. *Id.* The guilty suspect's knowledge of the crime benefited them in a way that an innocent suspect's lack of knowledge could not. *Id.*

<sup>112</sup> See *id.* (furthering the point that lying to suspects can be detrimental in custodial interrogative settings).

<sup>113</sup> See *id.* (arguing that the innocent suspect is worse off than the guilty suspect as they take what the police say to be factual and thereby feel as though there is incriminating evidence against them when in reality there is not).

<sup>114</sup> See *id.* (arguing that innocent people are potentially more likely to confess to crimes they did not commit when confronted with lies about them as they believe the officers have strong evidence against them, leading them to question the strength of their own case in such instances); Kassin & Gudjonsson, *supra* note 80, at 41 (analyzing multiple studies that dive into the impact police deception has on innocent individuals being interrogated). A 2003 study on the use of police deception found that presenting false evidence can lead vulnerable suspects to confess to something they did not commit, internalize responsibility for the confessed-to act, and create details that are consistent with that newfound belief. See Robert Horselenberg, Harald Merckelbach & Sarah Josephs, *Individual Differences and False Confessions: A Conceptual Replication of Kassin and Kiechel (1996)*, 9 PSYCH. CRIME & L. 1, 6 (2003) (stating that interrogating officers presenting false evidence can lead to suspects internalizing blame even if they did not commit the crime of which they have been accused). The results of the study showed that 82% of individuals complied with the police, 42% internalized the false confession, and 58% created false memories corroborating the confessed-to crime. *Id.*

<sup>115</sup> Vrij, *supra* note 41, at 419.

<sup>116</sup> See Lambert, *supra* note 42 (analyzing the research conducted on the Reid Technique and its impact on juveniles specifically). According to the research, juveniles are more susceptible than adults to the methods employed by the Reid Technique because their brains are less developed and they have a lower understanding of their legal rights and how the legal system works. *Id.* Youths also do not

tible to these tactics than adults as they have a lesser understanding of their legal rights and the consequences of their actions.<sup>117</sup> Youths also have an increased likelihood of cooperating with authority figures.<sup>118</sup> The manual to the Reid Technique itself explicitly warns officers of the dangers of these tactics with young suspects, cautioning them to modify their approach when dealing with juveniles, a more easily manipulable population.<sup>119</sup> Although this technique may lead to an increased number of guilty suspects confessing to crimes they actually committed, it can work contrary to its intended purpose.<sup>120</sup> The Reid Technique has prevailed despite the criticism it has faced over the years, with police departments across the country maintaining its use to consistently increase their ability to elicit confessions.<sup>121</sup>

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have the same level of understanding when it comes to the consequences of their actions, so the minimization portion of the technique works especially well on them. *Id.* Studies have also shown that youths have an increased likelihood of cooperating with authority figures. *Id.* This, mixed with the theory that youths tend to tell police officers what they believe the officers want to hear, further adds to the Reid Technique's success rate with juvenile suspects. *Id.*

<sup>117</sup> *Id.*; MAKING A MURDERER, *supra* note 47.

<sup>118</sup> Lambert, *supra* note 42. This can be seen through the anecdotal story of the Exonerated Five. See THE CENTRAL PARK FIVE, *supra* note 1, at 01:05:09 (showing the story of the five young boys interrogated and incarcerated for the rape and assault of Trisha Meili). The boys' confession tapes illustrate how they simply agreed to what the officers told them and confessed to different versions of the story that they each individually believed the police officers wanted to hear. *Id.* at 00:44:04.

Another example of this is the case of Brendan Dassey, the subject of the Netflix documentary *Making a Murderer*. See MAKING A MURDERER, *supra* note 47; William Douglas Woody, *Anatomy of a False Confession: The Interrogation and Conviction of Brendan Dassey*, RUTGERS (July 2020) (book review), <https://clcjbooks.rutgers.edu/books/anatomy-of-a-false-confession-the-interrogation-and-conviction-of-brendan-dassey/#:~:text=Throughout%20his%20review%2C%20the%20author,extensive%20use%20of%20leading%20questions> [perma.cc/X7XU-E75K] (explaining the story of Brendan Dassey, an intellectually disabled teenager whose conviction became famous after Netflix released its docuseries *Making a Murderer*); LAURA NIRIDER, MEGAN CRANE, & STEVEN DRIZIN, BRENDAN DASSEY: A TRUE STORY OF FALSE CONFESSION 2 (2017) (noting that the Netflix documentary *Making a Murderer* broadcasted Dassey's videotaped confession). Police officers interrogated Brendan Dassey until he confessed to murdering a young girl with his uncle. See Woody, *supra* (stating that the tactics the police officers used in their interrogation of Dassey prompted him to confess in ways that allowed the officers to place him, as well as his uncle, at the center of the rape and murder). In a conversation with his mother after the interrogation, Dassey explained to her that he confessed because the officers "got to [his] head." NOWTHIS, *Wrongful Conviction: Brendan Dassey, of Netflix's 'Making a Murderer'* | NowThis, at 06:07 (YouTube, Oct. 2, 2019), [https://www.youtube.com/watch?v=3Ve\\_UylqfK4](https://www.youtube.com/watch?v=3Ve_UylqfK4) [perma.cc/V8NV-VP5Y].

<sup>119</sup> Lambert, *supra* note 42.

<sup>120</sup> See Kassir & Gudjonsson, *supra* note 80, at 33 (conducting a meta-analysis of different psychological studies researching the impact that the Reid Technique has on suspects, arguing that the technique itself leads to confessions from innocent suspects as well as guilty suspects, and casting doubt on the efficacy of such interrogation methods).

<sup>121</sup> See Vrij, *supra* note 41, at 420 (arguing against use of the Reid Technique in interrogative settings).

