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The Defense Lawyer's Plea Recommendation: Disentangling the Influences of Perceived Guilt and Probability of Conviction

Johanna Hellgren[1] and Saul M. Kassin[2]

[1] Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Carey Law School

[2] John Jay College of Criminal Justice, City University of New York

In light of theory and research suggesting that plea decisions are made in the "Shadow of Trial," we examined the extent to which defense attorneys' plea recommendations are driven by their beliefs in the defendant's guilt or innocence and by estimates of the probability-of-conviction at trial. In two studies, participants read a case file containing a police report; a defendant's written confession or denial; a motion and ruling to suppress evidence (an inculpatory confession in Study 1; an exculpatory eyewitness in Study 2) that was granted or denied; defense counsel's interview notes in which the defendant proclaimed innocence or not; and the terms of a plea offer. Participants then made a plea recommendation and indicated their beliefs regarding the defendant's guilt and likely trial verdict. Consistent across both studies, the recommendation to accept a plea offer was driven more by the perceived probability of conviction than by perceptions of factual guilt or innocence. Indicative of this pattern, inculpatory and exculpatory evidence affected plea recommendations only when ruled admissible. The defendant's assertions of innocence to defense counsel also had little effect. Overall, these results suggest attorneys base their plea recommendations largely on pragmatic considerations. Policy implications are discussed.

Keywords: plea bargaining, decision making, defense attorneys

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In 2001, 19-year-old Joseph Buffey was apprehended and questioned about a property crime against a local business. He readily admitted his involvement, after which detectives commenced interrogation about an unrelated but far more serious violent crime: a burglary and sexual assault of an elderly woman, the mother of a police officer. Buffey repeatedly denied any involvement, but then at 3:25 a.m., after almost 9 hours of nighttime interrogation by three detectives, without food or sleep, and after being led to believe that he had failed a polygraph, Buffey confessed to the burglary and sexual assault. When pressed for details, which he could not provide, Buffey added, "You really want to know the truth? I didn't do it" (Shechtman & Cohn, 2014, p. 3).

Buffey was charged with the burglary and sexual assault. He was assigned counsel, to whom he professed his innocence, as he continued to do throughout the investigation. Yet even though he had recanted his confession and vehemently proclaimed his innocence, even though he was excluded as the source of all fingerprints collected at the crime scene, and even though the victim did not identify him from a photograph, Buffey was highly pressured to plead guilty. His lawyer informed him that he risked life in prison if convicted at trial. The prosecutor then made a time-limited "exploding" offer that his lawyer urged him to accept. Reluctantly, he accepted the offer to plead guilty to the rape and robbery. Allocuting to the charges in open court, he said that he "broke into an elderly lady's house and robbed her and forced her to have sex with me" (*Buffey v. Ballard,* 2015, p. 8). He was sentenced to serve at least 70 years in prison.

In 2015, after 14 years in prison, the West Virginia Supreme Court allowed Buffey to withdraw his guilty plea after concluding that the State had violated his due process rights by failing to disclose exculpatory DNA evidence prior to his plea (*Buffey v. Ballard*, 2015). In fact, DNA evidence from the rape kit had been available 6 weeks before Buffey entered his plea, and it conclusively excluded him and identified the perpetrator, who went on to become a serial offender (Bazelon, 2015). Unfortunately, Buffey

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Johanna Hellgren https://orcid.org/0000-0002-6204-9139

Saul M. Kassin https://orcid.org/0000-0002-0495-8377

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Correspondence concerning this article should be addressed to Johanna Hellgren, Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Carey Law School, 3501 Sansom Street, Philadelphia, PA 19104, United States. Email: hellgren@law.upenn.edu

is only one of countless innocent people induced to plead guilty to crimes they did not commit (according to the National Registry of Exonerations, 2020, 23% of individuals wrongfully convicted had pled guilty).

At present, well over 95% of convicted defendants in the United States resolve their cases by pleading guilty—a number that has climbed steadily in recent years. As a result, a number of judges, legal scholars, and researchers have become concerned about the "innocence problem," the extent to which innocent suspects like Joseph Buffey—often on the advice of their attorneys—plead guilty "in the shadow of trial" (Bibas, 2004; Bushway et al., 2014; Rakoff, 2014; for overviews from a psychological perspective, see Edkins & Redlich, 2019; Redlich et al., 2017). Although a prevalence rate cannot be determined, these figures underestimate the actual occurrence of false guilty pleas, many of which are never scrutinized (Redlich et al., 2017).

Through the use of laboratory experiments, role-playing studies, and interviews with individuals who had pled guilty, most plea-bargaining research is focused on personal and situational factors that influence the defendant in the decision-making process (e.g., Bordens & Bassett, 1985; Dervan & Edkins, 2012; Gregory et al., 1978; Zottoli et al., 2016). Considering the influential role played by defense counsel, however, it is also important to explore the defense attorney's plea recommendations. Following upon prior research that has done so (e.g., Edkins, 2011; Helm et al., 2018; Pezdek & O'Brien, 2014), the present studies were designed to examine the extent to which defense lawyers are driven by their perceptions of their client's actual guilt and innocence vs. the subjective probability of conviction at trial.

The Innocence Problem and Its Causes

Since the mid-1920s, plea bargaining has served as the standard method through which criminal cases in the United States are resolved, with only about 2–3% of cases now resulting in a full jury trial (Dervan & Edkins, 2012; Gramlich, 2019). Researchers argue that the process incentivizes defendants to plead guilty to obtain significant "plea discounts" relative to the sentence that would follow from conviction at trial. Research has shown that this discount can be as large as 96% (Dezember & Redlich, 2019; see Zottoli et al., 2016 regarding juveniles) and that defendants who reject a prosecutor's plea offer are generally subject to a "trial penalty"— receiving more severe sentences than defendants who went to trial without a prior offer (Ulmer & Bradley, 2006). With the substantial discount and risk of penalties, most legal scholars and psychologists argue that any rational, risk-averse defendant would be better off with a plea (Redlich et al., 2017).

As first articulated by Mnookin and Kornhauser (1979), the Shadow-of-the-Trial (SoT) model of plea decision making posits that prosecutors and defendants make plea decisions by evaluating the probability of conviction at trial and potential sentence that would be imposed relative to the plea discount of the deal that is offered. Since then, however, legal scholars have critiqued this model, arguing it fails to take important factors into account, such as individual differences and biases, as well as structural factors like pretrial detention and sentencing guidelines (Bibas, 2004). Importantly, the SoT model assumes that defendants have enough legal knowledge and appreciation to make an informed plea decision. Yet, research has shown that justice-involved individuals (both adults and adolescents) are limited in their knowledge and understanding of the relevant law (Viljoen et al., 2005; Zottoli et al., 2016). As a result, many defendants are heavily influenced by the advice of their attorneys (Henderson & Levett, 2018; Malloy et al., 2014; Redlich et al., 2010; Reed et al., 2020), further confirming the importance of examining what factors influence defense attorney plea decision making.

Plea Bargaining and Defense Attorneys' Role in Plea Deals

The Sixth Amendment guarantees that every criminal defendant has the right to effective counsel, a right that applies to the plea-bargaining phase as well as trials (*Strickland v. Washington*, 1984; *Lafler v. Cooper*, 2012). The American Bar Association (2017) outlines standards of practice for defense attorneys, which include the duty to inform their client on all aspects of a plea agreement, including its requirements and consequences, and assist the defendant in making an informed plea decision. At the same time, ABA notes that this decision is ultimately the defendant's to make.

For various reasons, defense attorneys will often recommend plea acceptance, even when it opposes the defendant's wishes (Kramer et al., 2007). In the *Trial Manual for the Defense of Criminal Cases*, for example, Amsterdam and Hertz (2016) state that

> often the only way for counsel to protect the client from disaster is by using a considerable amount of persuasion to convince the client that a plea which the client instinctively disfavors is, in fact, in his or her best interest. This persuasion is most often needed to convince a client that s/he should plead guilty in a case in which opting for a trial would be destructive. (p. 297)

Research has shown that defense attorney recommendations are influenced by the strength of the evidence in an individual case (Kramer et al., 2007). This finding is consistent with the SoT model; as the strength of evidence and likelihood of conviction increase, defense attorneys become more willing to recommend plea acceptance rather than litigate the case in court (McAllister & Bregman, 1986). Edkins (2011) asked defense attorneys to self-report the factors they found important in making a plea recommendation and found that strength of the evidence was the main factor reported. Similarly, Henderson (2021) found that evidence strength significantly predicted defense attorneys' plea recommendations as well as their estimation of the likelihood of winning the case at trial.

