AN EMPIRICAL TEST OF THE ADVERSARIAL ALLEGIANCE EFFECT WHEN

EVALUATING INTERROGATION COERCIVENESS

by

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Abstract

Adversarial allegiance is a bias that occurs when expert witnesses are unconsciously influenced by lawyers' opinions before conducting their analysis. While this bias has been demonstrated empirically, the underlying mechanisms are unclear and, more importantly, the strategies required to mitigate its presence in legal settings are unknown. This study explores the impact of the adversarial allegiance effect on voluntariness decisions across two experiments. In Experiment 1, participants ($N = 82$) either read only a police interrogation, a police interrogation and prosecution materials, or a police interrogation with defence materials, and then answered questions related to the guilt of the suspect and the coerciveness of the interrogation. In Experiment 2 ($N = 38$), participants either read a police interrogation transcript with defence materials alone or with defence materials and information about the duty of expert witnesses, and then answered questions related to the guilt of the suspect and coerciveness of the interrogation. The results from Experiment 1, in line with previous research, indicated the presence of adversarial allegiance, with participants aligning with the expert/lawyer of the team to which they were randomly assigned. The results of Experiment 2 indicated that the intervention did not reduce adversarial allegiance. The implications of these findings are discussed.

Keywords: adversarial allegiance bias, expert witnesses, interrogations, coercion

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Table of Contents

List of Tables

List of Appendices

An Empirical Test of the Adversarial Allegiance Effect when Evaluating Interrogation

Coerciveness

In legal proceedings around the world, it is common for expert witnesses—individuals with specialized knowledge in a particular field—to provide testimony in court. However, it is also common for that testimony to be scrutinized, challenged, and criticized. For example, in a 2017 murder trial in a Nova Scotia court, the defence team hired a forensic psychologist, Dr. Hucker, to assess the mental state of their client, Christopher Garnier (Pace, 2017). Dr. Hucker told the court that Garnier may have been suffering from a rare psychological condition known as automatism at the time of the crime, which may have left Garnier incapable of controlling his actions. Additionally, Dr. Hucker stated that Garnier suffers from acute stress disorder and post-traumatic stress disorder. However, the prosecution team quickly highlighted that there were many gaps in Dr. Hucker's evaluation, noting that his testimony was skewed because he did not consider DNA reports, blood stain analysis, surveillance videos, or information retrieved from Garnier's computer in his analysis. Similarly, in the highly publicized legal proceeding between Johnny Depp and Amber Heard, the testimony of a psychologist was also contested (CBC News, 2024). Dr. Shannon Curry was the psychologist hired by Depp's legal team, and after conducting extensive interviews with Heard, she testified in court that she believes Heard suffers from borderline personality disorder and histrionic personality disorder. This testimony seemed to support the argument made by Depp's legal team that Heard was the aggressor in the couple's relationship, not Depp. In turn, Heard's legal team questioned Dr. Curry about her objectivity and impartiality, noting that she had dinner and drinks with Depp and his legal team at Depp's house before being hired. Likewise, Dr. Dylan Gatner, a psychologist hired to conduct a risk assessment on Larry Amero, a member of The Hells Angel Motorcycle Club that was convicted

of murder conspiracy, was intensely scrutinized (Bolan, 2023). It was noted in court that Dr. Gatner failed to consider significant factors when conducting the risk assessment, such as Amero's ongoing connections with criminal organizations and convicted criminals, previous breaches of custody rules, and his relationships with his family members. Ultimately, it was argued that Gatner's assessment was not credible due to the amount of information that was overlooked.

As highlighted by these cases, expert witnesses can play a significant role in court proceedings. Therefore, numerous rules have been put in place in an attempt to govern expert testimony. For example, the Supreme Court of Canada has established four criteria that experts must meet to provide their opinion in court: (1) their opinion must be necessary and provide new knowledge or experience for the judge and/or jury; (2) their opinion must be relevant to the case; (3) the expert must have proper qualifications; and (4) the opinion or evidence presented must not be inadmissible under any other rules (*R. v. Mohan*, 1994). Additionally, there are also rules that outline an expert's duty when presenting their opinion in court. For example, in Ontario, Rule 4.1.01 states that every expert retained by a legal team must: (1) provide fair, objective, and non-partisan opinion evidence; (2) limit their opinion evidence to only their area of expertise; and (3) offer additional assistance as required by the court to resolve a matter in question (Vaitheeswaran, 2022). However, despite many rules being in place, issues surrounding expert testimony often still arise, as exemplified by the aforementioned cases.

These cases broadly highlight the power of framing effects in legal contexts, where the presentation of information affects people's decisions and perceptions. Framing effects occur when the way information is presented influences the interpretation and judgement of that information (Druckman, 2001). One specific example of framing effects, and a potential

explanation for the behaviour of the expert witnesses in these cases, is a phenomenon known as the adversarial allegiance effect (for a review, see Murrie & Boccaccini, 2015). Adversarial allegiance is a bias that occurs when expert witnesses are swayed, albeit unconsciously, by the opinions of lawyers and interpersonal relationships with lawyers before they conduct their analysis (Murrie et al., 2008). In other words, expert witnesses might seek to confirm what the retaining lawyers (i.e., defence or prosecution) think rather than maintaining a neutral and impartial stance.

The adversarial allegiance effect is highly troubling because it calls into question the integrity of the adversarial legal system. This system is based on the idea that two opposing sides—the defence advocating for the accused and the prosecution (also referred to as the Crown in Canada) advocating for the public—present their own versions of facts and arguments in court, while a neutral and impartial judge and/or jury attempt to discern the truth (Roesch et al., 2013; Ryan, 2003). In this system, the role of the expert is to educate the judge and jury on issues that are not considered common knowledge. For example, a forensic psychologist may be retained by the prosecution or defence to testify regarding matters of mental health, general theory, research in psychology and law, or the conduct of police officers during interrogations (Roesch et al., 2013). Experts are expected to help the judge and jury uncover the truth by evaluating all relevant materials and providing a clear and honest opinion that is free from bias, including any influence from the lawyer who hired them (Beran, 2009).

Experts are also frequently called upon to testify on issues of coercion and voluntariness (Kaplan et al., 2020). Voluntariness is an important legal safeguard that ensures any statements or confessions made during an investigation are given freely and without any coercion. During police interrogations, tactics such as threats, promises in exchange for a confession, and denying

a suspect access to necessities like food, water, or bathroom breaks, are all prohibited because they can lead to a suspect making involuntary statements or actions (Kaplan et al., 2020). Since the use of these tactics is not always obvious, experts are often asked to review police interrogation transcripts and educate the court on the true voluntariness of a statement or action.

Although an expert's role is to assist the court by offering independent and unbiased testimony regardless of the party that hired them, the impartiality of expert witnesses is often more of a legal fiction than a reality (Welch-Mongeau, 2020). That is, when experts fall prey to framing effects and more specifically, adversarial allegiance, their testimony can become skewed, ultimately impacting the fairness and outcome of legal proceedings. This is particularly concerning since numerous empirical studies on adversarial allegiance have shown that expert testimony is extremely powerful. For example, research has shown that the use of expert witnesses in adversarial court proceedings can impact judges' and juries' perceptions of guilt or innocence, thereby affecting the overall outcome of trials (Blais, 2015). Specifically, a survey by Blais (2015) explored the level of reliance 75 Canadian judges placed on risk assessment reports completed by expert witnesses. All the judges were asked to read partial court transcripts, which included a risk assessment report from an expert witness and a recommended sentencing length. The results showed that 77% of the judges relied heavily on the expert witness's opinion, accepting all information without any disagreement. Meanwhile, 22% of the judges relied somewhat on the expert witness's opinion, accepting some parts of the information while disagreeing with other aspects. Only one judge, representing 1% of the sample, did not rely on the expert witness's opinion at all, disregarding the information completely and instead relying on other information to make a final decision. Ultimately, this study highlights the power that expert witnesses hold within courtrooms.

In an experimental test of the adversarial allegiance effect, McAuliff and Arter (2016) randomly assigned 25 expert witnesses to one of four conditions in which retaining party (prosecution or defence) and interview suggestibility (low or high) varied. The experts were asked to read a transcript of a police interview with an alleged child victim and then complete a questionnaire. The questionnaire asked about the experts' willingness to testify in court, their perception of the child victim's trustworthiness and accuracy, and their assessment of the quality of the police interview. The results demonstrated an adversarial allegiance effect among the experts, especially when the evidence was not blatantly flawed. Specifically, experts in the prosecution condition were more willing to testify when interview suggestibility was low, while experts in the defence condition were more willing to testify when suggestibility was high. Furthermore, experts in the prosecution condition showed a stronger pro-prosecution stance, whereas experts in the defence condition showed a stronger pro-defence stance across various measures. For example, experts in the prosecution condition provided a significantly higher proportion of pro-prosecution statements about the police interview and child's memory as compared to experts in the defence condition ($d = 0.84$). These results highlight the adversarial allegiance effect.