## II. THE MASSACHUSETTS RULE AND THE ORTHODOX RULE

Currently, the standard by which judges determine whether a confession was voluntarily made is that of a preponderance of the evidence.<sup>122</sup> In the late twentieth century, the Supreme Court affirmed this but noted that state courts are free to raise their own standards if they choose.<sup>123</sup> Numerous scholars have read these words and argued that the preponderance of the evidence standard is too low for confession law given how influential self-incriminating statements are to juries, regardless of their reliability.<sup>124</sup>

State reform is one of the most effective means of increasing individual liberties and freedom.<sup>125</sup> Supreme Court Justice William Brennan wrote on the importance of state courts' interpretations of laws and their own constitutions in a 1977 Harvard law review article.<sup>126</sup> In it, Justice Brennan urged state courts to elevate their protections over the baseline threshold created by the Supreme Court.<sup>127</sup> He argued that states raising their own standards, and there-

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<sup>122</sup> See Primus, *supra* note 14, at 50 (stating that the standard by which judges determine voluntariness is that of a preponderance of the evidence).

<sup>123</sup> See *Lego v. Twomey*, 404 U.S. 477, 489 (1972) (ruling that, although the federal standard for confession law is a preponderance of the evidence, states are free to raise their standards).

<sup>124</sup> See Beltrani, *supra* note 19 (stating that confessions are so potent that they often dictate the decisions of the police, judge, and jury in a criminal case); Primus, *supra* note 14, at 50 (arguing for raising the voluntariness standard from preponderance of the evidence to that of clear and convincing evidence, a higher standard that is not quite at the level of beyond a reasonable doubt); Lederer, *supra* note 15, at 97 (contending that the military should raise its voluntariness standard to that of beyond a reasonable doubt, aligning itself more with what some of the state courts have already done). Although there is not a consensus among scholars as to what the standard should be, those writing on it mainly assert that it should simply be raised and that a preponderance of the evidence standard is too low for this type of law. See Primus, *supra* note 14, at 50 (arguing to raise the standard); Lederer, *supra* note 15, at 91 (advocating for a higher standard). One theory is that the standard should be raised to that of beyond a reasonable doubt, in accordance with what some states have done. Lederer, *supra* note 15, at 91. There are two schools of thought to this argument: one follows the orthodox rule whereas the other follows the Massachusetts rule. *Id.*; see MASS. DIST. CT., *supra* note 25 (articulating the Massachusetts rule for confession law).

<sup>125</sup> See Brennan, *supra* note 23, at 491 (arguing that state level reform is highly important and influential in providing individuals with more rights than what the federal constitution provides). Brennan argues that if state courts disagree with what the Supreme Court has ruled regarding the U.S. Constitution, they should interpret their own state constitutions to provide greater protections. See *id.* at 498–99 (stating that some state courts have made decisions that are contrary to parallel decisions of the Supreme Court). Brennan cites to California as an example of a state that has ruled that the Supreme Court's decisions are not binding on how the state will prosecute. *Id.*

<sup>126</sup> See *id.* at 495 (explaining how more states are choosing to deviate from Supreme Court decisions when interpreting their own constitutions).

<sup>127</sup> See *id.* at 500 (making the point that Supreme Court decisions are not dispositive of state law issues). Brennan argued that state court decisions should not be taken over by what the Supreme Court has ruled on a particular claim given that, often, Supreme Court decisions are not applicable to similar issues across the states. See *id.* (noting that the Supreme Court is not necessarily wrong in their decisions, but their decisions should not be read as gospel by state courts, as state courts are allowed to—and should—heighten the protections their state laws give to its citizens). He also noted that the whole notion of the American judiciary began as a way of differentiating between the federal system and the

by increasing the protections of their residents, is both significant and crucial to the operation of the legal system.<sup>128</sup>

There are two methods by which raising the standard has been achieved: the orthodox rule and the Massachusetts rule.<sup>129</sup> The orthodox rule states that judges are to make an independent determination, beyond a reasonable doubt, whether the confession was voluntary.<sup>130</sup> If the judge determines the confession is voluntary, it may be admitted into evidence at trial.<sup>131</sup> The Massachusetts rule has this same initial determination by the judge.<sup>132</sup> If the judge determines that the confession was voluntarily made, the Massachusetts rule requires that the jury be given a limiting instruction regarding the confession.<sup>133</sup> The jury is instructed that they must consider, beyond a reasonable doubt,

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state system and that should remain. *See id.* at 503 (arguing “that one of the strengths of [America’s] federal system is that it provides a double source of protection for the rights of [its] citizens”). He did not argue that the Supreme Court was incorrect in its decisions but that those decisions are not always applicable to the states and that judges write dissents for a reason. *See id.* at 502 (stating that Supreme Court decisions include dissents to show that there are different ways judges, courts, and attorneys can view the issues).

<sup>128</sup> *See id.* at 502 (urging states to differentiate themselves from the Supreme Court decisions with which they disagree because Supreme Court decisions are often not entirely complimentary to similar issues that arise in the states). Brennan noted that it would be error for state courts to rely on Supreme Court decisions in such a way that rids the state courts of their intended individualism. *See id.* (stating that the intention of state judiciaries was to make their own decisions).

<sup>129</sup> *See Lederer, supra* note 15, at 91 (describing the two ways by which state courts have raised their standards, the orthodox rule and the Massachusetts rule). In the orthodox rule, a judge makes an in-camera, pretrial determination as to the voluntariness of the confession beyond a reasonable doubt. *Id.* Although this first step is the same for the Massachusetts rule, in the Massachusetts rule, if the judge deems the confession voluntary beyond a reasonable doubt, the jury is instructed to decide whether the confession was voluntary beyond a reasonable doubt prior to determining the guilt of the accused. *Id.* The standard of clear and convincing evidence is in between that of the preponderance of the evidence and beyond a reasonable doubt. *Clear and Convincing Evidence*, CORN. L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/clear\\_and\\_convincing\\_evidence](https://www.law.cornell.edu/wex/clear_and_convincing_evidence) [perma.cc/J9NY-PWA2] (July 2022).