Despite this consistent finding, the strength of the evidence does not fully predict plea recommendations (Petersen et al., 2022). For example, Bibas (2004) noted that factors such as attorney ability, resources, and self-interests are often overlooked. In particular, defense attorneys may be incentivized in a system of pleas to resolve their clients' cases with efficiency (Walker Wilson, 2016). The literature is rife with examples of a "meet 'em and plead 'em" system, in which defense attorneys enter guilty pleas on behalf of clients only hours, and sometimes only minutes, after meeting them for the first time (ABA, 2004; Zeidman, 2017). Many defense attorneys are burdened with overwhelming caseloads, which increases the likelihood that they rely on cognitive heuristics to make case-specific decisions (Gigerenzer & Gaissmaier, 2011; Walker Wilson, 2016). The time-urgent nature of this system further discourages

both defense attorneys and prosecutors from fully investigating claims of factual innocence (Rakoff, 2014; Walker Wilson, 2016).

The Impact of Confession Evidence on Plea Decisions

Certain types of evidence may also serve as heuristics that influence decision making. In particular, mock jury research shows that confessions are the most potent and incriminating forms of evidence (Kassin & Neumann, 1997), boosting the conviction rate even when the confession was coerced (Kassin & Sukel, 1997; for a similar study of judges, see Wallace & Kassin, 2012); even when the confession was illegally obtained (Kassin & Sommers, 1997); even when the defendant suffered from mental illness or was under duress (Henkel, 2008); even when the defendant was a juvenile (Redlich et al., 2008); even when the confession was reported secondhand by an informant motivated to lie (Neuschatz et al., 2012); and even at times when DNA tests conclusively excluded the confessor (Appleby & Kassin, 2016).

Analyses of wrongful convictions in the databases of the Innocence Project and National Registry of Exonerations indicate that examining exonerees against whom there was a confession in evidence were far more likely to plead guilty than those who were not implicated by a confession (Kassin, 2012; Perillo, 2015). Analysis of prosecutors' case files also indicate that defendants in general who had confessed to police were later more likely to plead guilty than those who did not (Redlich et al., 2018). In a particularly interesting demonstration, Redlich et al. (2016) conducted an online plea recommendation study in which they presented a hypothetical criminal case to over 1,500 prosecutors, defense attorneys, and judges, which contained a set of labeled folders containing various legal and nonlegal pieces of information. The participants were asked to click as many folders as they needed to make an informed legal decision. Two important results followed: First, confession evidence was the most sought out item of evidence, with 94% of these legal professionals viewing that folder. Second, the presence of a confession increased their tendency to recommend the plea option, especially among defense lawyers.

Although it is clear that confession evidence can significantly influence plea recommendations, few studies have examined whether and to what extent a defendant's claim of actual innocence influences attorneys in their plea decision making, particularly after a confession. In one recent study, Helm et al. (2018) investigated the role of defense attorneys in plea bargaining. After surveying participants about their experience, they found that 78% believed there are cases in which innocent defendants should plead guilty because of the risk, pressure, and difficulty of trial. In fact, 89% said they had represented clients who accepted a plea deal while maintaining actual innocence; 45% had themselves explicitly advised clients they believed were innocent to accept a plea deal. Following the survey, participants read two short case vignettes and made a plea recommendation to a mock defendant. The results indicated that perceptions of both the probability of guilt and the probability of conviction were predictive of plea recommendations.

The Present Research

As part of responsible advocacy, criminal defense attorneys communicate plea offers, investigate the case, and advise their clients accordingly. Extant research indicates that attorneys' plea recommendations are influenced by the apparent strength of the evidence against their client. But does this factor drive the recommendation to accept a plea offer because it suggests that the defendant is factually guilty or innocent, because it presages a conviction or acquittal at trial, or for a combination of these factors? Both interpretations can be derived from existing research. In a novel attempt to tease apart these bases for the effects of strong evidence, we conducted two experiments in which attorneys received a case file containing highly inculpatory or exculpatory evidence that was either admissible or not admissible in evidence.

Study 1

In the first study, the case file contained a signed copy of a statement indicating that the defendant had confessed during an interrogation or denied involvement. We fully expected that the confession would increase the tendency to recommend plea acceptance. In a key twist, however, we also varied whether the judge granted or denied the defense motion to suppress that confession. This manipulation enabled us to compare the effects of an *admissible confession* that would increase both the attorney's belief in the defendant's actual guilt and the probability of conviction with an *inadmissible confession* that would increase perceptions of actual guilt without also increasing the likelihood of conviction. As embedded throughout the defense attorney's handwritten notes, also contained within the case file, we further varied whether or not the defendant had repeatedly proclaimed his innocence to assigned counsel. Among the questions we asked was, what recommendations would attorneys in the inadmissible confession condition make to a client who appears guilty but unlikely to get convicted at trial? And how would that recommendation be influenced by the defendant's insistence that he was innocent?

To examine the relative effects of these variations, we randomly assigned participating attorneys to one of six cells produced by a 3 (Statement Type: denial, admissible confession, inadmissible confession) × 2 (Defendant's Assertion of Innocence, no assertion) between-subjects factorial design. Consistent with a pragmatic SoT perspective, we predicted that defense attorneys would indeed be more likely to recommend acceptance of a plea offer when the defendant had confessed to police—but only when that confession was to be admissible at trial. We further predicted that perceptions of the defendant's actual guilt would have less of an impact on this decision than the subjective likelihood of conviction.

Method

Participants

Having constructed a 3 × 2 factorial between-subjects design, we sought a minimum of 25 participants per cell ($N = 150$). Needing to recruit from a finite resource of defense attorneys, and in anticipation that some number of participants will provide incomplete data, we sent out an initial recruitment email followed by a 1-week reminder via listservs for the National Association of Criminal Defense Lawyers and the National Forensic College. In both cases, we offered $10 gift cards for a 15–20-minute experiment. As a result of these two phases of recruitment, 278 defense attorneys responded. Eighty-eight then had to be removed for

failing to complete the survey, however, and five were eliminated for failing to provide consent. Thus, our final sample consisted of 185 defense attorneys randomly assigned to condition (73 male, 108 female, 2 "other," 2 did not respond).

Participants ranged in age from 25 to 73 (M = 39.5, SD = 10.4), represented 26 states plus the District of Columbia, Puerto Rico, and the federal system, and averaged 10.9 years of experience (SD = 8.96). Overall, 96% of participants were public defenders; 4% were in independent practice. On average, they estimated that they had accepted a total of 853 (SD = 1,224) pleas and litigated 48 trials (SD = 95). When combined, and consistent with national statistics of recent years, this means that an estimated 94.7% of their cases were resolved by a guilty plea.

Procedure and Material

An email containing an invitation to participate in the study along with the survey link was sent to defense attorneys via listservs through the National Association of Criminal Defense Lawyers and the National Forensic College. Participants gave informed consent and then received a realistic case file loosely modeled after the Joe Buffey case described above. The file, titled *The State of Maryland v. Jesse P. Reichert*, contained the following materials, always in this order:

Police Incident Report. The police report initially described a break-in and burglary at the Salvation Army in which the premises were ransacked and hundreds of dollars of merchandise were stolen. Surveillance video enabled police to identify one of the culprits who in turn identified two others for arrest, including Jesse Reichert. One of the defendants claimed Reichert did not join them afterward, a disclosure that denied Reichert an alibi for the remainder of the evening.

Later that night, Ms. Sarah Willis called 911 to report that a man in his 20s broke into her house, raped her, and stole money. She was taken to the local hospital, where she was treated, administered a rape kit, and where she provided a detailed account to police. At that point, detectives Mirandized Reichert and interrogated him for several hours regarding this crime. The report concluded with the assertion that Reichert either confessed or denied any involvement. Either way, his statement was attached.