Murrie et al. (2008) also demonstrated the adversarial allegiance effect in a field study that examined Psychopathy Checklist-Revised (PCL-R) scores, the most widely used measure for assessing psychopathy. In this study, the researchers gathered PCL-R scores assigned by experts that were hired by either a prosecution or defence team in 23 sexual violence trials in Texas. Then, the researchers compared the assigned PCL-R scores between prosecution-retained experts and defence-retained experts. The results showed that experts hired by the prosecution assigned a higher PCL-R score than experts hired by the defence ($d = 1.03$). Additionally, the

assigned PCL-R scores suggested that the experts leaned towards supporting the party that hired them.

As an extension to Murrie et al. (2008), Murrie and colleagues (2013) tested the adversarial allegiance effect with respect to other risk assessment tools. Specifically, the researchers first provided two days of training to 99 experienced forensic psychologists and psychiatrists on the Static-99R and the PCL-R, two commonly used instruments in risk assessments. The participants were then deceived into believing they were part of a large-scale forensic consultation, with half thinking they were working for the prosecution and half for the defence. Each participant received $400 per day and attended a short meeting with an attorney, who pretended to represent either the prosecution team or the defence team. They were then asked to review the records of four offenders and conduct risk assessments using the Static-99R and PCL-R. The results showed a clear pattern of adversarial allegiance in the risk scores provided by the experts. Specifically, experts in the prosecution condition assigned significantly higher scores on the PCL-R compared to experts in the defence condition. All significant effects ranged from moderate to high ($d = 0.55$ to 0.85). Additionally, though not statistically significant, experts in the prosecution condition tended to assign higher scores on the Static-99R than experts in the defence condition. Effect sizes ranged from low to moderate ($d = 0.14$ to 0.42). The presence of adversarial allegiance in this experiment is particularly notable because the experimental setup was less powerful than real-life cases. That is, unlike in real cases where experts typically gather different information depending on the side that retained them and have extensive contact with that side, in this study, the experts in the study had limited interaction with the retaining attorney and reviewed identical files.

Adams and Jung (2020) also examined the potential presence of adversarial allegiance in Canadian sentencing decisions for sexual assault cases. The researchers identified and retrieved 261 Canadian sentencing decisions involving sexual assault and assessed whether risk levels reported by prosecution and defence-retained experts showed evidence of an adversarial allegiance effect. This was done by comparing Static-99R risk assessments to Static-99R risk assessments completed by the researchers. The results revealed that more prosecution-retained experts assigned higher risk scores as compared to the assessments done by the other researchers. Moreover, while defence-retained experts tended to assign lower risk scores, the sample was too small to make definitive conclusions.

In a study conducted by Neal (2016), the personal attitudes of forensic psychologists toward the death penalty and biases such as the adversarial allegiance effect were explored. Surveys were sent to 962 American forensic psychologists, and 206 surveys were fully completed and analyzed. The results showed differences in acceptance rates based on support for the death penalty: 9% were willing to work exclusively for the defence, 2% were willing to work exclusively for the court, 20% refused all offers to work a death penalty case regardless of the source, and 68% were willing to accept referrals from any of the three sources (i.e., prosecution, defence, or court-appointed). Additionally, results demonstrated an association between lower support for the death penalty and a higher likelihood of accepting defence or defence and court-appointed referrals only. Ultimately, these results suggest that an expert's attitudes and biases can influence their willingness to lend their expertise and testify in court. Thus, pre-existing biases among experts can further exacerbate biases, such as the adversarial allegiance effect, within the court system.

The Current Study

While the existence of the adversarial allegiance effect has been empirically demonstrated by numerous researchers, many questions remain unanswered. The adversarial allegiance effect is highly troubling as it can lead to biased testimony and inaccurate information, which can then result in ethical issues and miscarriages of justice such as unnecessary incarceration or inadequate treatment for offenders (Adams & Jung, 2020). This study aims to add to the current literature by exploring the impact of the adversarial allegiance effect on voluntariness decisions and investigating potential interventions to reduce its presence. More specifically, this study will address two research questions: (1) How do the opinions of experts affect voluntariness decisions? (2) Perhaps more importantly, can the effect of adversarial allegiance on jurors be minimized by introducing an intervention that emphasizes the role of an expert witness? These questions will be answered across two experiments in which participants (i.e., laypeople and potential jurors) are shown case materials where adversarial allegiance is present, to explore if they also fall prey to this effect. It is predicted that the effect of adversarial allegiance on jurors will be present and lead to participants siding with the expert/lawyer of the team to which they were randomly assigned (Experiment 1). Additionally, it is predicted that an intervention that emphasizes the role of an expert witness in court proceedings will help minimize the presence of the adversarial allegiance effect (Experiment 2).

Experiment 1

Method

Participants

Participants ($N = 83$) were undergraduate students at Memorial University of Newfoundland. The participants were recruited from undergraduate psychology courses through

the Psychology Research Experience Pool (PREP), a research experience program. Participants

received a course credit of 1% toward their final grade in their respective courses in return for

their participation in this study. One response was removed prior to analysis because the

individual did not consent to their data being used, resulting in a final sample size of 82. Based

on the literature reviewed above, allegiance effects generally appear to be large (e.g., McAuliff

and Arter, 2016). Therefore, an a priori power analysis conducted with G*power (Faul et al.,

2007) indicated that 66 participants were required to detect a large effect size ($f = 0.4$) with an

alpha of 0.05 and power of 0.80 for the design. The final sample size of 82 provides sufficient

statistical power for detecting differences between groups and enhancing generalizability.

There were 27 (32.9%) participants in the defence condition, 27 (32.9%) participants in

the prosecution condition, and 28 (34.1%) participants in the control condition. The mean age of

participants was 21.49 ($SD = 4.56$, Range 18-45). See Table 1 for a further breakdown of

participants by demographic variables. There were no statistically significant differences in terms

of participants' age, gender, year of study, ethnicity, perception of the police between conditions

($ps > 0.05$).

Design

A single factor between-subject design was used, with the retaining party as the

independent variable (i.e., no-retention control, prosecution, defence). Participants were assigned

randomly to one of three conditions: (1) reading a transcript of a police interrogation (i.e., control

condition), (2) reading a transcript of a police interrogation along with information from a

prosecution lawyer and forensic psychology expert (i.e., prosecution condition), or (3) reading a

transcript of a police interrogation along with information from a defence lawyer and forensic

psychology expert (i.e., defence condition). The same interrogation transcript was used across all

conditions. The dependent variables were perceived likelihood of guilt, verdict, perceptions of the interrogation, and evidence strength.

Materials

The following materials were used in this study: (1) an informed consent form, (2) a transcript of a police interrogation, (3) email exchanges, (4) expert reports, (5) a questionnaire, and (6) a debriefing sheet.

Police Interrogation Transcript. The transcript pertained to the interrogation of a suspect who was charged with possession of child pornography (see Appendix A). The anonymized transcript began with the police officer asking the suspect a series of questions concerning child pornography discovered on a home computer, as well as other details of the case. Throughout the interrogation, the police officer employed questionable tactics, including both explicit and implicit forms of coercion, with the aim that the suspect would perceive his statement as the truth. The transcript also included a confession to the crime from the suspect.

Lawyer and Expert Email Exchanges. In addition to the interrogation script, participants in the prosecution and defence conditions read an email exchange between a forensic psychology expert and a lawyer (see Appendix B). The only variations in the email exchanges in the two conditions was the party that retained the expert (i.e., prosecution or defence) and their stance on the voluntariness of the statement (i.e., voluntary or involuntary). The email exchange in the prosecution condition indicated that the prosecutor believed the suspect confessed voluntarily, and they were seeking a forensic psychologist's evaluation to confirm this (495 words). Conversely, the email exchange in the defence condition indicated that the defence lawyer believed the suspect's confession was coerced, and they were seeking a forensic psychologist's evaluation for signs of involuntariness in the interrogation (493 words). Following

the email exchanges, a forensic psychology expert responded, agreeing to evaluate the interrogation (see Appendix C). The expert was either retained by a prosecutor (244 words) or a defence lawyer (263 words).