<sup>130</sup> *See Lederer, supra* note 15, at 91 (explaining the orthodox rule). Similar to other states, even those that use a preponderance of the evidence standard rather than a reasonable doubt standard, once the judge makes this determination, it is final. *Id.* The confession will either go to the jury or it will not. *Id.* Once this determination is made, the jury is to decide on the confession like it would any other piece of evidence, by the preponderance of the evidence. *See generally id.* (explaining the orthodox rule and how it works in practice). This difference is important when considering the orthodox rule versus the Massachusetts rule. *See id.* (noting the differences between the two main ways states have raised their burden of proof regarding confession evidence). The major distinction between the two rules is that, under the Massachusetts rule, the jury determines, beyond a reasonable doubt, whether the confession was voluntary, whereas, using the orthodox rule, the jury determines, by a preponderance of the evidence, whether the confession was voluntary. *Id.*

<sup>131</sup> *See id.* (stating the sole step of the orthodox rule is for the judge to make this determination outside the presence of the jury).

<sup>132</sup> *See id.* (explaining the Massachusetts rule).

<sup>133</sup> *See id.* (noting that the Massachusetts rule requires this extra step when compared to the orthodox rule).

whether the confession was voluntary before determining the defendant's guilt.<sup>134</sup>

Section A of this Part discusses the reason behind why some scholars prefer the orthodox rule to assess the voluntariness of confessions.<sup>135</sup> Section B analyzes why other scholars prefer the Massachusetts rule.<sup>136</sup> Section C discusses the potential critiques of raising the standard for confession law to beyond a reasonable doubt in general.<sup>137</sup>

### A. The Orthodox Rule

Supporters of the orthodox rule argue that this single-determination—requiring only the judge to determine the voluntariness of the confession rather than both the judge and the jury—is simpler and less confusing than the Massachusetts rule.<sup>138</sup> They posit that juries will often conflate confessions and guilt, not making a separate voluntariness assessment before determining the guilt of the defendant.<sup>139</sup>

Those championing the orthodox rule view it as more practical than the Massachusetts rule because litigating a confession in front of a jury may imprint it into the jurors' minds.<sup>140</sup> This litigation is often accompanied by the prosecution's very dramatic interpretation of the confession, tying it together with the other evidence being used.<sup>141</sup>

The crux of the argument in support of the orthodox rule is that a judge is likely to pass responsibility off to the jury rather than making an actual determination regarding the confession, ultimately harming the defendant.<sup>142</sup> The judge may forgo making a decision and simply enter the confession into evi-

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<sup>134</sup> See *id.* (stating that the Massachusetts rule includes instructing the jury to decide the voluntariness of the confession before determining the guilt of the defendant).

<sup>135</sup> See *infra* notes 138–144 and accompanying text.

<sup>136</sup> See *infra* notes 145–151 and accompanying text.

<sup>137</sup> See *infra* notes 152–165 and accompanying text.

<sup>138</sup> See Jerome Jaynes, Recent Case, *Constitutional Law—Due Process—Jury Determination of Voluntariness of Confession*, 41 N.D. L. REV. 211, 213 (1964) (stating that those advocating for the orthodox rule do so on the belief that juries are incapable of differentiating between voluntariness and guilt and that, even if the jury was able to deem the confession involuntary, it would not be able to disregard it).

<sup>139</sup> See *id.* (noting that juries often conflate voluntariness with guilt).

<sup>140</sup> See Bernard D. Meltzer, *Involuntary Confessions: The Allocation of Responsibility Between Judge and Jury*, 21 U. CHI. L. REV. 317, 325–26 (1954) (pointing out that judges following the Massachusetts rule will simply pass the determination to the jury instead of examining it themselves and arguing that litigating the confession imprints it on the jury). Meltzer notes that this litigation would make it harder for the jury to disregard the confession should they deem it involuntary. *Id.*

<sup>141</sup> See *id.* (discussing how the dramatic nature of confession evidence makes it difficult to disregard once presented to the jury).

<sup>142</sup> See *id.* (claiming that it is easier to convince a judge that there is an issue than to get the judge to definitively decide on the issue before them).

dence so that the jury can evaluate it and reach their own conclusion.<sup>143</sup> Supporters of the orthodox rule assert that by admitting the confession, a jury may feel that the judge already determined it was voluntary and will not disturb that presumed finding.<sup>144</sup>

### B. The Massachusetts Rule

Proponents of the Massachusetts rule argue that although it could be deemed more complex to implement as it includes multiple steps, the dual determination of voluntariness affords the defendant additional protection.<sup>145</sup>

These scholars contend that the second step aligns with the constitutional right of a trial by jury.<sup>146</sup> The entire purpose of a jury is to sift through all the facts before them and come to a verdict.<sup>147</sup> If a confession cannot be litigated as to whether it was voluntary or coerced, the jury will simply take the admitted confession as voluntary, thereby denying the defendant additional protection.<sup>148</sup>

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<sup>143</sup> See *id.* (critiquing the Massachusetts rule by stating that judges will defer to juries when given the opportunity to do so, thereby essentially eliminating the first step).

<sup>144</sup> See *id.* (stating that a defendant will likely not benefit from the extra step required in the Massachusetts rule as juries are unlikely to disregard the confession after determining it to be involuntary). Meltzer also notes that juries tend not to be phased by instructions to disregard certain evidence, meaning that they are not able to disregard it even if instructed to do so. See *id.* (noting that such an instruction on confessions may not be effective).

<sup>145</sup> See Note, *The Role of Judge and Jury in Determining a Confession's Voluntariness*, 48 J. CRIM. L. & CRIMINOLOGY 59, 62 (1957) (describing the Massachusetts rule as one in which the defendant gets multiple opportunities to have the confession ruled on beyond a reasonable doubt—one by the judge pretrial and one by the jury if the judge determines the confession to be voluntary—providing the defendant with an extra safeguard against the admission of their confession into evidence). The confession will only be admitted under this rule if the judge makes their determination in favor of the prosecution. *Id.* If there is any reasonable doubt as to the voluntariness of the confession, it is to be determined in favor of the defendant. See *id.* (stating that the judge must decide if the confession was voluntary beyond a reasonable doubt).

