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Barry C. Feld  
*University of Minnesota Law School, feldx001@umn.edu*

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# CRIMINOLOGY

## POLICE INTERROGATION OF JUVENILES: AN EMPIRICAL STUDY OF POLICY AND PRACTICE

BARRY C. FELD\*

*The Supreme Court does not require any special procedural safeguards when police interrogate youths and use the adult standard—"knowing, intelligent, and voluntary under the totality of the circumstances"—to gauge the validity of juveniles' waivers of Miranda rights. Developmental psychologists have studied adolescents' capacity to exercise Miranda rights, questioned whether juveniles possess the cognitive ability and adjudicative competence necessary to exercise legal rights, and contended that immaturity and vulnerability make juveniles uniquely susceptible to police interrogation tactics. In the four decades since the Court decided Miranda, we have almost no empirical research about what actually occurs when police interview criminal suspects, and we have no research about how police routinely question delinquents.*

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\* Centennial Professor of Law, University of Minnesota. B.A., University of Pennsylvania, 1966; J.D., University of Minnesota Law School, 1969; Ph.D (Sociology), Harvard University, 1973.

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*Since 1994, the Minnesota Supreme Court has required police to record all interrogations of criminal suspects, including juveniles. This Article begins to fill the empirical void about adolescents' competence in the interrogation room. It analyzes quantitative and qualitative data—interrogation tapes and transcripts, police reports, juvenile court filings, and probation and sentencing reports—of routine police interrogation of fifty-three juveniles sixteen years of age or older and charged with felony-level offenses who waived their Miranda rights. It provides the first empirical analyses of the tactics and techniques police use to interrogate juveniles and how youths respond to them. Based on the data analyses, the Article addresses three interrogation policy issues: mandatory recording; limiting the lengths of interrogation; and the use of false evidence to elicit confessions.*

## I. INTRODUCTION

[B]y any standards of human discourse, a criminal confession can never truly be called voluntary. With rare exception, a confession is compelled, provoked and manipulated from a suspect by a detective who has been trained in a genuinely deceitful art. That is the essence of interrogation, and those who believe that a straightforward conversation between a cop and a criminal—devoid of any treachery—is going to solve a crime are somewhere beyond naïve. If the interrogation process is, from a moral standpoint, contemptible, it is nonetheless essential. Deprived of the ability to question and confront suspects and witnesses, a detective is left with physical evidence and in many cases, precious little of that. Without a chance for a detective to manipulate a suspect's mind, a lot of bad people would simply go free.<sup>1</sup>

Interrogation manuals and training programs teach police to use psychological tactics and strategies to heighten suspects' stress and anxiety and to manipulate their vulnerabilities to obtain confessions.<sup>2</sup> Most people

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Patricia Feld is my partner in life, and her love is the foundation of all I do. No words can adequately express my gratitude to her for the life we share. More than many of my projects, she shared this study with me tape-by-tape as each case unfolded.

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<sup>1</sup> DAVID SIMON, *HOMICIDE: A YEAR ON THE KILLING STREETS* 211-12 (1991).

<sup>2</sup> See, e.g., Patrick M. McMullen, *Questioning the Questions: The Impermissibility of Police Deception in Interrogations of Juveniles*, 99 NW. U. L. REV. 971, 973 (2005) (noting that “[p]olice deception—lying to suspects about the evidence and case against them—is one critical element of such pressure tactics and is advocated by police training manuals and seminars”); Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 997 (1997) [hereinafter Ofshe &

would regard as reprehensible some of the deceptive techniques that police routinely use if employed by their acquaintances in everyday life.<sup>3</sup> Misrepresenting facts, presenting false evidence, lying, and deceit are part and parcel of the interrogation process.<sup>4</sup>

A suspect's self-incriminating statement leads almost ineluctably to a plea or conviction.<sup>5</sup> A relationship exists between certain types of

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Leo, *Decision to Confess Falsely*] (describing interrogation as "anxiety-provoking by design. To overcome a suspect's resistance, an investigator employs influence techniques that are intended to induce significant distress and anxiety, attack the person's self-respect, eviscerate his self-confidence, and reinforce the claim that his guilt is well known and certain.").

<sup>3</sup> The authors of the leading text on police interrogation concede that "[o]f necessity, therefore, investigators must deal with criminal suspects on a somewhat lower moral plane than that upon which ethical, law abiding citizens are expected to conduct their everyday affairs." FRED E. INBAU, JOHN E. REID, JOSEPH P. BUCKLEY & BRIAN C. JAYNE, *CRIMINAL INTERROGATION AND CONFESSIONS* xvi (4th ed. 2004) (Inbau and Reid co-authored the original volume. They enlisted Buckley and Jayne as co-authors on the third and fourth editions. *Id.* at ix. For stylistic simplicity, I refer to the authors as Inbau and Reid.). See, e.g., Deborah Young, *Unnecessary Evil: Police Lying in Interrogations*, 28 CONN. L. REV. 425, 469 (1998) (noting that "[w]e condemn lying in personal affairs and criminalize it in many contexts." Despite these social prohibitions, "[t]he clear goal of police lying, then, is manipulation."). However, Laurie Magid argues that "the rules and expectations governing discourse between citizens does not necessarily apply to police questioning of criminal suspects. Given society's interest in catching criminals, lying during interrogation can be justified as an appropriate means toward achieving this important social end." Laurie Magid, *Deceptive Police Interrogation Practices: How Far Is Too Far?*, 99 MICH. L. REV. 1168, 1185 (2001).

<sup>4</sup> Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 FORDHAM URB. L.J. 791, 796 (2006); Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 492 (1998) [hereinafter Leo & Ofshe, *Consequences of False Confessions*] (arguing that training manuals and practices "teach police to use tactics that have been shown to be coercive and to produce false confessions"); Ofshe & Leo, *Decision to Confess Falsely*, *supra* note 2, at 1115 (analyzing interrogation strategies that police use and noting that "courts permit investigators to lie to suspects about the evidence against them, to manipulate their perception of the significance of acknowledging culpability, and to emphasize the moral and self-image benefits of confessing").

<sup>5</sup> See, e.g., Steven Drizin & Richard Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 923 (2004) [hereinafter Drizin & Leo, *Problem of False Confessions in the Post-DNA World*] (arguing that "[c]onfession evidence (regardless of how it was obtained) is so biasing that juries will convict on the basis of confession alone, even when no significant or credible evidence confirms the disputed confession and considerable significant and credible evidence disconfirms it"); Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 429 (noting that "[b]ecause a confession is universally treated as damning and compelling evidence of guilt, it is likely to dominate all other case evidence and lead a trier of fact to convict the defendant"); Ofshe & Leo, *Decision to Confess Falsely*, *supra* note 2, at 983-84 (noting that a confession is often the most damaging evidence that

interrogation tactics, false confessions, and wrongful convictions.<sup>6</sup> Cases abound of innocent people who are wrongly convicted based solely on false confessions of dubious reliability.<sup>7</sup> Aggressive or manipulative techniques may be especially dangerous when police employ them with vulnerable suspects, such as those with mental retardation or juveniles.<sup>8</sup>

Despite youths' vulnerability in the interrogation room, courts treat them as the functional equivalents of adults and use the adult legal standard—"knowing, intelligent, and voluntary under the totality of the circumstances"—to gauge their waivers of *Miranda* rights and the voluntariness of confessions. Interrogation manuals recommend that police use the same techniques with children as with adults, despite developmental psychologists' doubts that juveniles possess the cognitive ability or judgment necessary to function on par with adults.<sup>9</sup>

We know remarkably little about how police actually question delinquents. Most of what the legal community—judges, law professors and criminologists, and policymakers—and the public know about interrogation practices derives from anecdotal cases of police abuse and false confessions often elicited from young, unsophisticated children. Dramatic portrayals of police interrogation in movies and television programs bear scant relationship to the mundane reality most criminal suspects experience. Four decades after the Supreme Court decided *Miranda*, we still have remarkably few empirical studies by criminologists or legal scholars about how police actually question suspects. Police departments are extremely reluctant to grant researchers unrestricted access to interrogation rooms. Concerns about confidentiality and protection of human subjects make it even more difficult to obtain empirical data or to directly observe police questioning juveniles.

This Article presents the first systematic quantitative and qualitative data—interrogation tapes and transcripts, police reports, juvenile court

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the state presents at a trial).

<sup>6</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 959; Gohara, *supra* note 4, at 976.

<sup>7</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 959 (summarizing facts of 125 proven cases of wrongful convictions, many of which relied on false confessions); Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confession Evidence: A Review of the Literature and Issues*, 5 *PSYCHOL. SCI. PUB. INT.* 33, 34 (2004) [hereinafter Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*]; Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 482.

<sup>8</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 944 (noting that juveniles comprised about one-third of their sample of false confessors and more than half of those youths were fifteen years of age or younger); see also *infra* notes 112-119 and accompanying text.

<sup>9</sup> See *infra* notes 35-57 and accompanying text.

filings, and probation and sentencing reports—about how police question juveniles. Section II summarizes the law governing police interrogation of juveniles. Section III examines developmental psychological research on juveniles' competence to exercise legal rights. Section IV reviews empirical studies of police interrogation, social psychological research on interrogation, and analyses of practices associated with eliciting false confessions. Section V describes the methodology and data in this study. Section VI analyzes routine police interrogation of juveniles sixteen years of age or older and charged with felony-level offenses. An earlier article analyzed sixty-six juveniles' competence to exercise *Miranda* rights.<sup>10</sup> This Article examines how police interrogated the fifty-three juveniles who waived their rights. It describes the techniques police used, how juveniles responded to those tactics, the length of interrogations, and the fruits of those efforts. Section VII discusses three policy issues: recording, interrogation length, and use of false evidence during questioning.

## II. LEGAL FRAMEWORK GOVERNING INTERROGATION OF JUVENILES

The Supreme Court in *In re Gault* granted juveniles the Fifth Amendment privilege against self-incrimination in delinquency proceedings.<sup>11</sup> As a result, the Court assumes that police should administer a *Miranda* warning to juveniles prior to custodial interrogation.<sup>12</sup> Decades earlier, in *Haley v. Ohio*<sup>13</sup> and *Gallegos v. Colorado*,<sup>14</sup> the Court warned trial courts to carefully evaluate the impact of youthfulness and inexperience on the voluntariness of confessions and excluded statements

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<sup>10</sup> See Barry C. Feld, *Juveniles' Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26 (2006) [hereinafter Feld, *Juveniles' Competence to Exercise Miranda Rights*].

<sup>11</sup> *In re Gault*, 387 U.S. 1, 42-57 (1967). See generally Barry C. Feld, *Juveniles' Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 105, 111-20 (Thomas Grisso & Robert G. Schwartz eds., 2000) [hereinafter Feld, *Juveniles' Waiver of Legal Rights*] (analyzing the inadequacy of *Miranda* framework to safeguard juveniles' ability to exercise privilege against self-incrimination); Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 MINN. L. REV. 141, 153-57 (1984) [hereinafter Feld, *Criminalizing Juvenile Justice*] (analyzing the decision to incorporate privilege against self-incrimination in state delinquency proceedings).

<sup>12</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966). Although the Court has not explicitly held that *Miranda* applies to delinquency proceedings, in *Fare v. Michael C.*, it "assume[d] without deciding that the *Miranda* principles were fully applicable to the present [juvenile] proceeding." 442 U.S. 707, 717 n.4 (1979).

<sup>13</sup> 332 U.S. 596, 599-601 (1948) (emphasizing Haley's youth and inexperience as factors that increased his vulnerability to coercive interrogation techniques).

<sup>14</sup> 370 U.S. 49, 54 (1962) (emphasizing that youthfulness made juveniles uniquely vulnerable during interrogation).

coerced from fourteen- and fifteen-year-old youths. *Gault* reaffirmed that children are not the functional equivalents of adults when interrogated by police.<sup>15</sup>

In *Fare v. Michael C.*,<sup>16</sup> the Court ignored its earlier concerns about youths' vulnerability and endorsed the adult waiver standard—"knowing, intelligent, and voluntary under the totality of the circumstances"—to evaluate juveniles' waivers of *Miranda* rights.<sup>17</sup> The Court denied that developmental and psychological differences between children and adults required different procedures for youths.<sup>18</sup> *Fare* asserted that the adult waiver standard provided judges with the flexibility needed to assess juveniles' invocations or waivers of *Miranda* rights.<sup>19</sup> In *Yarborough v.*

<sup>15</sup> *In re Gault*, 387 U.S. at 45, 55 (observing that "admissions and confessions of juveniles require special caution").

<sup>16</sup> 442 U.S. at 725-26 (finding a knowing, intelligent, and voluntary waiver of *Miranda* rights by a sixteen and a half year-old offender with several prior arrests who had served time in a youth camp).

<sup>17</sup> *Id.* at 718-24.

<sup>18</sup> *Id.* at 725; see Feld, *Criminalizing Juvenile Justice*, *supra* note 11 (noting the Court's departure from earlier concerns about the impact of immaturity on legal decision-making); Francis Barry McCarthy, *Pre-Adjudicatory Rights in Juvenile Court: An Historical and Constitutional Analysis*, 42 U. PITT. L. REV. 457 (1981) (analyzing *Fare*'s inconsistency with earlier Court decisions); Irene Merker Rosenberg, *The Constitutional Rights of Children Charged with Crime: Proposal for a Return to the Not So Distant Past*, 27 UCLA L. REV. 656 (1980) (decrying the Court's failure to provide additional procedural safeguards).

<sup>19</sup> *Fare*, 442 U.S. at 722-24. The vast majority of states follows the "totality" approach approved in *Fare* and avoids special procedural protections for juveniles. See, e.g., *Quick v. State*, 599 P.2d 712, 719-20 (Alaska 1979) (concluding that a juvenile may waive *Miranda* rights without consulting a parent or other adult); *Carter v. State*, 697 So. 2d 529, 533 (Fla. 1997) (affirming the "totality of circumstances" test and rejecting the "Grisso Test" to measure juvenile's understanding of *Miranda* warnings); *Dutil v. State*, 606 P.2d 269 (Wash. 1980) (rejecting a per se rule to require the presence of a parent at interrogation); Kimberly Larson, *Improving the "Kangaroo Courts": A Proposal for Reform in Evaluating Juveniles' Waiver of Miranda*, 48 VILL. L. REV. 629, 645-46 (2003) (summarizing majority of states' use of "totality of circumstances" test and factors they consider).

Appellate courts promulgate lists of factors for trial judges to consider when they evaluate the validity of a juvenile's waiver of *Miranda* rights. See *infra* note 24 and accompanying text. Multi-factor lists give trial judges wide discretion to admit statements, and they exclude confessions rarely and only under the most egregious circumstances. See, e.g., *In re W.C.*, 657 N.E.2d 908, 913 (Ill. 1995) (upholding the validity of waiver by thirteen-year-old who was "illiterate and moderately retarded with an IQ of 48 . . . the equivalent developmentally of a six to eight-year old . . . [and] possessing the emotional maturity of a six to seven-year old"). Trial judges routinely find that even very young juveniles, those suffering from significant mental limitations, and those subjected to highly coercive interrogation techniques voluntarily waived their rights. See, e.g., *W.M. v. State*, 585 So. 2d 979, 983 (Fla. Dist. Ct. App. 1991) (affirming trial judge's admission of confession of a ten-year-old learning disabled boy with an IQ of 70 with no prior police contact, and whom police questioned for six hours without any adult present); *People v.*

*Alvarado*,<sup>20</sup> the Court held that the “custody” sufficient to require a *Miranda* warning<sup>21</sup> reflected objective factors indicating a restraint of liberty and found that youthfulness or inexperience with police had no bearing on whether a reasonable person would feel free to leave.<sup>22</sup> *Alvarado* acknowledged that the voluntariness of juveniles’ *Miranda* waivers and confessions included subjective elements like youthfulness and inexperience.<sup>23</sup>

Trial judges consider both subjective and objective factors when they decide whether a juvenile made a “knowing, intelligent, and voluntary” waiver or gave a voluntary confession. The inquiry includes both offender characteristics—age, education, IQ, and prior contact with law enforcement—and features associated with the interrogation—location, methods employed, and duration of questioning.<sup>24</sup> The “totality” approach

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Cheatham, 551 N.W.2d 355, 370 (Mich. 1996) (upholding the validity of waiver by an illiterate juvenile with an IQ of 62 because “[l]ow mental ability in and of itself is insufficient to establish that a defendant did not understand his rights”); *State v. Cleary*, 641 A.2d 102, 105-09 (Vt. 1994) (upholding the validity of waiver by juvenile with limited ability to read or write and an IQ of 65).

<sup>20</sup> 541 U.S. 652 (2004).

<sup>21</sup> *Miranda v. Arizona*, 384 U.S. 436, 458 (1966) (noting that police must warn suspects subject to custodial interrogation because of “the compulsion inherent in custodial surroundings”). The Court explained that “custodial interrogation” meant “questioning deprived by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.* at 444.

<sup>22</sup> The *Alvarado* majority emphasized that, “Our opinions applying the *Miranda* custody test have not mentioned the suspect’s age, much less mandated its consideration. The only indications in the Court’s opinions relevant to a suspect’s experience with law enforcement have rejected reliance on such factors.” *Alvarado*, 541 U.S. at 666-67.

<sup>23</sup> The Court in *Alvarado* noted that the *Miranda* custody test was objective and thus distinguishable from other legal questions, such as the voluntariness of confessions or consents to search, in which courts also considered more subjective considerations:

[T]he objective *Miranda* custody inquiry could reasonably be viewed as different from doctrinal tests that depend on the actual mindset of a particular suspect, where we do consider a suspect’s age and experience. For example, the voluntariness of a statement is often said to depend on whether “the defendant’s will was overborne,” a question that logically can depend on “the characteristics of the accused.” The characteristics of the accused can include the suspect’s age, education, and intelligence, as well as a suspect’s prior experience with law enforcement.

*Id.* at 667-68.

<sup>24</sup> Judges focus on characteristics of the juvenile and on circumstances surrounding the interrogation. The leading case, *West v. United States*, provides an extensive lists of factors for trial judges to consider when they assess the validity of juveniles’ waiver decisions:

Factors considered by the courts in resolving this question include: 1) age of the accused; 2) education of the accused; 3) knowledge of the accused as to both the substance of the charge, if any has been filed, and the nature of his rights to consult with an attorney and remain silent; 4) whether the accused is held incommunicado or allowed to consult with relatives, friends or an attorney; 5) whether the accused was interrogated before or after formal charges had been filed;



gives judges broad discretion theoretically to protect youths without unduly restricting officers' ability to question them.<sup>25</sup>

About a dozen states require the presence of a parent or other "interested adult" when police interrogate juveniles as a prerequisite to a valid *Miranda* waiver.<sup>26</sup> Those states assume that most juveniles require an adult's assistance to effectively exercise *Miranda* rights.<sup>27</sup> They presume that a parent will enhance a juvenile's understanding of and ability to exercise rights<sup>28</sup> and reduce coercive pressures.<sup>29</sup> Courts recognize that

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6) methods used in interrogation; 7) length of interrogation; 8) whether vel non the accused refused to voluntarily give statements on prior occasions; and 9) whether the accused has repudiated an extra judicial statement at a later date. Although the age of the accused is one factor that is taken into account, no court, so far as we have been able to learn, has utilized age alone as the controlling factor and ignored the totality of circumstances in determining whether or not a juvenile has intelligently waived his rights against self-incrimination and to counsel.

399 F.2d 467, 469 (5th Cir. 1968); *see also* *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (listing factors); *State v. Benoit*, 490 A.2d 295, 302 (N.H. 1985) (listing factors).

<sup>25</sup> *Fare*, 442 U.S. at 725-26 (concluding that "[t]he totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.").

<sup>26</sup> *See, e.g.*, COLO. REV. STAT. § 19-2-210(1) (1996) (requiring a parent to be present at interrogation and advised of juvenile's *Miranda* rights); *Lewis v. State*, 288 N.E.2d 138 (Ind. 1972); *Commonwealth v. A Juvenile*, 449 N.E.2d 654, 657 (Mass. 1983) (requiring the State to show that "a parent or interested adult was present, understood the warnings, and had the opportunity to explain his rights to the juvenile so that the juvenile understands the significance of these rights"); Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1287 n.65 (2004) (listing the states with per se parental presence requirements); David T. Huang, "Less Unequal Footing": *State Courts' Per Se Rules for Juvenile Waivers During Interrogations and the Case for Their Implementation*, 86 CORNELL L. REV. 437, 449-55 (2001) (summarizing the variations in states' per se rules requiring parental presence or an "interested adult" at juvenile's interrogation); *infra* notes 27-32 and accompanying text.