Expert Report. Participants in the prosecution and defence conditions also read a short expert report about whether the suspects' confession was coerced (see Appendix D). The expert reports were identical in the two conditions except for the final conclusion. The expert report in the prosecution condition concluded that the suspect confessed voluntarily and therefore was guilty (345 words). In contrast, the expert report in the defence condition concluded that the suspect was coerced into confessing (342 words).

Questionnaire. The questionnaire asked participants to rate how likely it was that the suspect committed the crime on a scale of 0 to 100, with 0 representing no chance and 100 representing that the suspect absolutely committed the crime (see Appendix E). Participants were also asked if the suspect was guilty or not guilty. Additionally, using 5-point scales (1 = *strongly agree*, 5 = *strongly disagree*), participants were asked to rate their level of agreement with the following prompts: (1) the interrogation was fair, (2) the suspect voluntarily confessed to committing the crime, (3) the suspect was under pressure to give a confession, (4) the police officer offered leniency to the suspect in exchange for a confession, (5) the police officer threatened the suspect, and (6) the evidence of guilt was weak in this case. Two attention check questions (i.e., "what crime was the suspect accused of committing?" and "what was the food the officer said he would buy for the suspect?") were also included in the questionnaire to ensure that the participant read the transcript completely. Finally, the questionnaire requested demographic information. It also requested the participants' opinions about the police using a 5-point scale (1= *very negative*, 5 = *very positive*).

Procedure

Participation in this study occurred in-person at a time of the participants choosing (i.e., they selected their preferred testing time from available slots). Before the study began, participants were asked to read an informed consent form and then they were randomly assigned to one of the three study groups (i.e., control, prosecution or defence). After completing the informed consent form, all participants received a brief oral introduction and welcome to the study during which the researcher expressed appreciation to participants for their participation, emphasized the importance of their review of the case materials, and conveyed belief in their eagerness and intelligence. The researcher told participants in the prosecution and defence conditions that there were some disputes regarding the opinion of the expert witness who evaluated the case, and thus the expert witness was looking for individuals to review the case materials to further solidify their opinion. The researcher then gave participants the case materials and left the study room.

Participants in all groups were first instructed to read a transcript of a police interrogation. Participants in the control group completed the questionnaire after the transcript was read. The questionnaire included an anonymous demographic survey, and the specific questions are described above. Participants in the experimental groups (i.e., prosecution and defence) were asked to read an email exchange between a lawyer and expert along with an expert report after reading the transcript (described above). After reading these additional materials, participants were then asked to complete the questionnaire. Once participants in all groups completed the questionnaire, they read a debriefing statement and then they were free to leave the study room.

Results

The mean ratings and standard deviations for each condition are shown in Table 2. All interpretations of effect sizes were guided by Cohen (1988; i.e., > 0.2 = small, > 0.5 = medium, > 0.8 = large). One-way ANOVAs were conducted to assess the differences among the conditions and post-hoc tests were conducted using *Tukey HSD* tests. Cohen's *d* was used in all cases where a one-way ANOVA was performed to measure effect size.

Likelihood of Guilt

There was a statistically significant difference in guilt ratings among the three conditions, $F(2, 51.963) = 5.993$, $p = .005$. Specifically, participants in the defence condition ($M = 44.12$, $SD = 25.58$) thought the suspect was more likely to be innocent than participants in the prosecution condition ($M = 65.89$, $SD = 25.49$, $p = .009$), and the size of the effect was large, $d = -0.85$, 95% *CI* [-1.41, -0.29]. Similarly, participants in the defence condition perceived a lower likelihood of guilt than those in the control condition ($M = 65.14$, $SD = 27.36$, $p = .012$), with a large effect size, $d = -0.79$, 95% *CI* [-1.34, -0.23]. No difference was found between the prosecution and control condition, with a negligible effect, $d = 0.03$, 95% *CI* [-0.51, 0.56].

Verdict

A binomial logistic regression was performed to compare the guilty verdicts and not guilty verdicts among the three conditions. There was a statistically significant difference in verdict results between both the prosecution and defence group ($b = 1.48$, $p = .014$) and the control and defence group ($b = 1.17$, $p = .048$), suggesting that there were more guilty verdicts given in the prosecution and control groups than in the defence group.

Fairness of Interrogation

There was a statistically significant difference in fairness ratings among the three conditions, $F(2, 52.461) = 8.160$, $p < .001$. Specifically, participants in the defence condition ($M = 2.33$, $SD = 1.11$) thought the interrogation was less fair than participants in the prosecution condition ($M = 3.59$, $SD = 1.25$, $p = .001$), and the size of the effect was large, $d = -1.07$, 95% CI [-1.63, -0.49]. Similarly, participants in the defence condition perceived the interrogation as less fair than those in the control condition ($M = 3.21$, $SD = 1.34$, $p = .027$), with a large effect size, $d = -0.72$, 95% CI [-1.26, -0.17]. No significant difference was found between the prosecution and control condition, and the size of the effect was small, $d = 0.29$, 95% CI [-0.24, 0.82]. Participants in the prosecution condition perceived the interrogation as being slightly fairer than those in the control condition.

Voluntariness of Confession

There were no statistically significant differences in perceived voluntariness of confession ratings among the three conditions, $F(2, 51.213) = 2.911$, $p = .063$. However, the effect size between the defence ($M = 2.33$, $SD = 1.04$) and prosecution ($M = 3.19$, $SD = 1.55$) condition was medium, $d = -0.65$, 95% CI [-1.19, -0.10]. Participants in the defence condition perceived the confession as being slightly less voluntary than those in the prosecution condition. There were small effect sizes between the defence and control ($M = 2.75$, $SD = 1.38$) conditions and the defence and prosecution conditions ($d = -0.34$, 95% CI [-0.87, 0.19] and $d = 0.30$, 95% CI [-0.24, 0.83], respectively).

Pressure to Confess

There was a statistically significant difference in pressure to confess ratings among the three conditions, $F(2, 49.484) = 5.151$, $p = .009$. Specifically, participants in the defence condition ($M = 4.26$, $SD = 0.81$) perceived the interrogation as having more pressure than those

in the prosecution condition ($M = 3.26$, $SD = 1.46$, $p = .009$), and the effect size was large, $d = 0.85$, 95% *CI* [0.29, 1.40]. No difference was found between the defence and control condition ($M = 3.79$, $SD = 1.26$), however, there was a small to medium effect size, $d = 0.45$, 95% *CI* [-0.09, 0.98]. No difference was found between the control and prosecution group and the effect size was small, $d = -0.39$, 95% *CI* [-0.92, 0.15].

Evidence of Guilt

There were no statistically significant differences in perceived evidence of guilt ratings among the three conditions, $F(2, 51.389) = 2.058$, $p = .138$. However, the effect size between the defence ($M = 2.11$, $SD = 0.97$) and control group ($M = 2.71$, $SD = 1.30$) was medium, $d = -0.53$, 95% *CI* [-0.02, 1.06], with participants in the defence group perceiving slightly less evidence of guilt than those in the control group. There effect size between the defence and prosecution conditions ($M = 2.52$, $SD = 1.40$) was small, $d = 0.34$, 95% *CI* [-0.86, 0.20]. There was a negligible effect size between the control and prosecution conditions, $d = -0.14$, 95% *CI* [-0.39, 0.67], respectively.

Presence of Leniency

There were no statistically significant differences in perceived leniency ratings among the three conditions, $F(2, 52.478) = 2.879$, $p = .065$. However, the effect size between the defence ($M = 2.82$, $SD = 1.39$) and control group ($M = 1.96$, $SD = 1.32$) was medium, $d = 0.63$, 95% *CI* [0.08, 1.17], with participants in the defence group perceiving more leniency than those in the control group. The effect size between the defence and prosecution conditions ($M = 2.15$, $SD = 1.43$) was small to medium, $d = 0.47$, 95% *CI* [-0.07, 1.01]. There was a negligible effect size between the control and prosecution conditions, $d = 0.13$, 95% CI [-0.40, 0.66].

Presence of Threats

There were no statistically significant differences in perceived presence of threats ratings among the three conditions, $F(2, 50.800) = 1.181$, $p = .315$. All effect sizes were negligible to small: defence ($M = 1.50$, $SD = 0.81$) and prosecution ($M = 1.26$, $SD = 0.60$, $d = 0.34$, 95% CI [-0.20, 0.88]); defence and control ($M = 1.50$, $SD = 0.75$, $d = 0$, 95% CI [-0.53, 0.53]); control and prosecution ($d = -0.36$, 95% *CI* [-0.89, 0.18]).