One potential issue with this is that the judge may be more likely to lean in favor of admitting a confession on a close call, as the jury will also have a say in the matter, allowing them to make the ultimate decision on the voluntariness of the confession. See *id.* at 64 (noting the potential argument that, on close calls, the defendant may not be given extra protection from the Massachusetts rule, as judges may defer to the jury). This would potentially bar the defendant from that secondary protection against the admission of the confession, because the judge would not have to rule on it if it is a close determination between whether it was voluntary or not. See *id.* (arguing that judges will admit a confession if unsure as to whether it was voluntarily made).

<sup>146</sup> See Jaynes, *supra* note 138, at 213 (arguing that there is no proof that juries will be unable to discern between voluntariness and guilt, thereby making the argument for the orthodox rule moot).

<sup>147</sup> See Brienne J. Gorod & Lesley Kennedy, *Why Americans Have a Right to Trial by Jury*, CONST. ACCOUNTABILITY CTR., <https://www.theusconstitution.org/news/why-americans-have-a-right-to-trial-by-jury/#:~:text=A%20Check%20Against%20Government%20Overreach,legal%20system%2C%E2%80%9D%20she%20says> [perma.cc/A2BL-DKT8] (explaining the role of the jury in the American criminal justice system).

<sup>148</sup> See Amelia Mindthoff et al., *A Survey of Potential Jurors' Perceptions of Interrogations and Confessions*, 24 PSYCH. PUB. POL'Y & L. 430, 430 (2018) (finding that confessions are one of the

Jurisdictions using the Massachusetts rule reason that the true intention of raising the standard to beyond a reasonable doubt is to avoid a deferential approach by judges.<sup>149</sup> If there is a genuine question of fact that exists in the voluntariness inquiry, then there is, by definition, reasonable doubt.<sup>150</sup> If there is reasonable doubt, the Massachusetts rule instructs the judge to suppress the confession in the same way the orthodox rule does, thereby eliminating that distinction.<sup>151</sup>

### *C. Potential Critiques of this Reform*

Regardless of the rule that is used, potential critiques of raising the standard remain.<sup>152</sup> The main criticism of both rules is that the voluntariness doctrine itself is flawed.<sup>153</sup> As Richard Leo argues, the question to consider should not be whether the confession was voluntary but whether the confession was reliable.<sup>154</sup> Although the voluntariness doctrine initially intended to get at the reliability of the confession, the doctrine itself does not provide this intended protection.<sup>155</sup> It is very possible that a confession is voluntary but not reliable in the same way that it can be involuntary and reliable.<sup>156</sup> If the purpose of the

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most influential pieces of evidence and that jurors tend to be unable to dismiss unreliable confessions when presented to them).

<sup>149</sup> See *infra* notes 150–151 and accompanying text (explaining the “beyond a reasonable doubt” standard and its role in the Massachusetts rule).

<sup>150</sup> See *Beyond a Reasonable Doubt*, CORN. L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/beyond\\_a\\_reasonable\\_doubt#:~:text=Beyond%20a%20reasonable%20doubt%20is,certainty%20greater%20than%2050%20percent](https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt#:~:text=Beyond%20a%20reasonable%20doubt%20is,certainty%20greater%20than%2050%20percent) [perma.cc/4KM4-HF3G] (Aug. 2025) (explaining that “beyond a reasonable doubt” means that “the evidence must leave jurors firmly convinced of the defendant’s guilt”). If there is a close call as to whether a confession is voluntary beyond a reasonable doubt, then the judge cannot be virtually certain that the confession was in fact voluntarily made. See *id.* (defining “beyond a reasonable doubt”). The “beyond a reasonable doubt” standard is much higher than that of a preponderance of the evidence. *Id.*

<sup>151</sup> See Lederer, *supra* note 15, at 91 (explaining that the initial in-camera determination is the same for both the Massachusetts rule and the orthodox rule).

<sup>152</sup> See Leo, *supra* note 29, at 175–76 (arguing that raising the standard does not help the underlying problem of reliability, as the current legal doctrine surrounding this confession inquiry suppresses confessions that are involuntary rather than those that are unreliable).

<sup>153</sup> See *id.* (explaining that reliability is what the standard should be, as voluntary confessions can be unreliable and involuntary confessions can be reliable).

<sup>154</sup> See *id.* at 176 (arguing that the Due Process Clause does not concern itself with unreliable confessions but rather with involuntary ones that result from coercive police interrogation tactics). Leo contended that judges only exclude unreliable confessions if they were involuntary. *Id.* If an unreliable confession is not coerced, then it will be admitted. *Id.*

<sup>155</sup> See *id.* at 175 (stating that the Fourteenth Amendment’s jurisprudence is not aligned on the proper issue in that it should be focusing on the reliability of the confession rather than the voluntariness of the confession). Leo argued that the Due Process Clause is not concerned with the reliability of a suspect’s confession but rather with protecting the suspect from coercive police interrogation tactics. *Id.* at 176.