<sup>27</sup> *See, e.g.*, Lisa M. Krzewinski, *But I Didn't Do It: Protecting the Rights of Juveniles During Interrogation*, 22 B.C. THIRD WORLD L.J. 355, 370 (2002); Robert E. McGuire, *A Proposal to Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355, 1382 (2000) (arguing that without adult assistance, juveniles will comply with authority figures, misunderstand the warnings given, and fail to assert their rights).

<sup>28</sup> Some states require juveniles below fourteen years of age actually to consult with an interested adult, but provide older juveniles only with an opportunity to consult with an interested adult as a prerequisite to a valid waiver. *See, e.g.*, *In re B.M.B.*, 955 P.2d 1302 (Kan. 1998); *State v. Presha*, 748 A.2d 1108 (N.J. 2000).

<sup>29</sup> *See, e.g.*, Feld, *Juveniles' Waiver of Legal Rights*, *supra* note 11, at 117 (summarizing states' rationale for requiring presence of a parent). Some commentators rightly question the validity of these assumptions. Farber, *supra* note 26, at 1278 (2004) (observing that parental presence requirements expect parents to provide additional protections for juveniles during interrogation).

juvenile justice policies have become more punitive and that youths require additional safeguards to achieve functional procedural parity with adults.<sup>30</sup> Commentators generally support parental presence safeguards,<sup>31</sup> even though they recognize the limited utility of such safeguards.<sup>32</sup>

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<sup>30</sup> See, e.g., *Presha*, 748 A.2d at 1114 (concluding that because “punishment has now joined rehabilitation as a component of the State’s core mission with respect to juvenile offenders,” a parent or legal guardian should be present in the interrogation room whenever possible to provide a “buffer” between the child and the police).

<sup>31</sup> See, e.g., Steven A. Drizin & Beth A. Colgan, *Tales from the Juvenile Confession Front: A Guide to How Standard Police Interrogation Tactics Can Produce Coerced and False Confessions from Juvenile Suspects*, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 153-55 (G. Daniel Lassiter ed., 2004) (endorsing a parental presence requirement because “the presence of parents will enable them to be witnesses to the interrogation and may cause police officers to refrain from using the most coercive tactics in their arsenal”); Raymond Chao, *Mirandizing Kids: Not as Simple as A-B-C*, 21 WHITTIER L. REV. 521, 547 (2000) (proposing the adoption of interested adult standard); Huang, *supra* note 26, at 467; Krzewinski, *supra* note 27, at 370-83 (advocating for the adoption of a per se rule of parental presence); McGuire, *supra* note 27, at 1359 (advocating for the modification of a *Miranda* advisory to include a warning to a juvenile that she has the right to consult with and to have a parent present during interrogation).

<sup>32</sup> A parent’s interests may conflict with her child, for example, if the parent is a victim of her child’s assault or theft. He also may experience an “unhelpful” emotional reaction to his child’s arrest or may increase the pressures on his child to confess through the natural parental inclination to urge his child to “tell the truth.” See, e.g., THOMAS GRISSO, JUVENILES’ WAIVERS OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 180 (1981) [hereinafter GRISSO, JUVENILES’ WAIVERS OF RIGHTS] (finding that most parents encourage their child to cooperate with police and to tell the truth); Thomas Grisso & Melissa Ring, *Parents’ Attitudes Toward Juveniles’ Right in Interrogation*, 6 CRIM. JUST. & BEHAV. 211, 213-14 (1979) (reporting that most parents surveyed would provide little or no advice to juveniles, and that of those who did offer advice, “60% of these parents [would advise] waiver of rights to silence and counsel and about 16% (about 4% of the total sample) [would advise] against waiver”); Barbara Kaban & Ann E. Tobey, *When Police Question Children, Are Protections Adequate?*, 1 J. CENTER CHILD. & CTS. 151, 154 (1999) (noting that the “parents often push their children to ‘talk’ to authorities and to ‘tell the truth’”); Larson, *supra* note 19, at 654 (noting that “presence of an interested adult may not help the child and may actually hurt the child’s chances of understanding and asserting his or her rights”).

Police strategies obviate the assistance most parents could provide their children. For example, Inbau and Reid recommend that officers assure parents that no one blames them for their child’s misconduct, acknowledge that all children sometimes disappoint their parents, concede that everyone, including the officer, does things they should not have done, and emphasize that their role is to learn the truth. INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 301. Thereafter,

[a] parent who is present during the interrogation should be advised to refrain from talking, confining his or her function to that of an observer. The parent should be asked to sit in the chair set aside for an observer . . . . The investigator should then proceed with the interrogation as though he were alone with the suspect . . . .”

*Id.*

Like most states, Minnesota allows judges to decide whether a juvenile made a “knowing, intelligent, and voluntary” *Miranda* waiver under the “totality of the circumstances.”<sup>33</sup> The Minnesota Supreme Court reaffirmed the “totality” approach after *Fare* and has repeatedly rejected juveniles’ claims for a parental presence rule.<sup>34</sup> A parent’s absence undermines a waiver only if a juvenile repeatedly requested to speak with his parent both before and after he received his *Miranda* warning.<sup>35</sup> Federal and Minnesota law treat juveniles as equal to adults in the interrogation room. Youthfulness, inexperience, or parents’ absence are simply some of the factors judges consider when they assess *Miranda* waivers.

### III. DEVELOPMENTAL PSYCHOLOGICAL RESEARCH ON JUVENILES’ COMPETENCE

Developmental psychologists strongly question whether juveniles are competent to make “knowing, intelligent, and voluntary” waiver decisions. Thomas Grisso has studied juveniles’ legal competencies for three decades and reports that many do not understand the language of a *Miranda* warning well enough to make a valid waiver.<sup>36</sup> Because many juveniles do not understand the *Miranda* warning, they cannot exercise their rights as effectively as adults, who better understand the warnings.<sup>37</sup> Although

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<sup>33</sup> See, e.g., *In re M.A.*, 310 N.W.2d 699, 701 (Minn. 1981); *State v. Nunn*, 297 N.W.2d 752, 755 (Minn. 1980) (quoting *Fare* with approval and reaffirming its own adherence to the “totality” approach in determining the validity of a waiver of *Miranda* rights by a juvenile); *State v. Loyd*, 212 N.W.2d 671, 674 (Minn. 1973) (noting that as long as questioning by authorities did not lull juveniles into confessions, the confidential and informal atmosphere of juvenile courts posed no special danger during interrogation).

<sup>34</sup> *Nunn*, 297 N.W.2d at 755 (endorsing application of *Fare*’s “totality” approach); *State v. Hogan*, 212 N.W.2d 664, 671 (Minn. 1973) (endorsing a “totality” approach in which “parental presence is only one factor to consider”).

<sup>35</sup> E.g., *State v. Burrell*, 697 N.W.2d 579, 597 (Minn. 2005) (holding that a juvenile’s request to speak with his mother three times prior to the administration of the *Miranda* warning and ten times after the *Miranda* warning rendered the waiver invalid).

<sup>36</sup> See GRISSE, JUVENILES’ WAIVERS OF RIGHTS, *supra* note 32, at 106-07 (reporting that only about half of mid-adolescents understand their *Miranda* warning, a rate lower than that of adults); Thomas Grisso, *Juveniles’ Consent in Delinquency Proceedings*, in CHILDREN’S COMPETENCE TO CONSENT 131 (Gary B. Melton, Gerald P. Koocher & Michael J. Saks eds., 1983) [hereinafter Grisso, *Juveniles’ Consent in Delinquency Proceedings*]; Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1154 (1980) [hereinafter Grisso, *Juveniles’ Capacities to Waive*] (reporting that the majority of juveniles who received *Miranda* warnings did not understand them well enough to waive their rights; that only 20.9% of the juveniles, as compared with 42.3% of the adults, exhibited understanding of all four components of a *Miranda* warning; and 55.3% of juveniles, as contrasted with 23.1% of the adults, manifested no comprehension of at least one of the four warnings).

<sup>37</sup> Bruce Ferguson & Alan Charles Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L.

juveniles consistently underperformed when compared with adults, they most frequently misunderstood their right to consult with an attorney and to have one present during police questioning.<sup>38</sup> In studies, competence correlated with age; younger juveniles understood *Miranda* warnings even less often than did mid-adolescents.<sup>39</sup> Juveniles sixteen years of age and older understood *Miranda* warnings about as well as did adults, although substantial minorities of each group misunderstood some components.<sup>40</sup>

Even youths who understand the words of a *Miranda* warning may not be able to exercise them effectively. Juveniles do not appreciate the function or importance of rights as well as adults.<sup>41</sup> They have greater difficulty than adults conceiving of a right as an absolute entitlement that

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REV. 39, 53 (1970) (reporting that over 90% of the juveniles whom police interrogated waived their rights, that an equal number did not understand the rights they waived, and that even a simplified version of the language in the *Miranda* warning failed to cure these defects); Thomas Grisso & C. Pomicitier, *Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards and Rights Waiver*, 1 LAW & HUM. BEHAV. 321, 339 (1977) (reporting that juveniles invoked their rights in about 10% of cases compared with 40% of adults); Larson, *supra* note 19, at 648-49; Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, CRIM. JUST. SEC. NEWSL., Summer 2000, at 28 (reporting that more than half of juveniles did not understand the words of the *Miranda* warning).

<sup>38</sup> Grisso, *Juveniles' Capacities to Waive*, *supra* note 36, at 1159; see also Beyer, *supra* note 37, at 28 (reporting that juveniles misunderstood the role of defense counsel).

<sup>39</sup> Grisso summarized some of his research findings:

As a class, juveniles younger than fifteen years of age failed to meet both the absolute and relative (adult norm) standards for comprehension . . . . The vast majority of these juveniles misunderstood at least one of the four standard *Miranda* statements, and compared with adults, demonstrated significantly poorer comprehension of the nature and significance of the *Miranda* rights.

Grisso, *Juveniles' Capacities to Waive*, *supra* note 36, at 1160.

<sup>40</sup> *Id.* at 1157; see also Rona Abramovitch, Karen Higgins-Biss & Stephen Biss, *Young Persons' Comprehension of Waivers in Criminal Proceedings*, 35 CANADIAN J. CRIMINOLOGY 309, 320 (1993) (“[I]t seems likely that many if not most juveniles who are asked by the police to waive their rights do not have sufficient understanding to be competent to waive them.”); Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 PSYCHOL. PUB. POL’Y & L. 3, 11 (1997) [hereinafter Grisso, *Competence of Adolescents*] (summarizing the research on adolescents’ understanding of *Miranda* warnings and reporting “good understanding for a majority of 16- to 19-year olds,” for both delinquents and non-delinquents).

<sup>41</sup> GRISSE, *JUVENILES' WAIVERS OF RIGHTS*, *supra* note 32, at 130 (reporting that a majority of juveniles “view a right as an allowance which is bestowed by and can therefore be revoked by authorities”); Grisso, *Competence of Adolescents*, *supra* note 40, at 11 (distinguishing between understanding words and appreciating the rights conveyed by the *Miranda* warning); Larson, *supra* note 19, at 649-53 (reviewing the social psychological research and juveniles’ limited understanding of the concept of rights as an entitlement to be exercised).

they can exercise without adverse consequences.<sup>42</sup> Rather, they regard a right as something that authorities allow them to do, but which officials can unilaterally retract or withhold.<sup>43</sup>

Social expectations of obedience to authority and children's lower social status make them more vulnerable than adults during interrogation.<sup>44</sup> Less powerful people, such as juveniles or racial minorities, often speak indirectly with authority figures to avoid provoking conflict.<sup>45</sup> Juveniles may acquiesce more readily to police suggestions during questioning.<sup>46</sup> *Miranda* requires suspects to invoke their rights clearly and unambiguously, a requirement that runs contrary to most juvenile delinquents' social responses and verbal styles.<sup>47</sup>

Social psychologists who study interrogation and juveniles' competence to exercise rights conduct their research under laboratory conditions approved by Institutional Review Boards. Restrictions on experimentation on human subjects, especially vulnerable populations such as juveniles, prevent them from replicating the stressful conditions and

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<sup>42</sup> Thomas Grisso, *Competence to Stand Trial: New Questions for an Era of Punitive Juvenile Justice Reform*, in MORE THAN MEETS THE EYE: RETHINKING, ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARsher ERA OF JUVENILE JUSTICE 23, 29 (Patricia Puritz et al. eds., 2002) [hereinafter Grisso, *Competence to Stand Trial*]; Grisso, *Competence of Adolescents*, *supra* note 40, at 11 (noting adolescents' difficulty in grasping right as entitlement and arguing that "a larger proportion of delinquent youths bring to the defendant role an incomplete comprehension of the concept and meaning of a right as it applies to adversarial legal proceedings"); Larson, *supra* note 19, at 651-52.

<sup>43</sup> See, e.g., GRISSO, JUVENILES' WAIVERS OF RIGHTS, *supra* note 32, at 130 (reporting that juveniles conceive of rights as options granted by authority figures); Thomas Grisso, *What We Know About Youth's Capacities as Trial Defendants*, in YOUTH ON TRIAL, *supra* note 11, at 139, 148-49 [hereinafter Grisso, *What We Know*] (reporting that juveniles perceive rights to be conditional rather than absolute).

<sup>44</sup> See, e.g., Gerald P. Koocher, *Different Lenses: Psycho-Legal Perspectives on Children's Rights*, 16 NOVA L. REV. 711, 716 (1992) (noting that children are socialized to obey authority figures); Larson, *supra* note 19, at 657-58 (summarizing the psychological research reporting that "children are more compliant and suggestible than adults").

<sup>45</sup> Janet E. Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259, 315 (1993); Beyer, *supra* note 37, at 35 (reporting that children of color and victims of abuse fear police and feel they have to confess because "[h]aving been powerless when adults abused them in the past, these young people probably could not do anything but comply with police").

<sup>46</sup> Ainsworth, *supra* note 45, at 316; Kaban & Tobey, *supra* note 32, at 155 (noting that juveniles are especially susceptible to the coercive pressures of authority figures because "lower-status individuals are more likely to defer to the authority of higher-status individuals").

<sup>47</sup> *Davis v. United States*, 512 U.S. 452, 461 (1994) (holding that the police may "continue questioning until and unless the suspect clearly requests an attorney"); *Fare v. Michael C.*, 442 U.S. 707, 727 (1979) (requiring a clear and unambiguous assertion of rights).

coercive pressures that police exert during interrogation.<sup>48</sup> Moreover, public school youths who participate in social psychologists' studies are not necessarily comparable with delinquents who tend to be poorer, tend to possess less verbal facility, and tend to have a poorer understanding of legal abstractions.<sup>49</sup>

Developmental psychologists also have studied juveniles' adjudicative competence and raised further concerns about their ability to exercise *Miranda* rights.<sup>50</sup> To be competent to stand trial, a defendant must be able to understand legal proceedings, to make rational decisions, and to assist

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<sup>48</sup> Grisso, *Juveniles' Consent in Delinquency Proceedings*, *supra* note 36, at 139; Abramovitch, Higgins-Biss & Biss, *supra* note 40, at 319 (noting that responses to hypothetical questions in a relaxed atmosphere do not adequately replicate the conditions created by police who "can be gentle or tough, can explain the rights well or poorly, and in many ways can exert varying amounts of pressure to comply"); Grisso, *Competence of Adolescents*, *supra* note 40, at 18 (noting that juveniles appear less able to use the cognitive skills they possess in novel, ambiguous, or stressful conditions); Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 154 (2003) (acknowledging the limitations of ethically-constrained laboratory experiments and noting that "the interrogation procedures used in the present study were very mild compared to those used in real interrogations").

<sup>49</sup> See, e.g., Jodi L. Viljoen, Jessica Klaver & Ronald Roesch, *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals*, 29 LAW & HUM. BEHAV. 253, 256 (2005) (examining the legal competencies of 152 delinquents held in pretrial detention and reporting that the majority came from the lowest socioeconomic levels and had an average IQ of 82); see also Grisso, *Competence of Adolescents*, *supra* note 40, at 13 (reviewing psychological research and reporting a poorer understanding of legal information and concepts "for delinquents with lower intelligence test scores, lower scores on a verbal ability test, remedial or problematic educational histories, and learning disabilities"). Grisso further notes that the "real-world" outcomes for delinquents are likely poorer because many of the research studies "did not examine delinquent youths who are most likely to become defendants. Those that did, however, usually found levels of performance that were no better (and often poorer) than the performance found in studies using non-delinquents samples." *Id.* at 14. He further emphasizes that studies of "normal" or "average" adolescent populations are of limited utility for justice system policymakers "if their findings are not replicated with delinquent youths who, as a group, are not average in their cognitive, psychosocial, and cultural characteristics." *Id.* at 21.

<sup>50</sup> Richard J. Bonnie & Thomas Grisso, *Adjudicative Competence and Youthful Offenders*, in YOUTH ON TRIAL, *supra* note 11 [hereinafter Bonnie & Grisso, *Adjudicative Competence*]; Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 335 (2003) [hereinafter Grisso et al., *Juveniles' Competence to Stand Trial*] (explaining that adjudicative competence entails "a basic comprehension of the purpose and nature of the trial process (Understanding), the capacity to provide relevant information to counsel and to process information (Reasoning), and the ability to apply information to one's own situation in a manner that is neither distorted nor irrational (Appreciation)").

counsel.<sup>51</sup> Severe mental illness or retardation normally impairs defendants' competence.<sup>52</sup> However, generic developmental aspects of adolescents impair their ability to understand legal proceedings, to make rational decisions, or to assist counsel in the same ways that mental illness or retardation renders adults incompetent.<sup>53</sup> Grisso found significant age-related differences between adolescents' and young adults' adjudicative competence and quality of judgment.<sup>54</sup> Many juveniles below the age of fourteen were as severely impaired as adult defendants incompetent to stand trial.<sup>55</sup> A significant proportion of those younger than sixteen were incompetent, and many older youths exhibited substantial impairments.<sup>56</sup>

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<sup>51</sup> *Drope v. Missouri*, 420 U.S. 162, 171 (1975) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.").

<sup>52</sup> *Dusky v. United States*, 362 U.S. 402, 402 (1960) (requiring defendants to possess "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of proceedings against him").

<sup>53</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 1005 (arguing that "juvenile suspects share many of the same characteristics as the developmentally disabled, notably their eagerness to comply with adult authority figures, impulsivity, immature judgment, and inability to recognize and weigh risks in decision-making, and appear to be at greater risk of falsely confessing when subjected to psychological interrogation techniques . . ."); Thomas Grisso, *Juvenile Competency to Stand Trial: Questions in an Era of Punitive Reform*, 12 CRIM. JUST. 5, 7-9 (1997) (questioning youths' ability to understand the trial process, to assist counsel, and to make strategic legal decisions); Grisso et al., *Juveniles' Competence to Stand Trial*, *supra* note 50, at 350; Richard E. Redding & Lynda E. Frost, *Adjudicative Competence in the Modern Juvenile Court*, 9 VA. J. SOC. POL'Y & L. 353 (2001); Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. REV. 793, 800-01 (2005).

<sup>54</sup> Grisso et al., *Juveniles' Competence to Stand Trial*, *supra* note 50, at 343-46; Redding & Frost, *supra* note 53, at 374-78 (summarizing the research on adjudicative competence of adolescents and reporting that younger age, lower IQ, and mental illness combine to detract from juveniles' ability to understand proceedings and to assist counsel).

<sup>55</sup> Bonnie & Grisso, *Adjudicative Competence*, *supra* note 50, at 87 ("Some youths, especially those who are nearer to the minimum age for waiver to criminal court, may have significant deficits in competence-related abilities due not to mental disorder but to developmental immaturity."); Vance L. Cowden & Geoffrey R. McKee, *Competency to Stand Trial in Juvenile Delinquency Proceedings: Cognitive Maturity and the Attorney-Client Relationship*, 33 U. LOUISVILLE J. FAM. L. 629, 652 (1995) (reporting that the majority of juveniles fifteen and younger failed to meet adult standard of competence); Grisso et al., *Juveniles' Competence to Stand Trial*, *supra* note 50, at 344 ("30% of 11- to 13-year-olds, and 19% of 14- to 15-year olds, were significantly impaired on one or both of these subscales" measuring Understanding and Reasoning); Redding & Frost, *supra* note 53, at 355.