Discussion

The results provide support for the hypothesis: participants exhibited adversarial allegiance across numerous measures in which they aligned their perceptions with the expert/lawyer of the team to which they were randomly assigned. This bias was only prominent, however, in the defence condition. Specifically, participants in the defence condition perceived the suspect as less guilty, and the interrogation as less fair and having more pressure than those in the control and prosecution conditions. These differences were all statistically significant with large effect sizes.

Although research has yet to determine the exact mechanisms behind the adversarial allegiance effect, Murrie and Boccaccini (2015) reviewed the current literature and proposed that there are three broad causal factors that may drive this effect: (1) in-group out-group bias, (2) human decision-making errors, and (3) the presence of financial gains. In this experiment, two of these three factors may have played a role: in-group out-group bias and human decision-making errors.

Before reading the case materials, all participants received a brief oral introduction and welcome to the study which is described in the methods section above. The purpose of this introduction was to place an emphasis on the idea that the participant was seen as an integral member in the analysis of the case. Therefore, based on this introduction, participants in the

defence and prosecution conditions may have identified with the expert and the "team" they were randomly assigned to, exhibiting in-group favoritism, which is the tendency to favor members of one's own group over those in other groups (Everett et al., 2015). This potential identification with a side could have influenced participants' evaluation of the case materials and alignment with the expert witness, further exacerbating the adversarial allegiance effect.

Additionally, confirmation bias is a human decision-making error closely related to the adversarial allegiance effect (Sauerland et al., 2020). Confirmation bias is a well-documented tendency in which individuals favor information that confirms their pre-existing beliefs, expectations, or hypotheses (Nickerson, 1998). Therefore, participants in the defence and prosecution conditions may have looked for information in the case materials that aligned with the position of the expert witness to which they were assigned, ultimately affecting their evaluations and perceptions.

Regardless of the reason, Experiment 1 was able to demonstrate an adversarial allegiance effect with regards to the defence side of the adversarial system. Since the exact mechanisms responsible for driving the adversarial allegiance bias are unclear, methods to minimize this bias are also not clear. This will be explored in Experiment 2.

Experiment 2

As discussed in the introduction, there are currently numerous rules in place to govern expert testimony (e.g., Rule 4.1.01). The purpose of these rules is to remind expert witnesses of their role in court proceedings and their duty to present analyses free from bias. Failure to understand their role and/or duty to the court have the potential to lead to biased analyses due to factors such as the confirmation bias and the adversarial allegiance bias. Thus, the aim of Experiment 2 is to explore the efficacy of one of these real-life rules. Specifically, Rule 4.1 Duty

of Experts in *Civil Procedure and Practice in Ontario* (Vaitheeswaran, 2021), will be examined

to determine if it minimizes the effect of adversarial allegiance. Given that the adversarial

allegiance bias was most prominent in the defence group in Experiment 1, Experiment 2 will

focus on this group.

Method

Participants

Participants ($N = 39$) were undergraduate students at Memorial University of

Newfoundland. The participants were recruited from undergraduate psychology courses through

the Psychology Research Experience Pool (PREP), a research experience program. Participants

received a course credit of 1% toward their final grade in their respective courses in return for

their participation in this study. One response was removed prior to analysis because the

individual did not consent to their data being used, resulting in a final sample size of 38. Based

on the large effect sizes found in Experiment 1, a large effect size was also anticipated and used

for the current experiment. An a priori power analysis conducted with G*power (Faul et al.,

2007) indicated that 46 participants were required to detect a large effect size ($f = 0.43$) with an

alpha of 0.05 and power of 0.80 for the design. Therefore, the final sample size of 38 is slightly

underpowered. However, a sensitivity power analysis was also conducted with G*Power (Faul et

al., 2007), which indicated that there is an 80% chance of detecting an effect size of $d = 0.83$

with a sample size of 38, an alpha level of .05, and a power of .80.

There were 21 (55.3%) participants in the defence condition and 17 (44.7%) participants

in the defence + intervention. The mean age of participants was 22.46 ($SD = 6.89$, range 18-56).

See Table 3 for a further breakdown of participants by demographic variables. There were no

statistically significant differences in terms of participants' age, gender, year of study, ethnicity, perception of the police between conditions ($ps > 0.05$).

Design

A single factor between-subject design was used, with the retaining party as the independent variable (i.e., defence, defence + intervention). Participants were assigned randomly to one of two conditions: (1) reading a transcript of a police interrogation along with information from a defence lawyer and forensic psychology expert (i.e., defence condition), or (2) reading a transcript of a police interrogation along with information outlining the role of an expert witness during a legal proceeding in court, and information from a defence lawyer and a forensic psychology expert (i.e., defence + intervention condition). The same interrogation transcript was used in both conditions. The dependent variables were perceived likelihood of guilt, verdict, perceptions of the interrogation, and evidence strength.

Materials

The following materials were used in this study: (1) an informed consent form, (2) a transcript of a police interrogation, (3) email exchanges, (4) expert reports, (5) a summary of the role of an expert witness, (6) a questionnaire, and (7) a debriefing sheet.

Police Interrogation Transcript. The transcript pertained to the interrogation of a suspect who was charged with possession of child pornography (see Appendix A). The anonymized transcript began with the police officer asking the suspect a series of questions concerning child pornography discovered on a home computer, as well as other details of the case. Throughout the interrogation, the police officer employed questionable tactics, including both explicit and implicit forms of coercion, in the aim that the suspect will perceive his statement as the truth. The transcript also included a confession to the crime from the suspect.

Lawyer and Expert Email Exchanges. In addition to the interrogation script, participants in the defence and defence + intervention conditions read an email exchange between a forensic psychology expert and a defence lawyer (see Appendix B). There were no variations in the email exchanges in the two conditions. The email exchange indicated that the expert was retained by the defence lawyer, and the defence lawyer believed the suspect's confession was coerced, and they were seeking a forensic psychologist's evaluation for signs of involuntariness in the interrogation (493 words).

Expert Report. Participants also read an expert report about whether the suspects' confession was coerced. The expert reports were identical in the two conditions. The expert report concluded that the suspect was coerced into confessing (342 words; see Appendix D).

Role of Expert Witness. Participants in the defence + intervention condition also read a summary of the basic role of an expert witness in legal proceedings (see Appendix F). This summary was based on Rule 4.1 Duty of Experts in *Civil Procedure and Practice in Ontario* (Vaitheeswaran, 2021). It stated that expert witnesses must be fair, unbiased, independent, and stay within their expertise when presenting and evaluating evidence in court. Then, participants were instructed to remain objective and unbiased in their analysis and told that it was okay if their analysis of the materials they read differed from the defence lawyer and expert (225 words). This information was counterbalanced and participants either read it immediately after reading the transcript or immediately before completing the questionnaire.

Questionnaire. There were two versions of the questionnaires (see Appendix E). The only variation in the questionnaires in the two conditions was that an additional question was asked to those in the defence + intervention group regarding the role of an expert witness (i.e., "what does Rule 4.1 relate to?"). This served as an attention check question.

The questionnaire asked participants to rate how likely they think the suspect committed the crime on a scale of 0 to 100, with 0 representing no chance and 100 representing that the suspect absolutely committed the crime. Participants were also asked if the suspect was guilty or not guilty. Additionally, using 5-point scales (1 = *strongly agree*, 5 = *strongly disagree*), participants were asked to rate their level of agreement with the following prompts: (1) the interrogation was fair, (2) the suspect voluntarily confessed to committing the crime, (3) the suspect was under pressure to give a confession, (4) the police officer offered leniency to the suspect in exchange for a confession, (5) the police officer threatened the suspect, and (6) the evidence of guilt was weak in this case. Two attention check questions (i.e., "what crime was the suspect accused of committing?" and "what was the food the officer said he would buy for the suspect?") were also included in the questionnaire to ensure that the participant read the transcript completely. Finally, the questionnaire requested demographic information. It also requested the participants' opinions about the police using a 5-point scale (1= *very negative*, 5 = *very positive*).

Procedure

Participation in this study occurred in-person at a time of the participants choosing (i.e., they selected their preferred testing time from available slots). Before the study began, participants were asked to read an informed consent form and then they were randomly assigned to one of the two study groups (i.e., defence or defence + intervention). After completing the informed consent form, all participants received a brief oral introduction and welcome to the study during which the researcher expressed appreciation to participants for their participation, emphasized the importance of their review of the case materials, and conveyed belief in their eagerness and intelligence. The researcher told participants that there were some disputes

regarding the opinion of the expert witness who evaluated the case, and thus the expert witness was looking for individuals to review the case materials to further solidify their opinion that the suspect in the case was not guilty. The researcher then gave participants the case materials and left the study room.