<sup>156</sup> See *id.* at 176 (purporting that unreliable confessions are admissible evidence when police do not use coercive tactics in their interrogations but that reliable confessions are inadmissible when officers do use coercive tactics). One who is guilty but involuntarily confesses is still factually guilty whereas one who voluntarily confesses to a crime they did not commit is still factually innocent. See

criminal justice system is to seek truth and justice, then evaluating the voluntariness of a confession can be incompatible with those goals.<sup>157</sup> The voluntariness doctrine itself focuses more on procedural fairness than truth.<sup>158</sup>

The other potential critique is that this is just one component of additional reform and that there are still plenty of wrongful convictions that occur for reasons unrelated to false confessions.<sup>159</sup> There also remains the issue that countless wrongful convictions based in part on coerced confessions still occur in the states that have raised their standard to that of beyond a reasonable doubt.<sup>160</sup> Numerous individuals in states such as Massachusetts, New Jersey, and Louisiana—all states that have raised their standard for assessing voluntariness—were still convicted through false and coerced confessions.<sup>161</sup>

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*id.* (stating the difference between involuntary and unreliable confessions). The guilty individual will have his confession suppressed and the innocent will not. *Id.*

<sup>157</sup> See *id.* at 175–76 (arguing that the legal doctrines that are available to courts to protect against false confessions do not do what they set out to do, making determinations based on the voluntariness of the confession rather than the reliability of it).

<sup>158</sup> See *id.* at 176 (explaining that the voluntariness doctrine is not one seeking truth or reliability).

<sup>159</sup> See *Explore Exonerations*, THE NAT'L REGISTRY OF EXONERATIONS, [https://exoneratiregistry.org/cases?f%5B0%5D=n\\_pre\\_1989%3A0](https://exoneratiregistry.org/cases?f%5B0%5D=n_pre_1989%3A0) [perma.cc/N7ZY-4SLG] (explaining the tags that different wrongful convictions receive based on the conviction's red flags). These possible red flags include: prosecutorial misconduct, police officer misconduct, forensic analyst misconduct, child welfare worker misconduct, withholding of exculpatory evidence, misconduct that is not the withholding of exculpatory evidence, knowingly permitting perjury, witness tampering, misconduct in the interrogation of an exoneree, perjury by official, prosecutor lied in court, false or misleading forensic evidence, false confession, mistaken witness identification, official misconduct, perjury or false accusation, and inadequate legal defense. *Id.* As is evidenced by this list, there are many ways unrelated to false confessions for which someone can be wrongfully convicted, meaning that addressing the issue of false confessions is just one possible area of reform when much more reform is needed to fix the overall problem. See *id.* (noting many different potential reasons someone may be wrongfully convicted).

<sup>160</sup> *Byron Halsey*, THE NAT'L REGISTRY OF EXONERATIONS, <https://exoneratiregistry.org/cases/10503> [perma.cc/G9KU-MQH8] (Oct. 28, 2023) (explaining the story of Byron Halsey and his wrongful incarceration resulting partly from a false confession); *Victor Rosario*, *supra* note 13 (noting Victor Rosario's case of wrongful conviction after making a false confession in Massachusetts); *Jarvis Ballard*, THE NAT'L REGISTRY OF EXONERATIONS, <https://exoneratiregistry.org/cases/13066> [perma.cc/9HGH-N9F9] (Sep. 29, 2022) (stating the case of Jarvis Ballard, an individual who was wrongfully convicted after falsely confessing to the crime of which he was accused).

<sup>161</sup> See *Byron Halsey*, *supra* note 160 (noting the case of Byron Halsey, who was wrongfully convicted in New Jersey after making a false confession); *Victor Rosario*, *supra* note 13 (explaining Victor Rosario's wrongful conviction after he falsely confessed in Massachusetts); *Jarvis Ballard*, *supra* note 160 (telling the story of Jarvis Ballard, a man who was wrongfully convicted in Louisiana after making a false confession).

Notably, there are no such exonerees in South Dakota and Maine on the National Registry of Exonerations, but this does not necessarily mean that none have happened. See Search Results of Exonerations Since-1989 in South Dakota, THE NAT'L REGISTRY OF EXONERATIONS, [https://exoneratiregistry.org/cases?search\\_api\\_fulltext=&f%5B0%5D=n\\_pre\\_1989%3A0&f%5B1%5D=state%3ASouth+Dakota](https://exoneratiregistry.org/cases?search_api_fulltext=&f%5B0%5D=n_pre_1989%3A0&f%5B1%5D=state%3ASouth+Dakota) [perma.cc/EAJ7-9UMF] (announcing the causes of the discovered wrongful convictions in South Dakota); Search Results of Exonerations Since-1989 in Maine, THE NAT'L REGISTRY OF EXONERATIONS, [https://exoneratiregistry.org/cases?search\\_api\\_fulltext=&f%5B0%5D=n\\_pre\\_1989%3A0&f%5B1%5D=state%3AMaine](https://exoneratiregistry.org/cases?search_api_fulltext=&f%5B0%5D=n_pre_1989%3A0&f%5B1%5D=state%3AMaine) [perma.cc/7SKB-7SNF] (stating the causes of discovered wrongful convictions in Maine).

Although it is just one component of additional needed reform, scholars argue that the coercive nature of police practices, especially when using methods such as the Reid Technique, demonstrate that this one component of reform can still change potential trial outcomes.<sup>162</sup> For centuries, innocent individuals have confessed to crimes they did not commit, leading all the way back to the Salem Witch Trials.<sup>163</sup> Further, scholars note that without raising the standard, regardless of the method employed in doing so, these false confessions will go unchecked.<sup>164</sup> The potential reform of raising the burden of proof could play a major role in limiting, although likely not eliminating, wrongful convictions based on involuntary confessions.<sup>165</sup>

### III. THE MASSACHUSETTS HUMANE PRACTICE RULE IS THE MODEL SOLUTION TO HOW COURTS SHOULD RAISE THEIR VOLUNTARINESS STANDARDS

Given that the voluntariness standard is the framework we are left with, the question is not if states *should* change their voluntariness standard, but rather *how* they should do so.<sup>166</sup> Given the dual voluntariness consideration, the Massachusetts rule is the model solution as it provides more protection for criminal defendants.<sup>167</sup> Section A of this Part argues that the role of the jury in the American judicial system is essential to ensuring that criminal defendants' confessions are properly considered prior to determining their guilt.<sup>168</sup> Section B argues that the reasonable doubt standard requires judges to make final, virtually certain, decisions as to the admission of a defendant's confession into evidence.<sup>169</sup>

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<sup>162</sup> See Vrij, *supra* note 41, at 421 (explaining that the Reid Technique is innately coercive); Mindthoff, *supra* note 148, at 430 (finding that confession evidence is extremely influential to juries and that, in studies, mock jurors are often incapable of dismissing unreliable confessions).