<sup>56</sup> Grisso et al., *Juveniles' Competence to Stand Trial*, *supra* note 50, at 355.

Age and intelligence interacted to produce higher levels of incompetence among younger adolescents with lower IQs than among adults with lower IQs.<sup>57</sup> Even formally competent adolescents often made poorer decisions than did young adults because of differences in judgment.<sup>58</sup>

In summary, research on juveniles' ability to exercise *Miranda* rights and their adjudicative competence consistently reports that, as a group, adolescents understand legal proceedings and make decisions less well than do adults. Youths fifteen years of age and younger exhibited the clearest and greatest disability. Although juveniles sixteen years of age and older appear to function comparably with adults, many still exhibited significant deficits which could increase their vulnerability during interrogation.

#### IV. POLICE INTERROGATION—LEGAL FRAMEWORK AND EMPIRICAL REALITY

Prior to *Miranda*, the Supreme Court regulated police interrogation in the states by focusing on the voluntariness of a confession.<sup>59</sup> Except in extreme cases,<sup>60</sup> however, the Court experienced great difficulty determining whether a confession was voluntary or coerced. Judges considered both the characteristics of the suspect and the circumstances surrounding the interrogation and then attempted to reconstruct the defendant's state of mind to decide whether his confession reflected his

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<sup>57</sup> *Id.* at 356 (results indicated that approximately "one fifth of 14- to 15-year-olds are as impaired in capacities relevant to adjudicative competence as are seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts. . . . Not surprisingly, juveniles of below-average intelligence are more likely than juveniles of average intelligence to be impaired in abilities relevant for competence to stand trial. Because a greater proportion of youths in the juvenile justice system than in the community are of below-average intelligence, the risk for incompetence to stand trial is therefore even greater among adolescents who are in the justice system than it is among adolescents in the community.").

<sup>58</sup> Bonnie & Grisso, *Adjudicative Competence*, *supra* note 50, at 91; Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137 (1997); Laurence Steinberg & Elizabeth Cauffman, *The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders*, 6 VA. J. SOC. POL'Y & L. 389 (1999).

<sup>59</sup> Mark A. Godsey, *Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self-Incrimination*, 93 CAL. L. REV. 465, 467 (2005) ("The rule itself is simple: In criminal cases, a confession is inadmissible if the defendant did not speak voluntarily due to police coercion.").

<sup>60</sup> *E.g.*, *Brown v. Mississippi*, 297 U.S. 278, 282-83 (1936) (holding that confessions extracted from black suspects after a sheriff beat the defendants with a studded belt while the suspects were suspended from the ceiling "were not, beyond all reasonable doubt, free and voluntary").



“free will.”<sup>61</sup> By the mid-1960s, psychological interrogation tactics supplanted physical coercion and further increased the Court’s inability to distinguish between voluntary and involuntary confessions.<sup>62</sup>

#### A. THE *MIRANDA* DECISION AND POLICE INTERROGATION

The *Miranda* Court could not factually reconstruct how police interrogated suspects because it occurred incommunicado without an independent record, and police and suspects often described widely divergent experiences.<sup>63</sup> Although contemporary interrogation relied on psychological manipulation, rather than physical coercion, the Court had no direct evidence of the practices police used.<sup>64</sup> In lieu of empirical studies, the Court used police interrogation manuals and training programs as a

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<sup>61</sup> See *supra* note 24 and accompanying text. The Supreme Court in *Schneckloth v. Bustamonte* summarized the meaning of the involuntary confession rule:

In determining whether a defendant’s will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation. Some of the factors taken into account have included the youth of the accused, his lack of education, or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep.

412 U.S. 218, 225-26 (1973); see, e.g., Joseph D. Grano, *Voluntariness, Free Will, and the Law of Confessions*, 65 VA. L. REV. 859, 869 (1979) (analyzing the difficulty of applying an amorphous, multi-factor test to discern subjective psychological states).

<sup>62</sup> E.g., Godsey, *supra* note 59, at 492 (noting that the “voluntariness” test “describes the state of the mind of the suspect when he confesses. It semantically focuses the inquiry primarily on the state of mind of the suspect under interrogation, and it considers the conduct of the interrogators only in relation to the effect such conduct produces on the state of mind of the particular suspect under interrogation.”); Saul M. Kassin, *The Psychology of Confession Evidence*, 52 AM. PSYCHOLOGIST 221 (1997) [hereinafter Kassin, *The Psychology of Confession Evidence*]; Richard A. Leo, *From Coercion to Deception: The Changing Nature of Police Interrogation in America*, 18 CRIME L. & SOC. CHANGE 35 (1992) (describing the changes in police interrogation tactics during the first half of the twentieth century as a function of increased police professionalism).

<sup>63</sup> *Miranda v. Arizona*, 384 U.S. 436, 445 (1966).

<sup>64</sup> *Id.* at 448 (“Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. . . . Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms.”); see also Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 33 (noting that the contemporary police interrogation uses “strong, psychologically oriented techniques involving isolation, confrontation, and minimization of blame to elicit confessions”); Richard A. Leo & Welsh S. White, *Adapting to Miranda: Modern Interrogators’ Strategies for Dealing with the Obstacles posed by Miranda*, 84 MINN. L. REV. 397, 407 (1999) [hereinafter Leo & White, *Adapting to Miranda*] (indicating that “long before *Miranda*, police interrogators had developed sophisticated strategies for overcoming the obstacle of a suspect’s resistance to providing information to them”).

proxy for the procedures used.<sup>65</sup> The Court described the techniques recommended by Inbau and Reid in *Criminal Interrogation and Confession*, the leading interrogation manual at the time,<sup>66</sup> and characterized the physical isolation and psychological manipulations it prescribed as “inherently coercive.”<sup>67</sup>

Inbau and Reid’s recommended psychological manipulations and techniques underlie most contemporary interrogation practices, and are commonly referred to as the “Reid Method.”<sup>68</sup> They contend that verbal

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<sup>65</sup> *Miranda*, 384 U.S. at 448; Paul G. Cassell & Bret S. Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda*, 43 UCLA L. REV. 839, 844 (1996) (criticizing the Court because “[t]he police interrogation manuals became the centerpiece of what real-world support there was for the majority opinion in *Miranda*”). However, prior to relying on police manuals as evidence of interrogation practices, Chief Justice Warren determined the distribution and extent of use by police of the leading volumes. See Charles D. Weisselberg, *Saving Miranda*, 84 CORNELL L. REV. 109, 119 n.48 (1998) (describing the research conducted by the Supreme Court librarian to determine the representativeness of interrogation manuals).

<sup>66</sup> *Miranda*, 384 U.S. at 449 n.9. The Court characterized the techniques advocated in Inbau and Reid as “the most enlightened and effective means presently used to obtain statements through custodial interrogation.” *Id.* at 449. The successor edition of this text, INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, remains the leading treatise in the field and provides the framework employed to analyze interrogation practices in this study.

<sup>67</sup> The Court quoted extensively from an earlier edition of INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, and other interrogation texts and described in detail the practices the manuals recommended and that the Court found objectionable:

The officers are told by the manuals that the “principal psychological factor contributing to a successful interrogation is privacy—being alone with the person under interrogation.” . . .

To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect’s guilt and from outward appearance to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. . . . The officers are instructed to minimize the moral seriousness of the offense, to cast blame on the victim or on society. These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged. . . .

From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must “patiently maneuver himself or his quarry into a position from which the desired objective may be attained.” When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

*Miranda*, 384 U.S. at 449-55 (citations and footnotes omitted).

<sup>68</sup> See, e.g., Joseph D. Grano, *Selling the Idea to Tell the Truth: The Professional*

and non-verbal cues—Behavioral Symptom Analysis—enable an interrogator to distinguish between guilty and innocent suspects and to question them accordingly.<sup>69</sup> Isolating a suspect enables an officer to overcome a suspect's resistance and denials and to increase her willingness to confess.<sup>70</sup> Interrogators use a nine-step sequence of social influence and techniques of persuasion to systematically weaken suspects' resistance and to provide face-saving rationales.<sup>71</sup> These nine steps include: directly confronting the suspect about her guilt;<sup>72</sup> developing "techniques of neutralization" or psychological themes to justify or excuse the crime;<sup>73</sup>

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*Interrogator and Modern Confessions Law*, 89 J. CRIM. L. & CRIMINOLOGY 1465 (1986) (reviewing the third edition of Inbau and Reid's *Criminal Interrogation and Confessions* and noting changes in format and legal analyses introduced after the *Miranda* decision).

<sup>69</sup> INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 125 (describing the various "behavioral symptoms"—verbal channel, paralinguistic channel, and nonverbal channel—that interviewers should observe during an interrogation). Inbau and Reid advocate the use of certain types of "behavioral analysis interview" questions that are designed to provoke behavioral symptoms that enable interrogators to distinguish between innocent and guilty suspects and that enable them to further manipulate the guilty subject. *Id.* at 173-91. *But see* GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS* 12 (2003) [hereinafter GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*] (questioning the scientific and theoretical underpinnings of the Reid Method and noting that its advocates "have not published any data or studies on their observations. In other words, they have not collected any empirical data to scientifically validate their theory and techniques.").

<sup>70</sup> *E.g.*, GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 8 (noting that all psychologically sophisticated interrogation practices rely on a mix of the processes of influence and persuasion); Kassin, *The Psychology of Confession Evidence*, *supra* note 62, at 222 (noting that "the technique leads many suspects to incriminate themselves by reducing the perceived negative consequences of confessing while increasing the anxiety associated with deception"); J. Pearse, G. H. Gudjonsson, I.C.H. Clare & S. Rutter, *Police Interviewing and Psychological Vulnerabilities: Predicting the Likelihood of a Confession*, 8 J. COMMUNITY & APPLIED SOC. PSYCHOL. 1, 4 (1998) (describing the "Reid Method" as a strategy to "break down the reluctant suspect" and to "manipulate the suspect psychologically in order to overcome any resistance").

<sup>71</sup> Richard Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 673-74 (1996) [hereinafter Leo, *The Impact of Miranda Revisited*].

<sup>72</sup> INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 218-32 (recommending that at the outset of interrogation, the officer confront the suspect with a direct positive assertion of his guilt expressed with absolute certainty and in a slow, deliberate manner).

<sup>73</sup> *Id.* at 232-303 (describing various themes that officers suggest to suspects to provide them with a moral justification or excuse for their commission of the crime. Some of the recommended techniques to assuage guilt include: assuring the suspect that anyone under similar circumstances would have behaved as did the suspect; minimizing the moral seriousness of the crime; suggesting a more morally acceptable reason for the suspect's actions; and blaming other people, such as the victim or accomplices, for causing the crime). Inbau and Reid devote a section to themes interrogators can employ with juveniles. These themes include attributing the juvenile's offense to youthful boredom, the craving for excitement, the propensity to make mistakes, the presence of too many temptations, and inadequate parental supervision. *Id.* at 298-99.

interrupting the suspect's attempts at denial;<sup>74</sup> rebuffing the suspect's explanations or assertions of innocence;<sup>75</sup> engaging the suspect if she becomes passive or tunes out;<sup>76</sup> showing sympathy and urging the suspect to tell the truth;<sup>77</sup> offering a face-saving alternative, albeit incriminating, explanation for committing the crime;<sup>78</sup> having the suspect orally relate some incriminating details of the crime;<sup>79</sup> and finally, having the suspect provide a signed written confession.<sup>80</sup> The cumulative interrogation process increases a suspect's anxiety, creates a state of despair, and offers surcease by minimizing the consequences of confessing.<sup>81</sup>

## B. EMPIRICAL RESEARCH ON POLICE INTERROGATION

Criminologists and legal scholars have conducted remarkably few naturalistic field studies of how police actually interrogate suspects in the

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<sup>74</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 17-18; INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 303-30 (emphasizing that denials distract the suspect from the officer's themes and reinforce his resistance).

<sup>75</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 18; INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 330-37.

<sup>76</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 18; INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 337-45.

<sup>77</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 18 (describing the various strategies at this juncture as playing "upon the suspect's potential weaknesses in order to break down his remaining resistance"); INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 345-52.

<sup>78</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 19; INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 352-65.

<sup>79</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 20; INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 365-74 (suggesting that once the suspect commits himself to a statement, the officer should allow the suspect to relate the details of the crime, offer positive reinforcement for additional details, and bring in a second officer to witness the oral confession).

<sup>80</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 20; INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 374-97 (emphasizing the strength and value of written documentation in the face of a suspect's subsequent recantation).

<sup>81</sup> Kassin and Gudjonsson contend that the nine steps of the Reid Method employ three inter-related psychological processes:

*Custody and isolation*, which increases stress and the incentive to extricate oneself from the situation; *confrontation*, in which the interrogator accuses the suspect of the crime, expresses certainty in that opinion, cites real or manufactured evidence, and blocks the suspect from denials; and *minimization*, in which the sympathetic interrogator morally justifies the crime, leading the suspect to infer he or she will be treated leniently and to see confession as the best possible means of "escape."

Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 43.

United States.<sup>82</sup> Immediately after *Miranda*, several studies measured compliance with the warning requirement and assessed the impacts of warnings on confession rates.<sup>83</sup> The post-*Miranda* impact studies reported that police generally complied with *Miranda* and administered warnings, and thereafter suspects waived their rights.<sup>84</sup> Nearly all of those contemporaneous studies concluded that *Miranda* warnings had a minimal effect on confession rates and convictions or on police interrogation tactics.<sup>85</sup> However, only the 1967 New Haven study by the editors of the *Yale Law Journal* actually observed police interrogate suspects.<sup>86</sup>

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<sup>82</sup> Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 266-67 (1996) [hereinafter Leo, *Inside the Interrogation Room*] (noting that “the gap in our knowledge between legal ideals and empirical realities remains as wide as ever in the study of police interrogation. . . . [T]here exist no contemporary descriptive or analytical studies of routine police interrogation practices in America.”). Several studies conducted in the late 1960s evaluated the impact of the *Miranda* decision on the police’s ability to obtain confessions. See *infra* notes 83-88 and accompanying text. Leo correctly notes that “we know scant more about actual police interrogation practices today than we did in 1966 when Justice Earl Warren lamented the gap problem in *Miranda v. Arizona*.” Leo, *Inside the Interrogation Room*, *supra*, at 267-68; see also Cassell & Hayman, *supra* note 65, at 840 (noting that “we have little knowledge about what police interrogation looked like shortly after *Miranda*, much less what it looks like today”); Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 631 (noting that “everything we know to date about the impact of *Miranda* comes from research that was undertaken when *Miranda* was still in its infancy”).

<sup>83</sup> See, e.g., Lawrence S. Leiken, *Police Interrogation in Colorado: The Implementation of Miranda*, 47 DENVER L.J. 1, 48 (1970) (interviewing jailed defendants about whether they received a *Miranda* warning prior to interrogation); Richard J. Medalie et al., *Custodial Police Interrogation in our Nation’s Capital: The Attempt to Implement Miranda*, 66 MICH. L. REV. 1347, 1348-50 (1968); Richard H. Seeburger & R. Stanton Wettick, Jr., *Miranda in Pittsburgh—A Statistical Study*, 29 U. PITT. L. REV. 1, 26 (1967) (concluding that “*Miranda* has not impaired significantly the ability of the law enforcement agencies to apprehend and convict the criminal”); Michael Wald et al., *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519, 1613 (1967) (observing police interrogation of suspects in the aftermath of *Miranda* and concluding that “[n]ot much has changed after *Miranda*”); James W. Witt, *Non-Coercive Interrogation and the Administration of Criminal Justice: The Impact of Miranda on Police Effectuality*, 64 J. CRIM. L. & CRIMINOLOGY 320 (1973) (suggesting a marginal impact of *Miranda* warnings on collateral functions of interrogation, such as implicating accomplices).

<sup>84</sup> Leiken, *supra* note 83, at 47 (reporting strict police compliance with *Miranda*’s formal warning requirements); Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 632; Stephen J. Schulhofer, *Miranda’s Practical Effect: Substantial Benefits and Vanishingly Small Social Costs*, 90 NW. U. L. REV. 500, 503 (1996) (re-analyzing *Miranda* studies and concluding that “*Miranda*’s detectable net impact on conviction rates shrinks virtually to zero”); George C. Thomas III, *Is Miranda A Real-World Failure? A Plea for More (and Better) Empirical Evidence*, 43 UCLA L. REV. 821, 837 (concluding that “there is no proof of a *Miranda* effect on the confession rate”).

<sup>85</sup> Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 632. The foremost academic critic of the *Miranda* decision and its impact on the police is Professor Paul Cassell. See, e.g., Paul G. Cassell, *Miranda’s Social Costs: An Empirical Reassessment*, 90 NW. U. L.

Nearly three decades elapsed before criminologists ventured into the interrogation room to report what actually occurred. In 1992-1993, Richard Leo observed 122 interrogations in an urban California police department and reviewed 60 audio- and video-tapes of interrogations performed in two other California departments.<sup>87</sup> He analyzed how police induced suspects to waive *Miranda*, how they interrogated them following a waiver, and how the exercise of *Miranda* rights affected subsequent case processing.<sup>88</sup>

In addition to Leo's naturalistic field observations, legal scholars used indirect methods to assess contemporary police interrogation practices. Cassell and Hayman attended prosecutorial screening sessions that reviewed the sufficiency of evidence and interviewed police about any interrogations they conducted during their investigation.<sup>89</sup> Weisselberg

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REV. 387, 417 (1996) (arguing that the costs of *Miranda* include "lost confessions," i.e., statements not obtained, rather than simply those suppressed because of *Miranda* violations); Paul G. Cassell & Richard Fowles, *Handcuffing the Cops? A Thirty-Year Perspective on Miranda's Harmful Effects on Law Enforcement*, 50 STAN. L. REV. 1055 (1998) (attributing the drop in police clearance rates following *Miranda* decision to its warning requirement). A number of scholars have offered substantive and methodological critiques of Cassell's claims about the substantial costs and minimal benefits of *Miranda*. See, e.g., Floyd Feeney, *Police Clearances: A Poor Way to Measure the Impact of Miranda on the Police*, 32 RUTGERS L.J. 1 (2000) (criticizing the Cassell-Fowles claim that a sharp fall in clearance rates occurred after *Miranda*); Schulhofer, *supra* note 84, at 502 (arguing that Cassell's claim of lost convictions after *Miranda* derives from "data . . . cited selectively, sources . . . quoted out of context, weak studies showing negative impacts . . . uncritically accepted, and small methodological problems . . . invoked to discredit a no-harm conclusion").

<sup>86</sup> Wald et al., *supra* note 83, at 1533-58 (reporting the systematic observations of several editors of Yale Law Journal who spent the summer after the *Miranda* decision in the New Haven police department).

<sup>87</sup> See, e.g., Leo, *Inside the Interrogation Room*, *supra* note 82, at 268; Richard A. Leo, *Miranda's Revenge: Police Interrogation as a Confidence Game*, 30 LAW & SOC'Y REV. 259, 263 (1996) [hereinafter Leo, *Miranda's Revenge*]; see also Leo & White, *Adapting to Miranda*, *supra* note 64, at 431-32.

<sup>88</sup> See, e.g., Leo, *Inside the Interrogation Room*, *supra* note 82, at 268; Leo, *Miranda's Revenge*, *supra* note 87; Leo & White, *Adapting to Miranda*, *supra* note 64.