Defendant's Statement. In what appeared as a xeroxed copy, the defendant statement, typewritten by detectives and signed by Reichert, contained either a confession or a denial. In the confession, Reichert admitted to his involvement with the Salvation Army break-in cited in the police report. He then went on to describe how he climbed through an open window, stole money, and then went upstairs and sexually assaulted Ms. Willis. In the denial, Reichert's recounted the Salvation Army break-in but then insisted that he went home afterward and had nothing to do with the assault on Ms. Willis.

Motion to Suppress. In the confession conditions, the defendant filed a motion to suppress his statement on the ground that he was not apprised of his *Miranda* rights in a timely manner. In the *admissible* group, the judge ruled to deny the motion. In the *inadmissible* group, the judge ruled to grant the motion. Both rulings, identically formatted, typewritten, and signed by the judge, appeared on a single page.

Counsel's Interview Notes. Participants were presented with handwritten interview notes xeroxed to look like pages taken from a loose leaf note pad, from the attorney who had been assigned to Mr. Reichert. Via random assignment, these notes either indicated that the defendant had repeatedly asserted his innocence ("I never broke into any woman's house and never raped anyone;" "keeps saying he is innocent;" "insists again he is innocent") or no such assertions were included.

The Plea Offer. The written plea deal from the prosecutor's office offered the defendant 12–15 years in exchange for a guilty plea to armed robbery and sexual assault instead of additional charges on other serious counts (breaking-and-entering, burglary, and armed robbery in the first degree) that would yield up to 80 years in prison upon conviction. As part of the plea, the defendant would not need to register as a sex offender. The prosecutor stated that this offer was valid for only 48 hr and that the terms were not negotiable.

Dependent Measures

Participants were asked to imagine that they represented the defendant, read through the case file, and indicate (a) whether they would recommend that he accept vs. reject the plea offer, (b) the maximum prison sentence they would be willing to accept as the defendant's attorney, ranging from zero years/time served to 15 years, and (c) how much time and resources would they allocate to the case on a scale from 1 (*very little*) to 10 (*as much as needed*). Then they answered the following additional questions:

Perceptions of Guilt. Each participant's personal belief as to the defendant's culpability was measured via a dichotomous judgment ("In your personal opinion, is Jesse Reichert factually guilty or innocent of the robbery and sexual assaults of Ms. Willis?") and a continuous rating on a 0–100% scale ("In your estimation, what is the likelihood that Jesse Reichert actually committed the robbery and sexual assaults of Ms. Willis?").

Predictions of Trial Verdict. Participants were also asked to predict the jury's verdict if the defendant were to proceed to trial ("If this case went to trial before a jury, given what you know, what do you think would be the verdict?") and to estimate the likelihood of conviction on a 0% to 100% scale ("If this case went to trial, given what you know, what do you estimate to be the likelihood that Jesse Reichert would be convicted?").

Self-Reported Influences. All participants were asked to report on a 1–10-point scale the degree to which their plea recommendations were influenced by the different components of the case file (police report, defendant's statement, counsel's notes, motion to suppress and ruling). They also rated the strength of the evidence of the case, and the time and resources they would commit to it. Lastly, participants were asked to list in their own words the most important facts about the case that would influence their representation of the defendant.

Demographics. Finally, participants were asked to indicate their age, gender, jurisdiction of practice, type of practice—private or public—years of experience, estimated number of pleas accepted and rejected, and estimated number of trials litigated. As attorney demographics were not germane to our inquiry, the results pertaining to these variables, for both Studies 1 and 2, are presented and discussed in the online supplemental materials.

All procedures for both studies were approved by the Institutional Review Board at the second author's university. This project

was not preregistered, but all study materials are available at osf.io/ptvfx/. Deidentified data are available at osf.io/7fm36/.

Results

Our analytic strategy was to assess three main dependent variables (perceived guilt, likelihood of conviction at trial, and plea recommendation)—each assessed via both dichotomous and continuous measures. These key measures were followed by analyses of self-reported influences and open-ended responses.

Overall, participants perceived the evidence in this case as moderately weak—rated 4.32 (SD = 2.3) on a 10-point scale. On the "Big Three" dependent measures, across conditions, only 24.3% of participants believed the defendant to be guilty; on average, they predicted a conviction rate of 44.9%; hence, only 17.8% recommended accepting the plea offer. Against this backdrop, with binary logistic regressions used to analyze dichotomous data and ANOVAs for continuous data, the following informative results were obtained:

Perceptions of Guilt

We conducted a binary logistic regression to estimate the influence of statement type and defendant claim on perceptions of the defendant's guilt. For statement type, the denial condition served as the reference category, and for defendant claim, assertion of innocence was the reference category. The model was significant, $\chi^2(3, N = 185) = 19.5$, $p < .001$, and explained 14.9% (Nagelkerke's R^2) of the variance on this measure.

We found that statement type significantly predicted perceptions of the defendant's guilt. When the defendant's statement to police constituted a denial, only 6.5% of attorneys believed he was guilty. When he confessed, however, perceptions of guilt increased sixfold to 35.9% (OR = 20.53) in the admissible condition and to 30.5% (OR = 10.91) in the suppressed condition. The two confession conditions did not differ from each other (b = .632, SE = .548, p = .248) but both yielded a significant increase compared to denial (Admissible b = 3.02, SE = 1.08, p = .005, OR = 20.53; Inadmissible b = 2.39, SE = 1.10, p = .029, OR = 10.91). Consistent with previous research (Kassin & Sukel, 1997; Wallace & Kassin, 2012), the mere presence of a confession—regardless of its legal status—significantly increased perceptions of culpability.

Through the defense attorney's handwritten notes, we also varied whether the defendant had repeatedly asserted his innocence to assigned counsel, a variable not previously tested. Overall, no differences in perceptions of guilt were obtained between these conditions (11.9% & 12.4% in the no assertion and assertion groups, respectively (OR = 3.21). This factor also did not interact with the statement type condition, (Admissible $b = -1.577$, 95% CI [−4.115, .962], OR = .21, p = 223; Inadmissible $b = -.798$, 95% CI [−3.372, 1.777], OR = .45, p = .544).

A two-way ANOVA on perceptions of guilt via continuous estimates of the defendant's likelihood of commission revealed a similar pattern. Overall, participants estimated a low mean probability of commission of only 38.9% (SD = 25.1%). But a significant effect of statement type was found, $F(2, 179) = 3.663$, p = .028, η_p^2 = .039. When the defendant made a written denial, the mean likelihood-of-commission estimate was 32.2% (SD = 17.7%). When he had confessed, participants estimated that he was significantly more likely to have committed the crime (Ms = 43.40% and 41.25%, respectively, in the admissible and inadmissible conditions). As with dichotomous perceptions of guilt, the defendant's assertions of innocence to his attorney did not influence estimated likelihood-of-commission ratings, $F(1, 179) = .356$, p = .552, η_p^2 = .002, and there was no interaction between statement type and defendant assertion, $F(2, 179) = 1.804$, p = .168, η_p^2 = .020.

Predictions of Trial Verdict

A different pattern emerged for predictions of the trial verdict. A binary logistic regression, with denial and innocence assertion as the reference categories, revealed a significant model, $\chi^2(5, N = 185) = 22$, $p < .001$, which explained 15% (Nagelkerke's R^2) of the variance in predicted trial verdict. In the denial condition, only 30.2% of participants predicted a guilty verdict. On this measure, however, the added effect of a confession hinged on its evidentiary status. When ruled admissible, the predicted conviction rate more than doubled, to 65.6% (Admissible b = 1.70, SE = .56, p = .002, OR = 5.46). When the confession was to be suppressed, however, the predicted conviction rate did not significantly increase (37.3%, Inadmissible b = .329, SE = .55, p = .531, OR = 1.4). Once again, the defendant's assertions of innocence did not influence participant attorneys' verdict predictions and did not interact with the statement type condition.

A two-way ANOVA on the predicted continuous likelihood of conviction also revealed a significant main effect of statement type, $F(2, 180) = 15.36$, $p < .001$, η_p^2 = .146. When the defendant denied involvement to police, participants estimated a 50% (SD = 19.7%) likelihood of conviction at trial. In the admissible confession condition, this estimate increased significantly to 66% (SD = 20.4%). In the inadmissible confession condition, however, the estimated likelihood of conviction did not increase (M = 46.78, SD = 22.62).