<sup>163</sup> See Kassir, *supra* note 18, at 249 (equating modern false confessions to women confessing to being witches during the Salem Witch Trials). Kassir states that the Salem Witch Trials are some of the earliest periods recorded in U.S. history that people falsely confessed to crimes. *Id.*

<sup>164</sup> See Gerald F. Murray, Case Comment, *Constitutional Law—Criminal Law—Confessions Need Not Be Proved Voluntary Beyond a Reasonable Doubt Prior to Being Admitted into Evidence*, 3 LOY. U. CHI. L.J. 433, 437 (1972) (noting that states that have raised their standards to beyond a reasonable doubt have done so because confession evidence is highly impactful to juries). This article notes that many states equate a confession with finding the defendant guilty. *Id.* The author argues that fewer innocent people will be convicted if the standard is raised and that the current preponderance of the evidence standard puts into question the Constitution's protection against coerced confessions. *Id.* at 440–41.

<sup>165</sup> See *id.* at 441 (arguing that raising the standard will theoretically lower the number of innocent individuals convicted of crimes).

<sup>166</sup> See *infra* notes 178–197 and accompanying text (contending that states should increase their burden of proof for finding confessions voluntary).

<sup>167</sup> See Lederer, *supra* note 15, at 91 (explaining how the Massachusetts rule differs from the orthodox rule in that it has two determinations of voluntariness instead of one).

<sup>168</sup> See *infra* notes 170–189 and accompanying text.

<sup>169</sup> See *infra* notes 190–197 and accompanying text.

*A. The Role of the Jury Is Essential to the Voluntariness Inquiry,  
Therefore Favoring the Massachusetts Rule*

Our jury system is based on a belief that a group of peers is able to sift through evidence and reach legal conclusions when provided instructions on the law.<sup>170</sup> This is the case regardless of the issue presented.<sup>171</sup> To assume that a jury cannot do this same job in the context of evaluating voluntariness undermines the very basic tenets of our justice system.<sup>172</sup> If told to explicitly focus on the totality of the circumstances surrounding the confession, the jury will properly focus their determinations prior to assessing the defendant's guilt.<sup>173</sup> When making that decision in the order as laid out by the Massachusetts rule, jurors will be more inclined to disregard suspect confession evidence as they have taken the necessary time to properly consider everything before them.<sup>174</sup> This is superior to orthodox jurisdictions where the jurors simply hear the confession, which becomes just another piece of evidence used in their determination of guilt.<sup>175</sup> The orthodox rule dismisses the idea that jurors are more likely to categorize the confession as involuntary and thereby disregard it if given the express opportunity to do so.<sup>176</sup>

Any possible confusion added by an extra jury instruction can be avoided if the instruction is clear and properly given.<sup>177</sup> Such an instruction will explain

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<sup>170</sup> See Gorod & Kennedy, *supra* note 147 (stating that juries decide cases based on the evidence before them). The purpose of the jury is to place a check on the government and to allow everyday citizens to see the facts set out before them and make decisions based on those facts. *Id.*

<sup>171</sup> See *id.* (noting that the jury's role does not differ case by case).

<sup>172</sup> See *id.* (stating that the purpose of the jury system was to keep in check the American judiciary).

<sup>173</sup> See *id.* (writing that juries decide cases based on the evidence presented at trial rather than on any biases they had toward either party).

<sup>174</sup> See Jaynes, *supra* note 138, at 213 (stating that the argument that jurors are incapable of discerning between voluntariness and guilt is unpersuasive, as there is no concrete evidence to prove that). Jaynes notes that, to justify choosing one rule over another, someone must do more reasoning than simply attacking a jury's factual determination. *Id.* at 214. The role of the jury is to make these factual determinations. See Gorod & Kennedy, *supra* note 147.

<sup>175</sup> See Lederer, *supra* note 15, at 91 (describing the orthodox rule as one in which the judge makes the initial determination as to the voluntariness of the confession and then the jury hears it with the rest of the evidence, not making a separate determination as to the voluntariness issue prior to determining the guilt of the accused).

<sup>176</sup> See Meltzer, *supra* note 140, at 326 (dismissing the notion that juries are capable of discerning between a voluntariness question and the determination of guilt); Jaynes, *supra* note 138, at 213 (stating how jurors will likely properly consider the confession if adequately instructed). Not only does Meltzer argue that instructions for juries to disregard evidence tend to be ineffective, he also argues that making these instructions is detrimental to the adjudicative process, disregarding any idea that juries are either capable of making this separate determination or these instructions could possibly be helpful. See Meltzer, *supra* note 140, at 326 (arguing that expressly instructing the jury to consider a confession is ineffective).

<sup>177</sup> See Jaynes, *supra* note 138, at 213 (citing the response that those in favor of the Massachusetts rule would make to the previously stated critiques by those in favor of the orthodox rule). Regarding the first attack as to the jury's competency in making this determination, proponents of the Massachusetts rule argue that this is truly no issue at all because the judge would hopefully give a clear enough instruc-

to the jurors how they are to consider the evidence that was presented to them and that they should use their own common sense and experience in determining whether the confession was voluntary or coerced.<sup>178</sup>

By forcing the jury to focus on the totality of the circumstances surrounding the confession, they will inevitably become aware of the interrogation techniques used by the police officers against the defendant.<sup>179</sup> Providing evidence on the methods used in the interrogation, such as that of the Reid Technique, also allows for the defense to bring in expert witnesses to educate the

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tion that would clarify any confusion. *See id.* (noting that, if the jury is properly instructed, jurors would not be confused as to what to rule on). Responding to the second attack regarding a judge's deferential referral to the jury, proponents of the Massachusetts rule argue that this would be the case in orthodox jurisdictions as well. *See id.* (stating that the likelihood "of finding a shirker" as a judge is equally great regardless of the rule employed). The judge would not stop deferring to a jury simply because their decision is more final. *See id.* (arguing that a judge who is likely to defer to a jury will do so under either rule, not simply the Massachusetts rule). Given that the standard is that of beyond a reasonable doubt, a judge would only defer to a jury if they had no reasonable doubt as to the voluntariness of the confession, which would be the same as in orthodox jurisdictions. *See id.* (noting that judges will likely defer to the jury under either rule); MASS. DIST. CT., *supra* note 25 (stating that the standard for determining the voluntariness of a confession is that of beyond a reasonable doubt).