<sup>89</sup> Cassell and Hayman conducted research in Salt Lake County, Utah, in 1994. Cassell & Hayman, *supra* note 65, at 850-52. The Salt Lake County District Attorney's office evaluates felony cases for prosecutive merit: "The screening session is a forty-five-minute interview by the prosecutor of the police officer concerning the evidence supporting the filing of charges." *Id.* at 851. A law student completed a survey form during the screening session and collected data on the suspect, the nature of the offense, whether police questioned the suspect, whether the suspect was in custody, whether the suspect invoked or waived *Miranda* rights, whether police obtained information as a result of questioning, and the officer's estimate of the length of interrogation. *Id.* at 850-60. The law student conducted a case follow-up to determine whether or not the prosecutors charged the suspect and the ultimate outcome of the case. *Id.* at 923-25.

used the Court's *Miranda* methodology and analyzed interrogation training manuals and instructional programs.<sup>90</sup>

In addition to research in the United States, England's Police and Criminal Evidence Act (PACE) has required police to record station-house interrogation of suspects since 1991.<sup>91</sup> Gisli Gudjonsson and his associates developed quantitative and qualitative methods to code and analyze tapes and transcripts of interrogations, documented police interrogation techniques, assessed the effectiveness of those strategies, and measured the impact of those tactics on vulnerable suspects.<sup>92</sup> Roger Evans analyzed PACE transcripts of police questioning juveniles.<sup>93</sup>

For more than two decades, Saul Kassin and his associates have conducted extensive laboratory studies of the social psychology of interrogation.<sup>94</sup> They have analyzed the dynamics of social influence and persuasion, the accuracy with which police and naïve observers distinguish between truthful and deceptive subjects, the individual characteristics that increase some suspects' likelihood to give false confessions, and the police practices likely to elicit false confessions.<sup>95</sup> Finally, studies of cases of

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<sup>90</sup> Weisselberg, *supra* note 65, at 132-40 (analyzing police training manuals that encourage officers to continue questioning suspects even after they have invoked their *Miranda* rights in order to obtain impeachment evidence or leads to other witnesses and evidence).

<sup>91</sup> Police and Criminal Evidence Act 1984, 1991, c. 60, pt. V, § 60(1)(a) & (b) (providing that "[i]t shall be the duty of the Secretary of State—(a) to issue a code of practice in connection with the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and (b) to make an order requiring the tape-recording of interviews of persons suspected of the commission of criminal offences"); GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 22 (noting that substantial literature exists on police interrogation practices in England because "[s]ince 1991 there has been mandatory tape-recording of any person suspected of an indictable offence who is interviewed under caution").

<sup>92</sup> See, e.g., GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 59-60, 79-80; Pearse, Gudjonsson, Clare & Rutter, *supra* note 70, at 4.

<sup>93</sup> See ROGER EVANS, *THE CONDUCT OF POLICE INTERVIEWS WITH JUVENILES 1* (1993) [hereinafter EVANS, *POLICE INTERVIEWS*]; Roger Evans, *Police Interrogations and the Royal Commission on Criminal Justice*, 4 *POLICING & SOC'Y* 73, 77 (1994).

<sup>94</sup> See, e.g., Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 33 (citing nineteen articles by Kassin and an additional twenty by Gudjonsson analyzing the social psychology of police interrogation).

<sup>95</sup> See, e.g., Saul Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 *AM. PSYCHOLOGIST* 215, 218-21 (2005) [hereinafter Kassin, *On the Psychology of Confessions*] (summarizing a number of his laboratory studies and simulations of police interrogation); Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 33 (describing "maximization" and "minimization" techniques).

wrongful convictions examine the contributions police-induced false confessions make to miscarriages of justice.<sup>96</sup>

### C. VULNERABLE POPULATIONS AND FALSE CONFESSIONS

False confessions are one of the leading causes of wrongful convictions.<sup>97</sup> Scholars currently debate the incidence of false confessions; the types of techniques likely to elicit false confessions;<sup>98</sup> appropriate safeguards to reduce the likelihood of false confessions;<sup>99</sup> and the consequences of restricting interrogation tactics to innocent suspects and to the public.<sup>100</sup> We have no way to measure how often false confessions occur or lead to wrongful convictions, but recurring cases of DNA-exoneration of defendants who confessed falsely raise the specter of

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<sup>96</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 902 (reporting that 14-25% of cases of wrongful convictions included false confessions); Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 429.

<sup>97</sup> See, e.g., Albert W. Alschuler, *Constraint and Confessions*, 74 DENV. U. L. REV. 957, 969-76 (1997); Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 429; Ofshe & Leo, *Decision to Confess Falsely*, *supra* note 2, at 983-84; Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 STUD. L. POL. & SOC'Y 189, 191 (1997) [hereinafter Ofshe & Leo, *The Social Psychology of Police Interrogation*] (noting that "[p]olice-induced false confessions have long been recognized as one of the leading causes of miscarriages of justice in America"); Welsh S. White, *False Confessions and the Constitution: Safeguards Against Unworthy Confessions*, 17 HARV. C.R.-C.L. L. REV. 105, 132 (1997) [hereinafter White, *False Confessions and the Constitution*].

<sup>98</sup> See, e.g., Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 435; Magid, *supra* note 3; Welsh S. White, *Miranda's Failure to Restrain Pernicious Interrogation Practices*, 99 MICH. L. REV. 1211 (2001) [hereinafter White, *Miranda's Failure*]; Welsh S. White, *What Is an Involuntary Confession Now?*, 50 RUTGERS L. REV. 2001, 2029-41 (1998) [hereinafter White, *What Is an Involuntary Confession Now?*] (criticizing Cassell's argument as non-constitutional utilitarianism).

<sup>99</sup> See, e.g., Paul G. Cassell, *Protecting the Innocent from False Confessions and Lost Confessions—And From Miranda*, 88 J. CRIM. L. & CRIMINOLOGY 497, 502 (1998) (advocating for the use of deceptive interrogation tactics as long as the number of true confessions substantially outweighs the elicitation of false ones); White, *What Is an Involuntary Confession Now?*, *supra* note 98, at 2025.

<sup>100</sup> Compare Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 440-41 (describing impact of false confessions and erroneous convictions on innocent suspects), with Cassell, *supra* note 99, at 522 (arguing that the incidence of false confessions leading to erroneous convictions is very low and that collateral costs of restrictions on interrogation include the inability to obtain true confessions to exonerate innocent suspects and lost convictions of guilty criminals). See also Richard A. Leo & Richard J. Ofshe, *Using the Innocent to Scapegoat Miranda: Another Reply to Paul Cassell*, 88 J. CRIM. L. & CRIMINOLOGY 557, 563 (1998) [hereinafter Leo & Ofshe, *Using the Innocent*] (describing logical, empirical, and methodological flaws in Cassell's analyses and rejecting his conclusions as "ideologically driven" advocacy rather than empirically grounded research).



imprisoning and executing innocent people.<sup>101</sup> Three factors consistently contribute to police-induced false confessions—youthfulness, coercive interrogation techniques, and prolonged questioning.<sup>102</sup>

Interrogation manuals discount the likelihood of false confessions, minimize the role that interrogation practices play in eliciting them, and make scientifically unsubstantiated claims about police ability to assess suspects' guilt or innocence.<sup>103</sup> Most criminal defendants *do* lie, and the vast majority of those who do confess *are* guilty. This guilt-presumptive baseline expectancy predisposes police to disbelieve true claims of innocence.<sup>104</sup> Kassin contends that innocence itself puts innocent suspects

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<sup>101</sup> Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 48 (noting that “[a]s no one knows the frequency of false confessions or has devised an adequate method of calculating precise incidence rates, there is perennial debate over the numbers”); Leo & Ofshe, *Using the Innocent*, *supra* note 100, at 560 (attributing the inability to estimate the incidence of police-induced false confessions to three factors: “First, American police typically do not record interrogations in their entirety. Therefore, it is not possible to ascertain the ground truth of the interrogation . . . . Second, because no criminal justice agency keeps records or collects statistics on the number or frequency of interrogations in America, no one knows how often suspects are interrogated or how often they confess, whether truthfully or falsely. Third, many, if not most, cases of false confessions are likely to go entirely unreported by the media and therefore unacknowledged and unnoticed by researchers.”); Ofshe & Leo, *The Social Psychology of Police Interrogation*, *supra* note 97, at 191 (attributing the lack of data about false confessions to the fact that most custodial interrogation occurs in secret and without recording, the fact that police do not collect statistics on the number of interrogations they conduct, and the fact that researchers and the public remain unaware of most false confessions).

<sup>102</sup> Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 440-41 (arguing that “[p]olice-induced false confessions arise when a suspect’s resistance to confession is broken down as a result of poor police practice, overzealousness, criminal misconduct and/or misdirected training”).

<sup>103</sup> Police express greater confidence in their ability to distinguish between truthful and lying suspects than do lay-people, even though they do not in fact perform more accurately. Saul M. Kassin & Christina T. Fong, “*I’m Innocent!*”: *Effects of Training on Judgments of Truth and Deception in the Interrogation Room*, 23 *LAW & HUM. BEHAV.* 499, 511-14 (1999) (reporting the inability of experimental subjects to distinguish between true and false confessions and the negative effect of training in verbal and non-verbal deception cues on the ability to distinguish between truthful and deceptive suspects); Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 38 (concluding that “although many law-enforcement professionals assume that they can make accurate judgments of truth and deception from verbal and nonverbal behavioral cues, there is little scientific evidence to support this claim”); Saul M. Kassin, Christian A. Meissner & Rebecca J. Norwick, “*I’d Know a False Confession if I Saw One*”: *A Comparative Study of College Students and Police Investigators*, 29 *LAW & HUM. BEHAV.* 211, 221-25 (2005) [hereinafter Kassin, Meissner & Norwick, “*I’d Know a False Confession*”].

<sup>104</sup> See, for example, Kassin and Gudjonsson, who argue that:

Interrogation is a guilt-presumptive process, a theory-driven social interaction led by an authority figure who holds a strong a priori belief about the target and who measures success by the ability

at risk.<sup>105</sup> If police presume guilt or employ unreliable diagnostic cues of guilt or innocence, then they may confront and question more aggressively innocent suspects.<sup>106</sup>

The Reid Method emphasizes three psychological processes— isolation, confrontation, and minimalization—that increase risks of false confessions.<sup>107</sup> Isolation heightens stress and anxiety. Confrontation, fatigue, and sleep deprivation increase susceptibility to social influences, impair complex decision-making, and heighten suggestibility.<sup>108</sup> Minimization techniques provide a moral justification upon which some suspects seize to escape from isolation and despair.<sup>109</sup> Confronting suspects with strong assertions of guilt and presenting them with false evidence increase their sense of hopelessness, as well as the likelihood that even innocent people will confess.<sup>110</sup> Moral justifications to neutralize guilt may

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to extract an admission from that target. . . . [O]nce people form a belief, they selectively seek and interpret new data in ways that verify the belief . . . [and] makes beliefs resistant to change, even in the face of contradictory evidence.

Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 41.

<sup>105</sup> Saul M. Kassin, *On the Psychology of Confessions*, *supra* note 95. Kassin reviews the social psychological research, much of which he has conducted, and concludes that innocence may put innocent suspects at risk for false confessions and erroneous convictions:

Those who stand falsely accused . . . believe that truth and justice will prevail . . . . Reflecting a fundamental belief in a just world and in the transparency of their own blameless status, however, those who stand falsely accused also have faith that their innocence will become self-evident to others. As a result, they cooperate with police, often not realizing that they are suspects, not witnesses; they waive their rights to silence, counsel, and a lineup; they agree to take lie-detector tests; they vehemently protest their innocence, unwittingly triggering aggressive interrogation behavior; and they succumb to pressures to confess when isolated, trapped by false evidence, and offered hope via minimization and the leniency it implies.

*Id.* at 224.

<sup>106</sup> *Id.* at 219; *see also supra* note 104.

<sup>107</sup> Kassin, *On the Psychology of Confessions*, *supra* note 95, at 221; *see also supra* note 81. Research in England describes similar social psychological processes and identifies the most salient factors in overcoming suspects resistance as “Intimidation (e.g., increasing the suspect’s anxiety over denial), Robust Challenge (e.g., aggressively challenging lies and inconsistencies), and Manipulation (e.g., justifying or excusing the offense).” Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 47.

<sup>108</sup> *E.g.*, Kassin, *On the Psychology of Confessions*, *supra* note 95, at 221.

<sup>109</sup> *See, e.g.*, Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 38, 55 (describing minimization as “a process of providing moral justification or face-saving excuses, making confession seem like an expedient means of escape”).

<sup>110</sup> *E.g.*, Saul M. Kassin & Katherine L. Keichel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 *PSYCHOL. SCI.* 125, 127 (1996) [hereinafter Kassin & Keichel, *Social Psychology of False Confessions*]; Kassin, Meissner & Norwick, “*I’d Know a False Confession*,” *supra* note 103, at 211.

induce innocent suspects to adopt the proffered excuses to end questioning.<sup>111</sup>

Youths' diminished competence relative to adults increases their susceptibility to interrogation techniques and concomitant risks of false confessions.<sup>112</sup> Adolescents have fewer life experiences or psychological resources with which to resist the pressures of interrogation.<sup>113</sup> Juveniles' lesser understanding of legal rights or consequences increases their vulnerability to manipulative tactics.<sup>114</sup> They think less strategically and more readily assume responsibility for peers than do adults.<sup>115</sup> They are more likely to comply with authority figures and to tell police what they think the police want to hear.<sup>116</sup> As a result, interrogation techniques

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<sup>111</sup> Kassir, Meissner & Norwick, "I'd Know a False Confession," *supra* note 103, at 222.

<sup>112</sup> See, e.g., Bonnie & Grisso, *Adjudicative Competence*, *supra* note 50, at 86-93; Thomas Grisso, *What We Know About Youths' Capacities as Trial Defendants*, in *YOUTH ON TRIAL*, *supra* note 11, at 139, 141 (arguing that the effectiveness of a juvenile's ability to participate may affect trial outcomes); Allison D. Redlich, Melissa Silverman, Julie Chen & Hans Steiner, *The Police Interrogation of Children and Adolescents*, in *INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT*, *supra* note 31, at 107, 114 (reviewing psychological research on the inverse relationship between age and suggestibility); Ann Tobey, Thomas Grisso & Robert Schwartz, *Youths' Trial Participation as Seen by Youths and Their Attorneys: An Exploration of Competence-Based Issues*, in *YOUTH ON TRIAL*, *supra* note 11, at 225, 231-34 (arguing that juveniles are less effective as clients than adults because of differences in understanding, memory, attention, and motivation); Deborah K. Cooper, *Juveniles' Understanding of Trial-Related Information: Are They Competent Defendants*, 15 *BEHAV. SCI. & L.* 167, 178 (1997) (reporting that children "do not have an understanding of the legal process necessary for competence to stand trial"); Kassir & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 52 (noting that "[i]t is clear that juvenile suspects are highly vulnerable to false confessions, particularly when interrogated by police and other figures of authority"); Redlich & Goodman, *supra* note 48, at 141 (reporting that juveniles are more likely than adults to accept responsibility when presented with false evidence).

<sup>113</sup> Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 944 (summarizing reasons why juveniles exhibit unique vulnerabilities when interrogated).

<sup>114</sup> Kassir & Keichel, *Social Psychology of False Confessions*, *supra* note 110, at 129; Krzewinski, *supra* note 27, at 356 (questioning juveniles' capacity to understand the privilege against self-incrimination or to voluntarily give reliable statements); McMullen, *supra* note 2, at 992-99 (reviewing social science research on the impact of juveniles' skewed time perspective, their inability to evaluate risks and consequences, and their impulsivity on their vulnerability in the interrogation room).

<sup>115</sup> Grisso, *Competence to Stand Trial*, *supra* note 42, at 28; Beyer, *supra* note 37, at 29-30; Kaban & Tobey, *supra* note 32, at 155-56; McMullen, *supra* note 2, at 994 (arguing that youths' "inability to perceive and weigh long-term consequences can make juveniles much more susceptible to deceptive interrogation techniques than adults").

<sup>116</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 381 (noting that "adolescents are clearly more responsive to negative feedback than adults"); Redlich, Silverman, Chen & Steiner, *supra* note 112, at 108 (arguing that juveniles may feel

designed to manipulate adults may be even more effective and thus problematic when used against children.<sup>117</sup> Tactics like aggressive questioning, presenting false evidence, and leading questions may create unique dangers when employed with youths.<sup>118</sup> Under these interrogative

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compelled to waive *Miranda* rights because of their low social status relative to adult interrogators, societal expectations of youthful obedience to authority, and their dependence on adults); Grisso et al., *Juveniles' Competence to Stand Trial*, *supra* note 50, at 353; Gisli H. Gudjonsson, *Suggestibility and Compliance among Alleged False Confessors and Resisters in Criminal Trials*, 31 *MED. SCI. & L.* 147, 149 (1991) (reporting that low IQ subjects erroneously believe that false confessions have minimal consequences and therefore comply more readily with police suggestibility); Kassin, *The Psychology of Confession Evidence*, *supra* note 62, at 226-27; Krzewinski, *supra* note 27, at 360 (describing interrogation techniques by which "juveniles will readily agree to an officer's words without understanding the significant implications of these words"); McMullen, *supra* note 2, at 992 (arguing that "juveniles are less able to perceive and understand the long-term consequences of their acts, to think autonomously instead of bending to authority, and to control their emotions and act rationally instead of impulsively"); Redlich & Goodman, *supra* note 48, at 152 (finding that "younger participants were more likely than older participants to comply (as well as to comply without question or comment)"); David S. Tanenhaus & Steven A. Drizin, "Owing to the Extreme Youth of the Accused": *The Changing Legal Response to Juvenile Homicide*, 92 *J. CRIM. L. & CRIMINOLOGY* 641, 671-89 (2002) [hereinafter Tanenhaus & Drizin, "Owing to the Extreme Youth"] (summarizing three homicide interrogation cases in which police used leading questions, suggested answers, and drafted confessions for very young offenders).

<sup>117</sup> Kaban & Tobey, *supra* note 32, at 158 ("Interrogation procedures designed for adults but used with children increase the likelihood of false confessions and may even undermine the integrity of the fact-finding process."); Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 46 (noting that "younger suspects confess more readily than older suspects"); Redlich & Goodman, *supra* note 48, at 141 (demonstrating an inverse relationship between age and the likelihood of providing a false confession in behavioral laboratory research); White, *False Confessions and the Constitution*, *supra* note 97, at 118-21 (summarizing standard interrogation techniques especially likely to elicit false confessions from suspects with particular characteristics such as mental retardation and youth); White, *Miranda's Failure*, *supra* note 98, at 1232 (analyzing interrogation practices likely to produce untrustworthy confessions and noting that "youthful suspects are also especially likely to make false statements in response to police interrogation").

<sup>118</sup> See Matthew B. Johnson & Ronald C. Hunt, *The Psycholegal Interface in Juvenile Assessment of Miranda*, 18 *AM. J. FORENSIC PSYCHOL.* 17, 29-32 (2000) (reporting that stressful conditions may cause children to change their stories and actually believe their distorted perception of the event); Kassin, *The Psychology of Confession Evidence*, *supra* note 62, at 224; Kassin & Gudjonsson, *The Psychology of Confessions: A Review*, *supra* note 7, at 54 (reporting that in laboratory studies, "lying about evidence increases the risks that innocent people confess to acts they did not commit—and even, at times, internalize blame for outcomes they did not produce"); Koocher, *supra* note 44, at 716 (attributing children's compliance with police during interrogation to socialization to obey authority figures); Thomas D. Lyon, *The New Wave in Children's Suggestibility Research: A Critique*, 84 *CORNELL L. REV.* 1104, 1011 (1999); Redlich & Goodman, *supra* note 48, at 141; Beyer, *supra* note 37, at 29.

pressures, some juveniles confess falsely to serious crimes that they did not commit.<sup>119</sup> This study provides an opportunity to empirically examine how officers routinely question juveniles and to assess social psychologists' hypotheses about interrogation and adolescents' vulnerability.