It is notable that a significant main effect was found on this measure for the defendant's assertions of innocence to counsel, $F(1, 179) = 4.481$, p = .036, η_p^2 = .024. Surprisingly, participants believed that the defendant was more likely to be convicted when attorney's notes indicated his repeated insistence that he was innocent than when he made no such assertations (Ms = 5.78, SD = 2.27; and 5.14, SD = 2.18, respectively). The interaction between statement type and the assertion of innocence was not significant, $F(2, 179) = .963$, p = .384, η_p^2 = .011.

Plea Recommendations

Although the presence of a confession increased perceptions of guilt across the board, as predicted, it increased the subjective probability of conviction only when admissible. As to what drove plea recommendations, results were clear. A binary logistic regression produced a significant overall model, $\chi^2(5, N = 185) = 33.9$, $p < .001$, which explained 27.5% (Nagelkerke's R^2) of the variance in plea recommendations.

In the denial condition, only 3.2% of participants recommended the plea acceptance. That baseline number was significantly increased by the confession when it was admissible (39.1%; b = 3.276, SE = 1.08, p = .002, OR = 26.47), but not when it was inadmissible (10.2%; b = .762. SE = 1.25, p = .543, OR = 2.14). As with perceptions of guilt and verdict predictions, the defendant's assertions of innocence to assigned counsel did not significantly predict plea recommendations (19.4% for innocence and 16.1%

for no assertion, $b = .806$, 95% CI [−.975, 2.587], $OR = 2.24$, $p = .375$, and did not interact with statement type).In addition to making a binary plea recommendation, we asked participants to indicate the maximum prison sentence they would accept as the defendant's attorney, ranging from zero years/time served to 15 years in prison. Consistent with plea recommendations, a 3 × 2 ANOVA on this measure revealed a significant main effect of statement type, $F(2, 179) = 15.975$, $p < .001$, $\eta_p^2 = .151$. In the denial condition, participants asserted a maximum sentence of 4.3 years ($SD = 2.48$). In the admissible confession condition, that maximum acceptable sentence increased significantly in length to 6.9 years ($SD = 4.26$). In the inadmissible confession condition, however, that maximum did not significantly increase, $M = 3.9$ years ($SD = 2.43$). Once again, no main effect was found for the defendant's assertions of innocence, $F(1, 179) = .626$, $p = .430$, $\eta_p^2 = .003$, and no interaction, $F(2, 179) = .273$, $p = .761$, $\eta_p^2 = .003$.

As a result of the limited time and resources that constrain public defenders, often forcing them to make difficult allocation decisions, we also asked participants to rate on a 10-point scale the amount of time and resources they would allocate to this case. Overall, participants reported extraordinarily high levels, $M = 9.52$, $SD = 1.04$. Perhaps attributable to this ceiling effect, we found no significant main effects for statement type, $F(2, 179) = .239$, $p = .787$, $\eta_p^2 = .003$, or the defendant's assertion of innocence, $F(1, 179) = .074$, $p = .789$, $\eta_p^2 = .000$, and no interaction, $F(2, 179) = .245$, $p = .800$, $\eta_p^2 = .002$.

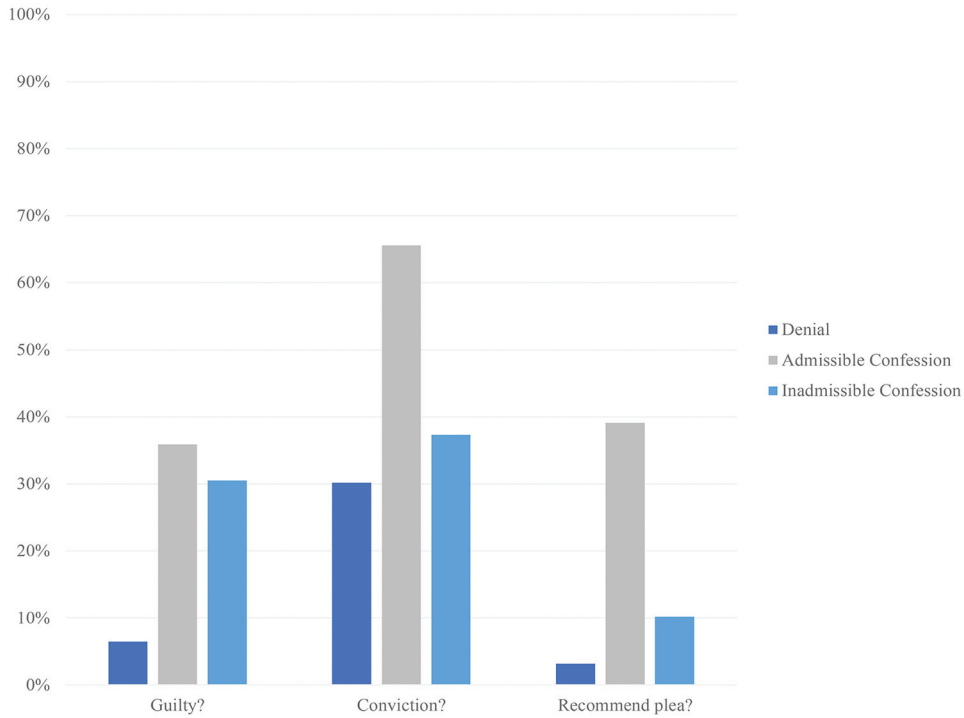
Before we examine the predictive links between (a) perceptions of the defendant's guilt, (b) predictions of a trial verdict, and (c) plea recommendations, it is instructive to summarize the results for each of these measures as a function of the presence of a confession ruled admissible vs. inadmissible. These patterns, clear and consistent, are presented in Figure 1.

Perceptions of Guilt and Verdicts

Between-group tests indicated that plea recommendations were based on perceptions of factual guilt and innocence and on verdict predictions "in the shadow of trial." A binary logistic regression was conducted to further explore these effects on attorneys' plea recommendations. When we submitted only guilt perceptions as a predictor, the model was significant, $\chi^2(2, N = 185) = 17.6$, $p < .001$, but it explained only 14.9% (Nagelkerke's R^2) of the variance in plea recommendations and had an AIC of 160. Attorneys were more likely to recommend that the defendant reject the plea both when they believed he was guilty (60 vs. 40%), and when they believed he was innocent (89.3 vs. 10.7%; additional analyses can be found in the online supplemental materials, Table S2). When we added predicted verdicts as a predictor to the model, it explained 51.7% of the variance and the AIC decreased to 110, $\chi^2(2, N = 185) = 70$, $p < .001$. While attorneys who predicted a conviction were also more likely to recommend plea rejection vs. acceptance (60.2 vs. 39.8%), all attorneys who predicted an acquittal recommended a plea rejection (100%, $b = 19.933$, $RSE = .265$,

Figure 1

Percentages of Attorneys in Study 1 Who Believed the Defendant Was Guilty, Predicted Conviction at Trial, and Recommended Acceptance of the Plea Offer Within the Three Evidence Groups



Note. See the online article for the color version of this figure.

OR = 4.52). In short, both factors were significant, but predicted verdicts was the stronger consideration.

Self-Reported Influences

We asked participants to rate the extent to which their plea recommendations were influenced by the different parts of the case file to explore how the materials influenced their decision-making process. Across conditions, mean ratings were highest for the defendant's statement (i.e., denial or confession ruled admissible or inadmissible; $M = 6.65$, $SD = 3.06$), followed by the police report ($M = 6.29$, $SD = 2.47$), and counsel's interview notes ($M = 5.94$, $SD = 2.93$). Although only the confession conditions contained a judge's ruling on a motion to suppress, participants in these conditions rated that document as highly influential ($M = 7.96$, $SD = 2.73$). In particular, those in the inadmissible condition rated the motion to suppress ruling as more influential than those in the admissible condition ($M = 9.32$, $SD = 1.46$ vs. $M = 6.70$, $SD = 3.02$), $t(121) = -6.041$, $p < .001$, $d = -1.09$.