Participants in both groups were first instructed to read a transcript of a police interrogation. Participants were then asked to read an email exchange between a lawyer and expert along with an expert report after reading the transcript (described above). Participants in the defence group completed the questionnaire after reading these materials. Participants in the defence + intervention group were additionally asked to read about the role of an expert witness. After reading this additional piece of material, participants then completed the questionnaire. Once participants in all groups completed the questionnaire, they read a debriefing statement and then they were free to leave the study room.

Results

The mean ratings and standard deviations for each condition are shown in Table 4. All interpretations of effect sizes were guided by Cohen (1988; i.e., > 0.2 = small, > 0.5 = medium, > 0.8 = large). Independent samples *t*-tests were conducted to assess the differences between the two conditions. Cohen's *d* was used in all cases where a *t*-test was performed to measure effect size.

Likelihood of Guilt

There was no statistically significant difference between likelihood of guilt ratings in the defence condition ($M = 42.10$, $SD = 24.34$) and the defence + intervention condition ($M = 45.29$, $SD = 16.91$); $t(36) = -0.459$, $p = .649$, 95% *CI* [-0.789, 0.493], and the effect was negligible, $d = -0.150$.

Verdict

A chi-squared test revealed that participants' verdicts did not differ by condition, $X^2 =$ 2.778, $p = .096$. Overall, the conviction rate was 36.1%.

Fairness of Interrogation

There was no statistically significant difference between fairness ratings in the defence condition ($M = 2.57$, $SD = 1.25$) and the defence + intervention condition ($M = 2.47$, $SD = 1.13$); $t(36) = .259$, $p = .797$, 95% CI [-0.557, 0.723], and the effect was negligible, $d = 0.084$.

Voluntariness of Confession

There was no statistically significant difference in perceived voluntariness of confession ratings in the defence condition ($M = 2.05$, $SD = 1.07$) and the defence + intervention condition ($M = 2.47$, $SD = 1.42$); $t(36) = -1.047$, $p = .302$, 95% CI [-0.986, 0.311], and the effect was small, $d = -0.342$. Participants in the defence + intervention condition perceived the confession as being slightly more voluntary than those in the defence condition.

Pressure to Confess

There was no statistically significant difference in pressure to confess ratings in the defence condition ($M = 3.95$, $SD = 0.97$) and the defence + intervention condition ($M = 4.24$, $SD = 0.97$); $t(36) = -0.892$, $p = .378$, 95% CI [-0.933, 0.358], and the effect was small, $d = -0.291$. Participants in the defence + intervention condition perceived less pressure to confess than those in the defence condition.

Evidence of Guilt

There was a statistically significant difference in perceived evidence of guilt ratings in the defence condition ($M = 2.29$, $SD = 1.06$) and the defence + intervention condition ($M = 1.53$, SD

= 0.80); $t(36) = 2.439$, $p = .020$, 95% CI [0.102, 1.472], and the effect was large, $d = 0.796$.

Participants in the defence + intervention condition perceived slightly more evidence of guilt.

Presence of Leniency

There was no statistically significant difference in perceived leniency ratings in the

defence condition ($M = 2.91$, $SD = 1.34$) and the defence + intervention condition ($M = 2.18$, SD

= 1.19); $t(36) = 1.754$, $p = .088$, 95% CI [-0.098, 1.229], and the effect was medium, $d = 0.572$.

Participants in the defence + intervention condition perceived slightly less leniency than those in

the defence condition.

Presence of Threats

There was no statistically significant difference in perceived presence of threat ratings in

the defence condition ($M = 1.57$, $SD = 0.98$) and the defence + intervention condition ($M = 1.53$,

$SD = 1.08$); $t(36) = 0.130$, $p = .897$, 95% CI [-0.598, 0.681], and the effect was negligible, $d =$

0.042.

Discussion

In the current experiment, an intervention based on Rule 4.1 Duty of Experts in *Civil*

Procedure and Practice in Ontario (Vaitheeswaran, 2021) was used to examine whether it would

help minimize the presence of the adversarial allegiance effect. This intervention mirrors real-life

cases where expert witnesses are reminded of the rules governing expert testimony and their duty

to maintain impartiality. The results did not support the hypothesis. That is, the additional

information on Rule 4.1 and the reminder to participants to remain objective and unbiased in

their analysis (i.e., the intervention) did not reduce the presence of the adversarial allegiance

bias.

There was a statistically significant difference in the perceived evidence of guilt ratings between groups, as participants in the defence + intervention group perceived more evidence of guilt than those in the defence group. However, all other differences were small and not statistically significant. In other words, participants' perceptions and ratings in the defence group were similar to those in the defence + intervention group. Ultimately, these findings suggest that information on Rule 4.1 was not successful in reducing the presence of the adversarial allegiance bias.

This finding is in line with a study by Sauerland et al. (2020). In this study, the researchers introduced a two-sided instruction intervention, asking participants to consider both supporting and contradicting information when analyzing a legal case. However, there were no significant differences in results when participants were presented with this intervention, and effect sizes were small, ranging from $d = 0.09$ to $d = 0.49$. Thus, similar to the current experiment, the intervention that was introduced did not counteract the adversarial allegiance bias.

One possible explanation for the ineffective nature of the intervention is that it was very simple and brief. Research suggests repeated training or repeated interventions might be more beneficial than "one-shot" debiasing interventions (Lilienfeld et al., 2009). Thus, the intervention in the current experiment may not have been robust enough to overcome the adversarial allegiance bias. Additionally, unlike lawyers and expert witnesses who may face consequences for failing to meet certain standards or engaging in misconduct during legal proceedings, the participants in this experiment faced no consequences for biased analyses. Therefore, some participants may have seen more benefit in simply agreeing with the presented case materials. Furthermore, a lack of understanding of the role of an expert witness (i.e., the intervention) may

have contributed to the intervention being ineffective. Although an attention check question about the intervention was included in the questionnaire, participants' understanding of concepts like fairness, unbiasedness, and independence were not explored in depth. Thus, future studies should ensure that the intervention being implemented is salient, clear, and well-understood.

General Discussion and Conclusion

The aim of the present research was to explore the impact of the adversarial allegiance effect on voluntariness decisions. It specifically addressed two main questions across two experiments: (1) How do expert witness opinions affect voluntariness decisions? (2) Can adversarial allegiance be minimized through an intervention that emphasizes the duty of an expert witness? In Experiment 1, the results revealed the presence of the adversarial allegiance bias, and it was particularly evident in the defence condition. In Experiment 2, the results showed that the intervention did not minimize the presence of adversarial allegiance. Overall, these findings add to the current literature on adversarial allegiance, which has demonstrated that experts can indeed be biased by the side that retains them (for a review, see Murrie & Boccaccini, 2015). More specifically, the results also suggest that the adversarial allegiance effect is not limited to specific types of experts or evaluations like risk assessments and sentencing decisions. The expert witness in this study was framed as already exhibiting the adversarial allegiance effect, and participants (i.e., laypeople) supported these assessments. This reinforces the existence of the adversarial allegiance effect and expands on its bounds. Furthermore, this study also adds to the current research that has failed to identify interventions that can effectively reduce the presence of this bias (e.g., Sauerland et al., 2020), emphasizing the need for further research into both the mechanisms driving adversarial allegiance and potential strategies to reduce its presence in legal settings. As shown in Experiment 1, the

opinions of experts can greatly influence perceptions and verdicts. Therefore, it is necessary to address adversarial allegiance to prevent things like unnecessary incarcerations or inadequate treatment of offenders (Adams & Jung, 2020).

However, there are a few limitations to note when considering the results of this study. First, this study used a student sample rather than actual expert witnesses. Thus, the participants evaluating the case materials would not have as much education or experience as compared to the experts that are called to testify in court. Nevertheless, the allegiance bias was still found in Experiment 1, which suggests that this could be a cost-effective experimental paradigm for future research on the adversarial allegiance effect. This methodology aligns with the paradigm used by Sauerland et al. (2020). Additionally, all participants were students at Memorial University of Newfoundland, with a majority being female, which limits the generalizability of the findings. Furthermore, an intervention was implemented in this study without first determining the exact causal mechanism for the adversarial allegiance effect that was found. This choice was made due to time and resource constraints. Future researchers should aim to improve the theoretical understanding of the adversarial allegiance effect so that interventions can be implemented more effectively.