#### V. METHODOLOGY AND DATA

The state supreme courts of Alaska and Minnesota have long required police to electronically record interrogation of criminal suspects.<sup>120</sup> In 1985, the Alaska Supreme Court in *Stephan v. State* held that an unexcused failure to record custodial interrogation violated defendants' state constitutional rights.<sup>121</sup> In 1994, the Minnesota Supreme Court in *State v. Scales* relied on its supervisory powers to regulate the admissibility of evidence and required police to record all custodial interrogations.<sup>122</sup> The Minnesota Court adopted the reasoning in *Stephan* and found that:

A recording requirement . . . provides a more accurate record of a defendant's interrogation and thus will reduce the number of disputes over the validity of *Miranda* warnings and the voluntariness of purported waivers. In addition, an accurate record makes it possible for a defendant to challenge misleading or false testimony and, at the same time, protects the state against meritless claims. Recognizing that the trial and appellant [sic] courts consistently credit the recollections of police officers regarding the events that take place in an unrecorded interview, the [*Stephan*] court held that recording "is now a reasonable and necessary safeguard, essential to the adequate protection of the accused's right to counsel, his right against self incrimination and, ultimately, his right to a fair trial." A recording requirement also discourages unfair and psychologically coercive police tactics and thus results in more professional law enforcement.<sup>123</sup>

Since *Stephan* and *Scales*, a few states have required police to record some or all custodial interrogation,<sup>124</sup> other states are considering such a

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<sup>119</sup> See, e.g., Steven A. Drizin & Beth A. Colgan, *Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions*, 32 LOY. U. CHI. L.J. 337, 349-55 (2001) [hereinafter Drizin & Colgan, *Let the Cameras Roll*] (summarizing and analyzing cases of false confessions obtained from innocent juveniles); Krzewinski, *supra* note 27, at 357-63 (summarizing cases of demonstrably false confessions obtained from juveniles); Tanenhaus & Drizin, "Owing to the Extreme Youth," *supra* note 116, at 671-89 (describing numerous instances of false confessions by young juveniles).

<sup>120</sup> *State v. Stephan*, 711 P.2d 1156, 1158 (Alaska 1985); *State v. Scales*, 518 N.W.2d 587, 589 (Minn. 1994).

<sup>121</sup> *Stephan*, 711 P.2d at 1158.

<sup>122</sup> *Scales*, 518 N.W.2d at 592 (holding that "all custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention").

<sup>123</sup> *Id.* at 591.

<sup>124</sup> See, e.g., D.C. CODE § 5-133.20 (2006); 20 ILL. COMP. STAT. 3930/7.2(d) (2004)

requirement,<sup>125</sup> and many police departments do so as a matter of departmental policy.<sup>126</sup> The Wisconsin Supreme Court recently required police to record custodial interrogation of juveniles.<sup>127</sup>

*Scales* tapes and transcripts provide the basis for this study. I obtained the data from the Ramsey County Attorney's office because of the office's proximity and the county attorney's willingness to cooperate with this study. Ramsey County is an urban and suburban area that includes St. Paul, the Minnesota state capital, and several smaller cities. It is the second most populous county in the state with more than half a million total residents. About 12% of the county's population falls within the age jurisdiction of the juvenile court. About 69% of the juveniles are white, 18% Asian, 12% African American, and less than 2% Native American.<sup>128</sup> The St. Paul Police, Ramsey County Sheriff, and seven suburban police departments provide law enforcement services.<sup>129</sup> In 2000, the Ramsey County Attorney

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(requiring Illinois police to record custodial interviews of suspects investigated for first degree murder); ME. REV. STAT. ANN. tit. 25, § 2803-B (2006); TEXAS CODE CRIM. PROC. ANN. art. 38.22, § 3(a)(1)-(2) (Vernon 2006) (barring admission in any criminal proceeding of any statement made during custodial interrogation unless "an electronic recording . . . is made of the statement").

In *Commonwealth v. DiGiambattista*, the Supreme Judicial Court of Massachusetts held that if police failed to record an interrogation, then a defendant may request the judge to instruct the jury that:

[T]he State's highest court has expressed a preference that such interrogations be recorded whenever practicable"; that the jury "should weigh evidence of the defendant's alleged statement with great caution and care"; and that the "absence of a recording permits (but does not compel) them to conclude that the Commonwealth has failed to prove voluntariness beyond a reasonable doubt."

813 N.E.2d 516, 533 (Mass. 2004).

<sup>125</sup> See SUPREME COURT OF N.J., ADMIN. DETERMINATION, REPORT OF THE SPECIAL COMMITTEE ON THE RECORDATION OF CUSTODIAL INTERROGATIONS (2005), available at [http://www.nacdl.org/sl\\_docs.nsf/freeform/MERI\\_attachments/\\$FILE/NJ\\_MERI\\_Rule\(10-14-05\).pdf](http://www.nacdl.org/sl_docs.nsf/freeform/MERI_attachments/$FILE/NJ_MERI_Rule(10-14-05).pdf).

<sup>126</sup> See THOMAS P. SULLIVAN, POLICE EXPERIENCES WITH RECORDING CUSTODIAL INTERROGATIONS (2004), available at [http://www.law.northwestern.edu/wrongful\\_convictions/Causes/CustodialInterrogations.htm](http://www.law.northwestern.edu/wrongful_convictions/Causes/CustodialInterrogations.htm).

<sup>127</sup> *In re Jerrell C.J.*, 699 N.W.2d 110, 123 (Wis. 2005) (requiring police to electronically record all custodial interrogations of juveniles "where feasible, and without exception when questioning occurs at a place of detention").

<sup>128</sup> See Office of Juvenile Justice and Delinquency Protection, Easy Access to Juvenile Populations: 1990-2004, <http://www.ojjdp.ncjrs.org/ojstatbb/ezapop/> (last visited Sept. 17, 2006).

<sup>129</sup> Suburban police departments include: Maplewood, Mounds View, New Brighton, North St. Paul, Roseville, St. Anthony, and White Bear Lake. See Minnesota Police Departments, Sheriffs' Offices, and Other Law Enforcement Agencies, <http://www.usacops.com/mn/ramsey.html> (last visited Sept. 17, 2006).

filed more than 4,000 delinquency petitions and nearly 1,000 status offense petitions.<sup>130</sup>

In Minnesota, trials of sixteen- and seventeen-year-old delinquents charged with felony-level offenses are public proceedings.<sup>131</sup> Because other delinquency proceedings are closed and confidential, the Ramsey County Attorney and I restricted this study to older delinquents. I assumed that police would employ the full range of interrogation techniques against older juveniles charged with felonies.

Initially, a Ramsey County paralegal generated a list of cases of sixteen- and seventeen-year-old youths charged with a felony. She searched for interrogation records in cases that were finally resolved but which had not yet been transferred to archives. She individually inspected every file in those closed felony cases to find any interrogation transcript or tape.<sup>132</sup> She also identified files that contained a *Miranda* form and no confession or police reports, which indicated a juvenile had invoked her rights, so we could compare juveniles who waived or asserted *Miranda* rights. Each time she found a tape or transcript, she copied the file associated with that offense—police reports, *Miranda* waiver form, transcripts or tapes of interrogation, court petitions, certification studies, and probation sentencing reports. She then laboriously redacted references to other juveniles in the police reports to protect their anonymity.

The county attorney's office provided me with all of the files in which the paralegal found tapes or transcripts. She did not "cherry-pick" or select

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<sup>130</sup> See Office of Juvenile Justice and Delinquency Protection, Easy Access to State and County Juvenile Court Case Counts, <http://www.ojjdp.ncjrs.org/ojstatbb/ezaco/> (last visited Sept. 17, 2006).

<sup>131</sup> MINN. STAT. § 260B.163 (1)(c)(2) (2005) provides that:

The court shall open the hearings to the public in delinquency . . . proceedings where the child is alleged to have committed an offense . . . that would be a felony if committed by an adult and the child was at least 16 years of age at the time of the offense.

Even though these delinquency adjudications are public proceedings, we anticipated that I would encounter confidential information regarding other juvenile co-defendants whose identity remained confidential. At the request of the Ramsey County Attorney Office, I obtained a court order from the Ramsey County District Court authorizing my access to the closed files with a number of stipulations to protect the identity of all juveniles I encountered. Order, *In re* Request of Professor Barry C. Feld to Access Ramsey County Attorney's Juvenile Delinquency Felony Files, Judge J. Thomas Mott, Chief Judge, Ramsey County District Court (Minn.) (June 1, 2004).

<sup>132</sup> We initially identified 404 cases that met the search criteria. While interrogation occurs far more frequently than in just the 66 files obtained, in the vast majority of cases, the *Scales* tapes are not transcribed and the physical tapes remain in the police property locker until the case is resolved. Then, the cassette tapes are recycled. Because I did not have access to the tapes retained by police, I do not know how the cases that contained tapes or transcripts in the County Attorney's files differed from that larger universe of cases.

only self-serving “good” cases but gave me all of the available files.<sup>133</sup> I obtained a total of sixty-six files of juveniles who met the search criteria—sixteen or seventeen years of age, charged with a felony level offense in a certification, Extended Jurisdiction Juvenile (EJJ) prosecution,<sup>134</sup> or delinquency matter—and for whom evidence of interrogation existed. I personally transcribed thirty tapes of interviews, both to preserve confidentiality and to immerse myself in the tenor of the interrogation room.

I read and coded each case file for two primary purposes. First, I reviewed police reports, witness statements, property inventories, and other documents to understand the circumstances surrounding the offense, the context of each interrogation, and the evidence police possessed when they questioned a suspect. Second, I adapted instruments used in other recent interrogation studies<sup>135</sup> and constructed a detailed coding form to classify and analyze whether juveniles invoked or waived *Miranda* rights, how the officers conducted the interrogation, and how the juveniles responded. An earlier article reported on juveniles’ competence to exercise their *Miranda* rights.<sup>136</sup> This Article examines the interrogation techniques police employed following juveniles’ *Miranda* waivers.

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<sup>133</sup> Thirty files contained only transcripts of interviews or invocations. I obtained an additional six cases in which police reports indicated that juveniles had invoked their rights. I personally transcribed half of the sample. Because no one else had transcribed or listened to the tapes since the police originally recorded them, this further bolsters my confidence that no censorship of files occurred to withhold “bad” interrogations.

<sup>134</sup> MINN. STAT. § 260B.130 (containing the authority for judges to impose juvenile “blended sentences” in lieu of certification. With “blended sentences,” the state tries youths in juvenile court with all adult criminal procedural safeguards, including the right to a jury trial, and following conviction, judges impose both a longer juvenile EJJ sentence and a stayed criminal sentence pending successful completion of the juvenile disposition.); Barry C. Feld, *Violent Youth and Public Police: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 1038-51 (1995) (describing the genesis of the EJJ Prosecution statute); Marcy Rasmussen Podkopacz & Barry C. Feld, *The Back-door to Prison, Waiver Reform, “Blended Sentencing,” and the Law of Unintended Consequences*, 91 J. CRIM. L. & CRIMINOLOGY 997, 1062-71 (2001) (evaluating the implementation of Minnesota’s EJJ statute in Hennepin County and concluding that it had a “net-widening” effect).

<sup>135</sup> Richard Leo and John Pearse generously provided me with the coding instruments that they used in their research on interrogation. See, e.g., John Pearse & Gisli H. Gudjonsson, *The Identification and Measurement of “Oppressive” Police Interviewing Tactics in Britain*, in THE PSYCHOLOGY OF INTERROGATION AND CONFESSIONS: A HANDBOOK 75, 79-81 (Gisli H. Gudjonsson ed., 2003); Leo, *Inside the Interrogation Room*, *supra* note 82, at 273. Leo’s coding form followed the protocols used in Wald’s New Haven research three decades earlier. See Wald et al., *supra* note 83, at app. 1617-25 (describing the Yale Study). A copy of the coding form that I constructed and used is available upon request.

<sup>136</sup> See Feld, *Juveniles’ Competence to Exercise Miranda Rights*, *supra* note 10.



This study suffers from significant methodological limitations. The first is sample selection bias. I was unable to randomly select the files I analyzed from a larger universe of interrogations cases because such an array simply did not exist. The study includes only juveniles whom prosecutors actually charged with serious crimes and for whom an interrogation record exists.<sup>137</sup> This significantly biases the sample compared with the larger number of cases in which police questioned juveniles and the county attorney did not file charges. Moreover, the fact that the prosecutor's files contained transcripts or tapes suggests that these cases differ in unknown ways from more numerous cases of juveniles who were charged, but whose tapes were not transcribed and remained in police evidence lockers until subsequently destroyed or recycled. Because the sample includes only sixteen- and seventeen-year-old youths charged with a felony, many of whom had prior experience with law enforcement, this study cannot address the problems posed when police question younger or less sophisticated juveniles.<sup>138</sup>

St. Paul Police Department officers conducted about three-quarters of the interviews and their interrogation practices may not be representative of those of other departments in Minnesota or elsewhere.<sup>139</sup> Several reviewers of this and an earlier article suggested that Minnesota police practices probably differ from and are more benign than those used in other states

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<sup>137</sup> Cassell & Hayman, *supra* note 65, at 849, criticized Leo, *Inside the Interrogation Room*, *supra* note 82, because his *in vivo* observations focused only on questioning by detectives in the police station. Because this study relies on actual interrogation records created primarily during custodial interrogation, it does not include cases of non-custodial police questioning or interrogation that does not result in the filing of a delinquency petition.

<sup>138</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 963-70 (summarizing cases of proven false confessions, many of which involved younger juveniles with no prior contact with police). The Central Park jogger case provides one of the most notorious recent cases of multiple false confessions extracted by police from five youths aged fourteen and fifteen. See, e.g., Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 52 (describing the special vulnerability of younger juveniles during interrogation).

<sup>139</sup> We have no systematic analysis of how different police departments' interrogation practices vary or how those differences affect rates of invocations of rights or admissions by suspects. The limited research available suggests how and why departmental practices might vary and produce different results. See ROGER EVANS, ROYAL COMM'N ON CRIMINAL JUSTICE, *THE CONDUCT OF POLICE INTERVIEWS WITH JUVENILES* 21 (1993) (reporting that "there are significant differences in admission rates depending on the [police] subdivision in which the interview takes place . . . interview styles may vary from station to station and have an impact on outcomes. This would be consistent with the thesis that police stations have their own ethos and culture. It would also be consistent with the thesis that police interviewing techniques take place on the job. If individual police stations develop their own distinctive approaches then the dominance of on-the-job training might ensure that these are passed on to new recruits to the station.").

because *Scales* has required them to record interrogations for more than a decade. The reviewers pointed out, for example, that unlike Leo's research, none of the officers in this study continued "questioning outside of *Miranda*" after a juvenile had invoked her rights.<sup>140</sup>

I personally transcribed half and coded all of the interrogations to address the county attorney's and district court's concerns about data confidentiality.<sup>141</sup> As a result, I could not use multiple coders or obtain inter-rater reliability scores. Rigorous experimental psychologists properly could characterize aspects of this study as "impressionistic." Finally, I only have sixty-six cases, both because of the limited number of tapes or transcripts available and the significant costs of identifying, copying, and redacting each file.

As a result of sample selection bias and small sample size, I make no claims that this study represents how police interrogate juveniles more generally or in other jurisdictions. Despite these caveats, this study reports the largest aggregation of routine interrogation of juveniles in the criminological literature. Scholars properly focus on notorious cases of juvenile false confessions<sup>142</sup>—for example, the Ryan Harris case, the Central Park Jogger, and Michael Crowe—but they too concede that they cannot estimate how representative those cases are of the universe of

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<sup>140</sup> I am grateful to Frank Zimring for noting that St. Paul Police Department practices may differ from those of other law enforcement agencies. Compare, e.g., Leo, *Inside the Interrogation Room*, *supra* note 82, at 276 (reporting that in 18% of cases in which suspects invoked *Miranda* rights, officers continued to question suspects even after the invocation in hopes of obtaining statements with which to impeach the defendant or leads to other evidence), with Feld, *Juveniles' Competence to Exercise Miranda Rights*, *supra* note 10, at 85-88 (reporting that in every instance in which juveniles invoked their *Miranda* rights, police immediately ceased interrogation and conducted no further questioning "outside of *Miranda*").

<sup>141</sup> The Ramsey County Attorney's Office and the Second Judicial District Court (Ramsey County) imposed several conditions under which I could obtain access to confidential juvenile court data. One of the court's conditions was that "Prof. Barry C. Feld shall retain personal custody of all edited files and no one else shall have access to those files. He shall personally transcribe all tapes not already transcribed and report his research findings only in ways that preserve the confidentiality of the information contained therein." Order, *supra* note 131.

<sup>142</sup> See, e.g., Steven A. Drizin & Beth A. Colgan, *Tales from the Juvenile Confession Front: A Guide to How Standard Police Interrogation Tactics Can Produce Coerced and False Confessions from Juvenile Suspects*, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT, *supra* note 31, at 132-51 (describing psychological manipulations and interrogation tactics police used to elicit false confessions in several high-profile juvenile interrogations); Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 965-70; Kassin, *On the Psychology of Confessions*, *supra* note 95, at 223; Tanenhaus & Drizin, "Owing to the Extreme Youth," *supra* note 116, at 671-89.

interrogations or how often they occur.<sup>143</sup> While this study is not representative, it sheds some light on routine interrogation of older juveniles.

#### VI. POLICE INTERROGATION OF JUVENILES

Table 1 introduces the juveniles whom police interrogated. Males comprised the vast majority (86%) of youths questioned. About two-thirds (65%) of the juveniles were sixteen years of age at the time of their questioning.<sup>144</sup> Their distribution of offenses was more serious than the typical Ramsey County juvenile felony caseload.<sup>145</sup> Prosecutors charged over half (52%) of the youths with crimes against the person—murder, armed robbery, aggravated assault, and criminal sexual conduct. Moreover, these delinquents were criminally experienced: almost half (42%) had one or more felony arrests prior to their current felony referrals; nearly two-thirds (62%) had prior juvenile court referrals; and more than one-quarter (26%) were under current juvenile court supervision—probation, placement, or parole status. The majority of youths whom police questioned (68%) were members of ethnic and racial minority groups—African-American, Hispanic, and Asian—and African-American juveniles accounted for the largest group (42%) in the sample.<sup>146</sup>

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<sup>143</sup> E.g., Kassin, *On the Psychology of Confessions*, *supra* note 95, at 215 (noting that “the incidence of false confessions is unknown”); Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 431-32 (asserting that “no one knows precisely how often false confessions occur”).

<sup>144</sup> I attribute some of the underrepresentation of seventeen-year-old juveniles to the fact that prosecutors filed certification (transfer) motions against more of these older youths charged with serious offenses. If the juvenile court waived a youth for trial as an adult, then the county attorney transferred his file to the criminal division, which made it unavailable for inclusion in this study. In addition, more of these older juveniles “aged out” of the juvenile court’s dispositional jurisdiction, and the county attorney transferred their files to archives for storage.

<sup>145</sup> See Feld, *Juveniles’ Competence to Exercise Miranda Rights*, *supra* note 10, at 67 n.134 (describing the characteristics of the felonies for which the Ramsey County Attorney charged sixteen- or seventeen-year-old juveniles in 1999: person, 27%; property, 48%; drugs, 15%; and weapons, 10%).

<sup>146</sup> See *id.* at 69 n.141 (describing the racial composition of sixteen- and seventeen-year-old juveniles whom the Ramsey County Attorney charged with felonies in 1999: white, 38%; African-American, 28%; Hispanic, 14%; Asian, 4%; Native American, 3%; and data missing, 14%). I attribute the overrepresentation of questioned African Americans juveniles to the large number of youths charged with crimes against the person in this study.

**Table 1: Characteristics of Juveniles Interviewed**

		N	Overall Percentage
<b>Sex of Juvenile</b>			
	Male	57	86
	Female	9	14
<b>Age</b>			
	16	43	65
	17	21	32
	18	2	3
<b>Race</b>			
	White	18	27
	African-American	28	42
	Hispanic	10	15
	Asian	7	11
	N/A	3	5
<b>Offense</b>			
	Person*	34	52
	Property <sup>#</sup>	22	33
	Drugs <sup>†</sup>	5	8
	Firearms <sup>‡</sup>	5	8
<b>Prior Arrests</b>			
	None	8	12
	Status/Truancy/Traffic	10	15
	Misdemeanor Only	20	30
	One Felony	11	17
	Two or More Felony	17	26
<b>Prior Juvenile Court Referrals</b>			
	None	25	38
	One or More	41	62
<b>Juvenile Court Status at Time of Interrogation</b>			
	None	37	56
	Prior Supervision	12	18
	Current Supervision: Probation or Placement	17	26

\* Crimes against the person include: aggravated and simple robbery; aggravated assault; murder and attempted murder; criminal sexual conduct; and terroristic threats.

<sup>#</sup> Crimes against property include: burglary; theft of a motor vehicle; receiving stolen property; possession of burglary tools; and criminal damage to property.

<sup>†</sup> Drug crimes include: possession of a controlled substance and tampering with anhydrous ammonia equipment (methamphetamine).