Defendant's Statement. As mentioned, participants rated the influence of the defendant's statement as 6.65 ($SD = 3.06$) on a 10-point scale. A 3 × 2 ANOVA yielded a significant main effect of statement type, $F(2, 179) = 15.108$, $p < .001$, $\eta_p^2 = .144$. Participants in both the admissible confession and denial conditions ($M = 7.56$, $SD = 2.38$, and $M = 7.31$, $SD = 2.6$, respectively) reported greater influence of the defendant's statement than those in the inadmissible confession condition ($M = 4.97$, $SD = 3.49$). Once again, we observed no effect for the defendant's assertions of innocence, $F(1, 179) = .057$, $p = .812$, $\eta_p^2 = .001$, and no interaction, $F(2, 179) = .952$, $p = .388$, $\eta_p^2 = .011$.

Police Report. Across conditions, participants rated the police report as moderately important: 6.28 ($SD = 2.5$). A 3 × 2 ANOVA on these ratings yielded a significant main effect of statement type, $F(2, 179) = 5.397$, $p = .005$, $\eta_p^2 = .057$. Specifically, those in the denial condition reported more influence of the police report ($M = 7.11$, $SD = 2.06$) compared to those in both confession conditions (Admissible: $M = 5.83$, $SD = 2.37$, Inadmissible: $M = 5.93$, $SD = 2.77$). Once again, we found no effects of the defendant's innocence assertions, $F(1, 179) = 2.096$, $p = .150$, $\eta_p^2 = .012$, and no interactions, $F(2, 179) = .061$, $p = .941$, $\eta_p^2 = .001$.

Counsel's Interview Notes. Overall, participants rated the interview notes at above the midpoint in its influence (5.94 on a 10-point scale; $SD = 2.94$). Neither statement type nor defendant's assertions of innocence significantly influenced these ratings ($F(2, 179) = 2.667$, $p = .072$, $\eta_p^2 = .029$; $F(1, 179) = 2.072$, $p = .152$, $\eta_p^2 = .012$, respectively). The interaction was also not significant, $F(2, 179) = .297$, $p = .743$, $\eta_p^2 = .003$.

Open-Ended Responses

Finally, we examined responses to the open-ended question regarding other factors that influenced plea recommendations. Consistent with previous research (Henderson, 2021; Kramer et al., 2007), 127 of our participating lawyers (68%) cited the overall strength/weakness of the evidence as an important factor. The defendant's statement was specifically cited by 34 participants (18.3%). Of the 123 who were in a confession condition, 34 (27.6%) stated this motion was the most important determinant of their approach. Other less frequently cited factors, in order, were the defendant's personal preference as to whether or not to accept the plea (7.5%), the unrelated burglary that preceded the crime (7.5%), that the defendant had no prior criminal history (6.4%), and the need to shield the defendant from the sex offender registry and stigma that follows (5.3%).

Discussion

The defense attorneys in our sample were more likely to see the defendant as culpable whenever presented with a case file containing a confession to police than a denial. Consistent with a pragmatic focus on the subjective probability of conviction, a core component of the SoT model, we also found that while they were willing to accept a plea offer when that confession was admissible, and hence likely to elicit a conviction at trial, they were far less affected by a confession that the judge had ruled to suppress. The result of this latter inadmissible condition indicated that the decision to recommend a plea was driven not by perceptions of the defendant's factual guilt or innocence but rather by the probability of conviction in the shadow of trial. This same pattern was obtained when participants indicated the maximum sentence they would tolerate as part of a plea agreement. Across conditions, plea recommendations correlated more highly with predicted trial verdicts than perceptions of guilt.

We also assessed the question of whether a defendant signals "actual innocence" by claiming as such to counsel in their initial encounter. We did this by inserting, or not, throughout counsel's interview notes the defendant's self-reported assertion that he had nothing to do with the assault. Overall, we found no support for the notion that a defendant who insists on his innocence elicits different perceptions or plea recommendations from prospective attorneys. Participants in general rated counsel's interview notes as above the midpoint in its influence (5.94 on a 10-point scale—6.25 in the innocence-assertion condition vs. 5.63 in the neutral condition, a difference that was not significant). Anecdotally, several attorneys commented on counsel's notes and/or defendant's assertions in their open-ended responses (30 in the innocence assertion condition; 22 in the neutral notes condition). It is important to note, however, that we did not administer an attention check for the manipulation, a limitation that should be addressed in future research testing an innocence-assertion hypothesis.

Study 2

Study 1 offered support for the probability-of-conviction component of the SoT model of plea decisions from a defense perspective. This is an important and uncontroversial result. As articulated by the American Bar Association's Criminal Justice Standards, defense counsel should act zealously within the bounds of the law on behalf of their clients. This begs the question: If attorneys advise clients to reject a plea offer when inculpatory evidence suggesting guilt is suppressed, do they also advise clients to accept a plea offer when exculpatory evidence suggesting innocence exists but will be suppressed?

To examine this question, we randomly assigned a new sample of defense attorneys into one of four conditions: (a) the defendant denied involvement to police during an interrogation and no additional evidence was presented, (b) the defendant confessed to police and no additional evidence was presented, (c) the defendant confessed but an exculpatory eyewitness came forward whose

testimony the judge ruled admissible, and (d) the defendant confessed but an exculpatory eyewitness came forward whose testimony the judge ruled inadmissible. Using this four-group design, we made it a point to introduce the exculpatory witness against the backdrop of a confession in order to raise the baseline level of perceived guilt/conviction and avoid floor effects in these conditions. Once again, the question we asked was, to what extent would defense attorneys presented with exculpatory evidence be influenced by the admissibility status of that evidence? What would be their recommendation when the defendant is likely innocent but for whom exculpatory evidence would be excluded from trial?

We predicted that our findings would be consistent with Study 1 and the SoT framework, in that defense attorneys would be more likely to recommend that their client accept a plea when he had previously confessed. We also predicted that the presence of exculpatory evidence would lessen the impact of the confession—but only when that evidence was deemed admissible at trial. Once again, we expected that perceptions of the defendant's factual guilt would influence plea decisions to a lesser degree than predictions of the trial verdict.

Method

Participants

For the four-group design, we again sought a minimum of 25–30 participants per cell. As in Study 1, we sought to overrecruit in order to compensate for the population of professionals we solicited and the need to remove some number of participants who provide incomplete data. Recruitment for this study was conducted almost 2 years after the first study, during the start of the COVID-19 pandemic, and several reminders had to be sent out.

Utilizing listservs of the National Forensic College, the National Criminal Defense College, and individual public defenders' offices, we collected data from 213 defense attorneys. Of these, 31 participants were removed for not completing the survey, and six were removed for not giving consent. Our final sample consisted of 176 defense attorneys (103 male, 71 female, 2 did not respond). In both the recruitment letter and the Informed Consent, we specified that anyone who participated in Study 1 was ineligible to participate in Study 2. Email addresses collected for the purpose of compensating participants confirmed that there were no overlaps.

Participants were offered $10 gift cards for their participation and randomly assigned to one of four conditions. They ranged in age from 27 to 76 (M = 42.4, SD = 11.6), and practiced in 27 states plus Puerto Rico and the federal system. Overall, 56.3% of participants were private attorneys; 43.7% were public defenders. They had an average of 13 years of experience (SD = 10.4) and estimated that they had accepted a total of 550 pleas (SD = 1021) and litigated 65 trials (SD = 108). Combined, these estimates suggest that 89.4% of their cases were resolved by a guilty plea.

Procedure and Material

An email containing an invitation to participate in the study along with the survey link was sent to defense attorneys. Participants gave informed consent and were randomly assigned to one of the four conditions described above. Then they received the same case file as in Study 1, which was loosely modeled after the Joe Buffey case described above. The file, titled *The State of Maryland v. Jesse P. Reichert*, contained the same materials described in Study 1 with the following changes:

Police Incident Report. Due to the perceived weakness of the case file we had created for Study 1, the police incident report included the addition of new evidence in the form of a baseball cap found at Reichert's house that fit the description of the assailant provided by the victim. Otherwise, the report was identical.

Defendant's Statement. In what appeared as a xeroxed copy, the defendant's statement, typewritten by detectives and signed by Reichert, contained either the confession or the denial used in Study 1.

Counsel's Interview Notes. As in Study 1, participants were presented with handwritten interview notes xeroxed to look like pages taken from a loose leaf note pad, from the attorney who had been assigned to Mr. Reichert. In this study, all participants received handwritten notes indicating that the defendant had repeatedly asserted his innocence.