<sup>178</sup> MASS. DIST. CT., *supra* note 25 (stating the instruction for the Massachusetts Humane Practice Rule, which indicates that jurors are to use their own common sense and personal experiences when considering the totality of the circumstances surrounding the confession).

<sup>179</sup> *See* Meltzer, *supra* note 140, at 326 (noting that the litigation of these confessions will imprint the confession itself and its surrounding circumstances into the minds of the jurors). Although Meltzer argues that imprinting the confession on the jurors' minds is a negative aspect of the Massachusetts rule, this is exactly why the Massachusetts rule is more efficacious than the orthodox rule. *See id.* (arguing that litigating the confession itself defeats the purpose of the Massachusetts rule, as defendants will not be protected better if the jury is acutely aware of the surrounding facts of the confession). In the instance of a questionably voluntary confession, this litigation could actually serve to benefit the defendant. *See* Jaynes, *supra* note 138, at 213 (noting that proper explanations to the jury would allow them to not be confused as to what testimony and litigation to consider). This imprinting of the confession on the jurors' minds, as well as proper instruction explaining that the jury shall consider the totality of the circumstances surrounding the confession, could help make the jury's determination as to the voluntariness of the confession more clear and complete. *See id.* (arguing that proper jury instructions will help the jurors clearly understand their role).

As an example, the prosecution showed the jurors in the case of the Central Park Five the boys' videotaped confessions. *See* THE CENTRAL PARK FIVE, *supra* note 1, at 01:20:22 (demonstrating the confessions of the boys and interviewing one of the jurors as to his thoughts regarding his decision and the confessions themselves). A documentary about the case exhibited an interview of one of the jurors who viewed the taped confessions. *Id.* The juror noted that the differences between the confessions were staggering to him and therefore he held out and believed them to be innocent. *Id.* at 1:20:29. Despite his holding out, the other jurors eventually convinced him to vote guilty for the boy on trial so that they all could go home. *Id.* at 01:20:54. If the jury in this case was privy to all the details of the interrogation, including potential expert witnesses explaining the impact of the police interrogation methods on the boys as well as the prevalence of false confessions in such instances, one would hope that every member of the jury would have noticed what was wrong with the boys' confessions. *See id.* at 01:20:22 (showing one of the jurors speaking on his thoughts regarding the boys' confessions and his experience in the jury deliberation room); Jaynes, *supra* note 138, at 213 (stating that proper litigation of a confession could better allow the jury to rule on its voluntariness).

jury on coercive police interrogation practices.<sup>180</sup> This may better allow the jury to empathize with the defendant and get a true understanding of what they were experiencing when they confessed.<sup>181</sup> This, however, is not the case in orthodox jurisdictions as the voluntariness issue itself is not litigated in full in front of the jury.<sup>182</sup> The orthodox method bars the jury from hearing this additional evidence.<sup>183</sup>

In jurisdictions that use the Massachusetts rule, defendants are also more fully protected as the burden of proving voluntariness rests with the prosecutor rather than the defendant.<sup>184</sup> The Massachusetts rule treats confessions as part of the essential elements of the crime that must be proven.<sup>185</sup> By treating confession evidence as such, the prosecution will be forced to litigate the issue, allowing the adversarial system to work the way it was intended.<sup>186</sup> If this litigation is passed over, as is the case in orthodox jurisdictions, the rights of criminal defendants are not properly protected.<sup>187</sup> The U.S. Constitution promises criminal defendants a trial by a jury of their peers and to not have their persons seized without due process of law.<sup>188</sup> Both of these rights are better afforded by allowing both sides to litigate the voluntariness of the defendant's confession to a jury.<sup>189</sup>

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<sup>180</sup> See Kassir & Gudjonsson, *supra* note 80, at 33 (demonstrating that there are numerous studies on police interrogation tactics, such as the Reid Technique).

<sup>181</sup> See Sigurdsson, *supra* note 81, at 55 (explaining, via a table, the pressures felt by inmates who had noted that they falsely confessed). By allowing in evidence from experts who have completed in-depth analyses of such confessions, juries will theoretically become aware of potential psychological and physiological reactions by suspects when being questioned. See Kassir & Gudjonsson, *supra* note 80, at 41 (showing many different studies on police interrogation techniques).

<sup>182</sup> See Lederer, *supra* note 15, at 91 (explaining that the orthodox rule is one in which solely the judge makes a determination as to the voluntariness of the confession in a pretrial hearing and that the jury is unaware of such determination).

<sup>183</sup> See *id.* (noting that orthodox jurisdictions do not allow the jury to individually determine the voluntariness of confessions admitted into evidence).

<sup>184</sup> See Jaynes, *supra* note 138, at 213 (explaining that proponents of the Massachusetts rule argue that the defendant has greater protection because it forces the burden in the criminal trial to be on the prosecution to prove to the jury that the confession was voluntarily made beyond a reasonable doubt).

<sup>185</sup> See *id.* (noting that the prosecution has the burden of proof with regard to the voluntariness of the confession under the Massachusetts rule).

<sup>186</sup> See Gorod & Kennedy, *supra* note 147 (explaining that the Sixth Amendment to the U.S. Constitution provides criminal defendants with the right to a trial by a jury of their peers who are to decide the cases in front of them based on the evidence that is presented to them).