<sup>‡</sup> Firearms crimes include: possession of a firearm and discharge of a firearm.

When police take a suspect into custody<sup>147</sup> and interrogate her,<sup>148</sup> *Miranda* requires that the police administer a warning and obtain a waiver prior to questioning.<sup>149</sup> Police arrested<sup>150</sup> nearly all (88%) of these juveniles before they questioned them.<sup>151</sup> Police placed in detention the vast majority (88%) of the youths they took into custody. They released 5% of youths whom they previously had detained after they finished questioning. Police conducted two-thirds (66%) of the interviews in detention centers or correctional facilities and an additional one-third (30%) at police or sheriff stations. They performed only 5% of interviews in non-custodial settings, such as a juvenile's school or home.

St. Paul juvenile officers conducted about two-thirds (68%) of the interviews, and St. Paul homicide detectives carried out another 8% of interviews.<sup>152</sup> Twenty-one officers conducted the sixty-six interrogations in this study. A male officer or officers conducted 80% of the interviews, a female officer conducted 18% of the interrogations, and a female and male officer conducted a "good cop-bad cop" interrogation in one case.<sup>153</sup>

Police must successfully negotiate the *Miranda* warning and secure a waiver before they can question a suspect.<sup>154</sup> My earlier study of juveniles'

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<sup>147</sup> See *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004) (defining the circumstances constituting custody).

<sup>148</sup> See *Rhode Island v. Innis*, 446 U.S. 291, 292 (1980) (defining "interrogation" under *Miranda* to include "not only express questioning, but also . . . any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect").

<sup>149</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966) (requiring the administration of a warning to protect the privilege of self-incrimination against inherent coercion of custodial interrogation).

<sup>150</sup> Technically, police do not "arrest" juveniles, but rather take them into custody. See MINN. STAT. § 260B.175 subdiv. 2 (2005) ("The taking of a child into custody under the provisions of this section shall not be considered an arrest."). However, courts recognize that "custody" is simply a euphemism for "arrest." See, e.g., *Lanes v. State*, 767 S.W.2d 789, 790 n.3 (Tex. Crim. App. 1989) (acknowledging that "[t]he arrest of a child is often labeled as merely 'detainment' or 'protective custody.' In the instant context, however, we find it appropriate to dispense with such euphemistic nomenclature.").

<sup>151</sup> Juveniles' parents brought them to the police station in several cases, and police arrested 5% of those youths after they questioned them.

<sup>152</sup> Personnel from three suburban police departments, six different county sheriffs departments, the State Highway Patrol, and the Department of Corrections carried out the remaining interviews.

<sup>153</sup> See *infra* Section VI.C.1. More female officers questioned juveniles in this study than reported by Leo, *Inside the Interrogation Room*, *supra* note 82, at 273 (noting that male detectives comprised 90% of primary and 86% of secondary interrogators in his sample).

<sup>154</sup> Leo described the warning process as a confidence game in which police deceive and manipulate suspects to obtain *Miranda* waivers. Leo, *Miranda's Revenge*, *supra* note 87, at 261.

competence to exercise *Miranda* rights reported that police initially asked “booking questions”<sup>155</sup> and delayed administering warnings in most cases to build rapport and to predispose juveniles to waive their rights.<sup>156</sup> Police conveyed to juveniles the impression that the *Miranda* warning was a bureaucratic ritual that they had to complete before they could talk.<sup>157</sup>

Once a suspect receives a *Miranda* warning, she must waive or invoke her rights clearly and unambiguously.<sup>158</sup> The post-*Miranda* research reported that most suspects—typically two-thirds to three-quarters or more—waived their rights.<sup>159</sup> The more recent studies of interrogation—Leo’s California research, Cassell and Hayman’s Salt Lake observations, and Gudjonsson’s British studies—also report high rates of waiver.<sup>160</sup> In this study, 80% of the juveniles waived their *Miranda* rights.<sup>161</sup> Criminally experienced juveniles with one or more prior felony arrests waived their rights at lower rates (68%) than did those with fewer or less serious police

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<sup>155</sup> See *Pennsylvania v. Muniz*, 496 U.S. 582, 601-02 (1990) (describing aspects of *Miranda*’s booking exemption); *Rhode Island v. Innis*, 446 U.S. 291, 292 (1980) (acknowledging that *Miranda* does not refer to words or actions normally attendant to arrest and custody, such as booking questions); *Miranda v. Arizona*, 384 U.S. 436, 481 (1966) (exempting routine booking questions from the requirement to administer warnings).

<sup>156</sup> Feld, *Juveniles’ Competence to Exercise Miranda Rights*, *supra* note 10, at 73-77 (noting that in the majority of cases, police delayed *Miranda* warnings until they had completed asking booking questions in an effort to build rapport with suspects).

<sup>157</sup> See *id.* at 74-77 (describing the strategies police used to encourage juveniles to waive *Miranda* rights); Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 660 (describing how officers “delivered the *Miranda* warnings without any build-up and in a seemingly neutral tone, without any apparent strategy, as if they were indifferent to the suspect’s response.”); Leo & White, *Adapting to Miranda*, *supra* note 64, at 413 (reporting that interrogators often warned suspects in a way that made them perceive that waiver was the appropriate response).

<sup>158</sup> *Davis v. United States*, 512 U.S. 452, 459 (1994) (holding that “the suspect must unambiguously request counsel”); *Fare v. Michael C.*, 442 U.S. 707, 727 (1979) (rejecting a juvenile’s request for his probation officer as a *Miranda* request for counsel).

<sup>159</sup> See *supra* notes 86-89 and accompanying text; see also Cassell & Hayman, *supra* note 65, at 859 (concluding that “[t]he evidence, although generally quite dated, suggests that about 20% of all suspects invoke their *Miranda* rights”); Leo, *Miranda’s Revenge*, *supra* note 87, at 260 (reporting that 78% of custodial suspects waived their *Miranda* rights and 64% of them provided incriminating information).

<sup>160</sup> Cassell & Hayman, *supra* note 65, at 859 (reporting that “of suspects given their *Miranda* rights, 83.7% waived them”); Leo, *Inside the Interrogation Room*, *supra* note 82, at 280-81 (reporting that two-thirds of all suspects questioned and three-quarters of all those who waived their *Miranda* rights made incriminating statements); Pearse, Gudjonsson, Clare & Rutter, *supra* note 70, at 2 (reporting confession rates of 55-62% in a series of studies of conducted in England); Viljoen, Klaver & Roesch, *supra* note 49, at 261 (reporting that in a retrospective study of delinquents held in detention, only 13% reported that they asserted their right to silence).

<sup>161</sup> Feld, *Juveniles’ Competence to Exercise Miranda Rights*, *supra* note 10, at 78-84.

contacts (89%).<sup>162</sup> In sum, these sixteen- and seventeen-year-old delinquents exercised their *Miranda* rights about as often as did the adults in other interrogation studies.

#### A. POLICE INTERROGATION TECHNIQUES

Legal scholars criticize the Court's *Miranda* and due process approaches to police questioning,<sup>163</sup> describe the dangers of false confessions,<sup>164</sup> and highlight the risks of prolonged interrogation and police trickery.<sup>165</sup> The data collected in this study allow us to examine how officers actually questioned juvenile suspects. I present quantitative and qualitative data from the fifty-three juveniles who waived their *Miranda* rights: the form of questions police asked, the tactics they employed, the juveniles' responses, and the effectiveness of these strategies in eliciting admissions and collateral evidence.

In the vast majority of cases (89%), a single officer conducted the interrogation. Two officers questioned 13% of youths charged with crimes against the person and 17% percent of youths charged with property offenses. In the latter cases, officers from different jurisdictions tried to clear separate crimes involving the same juvenile. Police concluded most (89%) examinations in one session, but questioned six juveniles (11%) a second time after questioning a co-defendant or at the juvenile's request.<sup>166</sup>

One of the interrogator's first tasks is to establish rapport and a positive relationship with a suspect.<sup>167</sup> Police used the *Miranda* warning

<sup>162</sup> *Id.* at 83-84. These findings are consistent with Leo, *Inside the Interrogation Room*, *supra* note 82, at 286 (reporting that "78% of the suspects chose to waive their *Miranda* rights. . . . [T]he only variable that exercised a statistically significant effect on the suspect's likelihood to waive or invoke his *Miranda* rights was whether a suspect had a prior criminal record."); *see also* EVANS, POLICE INTERVIEWS, *supra* note 93, at 20 (analyzing a sample of British juveniles and reporting that "[t]hose with previous convictions are less likely to confess than those without"); Cassell & Hayman, *supra* note 65, at 895 (reporting that "suspects with a prior criminal record were slightly more likely to invoke their *Miranda* rights").

<sup>163</sup> *See, e.g.*, White, *Miranda's Failure*, *supra* note 98, at 1220; White, *What Is an Involuntary Confession Now?*, *supra* note 98, at 2029-41.

<sup>164</sup> *See, e.g.*, White, *False Confessions and the Constitution*, *supra* note 97, at 108; *supra* notes 97-119 and accompanying text.

<sup>165</sup> *See, e.g.*, Magid, *supra* note 3, at 1185; McMullen, *supra* note 2, at 973; Young, *supra* note 3, at 469.

<sup>166</sup> *See also* EVANS, POLICE INTERVIEWS, *supra* note 93, at 26 (reporting that "[t]here were no examples of suspects being interviewed more than twice and 92.7 per cent of them were interviewed only once"); Cassell & Hayman, *supra* note 65, at 903 (reporting that police interviewed 9.2% of their questioned suspects more than one time).

<sup>167</sup> *See, e.g.*, INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 93-94 (emphasizing importance of rapport with a suspect and "establishing a level of comfort or trust").

process subtly to predispose the suspect to waive her rights and talk with police. The Supreme Court does not require police to give a *Miranda* warning before they ask routine “booking questions.”<sup>168</sup> In most cases (56%), police asked juveniles neutral booking questions—name, age and date of birth, address and telephone number, grade in school, and the like—to build rapport before administering *Miranda* warnings. Officers sometimes used juveniles’ responses to “booking questions” to engage in casual conversations with youths and to accustom them to answering questions.<sup>169</sup>

In addition to using “booking questions” to built rapport, in about one in seven cases (14%) officers asked juveniles if they wanted a drink or needed to use the bathroom:

Q: You want something to drink?

A: Yes, please.

Q: Have a seat over there. What do you want?

A: Ah, [inaudible]

Q: Anything cold?

In another case, the officer apologized for the interrogation room environment. “It is a little chilly in here. I apologize for that, but that’s just the way this building is.”

The detectives used these preliminary contacts to establish a positive relationship with the suspect. At the start of a homicide interrogation, the officer pointed out to the juvenile that he treated him respectfully:

Q: I want you to, I want you to realize, okay. You’re sitting here right now. You’re not in handcuffs, right? And I . . . I brought you a can of pop, right?

A: Uh huh [affirmative].

Q: Am I treating you like a suspect?

A: No.

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<sup>168</sup> See *Pennsylvania v. Muniz*, 496 U.S. 582, 601-02 (1990) (distinguishing *Miranda*’s booking exemption from questioning); *Rhode Island v. Innis*, 446 U.S. 291, 292 (1980) (excluding booking questions from definition of interrogation); *Miranda v. Arizona*, 384 U.S. 436, 481 (1966) (exempting routine booking questions from the requirement to administer warnings).

<sup>169</sup> See, e.g., Feld, *Juveniles’ Competence to Exercise Miranda Rights*, *supra* note 10, at 74-77; Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 661 (reporting officers made small talk with suspects as they asked routine booking questions in an effort to create a setting conducive to a *Miranda* waiver and subsequent confession).



Q: Okay. But I want you to understand, ah, that ah, there was a shooting tonight. . . . There was a shooting tonight and you're not here by chance. You're not here because we pulled your name out of mid-air. . . . Okay? You're here because we, we obviously know some things. Okay? Now, you noticed, I'm not treating you like a suspect.

Similarly, while investigating a shooting incident, the officer commented, "I think I've been more than fair with you, you know. I don't want to make you feel bad. I just want you to be honest with me."

After completing the *Miranda* formalities, in about one-fifth (17%) of cases, officers described their roles as neutral, objective fact finders trying to determine what happened, rather than as adversaries.<sup>170</sup> They invoked their professional expertise, advised the youths that they could distinguish between suspects who lied or told the truth, and reassured them that they would not lie to or trick them:

Okay. John,<sup>171</sup> here's the deal. First of all I . . . I ain't never met you before. I'm gonna look at you in the eye man-to-man I'm . . . if you got questions you ask me, okay? If there's some questions here that I can't answer, then I'll just tell you straight up I can't answer them, okay? But the better informed you are probably the better decisions you make too, okay? And I'll—John, I'll tell you what like I told—like I say to everybody um, no matter what the case is, I'm—I'm a homicide detective. We're not talking about a homicide here, um but my point is um, no matter who I talk to um, I try to be as straight forward as I can even though I—usually I've never met the people before in my life before you sit down here and like I said if you got questions, ask me questions, okay? All I'm looking—all I'm looking from you is the truth. That's it. Um, I think I've got the truth in this, but no matter what happens in my line of work, I'm never there to see it happen. I always come in after the fact. So for me to write down something for me to guess at something is I think to be the truth and write it down, I can't do that, okay? . . . I guess my advice would be don't let anyone talk for you uh, John's got a story and I'm here to write your story, whatever it is. My name's Mike, I told you. I don't . . . I don't take sides in this. I can't. I got no emotional involvement in this whatsoever. I'm just here as a detective taking down . . . taking the facts. And that's all it is, I mean the facts and everything else will speak for themselves and then uh, I'm thinking it's gonna be a load off your shoulders and at least it will be something you could put behind ya. So, I'm . . . I'm . . . I'm feeling that you probably know what this is about so, I don't know, do you just want to start at the beginning and then if we have to fill in some spots or some spaces we can do that, I don't care. Whatever you're most comfortable doing.

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<sup>170</sup> See also Leo, *Miranda's Revenge*, *supra* note 87, at 275 (reporting that detectives often tell suspects that their job is to discover the truth and to give the suspects a chance to tell their side of the story about what happened).

<sup>171</sup> To preserve confidentiality, throughout the narratives, I have changed the names of interviewing officers, juveniles, and other people referred to during questioning.

**Table 2**  
*Interview Tactics—Delivery*

Form of Questioning	N	Percentage of Cases
Open-Ended	53	100
Closed	49	93
Leading	26	49
Echoing	25	47
Multiple	13	25
Long Pause	12	23
Interruption	6	11

  

Number of Types of Questions Asked			
Number of Types	Frequency	Percent	Cumulative Percentage
1	2	4	4
2	8	15	19
3	18	34	52
4	17	32	85
5	5	9	94
6	2	4	98
7	1	2	100

Once officers secured a *Miranda* waiver, they commenced interrogation in earnest. Questions can take a variety of forms, so I initially examined simply how officers framed their questions. As Table 2 indicates, in every interrogation (100%) officers asked juveniles at least some open-ended queries that invited them to provide an account. In nearly half the cases (42%), they began interrogation with open-ended questions and asked the suspect to “tell her story.”<sup>172</sup>

What I’ve learned over the years is there’s always two sides to every story and this is your opportunity to give your side of the story.

Do you want to tell me what the circumstances were or your side of the story on what happened?

<sup>172</sup> Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 664 (describing how police tell suspects “that there are two sides to every story”); *see also* EVANS, *POLICE INTERVIEWS*, *supra* note 93, at 27 (noting that, in England, police interrogations in which suspects are not informed of the charges against them “typically start with questions of the type ‘Do you know why you’ve been arrested?’, ‘Can you tell me about the incident that happened today?’, or ‘Do you know why you are here?’”).

Well, this, this is to get your side of the story, Darnell. Whatever you say, of course, it's on tape, so I can't add to it. I mean I can't say something you didn't do, but this is to get your side of the story so we want to know what your part in this was.

Officers' initial open-ended invitation to "tell their story" sometimes emphasized discrepancies among witnesses' or co-defendants' statements and offered the juvenile the opportunity to provide his version:

Do you want to tell me what happened? 'Cuz I've heard two different stories now. Actually, three different stories.

'Cuz I've got one of version of the story of what was going on and I've gotta find out what was going on with your side.

We have to investigate it. First we have to gather knowledge, talk to people, get witness statements, talk to maybe people that were involved with things . . . The thing is Rick, you know, we're here to get your side of the story. We've already got the other side of the story. We've talked to Chris [co-defendant]. We want to get your side of the story.

In nearly every interview (93%), police also asked closed-ended questions which required only a few words to answers.

Leading questions play a prominent role in studies of false confessions because they require suspects to adopt interrogators' incriminating premises or feed suspects "inside information" that only a guilty party would know.<sup>173</sup> Police asked leading questions in only half (49%) of the interrogations, and such questions did not feature prominently in any case. Interrogators "echoed"—repeating back a phrase or the last few words of the suspect's previous reply—in about half (47%) the cases to invite further comment. In about one-quarter of cases, officers asked multiple questions (25%) in a single sentence or allowed a long pause (23%) to hang in the air. Although a few of the transcripts that I received noted the presence of long pauses, I encountered this technique more frequently in the tapes that I transcribed, so it may be more common than the data indicate. Although the Reid Method instructs interrogators to cut off suspects' denials,<sup>174</sup> police interrupted juveniles' answers in only about one-tenth (11%) of cases. Table 2 summarizes the frequency with which officers used different forms of questions. In two-thirds of the cases (66%), they asked questions in three or four different ways, and in 15% percent of cases, they used five or more deliveries.

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<sup>173</sup> Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 911-20; Ofshe & Leo, *Decision to Confess Falsely*, *supra* note 2, at 1119.

<sup>174</sup> See *supra* notes 66-81 and accompanying text.

*1. Overcoming Resistance—“Maximization” Strategies*

Police interrogators use a two-pronged strategy to overcome suspects' resistance and to enable them to admit responsibility.<sup>175</sup> Maximization techniques intimidate suspects and impress on them the futility of denial, while minimization techniques provide moral justifications or face-saving alternatives to enable them to confess.<sup>176</sup> Police may overstate the seriousness of the crime or make exaggerated or false claims about the evidence.<sup>177</sup> The Reid Method recommends asking emotionally-charged Behavioral Analysis Interview (BAI) questions to provoke reactions from suspects.<sup>178</sup> Leo reported that detectives used several maximization tactics: confront suspects with real and false evidence; refuse to accept denials; accuse suspects of lying; identify inconsistencies in suspects' stories; and emphasize the implausibility of suspects' claims.<sup>179</sup>

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<sup>175</sup> Kassin, *The Psychology of Confession Evidence*, *supra* note 62, at 223; Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 42-44; Saul M. Kassin & K. McNall, *Police Interrogations and Confessions*, 15 LAW & HUM. BEHAV. 233 (1991); Leo, *Inside the Interrogation Room*, *supra* note 82, at 278-79 (observing that police employed “a two-prong approach: the use of negative incentives (tactics that suggest the suspect should confess because of no other plausible course of action) and positive incentives (tactics that suggest the suspect will in some way feel better or benefit if he confesses)”); *see also supra* notes 107-111 and accompanying text.

<sup>176</sup> *See, e.g.*, Kassin, *Psychology of Confession Evidence*, *supra* note 62, at 223 (describing “‘maximization’ technique as the use of ‘scare tactics’ designed to intimidate a suspect believed to be guilty. This intimidation is achieved by overstating the seriousness of the offense and the magnitude of the charges and even by making false or exaggerated claims about the evidence.”).

<sup>177</sup> *Id.*

<sup>178</sup> INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 173-206 (recommending the use of response-provoking BAI questions such as: Do you know why I have asked to talk to you here today?; Did you commit [the crime]?; Who do you think committed [the crime]?; Is there any reason you can think of that someone would name you as a suspect?; Who would eliminate you from suspicion?; How do you feel about being interviewed about [the crime]?; Why do you think the victim is saying you are the one who did this?; Who do you think would have had the best chance to do [the crime]?; Why do you think someone would have done [the crime]?; Did you ever think about doing [the crime] even though you didn't go through with it?; Tell me why you wouldn't do something like this?; What do you think should happen to the person who did this?; How do you think the results of the investigation will come out on you?; If it becomes necessary, would you be willing to take a polygraph test to verify that what you have told me about this issue is the truth?; Do you think the person who did this would deserve a second chance under any circumstances?; Is there any reason why you would have done [the crime]?).