In conclusion, while this study provides some insights into adversarial allegiance, further research is necessary to identify the mechanisms of this bias and to develop effective interventions. Addressing this bias and the limitations present in this study is crucial for improving the fairness of legal proceedings and the integrity of legal systems.

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Table 1

Breakdown of Participants by Demographic Variable (Experiment 1; N = 82)

Demographic Characteristic	N	Percentage
Gender		
Male	15	18.8%
Female	63	78.8%
Other	2	2.5%
Education Level		
First Year	18	22.2%
Second Year	25	30.9%
Third Year	22	27.2%
Fourth Year	12	14.8%
Fifth Year	2	2.5%
Other	2	2.5%
Race/Ethnicity		
White/Caucasian	65	80.2%
Indigenous/Aboriginal	1	1.2%
Asian	5	6.2%
Middle Eastern	1	1.2%
Hispanic/Latino	1	1.2%
Black/African	5	6.2%
Pacific Islander	0	0%
Other	3	3.7%
English First Language		
Yes	70	86.4%
No	11	13.6%
Feelings about Police		
Very Negative	5	6.2%
Somewhat Negative	22	27.2%
Neither Negative nor Positive	27	33.3%
Somewhat Positive	22	27.2%
Very Positive	5	6.2%

Table 2

Means and SDs of Perceptions of the Interrogation (Experiment 1; N = 82)

Perceptions of Interrogation	Control	Prosecution	Defence
Likelihood of Guilt			
M	65.143	65.889	44.115
SD	27.357	25.484	25.580
Threat			
M	1.500	1.259	1.500
SD	0.745	0.594	0.812
Fairness			
M	3.214	3.593	2.333
SD	1.343	1.248	1.109
Voluntariness			
M	2.750	3.185	2.333
SD	1.378	1.545	1.038
Pressure			
M	3.786	3.259	4.259
SD	1.258	1.457	0.813
Leniency			
M	1.964	2.148	2.815
SD	1.319	1.433	1.388
Evidence of Guilt			
M	2.714	2.519	2.111
SD	1.301	1.397	0.974

Table 3

Breakdown of Participants by Demographic Variable (Experiment 2; N = 38)

Demographic Characteristic	N	Percentage
Gender		
Male	7	18.9%
Female	30	81.1%
Other	0	0%
Education Level		
First Year	16	44.4%
Second Year	7	19.4%
Third Year	6	16.7%
Fourth Year	4	11.1%
Fifth Year	3	8.3%
Other	0	0%
Race/Ethnicity		
White/Caucasian	29	78.4%
Indigenous/Aboriginal	2	5.4%
Asian	1	2.7%
Middle Eastern	0	0%
Hispanic/Latino	0	0%
Black/African	3	8.1%
Pacific Islander	0	0%
Other	2	5.4%
English First Language		
Yes	33	89.2%
No	4	10.8%
Feelings about Police		
Very Negative	0	0%
Somewhat Negative	9	24.3%
Neither Negative nor Positive	11	29.7%
Somewhat Positive	15	40.5%
Very Positive	2	5.4%

Table 4

Means and SDs of Perceptions of the Interrogation (Experiment 2; N = 38)

Perceptions of Interrogation	Defence	Defence + Intervention
Likelihood of Guilt		
M	42.095	45.294
SD	24.329	16.907
Threat		
M	1.571	1.529
SD	0.978	1.007
Fairness		
M	2.571	2.471
SD	1.248	1.125
Voluntariness		
M	2.048	2.471
SD	1.071	1.419
Pressure		
M	3.952	4.235
SD	0.973	0.970
Leniency		
M	2.905	2.176
SD	1.338	1.185
Evidence of Guilt		
M	2.286	1.529
SD	1.056	0.800

APPENDIX A – POLICE INTERROGATION TRANSCRIPT

Interview

Justin Simms

Police File # 14-056982

The following is a transcript of an audio/videotaped interview conducted by Constable

Hatcher.

This interview was conducted on the 9th day of April in the year 2017, at OPP

Headquarters.

Present in room: Constable Gregory Hatcher

                        Justin Simms

___

[Cst. Hatcher enters interview room and Mr. Simms is already seated]

CST. HATCHER: Okay, Justin, just give me a second to get settled away here. Sorry for the

                        wait there. Just had to talk to some people and get some things ready.

                        Things all right to this point?

MR. SIMMS: All right, yeah.

CST. HATCHER: All right?

MR. SIMMS: Yeah

CST. HATCHER: Okay. So, Justin, I know you are all right, but how ya doing? How you

                        feeling about all this?

MR. SIMMS: Yeah, good.

CST. HATCHER: Okay, Justin, uh, just so you know the room is audio taped and videotaped.

                        Okay?

MR. SIMMS: Yeah, sure.

CST. HATCHER:	You know, you know the reason we do that is to make sure that what I say is accurate and what…
MR. SIMMS:	Yeah.
CST. HATCHER:	…what you say is accurate and, you know, I don't wanna have to come back…
MR. SIMMS:	Yeah.
CST. HATCHER:	…a second time then I'll ask you, hey, do you remember what we talked about?
MR. SIMMS:	Right, right.
CST. HATCHER:	So, for the record, it is Thursday, April 9. It is 4 in the afternoon and we are at headquarters in interview room 3.
MR. SIMMS:	Mhm
CST. HATCHER:	Just to make sure we get this on camera, uh, you were read your right to silence outside?
MR. SIMMS:	Yeah.
CST. HATCHER:	So, you know that you do not have to talk to us today, right?
MR. SIMMS:	Yeah, but I don't have lots to say. I didn't do anything.
CST. HATCHER:	Now, you were also told about your right to seek legal counsel, and how to talk to a lawyer if you want, right?
MR. SIMMS:	Yep
CST. HATCHER:	And you told us that you didn't want to talk to any lawyers just yet
MR. SIMMS:	Yep
CST. HATCHER:	Okay. We can certainly get you one if you change your mind, and

MR. SIMMS: Thanks, but I am good, cause…

CST. HATCHER: ….so, let me come in there. Justin, do you know why you're here today?

MR. SIMMS: Uh, yeah.

CST. HATCHER: And why is that?

MR. SIMMS: Uh, because of the stuff you said was on the computer.

CST. HATCHER: That's right. We have reason to suspect that you are in possession of child pornography. So, because of that, you are currently under arrest for possession of child pornography. Do you understand all that?

MR. SIMMS: Yeah, kinda.

CST. HATCHER: Alright, so I'm just going to ask you straight out: did you download child pornography?

MR. SIMMS: No.

CST. HATCHER: Ok. Ok. It's really important that we get to the bottom of this because it is a very serious crime. But maybe we need to get to know each other a bit first before we start getting serious. So, as you know, my name is Greg Hatcher, and I'm a police officer. I'm married, and have two boys, who are 8 and 5. I know you, Justin, are 18 years old. Is that right?

MR. SIMMS: Yup.

CST. HATCHER: And where do you go to school?

MR. SIMMS: I'm in grade 12 at Central High School.

CST. HATCHER: Ok. And what do you like to do in your spare time, Justin?

MR. SIMMS: Um, I don't know, I guess I like watching hockey, watching Netflix, and I play a lot of video games.

CST. HATCHER: Ok. Do you play your video games mostly on the computer, or?

MR. SIMMS: Um, yeah. I have a PlayStation too but I play a lot of games on the computer. I play online with my friends mostly.

CST. HATCHER: On the main computer in your house?

MR. SIMMS: Yeah

CST. HATCHER: Are you the only one who uses that computer, or do other people in your family use it too?

MR. SIMMS: No, we all share that computer. I probably use it the most, but we all use it sometimes.

CST. HATCHER: Ok. Have you ever looked at pornographic materials on that computer?

MR. SIMMS: No sir. I mean, sometimes stuff pops up but I never…

CST. HATCHER: Have you ever downloaded child pornography on that computer?

MR. SIMMS: No sir, I would never do that.

CST. HATCHER: You're sure?

MR. SIMMS: Yeah, my mom would kill me.

CST. HATCHER: Ok, and so can you tell me honestly that you've never looked at child pornography on that computer?

MR. SIMMS: No, never. I am not into that stuff.

CST. HATCHER: Ok, well, the problem here is that we checked and found child pornography on this computer that you said you use the most out of anyone in your family, so it's just hard to understand where that could have come from if you didn't download it.

MR. SIMMS: Oh. I don't know. I mean, it could be a virus.