<sup>187</sup> See *id.* (outlining the importance of the right to a jury trial litigating and adjudicating all issues of material fact, as was the intention of the adversarial system when it was first created for this country). The framers saw the jury as fundamental and the driving force behind democracy and liberty. *Id.*

<sup>188</sup> U.S. CONST. amend. VI; *id.* amend. XIV, § 1.

<sup>189</sup> See Gorod & Kennedy, *supra* note 147 (asserting that the intention of the adversarial system is for issues of fact to be litigated to juries of the defendant's peers, who are to give an unbiased analysis of the evidence and come to factual conclusions based on their hearing of the evidence). The thought was that an unbiased jury, unlike biased judges or officials, would help balance evidentiary assessments and uphold community standards. *Id.* The jury was formed to promote transparency and ensure open justice. *Id.*

*B. The Reasonable Doubt Standard Requires Judges to Make Final Determinations, Not Allowing Them to Defer to Juries on "Close Calls"*

The purpose of raising the standard to beyond a reasonable doubt is to avoid the concerns that orthodox proponents raise regarding judges deferring to juries.<sup>190</sup> The reasonable doubt standard exists so that decision-makers are virtually certain in their determinations.<sup>191</sup> The same should be true for judges when determining the voluntariness of a confession.<sup>192</sup> If the judge has any ounce of doubt as to whether the confession was voluntary, they should, by definition, rule the confession inadmissible.<sup>193</sup> If there is no such doubt, then allowing that question to go to a jury simply ensures that the judge made the right decision.<sup>194</sup> The assumption that a judge will defer to a jury when their explicit instructions are to make a determination beyond a reasonable doubt undermines the reasonable doubt standard itself and the integrity of the judicial role in making pretrial rulings.<sup>195</sup>

The procedure that is used by the court in any given case may be the distinction between a defendant's confession being admitted into evidence and their confession being barred from admission.<sup>196</sup> The difference between admitting false confessions into evidence and not can be life in prison for a crime the defendant did not commit.<sup>197</sup>

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<sup>190</sup> See Murray, *supra* note 164, at 440 (stating that there is a narrow zone in which judges will rule a confession voluntary by a preponderance of the evidence where they have reasonable doubt as to whether the confession was voluntary, making the standard of persuasion determinative). "At a voluntariness hearing there will almost always be conflicting testimony as to the circumstances surrounding the taking of the confession and when the conclusion of the factfinder is controlled by which of two conflicting accounts is accepted, it is clear that the standard of persuasion will be determinative." *Id.*

<sup>191</sup> See *Beyond a Reasonable Doubt*, *supra* note 150 (explaining that the standard of reasonable doubt ensures that there is moral certainty as to the decision being made).

<sup>192</sup> See *id.* (defining "beyond a reasonable doubt"); Lederer, *supra* note 15, at 91 (explaining that the judge is the fact-finder in orthodox jurisdictions, not the jury).

<sup>193</sup> See *Beyond a Reasonable Doubt*, *supra* note 150 (explaining the standard of "beyond a reasonable doubt"). If there is any shred of doubt as to the voluntariness of the confession, then the factfinder—the judge in these pretrial, in camera hearings—shall rule the confession involuntary as they could not be virtually certain that the statement was made voluntarily. *Id.*

<sup>194</sup> See Lederer, *supra* note 15, at 91 (defining the Massachusetts rule and stating that it allows confessions to go to a jury if the judge deems them voluntarily made, which is used as an extra precaution against involuntary confessions). In Massachusetts rule jurisdictions, both the judges and the juries are to make these determinations beyond a reasonable doubt. *Id.*

<sup>195</sup> See *Beyond a Reasonable Doubt*, *supra* note 150 (defining "beyond a reasonable doubt").

<sup>196</sup> See Meltzer, *supra* note 140, at 325 (stating that the standard employed could potentially have important consequences for the defendant when the court is determining whether the confession was voluntary).

<sup>197</sup> See *Byron Halsey*, *supra* note 160 (detailing Byron Halsey's case, a man who was wrongfully incarcerated due in part to a false confession); *Victor Rosario*, *supra* note 13 (noting Victor Rosario's false confession led him to spend many years in prison for a crime he did not commit); *Jarvis Ballard*, *supra* note 160 (examining the story of Jarvis Ballard, a man who was wrongfully incarcerated due in part to his false confession); *Christopher Abernathy*, *supra* note 13 (outlining the case of Christopher

## CONCLUSION

Police coercion in confessions due to methods such as the Reid Technique for interrogation is too common and extremely problematic. Moreover, the doctrine limiting the admissibility of such coerced evidence is insufficient, requiring the prosecution to show, only by a preponderance of the evidence, that the confession was made voluntarily. Many states, however, have raised this standard to that of beyond a reasonable doubt in an effort to aid defendants in the suppression of false confessions. There are two ways in which states go about raising the standard: the orthodox rule and the Massachusetts rule. Although some scholars argue that the orthodox rule reigns superior as it forces judges to make a concrete decision, the extra step in the Massachusetts rule adds another protective layer to this analysis, allowing the jury to correct possible mistakes made by judges in admitting involuntary confessions. This extra procedural step allows the factfinder to home in on the totality of the circumstances surrounding the defendant's confession, adding both another safeguard against these confessions and a check on the judge's initial decision if it favors the prosecution. As the Supreme Court is unlikely to step up and provide additional guidance, states must take on the responsibility of increasing the standard of admissibility to beyond a reasonable doubt.

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Abernathy, a man convicted at seventeen-years-old who spent nearly thirty years in prison for a rape and robbery he did not commit because he falsely confessed); *Eruby Abrego*, *supra* note 13 (stating the case of a man convicted at twenty-years-old who spent eighteen years in prison for a murder that he did not commit, mainly due to a mistaken witness identification, official misconduct, and his own false confession).

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