<sup>179</sup> Leo, *Inside the Interrogation Room*, *supra* note 82, at 277-79.

**Table 3**  
*Maximization Questions: Types & Frequency*

<b>Interrogation Strategy</b>	<b>N</b>	<b>Percentage of Cases*</b>
Confront with Evidence	33	70
BAI Questions	29	62
Accuse of Lying	23	49
Inconsistencies	21	45
Tell the Truth	21	45
Dispute	19	40
Play on Fears	17	36
Emphasize Seriousness	16	34
Maximize Anxiety	13	28
Challenge	11	23
Confront	9	19
Imply Evidence	8	17
Accuse Other Crimes	7	15
Accuse Past Crimes	6	13
Officer's Expertise	3	6
Non-Verbal Cues	2	4
Impact on Third Parties	2	4
Good Cop/Bad Cop	1	2
Confuse	1	2

<b>Number of Questions</b>	<b>Frequency</b>	<b>Cumulative Percentage</b>
0	6	11
1	7	25
2	8	40
3	4	47
4	3	53
5	3	59
6	7	72
7	4	79
8	2	83
9	4	91
10 or more	5	100
N = 53		

\* Percentages based on cases in which officers used some type of maximization question (N = 47).

Table 3 summarizes the more common maximization strategies officers used: confronting juveniles with evidence; asking BAI questions; playing on their fears; calling them liars; and pointing out inconsistencies. Officers used maximization strategies in nine out of ten (89%) interrogations and asked an average of five (5.1) different types of questions in the interrogations in which they used them. In more than two-thirds of the cases (70%), police confronted juveniles with evidence—identification by witnesses, statements of co-defendants, physical evidence, or fingerprints—to emphasize the strength of their case.<sup>180</sup> In about one-half or more of the cases, officers asked BAI questions (62%), accused suspects of lying (49%), pointed out inconsistencies in suspects' responses (45%), and urged them to tell the truth (45%). In more than one-third of interrogations, the officers disputed suspects' assertions (40%), played on their fears (36%), and emphasized the seriousness of their predicament (34%). The following excerpts illustrate the more common maximization strategies police used.

#### a. Confront with Evidence

Police confronted suspects with statements of witnesses or co-defendants, physical evidence, and fingerprints. They most commonly (70%) referred to witnesses who identified the juvenile. Because prosecutors charged the majority (52%) of these youths with crimes against the person, these offenses generated both victims and potential witnesses. When youths denied involvement, officers referred to eyewitnesses who named or identified them:

Somebody—well we got—I'm guess we got one, two, three, four—four people saying you hit him . . . . Four people that know Jay-Jay from the neighborhood . . . .

And it's not just one person, we've got, we've got multiple witnesses on you. You're . . . you're . . . you're screwed. You really are. You're screwed.

Q: Eyewitnesses, that's the best evidence possible. I mean, you can't get better than witnesses, and I've got witnesses, neighbor witnesses that's sitting on the deck by the trailer.

A: How do they know it's me? Oh yeah, it's Rick.

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<sup>180</sup> EVANS, POLICE INTERVIEWS, *supra* note 93, at 31-32 (describing similar interrogation tactics used by English police); Leo, *Inside the Interrogation Room*, *supra* note 82, at 279 (reporting that "detectives typically began the interrogation session by confronting the suspect with some form of evidence, whether true (85%) or false (30%), suggesting his guilt and then attempting to undermine the suspect's denial of involvement (43%) while identifying contradictions in the suspect's alibi or story (42%)").

Q: Ever hear of a lineup? You got your photo taken last winter.

Sometimes a “confidential informant” provided officers with a lead to the juvenile:

1830 hours received a call from a person who . . . I can’t tell you who it is . . . who told them the following: Roger Jefferson, Ronald and a third black male named Otto did the robbery at Blimpies the night before using a shotgun.

In other cases, friends or acquaintances furnished the testimony. A juvenile suspect in a homicide drove a car in which two girls were passengers and whom the victims earlier had disrespected—“dissed.” Officers told the youth that if his statement was consistent with what the girls already had told them, then they would know he was telling the truth:

You were driving the car. Remember what I told you. Your best . . . the best thing for you is to just tell the truth what happened up there. Okay? No BSing, no lies. That’s your best chance right now . . . is to be a witness to what happened. You’re there, you’re driving the car. We know about the dissing, you know, the arguments before. The deal with girls. We know all that. I’m not, I’m not BSing you. You know that I know. So now what I want you to know is to tell me exactly what you saw, and that includes, I know who did the shooting, but I want you to tell me the same as the two girls did.

To a greater extent than do adults, juveniles commit their crimes in groups.<sup>181</sup> Because juveniles never can be certain whether or not their confederates have cooperated or will cooperate, interrogators exploit that vulnerability. In more than half of the cases (55%) in which police confronted suspects with evidence, they referred to statements purportedly made by other participants or co-defendants that implicated those suspects.

Q: You know that RL is putting that gun in—on you? RL says that Ronnie asked everybody to help him do this lick. He just admitted it. Everybody turned him down, except you. You said, you said “I’ll help you, Ronnie.”

A: I didn’t say that. I did not say that.

Q: Matter of fact, I got a gun.

A: I did not say that.

Q: That’s what KD says.

A: That’s a lie. Good lie.

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<sup>181</sup> See, e.g., Franklin E. Zimring, *Kids, Groups, and Crime: Some Implications of a Well-Known Secret*, 72 J. CRIM. L. & CRIMINOLOGY 867 (1981) (reporting that juveniles commit their crimes in groups to a larger extent than do adults).

Q: Well, then he's lying. Then he's gonna lie on ya. Cuz he's putting the gun on you . . .

During a burglary interrogation, the officer compared the fulsome statement obtained from a confederate with the paltry explanation provided by the suspect:

I don't work that way, I told you that already, we've gotten statements, we've gotten tapes from the kids that the county attorneys and the judges . . . I can tell you that those tapes and those statements are awful full compared to yours. I'm not, I don't even have . . . I'm only on my half a page with you and I've used several pages with the other people that I've talked to.

In more than one-third (36%) of cases, police confronted juveniles with physical or circumstantial evidence that implicated them in the crime:

Is . . . the, the, the problem is here, Mr. Kent, that you were driving a stolen vehicle. Its got a smashed window, the ignition was all jacked up, punched out, there's no keys, there's no ignition keys in it, and you're driving it. And you get stopped, you lie about who you are, and you're driving a stolen vehicle, and you know what that means don't ya?

An officer investigating a robbery marshaled an entire case of direct and circumstantial evidence against the youth, including witnesses, his prior record for similar offenses, and his inability to explain his whereabouts:

The best evidence you can possible get is an eyewitness, an eyewitness that is unbiased. Meaning someone that doesn't know you, that doesn't have a grudge against you. And that's what I've got. Plus, I've got physical evidence too, plus there's a lot of circumstantial evidence there too, fingerprints like you just said. . . . Footprints, all that kind of stuff if you want to go that route. And another thing is circumstantial evidence. You have no alibi. You can't tell us where you were that night. You've got a history like you would not believe . . . crimes related to the offenses we're accusing you of right now. We've got people that were involved in this offense. You know what I'm talking about? People who were involved in this offense, they're saying that you done it. They're making deals, because they're an adult. Okay?

Police sometimes (15%) referred to fingerprints or the possibility of obtaining fingerprint evidence to bolster their case:<sup>182</sup>

You know I towed that car, right? Do you know where they towed it to? . . . St. Paul Crime Lab. When we get a stolen car, we obviously, we're gonna do, we're gonna fingerprint it. . . . Actually, St. Paul coppers are gonna do that. Do you know what they found? . . . Your fingerprints all over the place. Probably 'cause you're drivin' huh? . . . The problem is that no one else's fingerprints are in there.

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<sup>182</sup> See, e.g., EVANS, POLICE INTERVIEWS, *supra* note 93, at 33 (noting that British police use similar suggestions of the incriminating implications of fingerprint evidence by suggesting fingerprint evidence "would be or had been found and that therefore there was no point in denying the offence").



An officer investigating another stolen car gave the juvenile a mini-course on fingerprint evidence and how the latent prints they obtained from the vehicle led them to him:

I know, but how? I want to know how your fingerprints got on the car that had things taken out of it. The car was damaged. We know you were there because your fingerprints were there. You know the officer got a call that there was a car broken into. He goes there and of course nobody's there and the car is broken into and there's a couple of things missing, stereo stuff missing from the car, the trunk was damaged where they broke into the trunk and they broke into the car too. They damaged the windows to the car. So he fingerprints the car. You know, dusts for fingerprints and lo and behold he gets latent prints. Latent prints are fingerprints from a crime scene, you know it could be a partial fingerprint, a whole fingerprint, no matter. It just, you know what a fingerprint looks like, you leave a fingerprint on a glass or something? So, he pulls the prints off the car, he pulls them off and he turns them into our crime lab. So, two weeks later I get a crime lab report and what do you think it says? [tapping on table] Lee Richards [the suspect], date of birth 9/18/87. See your prints are on file. Any time somebody gets arrested, you know they take your finger prints and they're on file in a computer. You know they take those latent fingerprints, they put it into a machine and the machine studies the latent fingerprints from the crime and then they match it through the whole data base of not only in St. Paul arrests, Ramsey County, um Minneapolis, the BCA which is the state Bureau of Criminal Apprehension, that means anybody arrested in the State of Minnesota. . . . So we already have your fingerprints, it's already matched. So I just want to know how your fingerprints, if you weren't there, don't know anything about the car. . . . Do you know how your fingerprints would have gotten in there?

Leo reported that police confronted suspects with "false evidence" of guilt in nearly one-third (30%) of interrogations.<sup>183</sup> Unfortunately, he did not define "false evidence"—non-existent or made-up evidence—as distinguished from "embellished evidence"—officers overstating the certainty of a witness' identification—or "anticipated evidence"—evidence that officers expect to uncover with further investigation. Leo directly observed detectives question suspects and, after interrogations, asked the detectives whether they possessed the evidence to which they referred. Because this study relies on tapes and transcripts, I have no way of independently verifying whether police actually possessed evidence to which they referred during interrogations. However, in about five or six cases, officers phrased a question in a way that raised a doubt in my mind as to whether the evidence they described existed:

*What if I said we've got a witness that saw you take it [car]?*

*Q: Any idea why you might be on videotape doing this crime then, if that's the case?*

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<sup>183</sup> See Leo, *Inside the Interrogation Room*, *supra* note 82, at 279 (reporting that detectives initially confronted suspects with true (85%) or false (30%) evidence).

A: Can I see the videotape?

Q: No. It's evidence. You can see it in court. Now is your chance to tell what's going on. Now is your chance to redeem yourself.

Officers sometimes implied that they had or soon would have fingerprint evidence:

Q: You know, I mean, this . . . we're giving you the chance, we're coming to you, we're coming to you and we're saying, hey, you show some cooperation, we'll see what we can do to help you, okay. But, I'm telling you, you're involved in it, I've got evidence in that burglary case. Have you been fingerprinted yet?

A: I have.

Q: Okay. *Guess what we have at the scene?*

A: What?

Q: *Evidence . . . which I'm not at liberty to say.*

In cases in which officers' questions aroused suspicion, I reexamined the police reports to determine whether they contained the statements or evidence to which the officer referred and, in some instances, I was unable to locate them. These may be instances of false evidence ploys, or nothing more sinister than incomplete files. Of course, other officers simply may have phrased their questions more artfully, and false evidence ruses may have occurred more frequently. Legal scholars and social psychologists have strongly objected to police use of false evidence during interrogation, and I examine this issue later in this Article.<sup>184</sup>

#### b. Behavioral Analysis Interview Questions

Leo reported that officers used BAI questions in about 40% of the cases he observed.<sup>185</sup> In this study, police asked six types of BAI questions in about half (55%) the interrogations. The most common BAI question was some variation of "Do you know why I have asked to talk to you here today?" Police directly confronted suspects with variations of "Did you commit [the crime]?" in about 10% of cases. For example: "Yeah, I'm just saying you stole somebody else's car. There was no other third party." Police used some BAI version of "Why do you think the victim is saying you are the one who did this?" in another 10% of cases:

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<sup>184</sup> See *infra* notes 256-281 and accompanying text.

<sup>185</sup> INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 173-206; Leo, *Inside the Interrogation Room*, *supra* note 82, at 278; *supra* notes 69 and 178 (summarizing BAI questions).

Why would people want to want to frame you? You said you don't have any enemies, why would people want to frame you?

Well, you're right, that's what people are saying about you . . . . Why would they say that about ya? . . . Somebody mad at you or are you mad at somebody or what's the . . . ?

Why would they mistake you and Chris? . . . Do you have any enemies . . . hmm that would set you up for doing something like this? . . . Positively identifying you. Like I say, more than one person . . . . Why would someone just say this out of the blue, that Rick and Chris did it?

In a few (7%) cases, officers used a variation of the BAI question "What do you think should happen to the person who did this?"

What do you think should happen here with this? I mean it's not something that I can just, you know, say hey . . . obviously, you stick somebody and send 'em to the hospital, we need to do something. What do you think should happen?

### c. Accuse of Lying

In addition to confronting suspects with evidence, officers frequently (49%) accused them of lying when they denied involvement or disputed particular details of a crime. In several cases in which juveniles denied stealing a car or participating in a burglary, the officers responded:

So why, tell me why I should believe that you're not lying. Because you are a liar.

You're not a liar? Well, you have to be because your prints are on the back of the car.

If you didn't go into the house, then you assisted in some way. And if you're saying you didn't, you're a liar, and I'm telling you this as I look you in the eye, you're a liar. And everybody knows it.

Officers warned juveniles that lying to police or giving a false name, as occurred when a juvenile arrested for stealing a car refused to identify himself, were separate crimes:

'Cause you realize when I find out who you are, if you're lying to me, you got another charge on you, right? And if it's a real person it's a gross misdemeanor. You already got this felony auto theft hangin' on you right now, you don't need no more charges. It's time to clear this stuff up, man. It's time to get all this crap behind you and get on with your life. First way to start doin' that is by being honest and straight with me on who you are. And how am I supposed to trust ya' if you keep lying to me.

Officer dismissed juveniles' denials as false disclaimer they regularly encountered:

Do you know how many times I've heard that [denial of involvement], we've heard that over ten years of investigation . . . [mimicking juvenile's denial] I swear. . . . You wouldn't be here right now if you weren't involved, if we did not have evidence that

you were involved. If we didn't have statements from others that were involved saying that you were there with them . . . identifying you.

Officers used circumstantial evidence to identify internal inconsistencies in suspects' denial. They accused juveniles of lying; noted how their story changed during interrogation; and pointed out how inconsistencies rendered all assertions unbelievable:

Yeah, but you tell me one thing, now you're telling me another not to get yourself in trouble. . . . How can . . . how can I believe you?

You know, you're going to have to explain this to a judge, because you tell me one story and now you're telling me another story. You lied to me earlier, okay? I can put that [new version] in my report, but it doesn't mean you're not still going to be charged with it.

#### d. Tell the Truth

Officers frequently (45%) asked juveniles just to tell the truth. Appeals for truth often accompanied other interrogation tactics:

You don't have any choice now, you know it. You gotta, you gotta give up the truth, the whole thing. You're in it, you know, you're in it up to your knees. You gotta give up. The only thing that can help you is the truth. That's what I'm telling you. The only thing that can help you.

Okay. Be truthful with me. I want to speak to your truthfulness. . . . Carl, don't don't go half way on me here. . . . You, you get caught in a lie and you're gonna, get, end up . . .

Do you want to be a little bit more truthful now? I need the full truth from you or else I can't help you.

That's all I want is the truth. You tell me you're telling the truth and I'll put that in the report. 'Cause I can't add anything. It's on the recorder. So if you tell me what you're saying is the truth, then I'll put it in there. Simple as that. All I want to know is what happened . . .

Officers confronted juveniles with other witnesses' testimony from which they claimed already to know the truth. A youth would demonstrate his truthfulness if his statements conformed with others' versions:

Okay. Alright. Richard, we've talked to, ah, a lot of the witnesses that were out there tonight, including the two girls that were in the car. They gave us statements and told us exactly what happened. Okay? What they told us, ok, about what happened up there, goes right along with what the people told us that actually saw it. Okay? So, the best thing for you right now it to tell the truth about what happened up there. That's gonna help you the best in this mess. Okay? . . . Is to just tell the truth about what happened up there. Now, what I want you to do is don't, you know, don't bullshit me now on this. 'Cause if you lie, if you tell me one lie, then that makes, you

know, everything you say a lie. Okay? The best thing to do is to just tell us the truth. And like I say, we've got two statements...

So I don't want to hear these bits and pieces stuff, 'cause you know exactly what happened. Because the next time I go talk to somebody else, and the story deviates a little bit, it moves away from what you're telling me, what does that tell me? Well, what's that tell me? . . . Okay. That you're lying to me. That you're not telling me the whole truth. And that you're holding something back for a reason. I just want you to understand where I'm coming from. I just want you to understand where I'm coming from. Okay?

An officer warned a juvenile who hid a gun with which a fellow gang-member shot a rival gang-member that his confederates might try to implicate him, appealed for the truth, and sought help to recover the gun:

Okay that's what Mark and Paul and Marvin told you. Okay. I also know that you did see the gun and you touched the gun. I also know that you had the gun for longer than just five minutes. Okay. So I want to make sure that I tell the county attorney that you're telling me the truth. Okay. So, if down the line when I get a hold of Mark, Paul and Marvin, they say something different, who am I going to believe, you know what I'm saying? So, if you want to get me that gun, you've got to be honest with me. You've got to be very honest with me 'cause these guys are going to lie their asses off, because they're going to cover themselves, especially Marvin if he was the shooter. I don't know if he was or not. So, it's up to you.

Officers regularly advised juveniles who initially denied involvement that the best time to tell the truth was during the investigation and not to wait until the case went to trial:

Well, I don't know what to say. I wish you luck. I really do. Right now sometimes luck isn't going to help you. The truth will help you, that's the truth. I'm telling you, when this does go to the judge, I can guarantee you it's going to go to the judges. Sometimes, I can say, well, I don't know if it's going to go to the judge or you know, there's no chance I'm going to give it to the judge. But this report, this incident is definitely going to go to a judge. You know, and I can only wish you luck. You know, it's not going to help you much all of a sudden when you go to court and you tell your attorney and you're obviously going to get an attorney there, and you tell your attorney, well, right now I want to tell what happened. But then it's already too late, because you've already exhausted a lot of time for us.

Officers pledged to work on behalf of truthful suspects, warned that those who lied would dig themselves a deeper hole, and appealed for the truth:

Okay? Now, what I'd like to do is I'd like to speak on behalf of your truthfulness. Alright? I want to make sure that when I talk about your involvement in this thing that I'm talking about a, a truthful person's involvement in this thing. . . . Alright? Right now with what you've given me, can I speak to a truthful person's involvement? Okay? I can't. If you'd like to tell me the truth . . . I expect you to be truthful with me.

Officers frequently described “telling the truth” as a juvenile’s opportunity to help himself:

When the lawyers look at this and . . . you can pretend you’re a lawyer and you’re listening to yourself talk, you know, would you, how would you feel if the person doesn’t, isn’t being truthful? ‘Cause they’re not trying to help their cause, you know? It seems like they’re lying or withhold information and you know, how would you feel about that?

Officers cautioned juveniles about how their “story” would sound to a lawyer, prosecutor, or judge and advised them that court officials responded more favorably to truthful defendants than to those who lied:

This stuff isn’t cut-and-dried, you know? You know, you know what I mean by that? Well, some people don’t have, if you were, like I say, a criminal and this was like the fifth time you got arrested for stuff and . . . the first time you shop-lifted and the second time was you broke into a house and the third time was you stole a car. A judge . . . and then seeing this now, what would a judge think? You’re a bad kid. You obviously don’t know how to . . . but the judge is looking at him saying, “You know Darnell’s never been arrested before.” But yet he doesn’t want to help us. I don’t want to put words in your mouth. I just want you to tell me the truth. You know ‘cause too, if you think about this Darnell, I can’t add anything to the tape, right?