CST. HATCHER:	Ok. Well, you know, I think we have gotten to know each other a bit over the past little while. It is important for me though to investigate what we have found. I need to keep asking questions to get to the bottom of this. You understand that, right?
MR. SIMMS:	Yeah. I guess, like those detectives on Law and Order.
CST. HATCHER:	Yeah. Something like that [chuckles]
MR. SIMMS:	[chuckles]
CST. HATCHER:	Okay, let's go back to the issue of who owns the computer, who was looking at the pictures… who do you think could have come into the house and been responsible for having those child pornography pictures on the computer?
MR. SIMMS:	I don't know sir – I couldn't tell you.
CST. HATCHER:	No
MR. SIMMS:	No
CST. HATCHER:	Do you ever, ah, other than when your sister's friends are there, anyone else generally come into the house?
MR. SIMMS:	No
CST. HATCHER:	Anyone you know of who would have access to your computer or internet?
MR. SIMMS:	No, it is mostly me and my sister usually and my dad and my mom.
CST. HATCHER:	Oh. I see, and…
MR. SIMMS:	My dad is only home a few days a month. My mom don't know much about computers.

CST. HATCHER:	Oh, okay. So, I'm going to ask you a hard question and I feel like you've been really honest with me right?
MR. SIMMS:	Yeah
CST. HATCHER:	I think we have gotten to know each other a bit. I told you that I have kids and understand how kids get into things sometimes that they don't intend
MR. SIMMS:	Yeah
CST. HATCHER:	The whole thing is, you know, a lot of times, in my experience, people are dealing with these types of issues, they're obviously worried and they're afraid to talk to someone but once they talk...you know, we should talk.
MR. SIMMS:	Mhm
CST. HATCHER:	You know, I can understand you. Lots of people will say to me that they don't understand how I can do this job. They ask how I can talk to sex offenders or look at sex offenders? But, I find it really interesting because I want to understand what happened for the person to look at this stuff.
MR. SIMMS:	Mhm
CST. HATCHER:	I want you to know that I think you are responsible for this and, if you did, you can seek some help from someone for this when this is all over.
MR. SIMMS:	Mhm
CST. HATCHER:	I often think maybe people who download child porn have been a victim of sexual abuse before. Maybe they were a victim of some type of abuse and that is why they're drawn to these pictures, and I have seen those people who have had that situation. It might not be the case with you, I am just saying that this happens. Is this the case for you?

MR. SIMMS: Yeah

CST. HATCHER: I want you to know that you can talk to me and I will listen. And if in the case that you did it, by all means, you can tell me. I can get you some help if you tell me how you came into possession of the child pornography.

MR. SIMMS: I mean. I don't know what to tell you. I wasn't…

CST. HATCHER: Or maybe it has to do with your sexual preference. I've heard people say that these types of things are much the same as somebody who was born homosexual right, cause like you don't think that you chose to prefer males over females...

MR. SIMMS: Mhm

CST. HATCHER: It's something kind of you were born with and this is your preference. You have urges that you can't control, right. So, you understand what I just said? Is there anything you want to tell me?

MR. SIMMS: Um…

CST. HATCHER: It is my job to listen to people and I do it all the time – it is normal.

MR. SIMMS: Mhm. I think another reason that people commit these crimes is that they can be bullied a lot as a child

CST. HATCHER: Yeah, good thinking. Lots of people need help. And, lots of times people feel like it's been a huge release to finally talk to somebody about it, right. It's almost like they've been carrying around this weight on the shoulders and talking in a safe place like this can be helpful. So, now you have a sense of what I am thinking.

MR. SIMMS: Um, I dunno what to say

CST. HATCHER: It's ok. You can talk to me.

MR. SIMMS: Um, ok, I guess I must have downloaded some stuff

CST. HATCHER: Okay. Thanks for that. So, you did download some. I appreciate that.

MR. SIMMS: Well, I guess I must have downloaded some pictures if they are on my

computer. I mean, I dunno how else they got there.

CST. HATCHER: Ok. Thank you for being honest with me.

MR. SIMMS: As you said, I must need help but I'm no monster.

CST. HATCHER: Yeah. I see that.

MR. SIMMS: This is all very stressful.

CST. HATCHER: What is the password on that email you use. We'll get it eventually but

you can save us time.

MR. SIMMS: I have a couple of email addresses. The main one is [*********]

CST. HATCHER: For what email address?

MR. SIMMS: Uh, the SmileySimms88@hotmail.com is [**********]

CST. HATCHER: Thanks for this.

MR. SIMMS: What did you find on my computer? Where was it?

CST. HATCHER: Ah…well, we have got more work to do on the computer and we'll come

back and talk again soon about more specific details.

[Knock on Door]

CST. HATCHER: Alright, give me a minute…

MR. SIMMS: OK

CST. HATCHER: Justin, I've been called out for a chat. So thank you for talking with me

today and telling me this stuff.

MR. SIMMS: Yeah.

CST. HATCHER: Okay, yeah. So, we are gonna clue up for now and I'll get Cst. Hicks to take you to your cell. Maybe we'll talk again later tonight if I have some more questions. I will also get him to grab you a meatball sub for your supper.

MR. SIMMS: Okay

CST. HATCHER: Ok. Just wanted to make sure that was on the record before we wrap things up. As for what happens now, just to remind you that you are under arrest, so I'm going to get someone to come in and bring you to the lockup. Do you have any more questions for me?

MR. SIMMS: No, I'm good.

CST HATCHER: Ok. Well, thanks again for being honest with me today. It is now 4:30 pm. I'll be right back when I turn off the tape.

APPENDIX B – LAWYER AND EXPERT EMAIL EXCHANGES

Condition – Prosecution (Experiment 1)

Re: Possible Expert Advice

Brent Snook <bsnook@mun.ca>   Tue, Nov 6,

2018, 5:17 PM

to Sam

Hi Sam,

I am free to talk now for the next two hours. You can reach me on 709-778-

1845. Alternatively, I am free for a chat around 12 EST tomorrow as well (same

number).

Cheers,

Brent

_____

Brent Snook, PhD

Professor of Psychology

Psychology and Law Lab

http://www.mun.ca/psychology/brl/home/

bsnook@mun.ca

709.864.3101

On Nov 6, 2018, at 3:03 PM, Sam Hedwall <sheadwall@ontario.ca> wrote:

Dear Dr Snook…Your name was given to me by my dear colleague Jillian Moores (copied above).

I am a crown prosecutor, based in Toronto, and am prosecuting a young man who has been

accused of possessing child pornography. I anticipate that the defense lawyer will hire an expert

to examine the interrogation. I am concerned about this matter and want to ensure that the

police officer conducted a fair interrogation. I have looked at the transcript and think the cops'

tactics are not coercive – I think the defendant's confession was voluntary. As you know, I am

not an expert so I am looking for your guidance to see if I am on the right track.

I have read your impressive CV. I am interested in retaining your services to assist me in making

sure I have addressed this matter in a thorough manner. The trial is scheduled for April here in

Toronto. Is it possible to chat about this to see if you may be interested in assisting if you can.

This is a private retainer.

If you agree to do the analysis, I will mail an official retainer request soon.

Thanks

Sam Headwall

Samuel L. Headwall, B.A, LL.B, LSM.

Ontario Ministry of the Attorney General

932 Simcoe Street, Suite 320

Toronto, Ontario

M5H 4E2

Tel: (416) 584-3585 xt. 113

Fax:(416) 569-8351

E-Mail Confidentiality Disclaimer

please consider the environment before printing this email

Brent Snook <bsnook@mun.ca>   Tue, Nov 6, 2018, 6:49 PM

to Sam

Hi Sam,

It was nice talking with you earlier.

I will analyze the transcript and let you know my thoughts.

Regards,

Brent

_____

Brent Snook, PhD

Professor of Psychology

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Calling in 30 minutes..Thx

Condition – Defence (Experiments 1 and 2) and Defence + Intervention (Experiment 2)

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examine the interrogation. I am very concerned about this matter and have a client that denies

the events ever took place. I have looked at the transcript and think the cops' tactics are

coercive – I think [my client] confession was false. As you know, I am not an expert so I am

looking for your guidance to see if I am on the right track.

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Calling in 30 minutes..Thx

APPENDIX C – RETAINER LETTER

Condition – Prosecution (Experiment 1)

Ontario

**MINISTRY OF THE
ATTORNEY GENERAL**

932 Simcoe Street, Suite 320

Toronto, Ontario

M5H 4E2

Tel: (416) 584-3585 ext. 113

Fax:(416) 569-8351

November 9, 2018

Dr. Brent Snook
Science Building
Psychology and Law Lab
Memorial University
St. John's, NL, Canada
A1B 3X9

Re: Expert Witness – Interrogation Analysis. Case No. 2017-056982

Dear Dr. Snook:

As mentioned during our phone call, I would like to retain you as a consulting expert in

connection with my representation of Mr. Justin Simms. Mr. Simms has been accused of

possessing child pornography. As discussed, Mr. Simms confessed his involvement.