Eyewitness Evidence. In light of the defendant's claim that he was innocent, the defense hired a private investigator who discovered that after Reichert's statement to police, the detectives who questioned him interviewed neighbors who may have witnessed something. Ms. Cheryl Winthrop, a local high school teacher who lived next door to the victim, and who knew Reichert, was home at the time of the burglary. When questioned about it, she said she did not see or hear anything. Two weeks later Ms. Winthrop was struck by a van while crossing the street, causing severe head trauma. While in an ambulance to the local emergency room, she told her daughter, who was permitted to ride along, that she recently had lied to police when they asked about a rape next door. "I didn't want to get involved," she said. "But I did see the guy run out of her house and it was definitely not Jesse Reichert." In the hospital later that day, she lost consciousness and died. The defense moved to introduce Ms. Winthrop's exculpatory eyewitness statement as a dying declaration exception to the hearsay rule.

Motion to Exclude. In the conditions that included the eyewitness evidence, the State filed a motion to exclude the eyewitness evidence on the ground that it was inadmissible hearsay. In the admissible condition, the judge denied the motion because the statement made by Ms. Winthrop was a dying declaration and therefore an exception to the hearsay rule. In the inadmissible condition, the judge granted the State's motion and excluded the witness's exculpatory statement. Both rulings, identically formatted, typewritten, dated, and signed by the judge, appeared on a single page.

The Plea Offer. The written plea deal was the same as the one used in Study 1: the prosecutor offered the defendant 12–15 years in exchange for a guilty plea. As part of the agreement, the defendant would not need to register as a sex offender. This offer was valid for 48 hr and the terms were not negotiable.

Dependent Measures

As in Study 1, participants were instructed to imagine that they represented the defendant. After reading through the case file, they were asked the same dichotomous, continuous, and open-ended questions as in Study 1, with the primary dependent measures being perceptions of the defendant's guilt, predicted trial verdict, and plea recommendations.

Results

Overall, the minor changes made to the baseline case file strengthened the case considerably: On the "Big Three" dependent measures, 49.4% of attorneys believed the defendant was guilty, 61.9% believed the defendant would be convicted were he to proceed to trial, and 47.2% said they would recommend that their client accept the plea offer. The mean rating of the strength of the evidence was now over the midpoint, (M = 5.39, SD = 2.4). As in Study 1, we obtained both dichotomous and continuous measures of three main dependent variables—perceptions of guilt, predictions of a verdict, and plea recommendations. These are reported in turn.

Perceptions of Guilt

We conducted a binary regression with condition as the predictor (and the denial condition as the reference category) and found no significant relationship between conditions and perceptions of the defendant's guilt, $\chi^2(3, N = 176) = 3.29$, $p = .349$. None of the four groups emerged as a significant predictor. The differences between conditions were consistent with Study 1, such that the confession appeared to increase guilt perceptions relative to denial, though the difference was not significant in this study, and only when it was uncontested by exculpatory evidence (see Figure 2). A one-way ANOVA on perceptions of guilt assessed via continuous estimates of the defendant's likelihood of commission also revealed a nonsignificant result, $F(3, 172) = .853$, $p = .467$, $\eta_p^2 = .015$.

Predictions of Trial Verdict

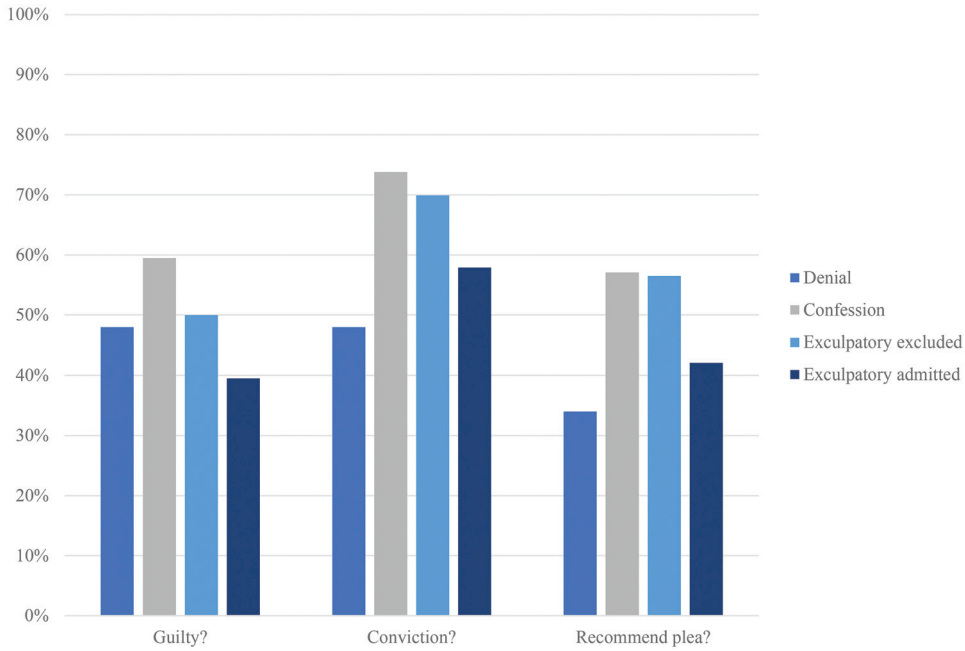
Another binary logistic regression was conducted on projected trial verdicts (conviction vs. acquittal) with condition as the predictor and the denial condition as the reference category. The overall model was significant, $\chi^2(3, N = 176) = 8.07$, $p = .045$, and explained 60.9% of the variance (Nagelkerke's R^2). When the defendant had denied involvement, only 48% of attorneys predicted he would be found guilty at trial. However, when the defendant had confessed and the confession was accompanied by no other evidence or exculpatory evidence that would be excluded, the predicted guilty verdict significantly increased (73.8 and 69.9%, respectively). Interestingly, when exculpatory evidence was presented and deemed admissible at trial, attorney's predicted guilty verdicts did not significantly differ from that found in the denial condition (57.9%). Although the pattern was similar, a one-way ANOVA on the continuous likelihood of conviction prediction did not reach significance, $F(3, 172) = 2.194$, $p = .091$, $\eta_p^2 = .037$.

Plea Recommendations

With condition as the predictor, we conducted a binary logistic regression on plea recommendations. While the overall model did not reach significance, $\chi^2(3, N = 176) = 7.24$, $p = .065$, individual predictors did. Compared to 34% of participants who recommended accepting the plea in the denial condition, that rate significantly increased to 57% when the defendant had confessed and in the absence of other evidence (OR = 2.588). Moreover, the added influence of the exculpatory eyewitness hinged on its evidentiary

Figure 2

Percentages of Attorneys in Study 2 Who Believed the Defendant Was Guilty, Predicted Conviction at Trial, and Recommended Acceptance of the Plea Offer Within the Four Evidence Groups



Note. See the online article for the color version of this figure.

status. When this statement was admissible, the plea recommendation rate did not significantly differ from the denial condition (42.1%, *OR* = 1.412). When it was excluded, however, the plea recommendation rate was comparable to that found in confession condition with no evidence and significantly greater than in the denial condition (56.5%, *OR* = 2.24). Thus, the presence of a confession increased the likelihood that attorneys would recommend that the defendant to accept the plea—except in the presence of exculpatory evidence ruled admissible at trial.

As in Study 1, participants also rated the maximum prison sentence they would be willing to accept as the defendant's attorney, ranging from zero years/time served to 15 years in prison. The average acceptable sentence across conditions was 6.2 years (*SD* = 4.8). However, we found no significant differences across conditions, $F(3, 172) = 1.626$, $p = .185$, $\eta_p^2 = .028$. We also asked participants to rate on a 10-point scale the amount of time and resources they would allocate to this case. Once again, they reported high levels of commitment, $M = 8.16$, $SD = 2.26$; there were no significant between-group differences, $F(3, 172) = .149$, $p = .930$, $\eta_p^2 = .003$.

Before we proceed to examine the predictive links between (a) perceptions of the defendant's guilt and (b) predictions of a trial verdict, on the one hand, and (c) plea recommendations on the other, it is important to summarize the results for each of these measures as a function of the presence of a confession vs. denial as well as the presence of an exculpatory witness ruled admissible or not admissible at trial. These patterns are presented in Figure 2.

Perceptions of Guilt and Verdicts

We wanted to see how guilt perceptions and predicted trial verdict influenced plea recommendations. As in Study 1, we conducted binary logistic regressions to explore this question. First, we found that a model with perceptions of actual guilt as the predictor was significant, $\chi^2(1, N = 176) = 90$, $p < .001$, and explained 53.6% of the variance in plea recommendations (Nagelkerke's R^2) with an AIC of 157. Attorneys who believed the defendant was guilty were more likely to recommend accepting a deal than rejecting it (81.6 vs. 18.4%). The opposite pattern was found among attorneys who believed the defendant was innocent, where only 13.5% accepted the deal compared to 86.5% who rejected it (see additional analyses in Table S3 of the online supplemental materials).

Next, we added attorneys' predicted trial verdicts as a predictor and found that the model was significantly improved, $\chi^2(1, N = 176) = 137$, $p < .001$, explaining 72.1% of the variance with an AIC of 113. Participants who predicted a conviction were markedly more likely to accept a plea than to reject one (75.2 vs. 24.8%). The opposite pattern was found among attorneys who predicted an acquittal, where only 1.5% accepted the deal compared to 98.5% who rejected it ($b = 4.47$, $SE = 1.055$, $OR = 87.02$).

In short, the pattern of results closely resembled Study 1. While both perceived actual guilt and predicted trial verdicts were significant predictors of plea recommendations, predicted trial verdicts was by far the stronger predictor of the two. Furthermore, while each predictor explained a good deal of the variance in plea recommendations, the combination significantly improved the model.

Self-Reported Influences

Participants rated the extent to which their plea recommendations were influenced by the different aspects of the case file. Across conditions, mean ratings were highest for the defendant's statement to police (i.e., confession or denial; $M = 7.27$, $SD = 2.22$), followed by counsel's interview notes ($M = 6.81$, $SD = 2.23$) and the police report ($M = 6.36$, $SD = 2.31$). Only two of the four conditions contained the eyewitness who provided exculpatory information in which a motion to suppress was either granted or denied. In these conditions, participants rated both the witness and the judge's ruling as highly influential ($M = 7.19$, $SD = 2.39$, and $M = 7.02$, $SD = 2.08$, respectively).

No differences as a function of condition were found for ratings of the defendant's statement ($F(3, 172) = 1.427$, $p = .237$, $\eta_p^2 = .024$ or the police report, ($F(3, 172) = .863$ $p = .461$, $\eta_p^2 = .015$). However, a significant difference was found on ratings of counsel's interview notes, in which the defendant insisted on his innocence ($F(3, 172) = 3.199$, $p = .025$, $\eta_p^2 = .053$). These notes were rated as having the greatest influence in the confession condition that contained no exculpatory evidence ($M = 7.64$, $SD = 1.83$) and the least influence in the confession condition in which exculpatory evidence was presented and deemed admissible, ($M = 6.20$, $SD = 2.2$). The reported impact fell between these extremes when exculpatory evidence was present but suppressed ($M = 6.54$, $SD = 2.2$), and in the denial condition ($M = 6.84$, $SD = 2.44$).

Participants in the two exculpatory evidence conditions rated the eyewitness as a highly important influence on their decision ($M = 7.19$, $SD = 2.39$). A *t*-test yielded no significant differences between the groups, $t(82) = -1.081$, $p = .283$, $d = .16$. Similarly, participants rated the judge's ruling on the motion to exclude the eyewitness as highly influential in their plea recommendations ($M = 7.02$, $SD = 2.08$). A *t*-test revealed a significant difference between the two groups, $t(82) = -2.042$, $p = .044$, $d = .45$, such that attorneys rated the judge's ruling as significantly more impactful when the eyewitness evidence was admitted into evidence ($M = 7.53$, $SD = 2.02$) than when it was suppressed ($M = 6.61$, $SD = 2.07$).

Open-Ended Responses

Next, we looked at responses to the open-ended question regarding other factors that influenced their approach to the case. Out of the 176 participants, 22 participants declined to respond. Of the remaining 153, 76 (49.7%) cited the strength of the evidence as an important factor; 44 (28.8%) cited the unreliability of the confession; 28 (18.3%) cited the defendant's statement to police; and 22 (14.4%) cited the eyewitness evidence exculpating the defendant. As in Study 1, very few participants (8.4%) cited the defendant's assertions of innocence to counsel.

Summary of Results

Consistent with our first experiment, Study 2 showed that (a) the presence of a confession increased the number of attorneys recommending acceptance of a guilty plea, and (b) the presence of an exculpatory witness curtailed that tendency—but only when that witness would be excluded from trial. Once again, attorneys' predictions as to a trial verdict had a greater effect on plea recommendations than their perceptions of the defendant's factual guilt.

General Discussion

The case of Joseph Buffey of West Virginia, whose attorney advised him to accept a guilty plea offer, is a story often repeated.

Consistent with the shadow of trial model, research shows that attorneys' plea recommendations are significantly influenced by the strength of the evidence against a defendant (Edkins, 2011; Henderson, 2021; Kramer et al., 2007; Pezdek & O'Brien, 2014). But does evidence strength have this effect because it indicates the defendant's factual guilt or because it foreshadows a conviction at trial? As evidence strength has both effects in the real world, that question has proved elusive.

In two studies, we used an admissibility manipulation to tease apart these two sets of considerations. In Study 1, modeled after Buffey, we introduced a confession into an otherwise weak case. In one group, the judge ruled the confession admissible in response to a defense motion to suppress, mimicking other strength-of-evidence manipulations that simultaneously increase both perceptions of factual guilt and conviction. In a second group, the judge ruled the confession inadmissible, a manipulation aimed at surgically increasing attorneys' perceptions of factual guilt without also influencing the expected probability of conviction at trial. The question we posed was, how would participants react in this latter situation?

Consistent with our predictions, the results supported the operation of a pragmatic heuristic focused on the predicted trial outcome. When the defendant had confessed to the police and his confession statement was admissible (Study 1) and uncontested by admissible exculpatory evidence (Study 2), many participants predicted the defendant would be found guilty at trial and, as a result, advised him to accept the plea offer. Similarly, they were willing to accept longer prison sentences if there was a confession, but only if it was ruled admissible. These findings lend support to the probability-of-conviction component of the SoT model and to prior research showing that when strong evidence points to a high likelihood of conviction, attorneys are more willing to recommend plea acceptance (Henderson, 2021; McAllister & Bregman, 1986). Indeed, participants in both studies self-reported that evidence strength was one of the most important factors influencing their decisions.

Our results are also consistent with research on the impact of confession evidence on judges, juries, and attorneys (e.g., Kassin & Neumann, 1997; Redlich et al., 2016; Wallace & Kassin, 2012). Across the two studies, participants rated the defendant's statement as the single most influential factor when making their plea recommendations, especially if that statement was an admissible confession. Even in the broader context of a case that many attorneys reported as weak and circumstantial in their open-ended responses, an admissible confession led a majority of participants to recommend that the defendant accept a plea deal. Relative to a condition in which the defendant had denied involvement to police, in which only 3% of participants recommended accepting the plea offer, the presence of a confession significantly increased that number when the confession was ruled admissible at trial (39%)—but not when it was ruled inadmissible (10%). In this latter condition, a pragmatic heuristic led many participants to advise clients they viewed as guilty to reject the plea offer. Interestingly, too, the defendant's proclamations of innocence, when scrawled throughout counsel's notes, had no effect.

In Study 2, we strengthened the circumstantial case against the defendant and once again observed a significant increase in the plea acceptance rate when a confession was introduced (57 vs. 34% in the denial condition). We also supplemented the confession in two conditions with an exculpatory eyewitness ruled admissible or inadmissible. The results showed that while this exculpatory evidence did not nullify the confession, the increase in guilty plea recommendations from the denial condition (34%) was significant when the exculpatory witness was ruled inadmissible (56%) but not when it was admissible (42%). Paralleling the first study result that an inculpatory confession increased the guilty plea rate only when it was admissible, the exculpatory witness in Study 2 significantly decreased guilty plea rate only when it was ruled admissible.