I have attached a copy of Mr. Simms interrogation. I would request that you evaluate the

interrogation for the presence of any factors that speak to voluntariness. We have examined the interrogation in-house and believe Constable Hatcher conducted a fair interrogation – we believe this confession is voluntary.

You should also understand that you may be asked to provide expert witness services and testimony in the matter should it become necessary. This engagement letter sets forth the terms of your services.

At your convenience, please let me know your retainer and hourly fee.

Please note that your services should be delivered in a manner that is independent, impartial and objective. You should know that the outcome of this matter, and neither the amount nor payment of your fees is not contingent on any result.

If these arrangements are acceptable, please sign and return the enclosed copy of this letter.

Yours truly,

Sam Headwall

Samuel L. Headwall, B.A, LL.B, LSM.

Condition – Defence (Experiments 1 and 2) and Defence + Intervention (Experiment 2)

The Law Offices of

Edielson and Gilson, PLC

A Professional Law Corporation

932 Simcoe Street, Suite 320
Toronto, Ontario
M5H 4E2
Tel: (416) 584-3585 ext. 113
Fax:(416) 569-8351

November 9, 2018

Dr. Brent Snook
Science Building
Psychology and Law Lab
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Dear Dr. Snook:

As mentioned during our phone call, I would like to retain you as a consulting expert in connection with my representation of Mr. Justin Simms. Mr. Simms has been accused of possessing child pornography. As discussed, Mr. Simms denies all involvement.

I have attached a copy of Mr. Simms interrogation. I would request that you evaluate the interrogation for the presence of any factors that speak to involuntariness. We have examined the interrogation in-house and believe there are concerns regarding the use of coercion by Constable Hatcher – we believe this might be a false confession.

You should also understand that you may be asked to provide expert witness services and testimony in the matter should it become necessary. This engagement letter sets forth the terms of your services.

At your convenience, please let me know your retainer and hourly fee.

Please note that your services should be delivered in a manner that is independent, impartial and objective. You should know that the outcome of this matter, and neither the amount nor payment of your fees is not contingent on any result.

If these arrangements are acceptable, please sign and return the enclosed copy of this letter.

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APPENDIX D – EXPERT REPORTS

Condition – Prosecution (Experiment 1)

Analysis of Justin Simms Interrogation

File Number: 2017-056982

Dr. Brent Snook

December, 2018

Request

I was contacted on November 9, 2018, by Samuel L. Headwall about providing an analysis of an interrogation of Justin Simms; the interrogation was conducted by Cst. Gregory Hatcher.

My analysis suggests that Cst. Hatcher ensured access to legal counsel and that there is little concern that the interrogation may have influenced the voluntariness of the confession provided by Mr. Simms. Please see the attached analysis of the interrogation transcript.

Background Confession Rule

In 2000, the Supreme Court of Canada (SCC) handed down a decision on the case of *R. v. Oickle* that provides police officers with guidance on the acceptability of interrogation practices. This case contained a major re-statement of the common law confessions rule (i.e., a set of guidelines protecting against police-induced confessions).

The confessions rule states that police officers cannot induce confessions by (1) making threats or promises (e.g., promise a lenient sentence in exchange for a confession), (2) questioning a suspect or accused person under an atmosphere of oppression (e.g., deprivation of food), (3) interrogating an individual who is not of sound mind (e.g., someone who is under the influence of alcohol), or (4) engaging in a high degree of trickery. These variables must be considered in every interrogation.

Definition of Coercion

According to Dr. Jeffrey Kaplan (2019), coercion in police interrogation consists of the use of persuasive techniques that limit the suspect's autonomy by manipulating the perceived costs and benefits of possible courses of action and/or depleting the suspect's motivation or ability to resist persuasion and acceding to the investigators' demands (Kaplan et al., 2019). In other words, a coercive interrogation tactic is any behaviour exhibited by a police officer that attempts to cause someone to comply with their request to confess.

Final Conclusion

My analysis suggests that Mr. Simms would not have interpreted Cst. Hatcher's behaviours to mean compliance was needed to escape the situation. That is, there is a low number of risk factors in the interrogation and the confession was likely given freely.

Condition – Defence (Experiments 1 and 2) and Defence + Intervention (Experiment 2)

Analysis of Justin Simms Interrogation

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December, 2018

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I was contacted on November 9, 2018, by Samuel L. Headwall about providing an analysis of an interrogation of Justin Simms; the interrogation was conducted by Cst. Gregory Hatcher.

My analysis suggests that while Cst. Hatcher ensured access to legal counsel, there is concern that the interrogation may have influenced the voluntariness of the confession provided by Mr. Simms. Please see the attached analysis of the interrogation transcript.

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Final Conclusion

My analysis suggests that Mr. Simms interpreted Cst. Hatcher's behaviours to mean compliance was needed to escape the situation. That is, there is a high number of risk factors in the interrogation and the confession was likely given against his will.

APPENDIX E – QUESTIONNAIRE

Note: Question 11 was only included for those in the Defence + Intervention condition

(Experiment 2).

Interrogation Questionnaire

Based on all of the materials you just read, please respond to the following questions. Please note that you may skip any questions that you do not wish to answer.

1. On a scale of 0-100, how likely do you think it is that the suspect committed the crime? (NOTE: please respond using a whole number from 0-100; 0 meaning there is no chance they committed the crime, and 100 meaning you are absolutely sure they committed the crime)

    _____

2. Do you think the suspect is guilty or not guilty?

    a. Guilty
    b. Not guilty

3. What crime was the suspect accused of committing?
    a. Break and enter
    b. Homicide
    c. Arson
    d. Possession of child pornography
    e. Theft

    Please rate your level of agreement with the following statements:

4. The interrogation was fair.

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

5. The suspect voluntarily (i.e., given freely) confessed to committing the crime.

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

6. The suspect was under pressure to give a confession.

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

7. The police officer offered leniency (i.e., a less severe punishment) to the suspect in exchange for a confession.

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

8. The police officer threatened the suspect.

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

9. The evidence of guilt was weak in this case.

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

10. What was food the officer said he would buy for the defendant?

a. Noodles

b. French fires

c. Meatball sub

d. Pizza

e. Nachos

11. What does Rule 4.1 relate to?

a. Expert witnesses

b. Suspects

c. Police officers

d. Victims

e. Paramedics

Demographic Questions

If there are any questions that you do not want to answer, then you may skip them.

1. What is your age? _____

2. What is your gender?

___ Male

___ Female

___ Other

3. What is the highest grade / level of education you have completed?

___ First-year University/College
___ Second-year University/College
___ Third-year University/College
___ Fourth-year University/College
___ Fifth-year University/College
___ Other (Specify): _____

4. What is your race/ethnicity?

___White/Caucasian

___ Indigenous/Aboriginal

___ Asian

___Middle Eastern

___ Hispanic/Latino

___ Black/African

___ Pacific Islander

___ Other (Specify): _____

5. Is English your first language?

___ Yes ____ No

6. In general, how do you feel about the police?

     a. Very negative

     b. Somewhat negative

     c. Neither negative nor positive

     d. Somewhat positive

     e. Very positive

APPENDIX F – SUMMARY OF EXPERT WITNESS ROLE

You have just read a transcript of an interrogation between a police officer and a suspect. Before you proceed to reading the rest of the case materials and completing the questionnaire, please take time to read and understand the role of an expert witness.

Rule 4.1: The Role of an Expert Witness

An expert witness should not assume the role of an advocate. An advocate is someone who supports a specific cause or viewpoint. Rule 4.1 states that experts must present evidence to the court (Judge and/or Jury) that is fair, unbiased, and independent, staying within their expertise. Essentially, an expert witness must avoid being swayed by the needs of the lawyer. Experts serve the court as a neutral witness, not a representative or advocate of the party hiring them. Reports provided by experts should be clear, concise, and free from emotional bias. Experts should not "take sides" or adjust their reports to fit a lawyer's needs.

Your Role

As you know, your role is to serve as a second set of eyes about Dr. Snook's analysis of the interrogation. For your task, it is crucial that you also remain objective and unbiased when completing your analysis. It is okay if your analysis of the interrogation is different from Dr. Snook's opinion. The most important thing is that you provide a fair and independent analysis.