In both studies, across conditions, and consistent with Helm et al. (2018), we found that attorneys' predictions as to a trial verdict had a greater effect on plea recommendations than did their perceptions of the defendant's factual guilt. In Study 1, participants who believed that the defendant was guilty were 3.8 times more likely to advise plea acceptance (compared to those who believed he was innocent); and those who believed he would be convicted at trial were 4.5 times more likely to advise plea acceptance (compared to those who believed he would be acquitted). The differences in Study 2 were even more striking: whereas participants were 11 times more likely to recommend plea acceptance when they believed that the defendant was guilty versus innocent, those who predicted a conviction at trial were 87 times more likely to recommend plea acceptance compared to those who predicted an acquittal.

One particularly interesting result concerns the effect, or lack thereof, of a defendant who seeks to communicate factual innocence through proclamations to defense counsel. Half of participants in Study 1 were presented with counsel's interview notes in which the defendant repeatedly denied involvement in the assault (e.g., "Keeps saying he is innocent," "Insists again he is innocent"). Overall, we found no support for the notion that these assertions affected attorneys' perceptions of factual innocence or plea recommendations. Perhaps these null results are attributable to the fact that the manipulation was not salient enough, embedded only in counsel's notes, a possible limitation to be addressed in future research. Or perhaps a defendant's spontaneous and repeated assertions can be seen as self-serving indications of factual guilt, which might explain why this manipulation increased the perceived likelihood of conviction. Testing one component of Wason's (1965) hypothesis that denials lack plausibility if they are premature and/or excessive, Yandell (1979) found that observers infer guilt from denials of wrongdoing that were premature, not preceded by an accusation. To our knowledge, comparable research has not tested for the effect of excessive denials and possibility of the type of ironic effect famously articulated in Shakespeare's "The lady doth protest too much, methinks" (for an overview, see Nao, 2020). It is also possible that repeated denials are perceived as indicative of a lack of remorse, which in some jurisdictions is considered an aggravating factor for sentencing purposes (e.g., see Ohio Rev. Code Ann, 2014; Ward, 2003). Although our data do not address this question, perhaps participants believed that a defendant who made repeated claims of innocence would be viewed unfavorably by a jury, hence the increased likelihood of conviction. Additional research is needed to better understand the impact of a defendant's repeated claims of innocence on both attorneys and juries.

Limitations and Future Directions

Although we obtained support for the impact of perceived probability of conviction, a pragmatic heuristic that underlies the SoT

model, the present studies are not without limitations. In both experiments, participants were overall more likely to reject a guilty plea than to accept it, a tendency that contradicts the reality in which 97% of cases are resolved through plea deals. This discrepancy may reflect the ambiguity and/or evidentiary weakness of the case we had constructed. Or it may indicate that participants were reluctant to state that they would accept a plea offer within the context of a zero-stakes experiment in which all responses were anonymous. This issue is further seen in the results regarding the amount of time and resources participants reportedly would spend on the case. Unsurprisingly, we obtained a ceiling effect on this measure, which could be explained by an attorney's knowing responsibility to provide zealous representation of their clients. Indeed, the verbal anchoring we used for this 1–10-point measure (where 10 = "As much as needed") may have implied that any response below the maximum indicates a lack of responsibility. As in all studies using hypothetical decision-making paradigms, additional research is needed in which the stakes are varied and/or the results replicated in more naturalistic settings. On this point, we note that although one might also argue that the limited information available to participants about their hypothetical client poses a weakness, it is a situation not uncommon in the "meet 'em and plead 'em" system in which defense attorneys often spend relatively little time with their clients and have limited access to their case files (American Bar Association, 2004; Zottoli et al., 2016).

While our findings support the probability-of-conviction component of the SoT model, many other factors can and do influence both defendant and attorney decision making. Indeed, although our results indicate that predicted trial verdict was the strongest determinant of the plea recommendation, participants' perceptions of the defendant's actual guilt also impacted their recommendations. It is clear the SoT model does not fully explain plea decision making (Bibas, 2004). For example, future research should explore the effect on attorneys of clients who are vulnerable and disadvantaged (e.g., for a study on the effects of race on defense attorney plea recommendations, see Edkins, 2011).

Conclusion and Implications

When Joe Buffey appeared in court and pled guilty, a decision preceded by proclamations of innocence, he did so on the advice of his attorney. At first glance, this type of situation seems troubling. Yet in the shadow of trial, attorneys who make a pragmatic assessment that their client would likely be convicted and thereby suffer the sentencing consequences despite indications of factual innocence, provide effective counsel. Indeed, one might argue that an attorney who fails to inform their client of the risks, especially in light of a confession, fails in this responsibility (see *Lafler v. Cooper*, 2012; *Missouri v. Frye*, 2012).

To what extent are defense lawyers driven by their belief in a client's factual guilt or innocence, and to what extent are they captive to their pragmatic assessments of the risk posed by trial? Without rendering a value judgment, the present research aimed at examining these relative bases for making plea recommendations. As a general rule, we assume that these factors—perceptions of factual guilt and probability of conviction—are aligned. Too often, however, defense attorneys must counsel their clients without access to all available evidence. By showing that the effects of inculpatory and exculpatory evidence in a case file hinge not upon their mere existence (suggesting factual guilt and innocence, respectively) but on whether that evidence is rendered admissible versus inadmissible (altering predictions of conviction versus acquittal at trial), the results indicate the relative power of pragmatic considerations.

These findings should prompt discussion of structural reform on two fronts. First, both defendants and their attorneys must cope with the fact that defendants who invoke their right to trial face a "penalty" in sentencing for doing so, the so-called plea discount. Numerous sources document the extent of the trial penalty. For example, the National Association for Criminal Defense Lawyers using data from the U.S. Sentencing Commission (2017) found that defendants convicted at trial received sentences that were 3.27 times higher than those who pled guilty to comparable crimes (Jones et al., 2019; also see King et al., 2005; Ulmer & Bradley, 2006). Field studies and interviews of felony-convicted defendants suggest even higher rates (e.g., Zottoli et al., 2016). Reducing the risk associated with trial (e.g., rethinking the use of mandatory minimum sentences) should increase defense attorneys' agency in the plea bargaining.

Second, too often defense attorneys lack access to case file information that would enable smart assessments of factual guilt and innocence as well as the probability of conviction independent of their client's proclamations. In *Brady v. Maryland* (1963), the U.S. Supreme Court established that a prosecutor must turn over exculpatory evidence that tends to show that the defendant did not commit the crime or that witnesses who testified against that defendant lacked credibility. Yet in Buffey's case, the prosecutor failed to disclose that DNA tests from the rape kit were completed at the time Buffey had to accept or reject a time-limited plea offer. Not disclosed until 14 years later, the DNA results conclusively excluded Buffey. This led the West Virginia Supreme Court to declare that the prosecution has a duty to disclose exculpatory information not just before trial but during plea negotiations. In fact, in previous habeas proceedings, Buffey's original attorney testified that if he had known about the DNA evidence, he would have "put the brakes on the Judge['s] accepting the plea" (Shechtman & Cohn, 2014, p. 7).

The failure to disclose DNA results during plea negotiations is an extreme example, to be sure, but the frequency with which Brady violations appear in wrongful convictions (see Gross et al., 2020) suggests that defense attorneys often lack the information they need to assess, much less factor into their decision making a defendant's factual guilt or innocence. Indeed, the Supreme Court has held that the prosecution is not required to disclose exculpatory impeachment evidence that challenges the credibility of witnesses at the preplea stage (*United States v. Ruiz*, 2002) and outside of West Virginia, several circuit courts have applied this reasoning to all exculpatory evidence (Waldstein, 2019). However, 17 states (e.g., North Carolina, Texas) have adopted open-file discovery rules that promote broad disclosure of evidence (Zottoli et al., 2019). Previous research has indicated that open-file discovery practices can lead to enhanced preplea disclosure of evidence which in turn enables defendants to make more informed plea decisions (Turner & Redlich, 2016).

In conclusion, defense attorneys often have little choice but to rely on pragmatic considerations when assisting their clients. The real problem may lie within a system that (a) forces them to make this choice in the face of stiff trial penalties, which invariably draws their focus to the probability of conviction; and (b) tolerates their

lack of access to case files that would enable smart assessments of factual guilt and innocence. Continued research is needed to examine these matters of speculation and shed further light on how to move toward reforms that enable defense attorneys to achieve just outcomes for their clients.

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