You know, if that’s your side of the story, it’s not going to look too good when the judge hears this with all these other statements from all these other people

Officers stressed that their professional expertise and experience enabled them to determine whether or not a suspect told them the truth:

Here’s the deal. I sit . . . I sit across from killers many times every year because I’m a homicide detective. John, to be a good fucking detective I can damn near look at somebody and tell when they’re not being completely truthful. Now what I’m getting here from you is some truth. And John, I appreciate that because the truth’s gonna help you out. Believe it or fuckin’ not. But, sit here and fuckin’ lie and to . . . and to . . . and . . . and run your suck and not be truthful, that’s gonna get, John, more serious than what it already is. And . . .

#### e. Challenge, Dispute, and Increase Anxiety

Officers often (40%) challenged suspects’ versions of events, disputed their claims, and conveyed their disbelief with barnyard epithets:

Bullshit.

Listen, that’s bullshit and I told you that.

Uh, huh. [affirmative] Well, you gotta unblur it in your mind. John, the deal is I’m not gonna have you sit . . . I’m not gonna have you sit here and tell me something’s a blur, you don’t remember this, you don’t remember that, ‘cause I know that’s bullshit.

In about one-third (36%) of the cases, officers used several strategies to increase juveniles' anxiety and to undermine their confidence. They admonished youths that remaining silent could make the situation worse, warned that they could receive more punishment than if they did not confess, and cautioned them that other co-offenders might try to "cut a deal." They played on juveniles' uncertainty about the reliability of confederates and suggested that they should tell their own story rather than let others speak for them and shift responsibility:

But anyway, Andrew says, well, anyway, you can figure it out that um . . . you know, he's basically putting some distance between you and him. . . . Well, I'm not going to tell you what he said, but basically, you know he's talking and minimizing what he's involved in.

John, there's . . . there's something more inside your brain there that you're not telling me and I think the reason why you're not telling me is 'cause you're scared. But I'm hear to tell you if you let these other people tell your story for ya, you're fucked. Because then it ain't John telling the story like it should be, alright? It's someone else telling the story for John. That's . . . that's my whole point. It don't . . . I mean I . . . I'm trying to make it simple . . . I'm trying to make it as simple as I can because it . . . it comes down . . . it is very simple. It's just you don't want someone talking for you and that's why I had you brought here today, so you could tell the story and not somebody else. You got some more in your head that you're not coming out with and I know it to be the truth and if you want to go down this path and not . . . not come out with it all, then it looks bad for John. And I'm telling ya, as my experience as a homicide detective and I've said the same thing many times to other people, and they finally come around and they see it for what it is that the truth will help them out, alright? And that's that's . . . I mean that's all I can tell ya, John. That's all. One other thing you gotta know, John, is I'll write down whatever you tell me, but I want to be able to write the truth. I don't want to be . . . I don't want to be writing lies for a judge to see if it comes to that. I don't think you want that either. If you want to see my fucking report after I write it, John, you can see it. You know. It ain't . . . this is no cloak and dagger here, there's no mirrors or nothing else. This is just about getting the truth and putting this matter behind you.

Sometimes, officers suggested that an admission might garner leniency whereas a refusal to confess could result in more punishment. For example, officers questioning a juvenile about several burglaries committed in different counties described the value of confessing to a "package deal":

We've got information on a lot of different burglaries here. And like the detective said, it's probably in your best interest to share this information with us now so we can clear all this up. If you're keeping stuff from us, it's just a matter of time until we tie it to you guys. How many burglaries you've been involved in? . . . You know, like I said, you know, this is all going to get lumped together. If other burglaries come up that you were involved in, that's gonna be all separate charges. Okay? You know, you can get more time with that than just by coming open and telling us everything you know about the burglaries.

Officers also withheld information from juveniles about the course of the investigation to increase their uncertainty and anxiety:

I'm not going to discuss that . . . that's kind of private, like I'm not going to discuss, like I'm not going to tell you what he told me, like I'm not going to tell him what you told me right now. Okay. I don't work that way. You'll find out in court, you know that, if it goes to that degree. I think there's something we can do now, that's why it's important for me to get your side of the story for the tape recorder.

One officer analogized interrogation to a game of poker in which neither side could afford to reveal what each knew, but from which both sides could benefit with openness:

Like I said, I'm not going to sit here and tell you what other people told me, because I don't play those games. Kind of like the game of poker. You ever play poker? You ever play poker? . . . I'm not going to tell you what my hand is. And you're obviously not going to show me your hand, right? Right, right now? This can definitely be a win-win situation here, okay. You can definitely help yourself by sitting and telling us.

Police sometimes portrayed themselves as suspects' information conduit to the prosecutor and emphasized that truthfulness with police could affect county attorneys' positive or negative reactions.<sup>186</sup> Officers warned that continued silence could adversely affect the county attorney's charge evaluation and the judge's decision:

You don't want to create an impression that you don't care, you don't want to create the impression that you're cold blooded. You don't want to create an impression that you're a liar, okay?

Right. But where's it going to look better when it goes to court, if we have your story of what happened, or if we just have other people's story against you. You're making our job so easy by just not willing to talk. I mean just saying I didn't do it, I didn't do it, I didn't do it. That is making our job easy, believe it or not. That's not the way I operate and I have a feeling that's not the way he operates. And I just met him today, okay. But that's not the way we're trained. We're trained to get all sides of this story before it goes to court. Otherwise, we would not be doing our jobs to the fullest. And we're not sitting here BSing you, this is not like how it is on TV. Okay. This is reality.

And here—here's what I gotta tell ya too . . . you and I never met each other before, but I'm telling ya if you go into this matter a liar and you have . . . and you have to go in front of a judge, do you want to go in front of a judge looking like a liar or looking like a truthful person that's maybe sorry for his actions. I made a mistake, I'm sorry. I mean ask yourself. I'm not sitting across from a dummy here, but you gotta ask yourself, which is a better way to go? The truthful way or maybe a way where

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<sup>186</sup> See, e.g., Leo, *Miranda's Revenge*, *supra* note 87, at 276 (reporting that detectives frequently inform suspects that their truthfulness and cooperation with the police will affect how the prosecutor reacts when they present the case to her).



you're . . . and even if you don't . . . even if you don't tell me something, you just keep it in your head, to me, that's a lie too, because I think I know what the truth is. Now either you're gonna tell me the truth or you're gonna lie. You wanna lie, that's worse for you. 'Cause I know what happened, okay? And I—I—I'm still . . . I'm looking at ya, you're eye-to-eye it's . . . it's just me and you.

#### f. Maximize Seriousness

In about one-third (34%) of cases, officers emphasized the seriousness of the offense or the gravity of the situation. An officer questioned a juvenile charged with aggravated assault for stabbing another youth and emphasized the fine line between assault and murder:

This is some serious stuff. Okay, this is not, this is not a fist fight in a parking lot or somewhere or something like that. This kid actually went to the hospital. Okay, fortunately for you, he's alright or he's gonna be alright. He's got some recovering stuff to go through from what I understand, according to the doctors that, the information I have is that he's gonna heal up and everything's gonna be fine. He was still stabbed with a knife, okay? You didn't kill him, though. Okay, so this isn't a homicide investigation. Now if something turns around and obviously because of his injuries, yeah, that could be serious, but it doesn't look like anything of the sort. Okay, I can't make guarantees. I'm not a doctor. If something happens, he gets an infection . . . that's some serious stuff, you know. And that would be an end result of you sticking him with that knife. . . . It's a serious crime, though, okay? It's not a . . . like I said it's not two guys mutually going at it out in the parking lot somewhere or whatever and one guy gets a bloody nose or something. This is, gets stuck with a deadly weapon. That's what a knife is.

Maximization tactics raise the stakes and increase offenders' anxiety, such as when an officer informed a juvenile three-quarters of the way into an interrogation that his victim had died. He coupled that disclosure with an appeal for the truth:

Okay. I'll tell you something right now, I should've told you at the beginning. Mike's [the victim] dead. Okay? So this is your time to be as truthful as you can with me. When you approached Duncan and were talking to him, and telling him "why didn't you shoot him, why didn't you shoot him." Why did you say that? This is your turn to be absolutely truthful Richard. [inaudible] If anybody else starts talking shit like that, it's gonna be bad news for you. And you have to be as truthful as you can, right now. 'Cause you understand how serious this is. Why did you say that?

Officers warned juveniles that if they failed to cooperate, then they could face additional legal problems such as waiver to criminal court or longer sentences:

You know, the thing is that you're at that age . . . um where you're going to be adult . . . um you made mistakes. Don't . . . don't screw this up for your adult record, cause if they put this all together and they want to try you as an adult, if they find that you're not cooperative they could technically do that. This happened last week with a kid that I had in custody for . . . a seventeen-year-old that had a history like you. They

tried him as an adult. You know that goes on your adult record and I don't think you want that. Do you?

You got no choice. Don't you understand, you got no choice but to tell the truth. Otherwise, you put yourself right in it with him. You know. What are you, sixteen-years-old? Huh? Is he worth twenty years of your life in jail? Huh? Is he worth that? I don't know anybody that's worth that. I haven't got that kind of friends.

In about 13% of interrogations, juveniles expressed reluctance to inform or "snitch" on their co-offenders. In such cases, officers warned youths that trying to protect confederates could result in more severe consequences for themselves:

I want to tell you something right now. Okay? Friendship stops here and I want to tell you something. Friendship stops here. Donald ain't gonna be looking out for you. Carl ain't gonna be looking out for you. Nobody else is gonna be looking out for you. The girls ain't gonna be looking out for you. And if you think you're gonna be the big guy and look out for everybody else, who's gonna get hosed out of that deal? . . . Who's gonna get hosed out of that deal?

#### g. Accuse of Other Crimes

Officers sometimes accused juveniles of other crimes in addition to the one for which they were being interrogated to intimidate them and increase their anxiety. In several cases, officers questioning juveniles about one robbery accused them of committing other robberies or referred to their previous convictions for robbery:

Okay, then the next night. Were you involved in another robbery? . . . Over on the East Side? . . . Well, so far I think we've got us, at least one of the three of ya identified as doing this other robbery. . . . We're looking, we're looking at you guys . . . we're looking hard at you guys for about a half a dozen of them . . . All the same MO. . . . We're talking about some more robberies . . . We'll be liking ya for those other robberies, too.

And, we're looking at you for about a half dozen other robberies. Okay? . . . We've got, we've got witnesses, we got someone who came forward and told us that you and Ron and Otto went in, robbed the place, your girlfriend was driving the car.

You've done it [committed robbery] in the past.

#### h. Impact on Third Parties

Officers warned juveniles that their criminal behavior and denials could adversely affect innocent third parties such as parents or siblings. For example, while questioning a girl for possessing a firearm which police suspected she was holding for her boyfriend, the officer described a

scenario in which her lying to protect her boyfriend could endanger her mother:

Okay, like I said earlier on in the interview here, somebody going to get hurt and killed. Could be you, could be Raymond [her boyfriend], could be, I don't want to say this, but I'm gonna, it could be your mom, because she could just be at the wrong place at the wrong time and somebody could come by and does a drive-by shooting and she could get hit too. So I'm trying to find out here, you got to be straight with me, honest, because we got to get this thing squared away. Somebody's gonna get hurt here, okay. So I gotta know if you're taking the heat for something. I know your mom had told us that Raymond wanted you to lie and stuff like that, well, I gotta know the truth, okay, you gotta be straight with me . . . That's why she's [mother] mad at you right now, that's why she's mad right now, because she knows that you're taking the fall for him. She's pretty upset about that. Did he plead with you to tell the police that?

Officers reminded juveniles of their parents' love, concern, and hurt: "Your mom doesn't want to see anything happen to you." They explained how youths' denials and officers' investigations could inconvenience innocent third parties and compound their difficulties:

Okay. Now, what's going to end up happening is, if I don't get the full truth here, we're going to have to bring your brother back . . . from the military. He ain't gonna be happy and neither is the military. . . . Okay . . . and I don't really want to have to do that and I shouldn't have to.

After police arrested a juvenile suspected of a robbery while driving a car in which his younger sister was a passenger, the officer warned him that if he did not cooperate with their investigation, then they would have to detain his sister to investigate whether she was a participant:

I'm just trying to understand. I'm just trying to understand cause you know, do you want to see your sister go to the juvenile detention center? . . . No and I don't either. You know, I don't want to see her go. When I get her side of the story I wouldn't have a problem with your sister or your mother or somebody come and pick her up, you know? But I need to understand what her part was in this thing. . . .

In another robbery investigation, the officer expressed uncertainty about whether the adult girlfriend who drove her car in which the juvenile was arrested was an accomplice and warned that his failure to cooperate could adversely affect how he handled the girlfriend's case:

I'm going to tell you right now that the adult investigator is probably over at the County Attorney's Office charging your girlfriend. . . . He interviewed her yesterday afternoon. It was yesterday afternoon after I talked to you. She laid it out a little better than you did. Okay? . . . Okay, now if you want to keep her out of it, I need the whole truth, okay? . . . She says she dropped you off with them. Okay. Now if she's lying, it means she's implicated, okay, and if we, if we get her charged, we'll get her charged with aggravated robbery, just like you, for driving the car. Now, if she truthfully didn't know exactly what was going down, we could probably take her out

of it, okay? . . . I can't guarantee it, but there's probably a better chance that she can stay out of it if we get the entire truth.

As the foregoing excerpts illustrate, officers used the same types of maximization strategies to manipulate and intimidate juveniles as Leo observed them employ with adults. As the frequency count indicates, officers used several different types of maximization tactics in the course of an interrogation. Although officers spoke firmly and directly with juveniles, they did not raise their voices or shout at juveniles on any of the tapes to which I listened.

**Table 4**  
*Minimization Questions: Types & Frequency*

<b>Interrogation Strategy</b>	<b>N</b>	<b>Percent of Cases*</b>
Scenario/Theme	12	50
Express Empathy	10	42
Offer to Help	9	38
Minimize Seriousness	9	38
Appeal to Honor	8	33
Manipulate Details	7	29
Appeal to Self-Interest	7	29
Minimize Facts	2	8
Minimize Purpose of Questions	2	8

  

<b>Number of Questions</b>	<b>Frequency</b>	<b>Cumulative Percentage</b>
0	29	55
1	9	72
2	3	77
3	3	83
4	3	89
5	1	91
6	4	98
8	1	100

N = 53

## *2. Persuading Suspects to Confess—"Minimization" Techniques*

Minimization techniques provide face-saving excuses and moral justifications to induce a confession by minimizing the seriousness of the

\* Percentages based on cases in which officers used some of type minimization question (N = 24).

offense or blaming the victim or accomplices.<sup>187</sup> Police used minimization techniques in about half of the cases (45%).<sup>188</sup> Strategies police used in between one-third and one-half of the cases included: the use of scenarios or themes to reduce suspects' feelings of guilt (50%); expressions of empathy (42%); comments minimizing the seriousness of the crime (38%); offers to help (38%); and appeals to honor (33%).

#### a. Themes and Scenarios

The Reid Method advises police to develop a theme or scenario to neutralize guilt and to make it easier for a suspect to confess.<sup>189</sup> Developing a theme entails:

[P]resenting a "moral excuse" for the suspect's commission of the offense or minimizing the moral implications of the conduct. Some themes may offer a "crutch" for the suspect as he moves toward a confession. Most interrogation themes reinforce the guilty suspect's own rationalizations and justification for committing the crime.<sup>190</sup>

Techniques of neutralization allow suspects to defuse guilt and reduce culpability by denying responsibility, blaming the victim, or appealing to higher loyalties.<sup>191</sup> Many themes are logical extensions of criminal law defenses—provocation, intoxication, insanity, and the like.<sup>192</sup> David Matza's classic study, *Delinquency and Drift*, contends that juveniles experience episodic release from "the moral bind of conventional order."<sup>193</sup> During this moral drift, juveniles use rationales to enable themselves to engage in delinquency.<sup>194</sup> For example, while delinquents may reject the

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<sup>187</sup> E.g., Kassin, *The Psychology of Confession Evidence*, *supra* note 62, at 223 (describing "minimization" as a 'soft sell' technique in which the detective tries to lull the suspect into a false sense of security by offering sympathy, tolerance, face-saving excuses, and moral justification; by blaming the victim or an accomplice; and by underplaying the seriousness or magnitude of the charges").

<sup>188</sup> *Id.*

<sup>189</sup> INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at 232 (noting that "psychologists refer to this internal process as techniques of neutralization. Those classifications are remarkably similar to what we refer to as themes (for example, 'denial of responsibility,' 'denial of injury,' 'denial of victim,' and 'condemnation of the condemners').").

<sup>190</sup> *Id.*

<sup>191</sup> See Gresham M. Sykes & David Matza, *Techniques of Neutralization: A Theory of Delinquency*, 22 AM. SOC. REV. 664 (1957); *infra* notes 192-196 and accompanying text.

<sup>192</sup> See, e.g., DAVID MATZA, *DELINQUENCY AND DRIFT* 69-98 (1964) (arguing that juveniles "drift" into delinquency by using rationales that release them from moral constraints).

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 74 ("The major bases of negation and irresponsibility in law rest on self-defense, insanity, and accident; so, too, in the subculture of delinquency. The restraint of law is episodically neutralized through an expansion of each extenuating circumstances

idea that they are “sick” or “mentally ill,” they more readily embrace the idea of “going crazy” or being “mad” to rationalize criminal conduct.<sup>195</sup> Interrogating officers use similar themes to minimize responsibility or to explain juveniles’ inability to remember details of the offense. Officers sometimes suggested that “madness” or the “excitement of the moment” explained or even caused the youths’ uncharacteristic behavior:

And—and you were so hyped up, I bet you don’t even remember hitting him here. I do things—I done things in the heat of the moment [inaudible]. Did I do that? Did I do that or didn’t I do that? That’s just a normal reaction. You get freaked out because you’re a decent person. You get overloaded [inaudible] and you do things and you perceive things different than you react. So a witness who’s breathing normal out here, wherever they are . . . a witness who’s standing here breathing normal looking sees what’s really happening versus what you think is going on because you have this massive adrenaline rush and I believe that’s why you did what you did. You got caught up. You got caught up and because you got caught up, you did things you won’t—you won’t—you don’t normally do and you would never do intentionally. That’s a good explanation I think. [inaudible] you do? . . . You got caught up in something here. And you know who started it. Mike started it and you just got caught up. Mike’s the guy who threw the brick through the window that started a whole other riot. You’re the guy that was stealing TVs out of—out of the stores in LA, but you don’t remember doing it ‘cause you were just caught up in the moment. You know people stealing TVs aren’t the bad people, you know what I mean. But, they got caught up . . . .

Just as “getting mad” or “losing control” can rationalize or mitigate a crime, an officer suggested that a youth charged with criminal sexual conduct experienced an “irresistible impulse”:

Okay. Did you just get thoughts in your head? . . . Were they, were they thoughts that you had all day or did they just come upon you really quick? . . . Okay. And what were those thoughts? Do you remember, Dave?

Juveniles readily invoke drinking alcohol, using drugs, or being intoxicated as excuses to deny responsibility for something they would not have done had they been sober.<sup>196</sup> The juvenile does not act, but rather responds to external or internal forces. Officers regularly offered juveniles intoxication as a face-saving explanation for their conduct:

There was probably a lot of people drinking down there. I’m not saying you were the only one and I’m not trying . . . don’t worry about minor consumption and that kind of stuff, cuz I’m not worried about that. I mean, I just wanna get your mind frame here

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beyond a point countenanced in law.”).

<sup>195</sup> *Id.* at 84.

<sup>196</sup> *Id.* Matza argues that even though intoxication is not a formal defense to most crimes, it does provide an explanation that enables the offender to excuse his “uncharacteristic” behavior: “Being under the influence of alcohol is likened to losing one’s mind, going crazy.” *Id.*

when you picked up the knife. If you . . . I'm not saying it was right if you were drinking, but what I'm saying is, was alcohol a factor?

Had you guys been drinking lately? Were you using any kinds of drugs?

Officers also offered juveniles opportunities to diffuse responsibility, such as succumbing to negative peer influences:

Rick knew he made a mistake, maybe Rick was um forced to do it, I know how peer pressure goes. Right? You know, I went along to be with the crowd, 'cause I thought it was cool at the time. Right? I've been there, I've got kids, I've got a kid your age, I told you that. I know how it is. Come on let's be cool and do it, come on, let's do it, let's do it for the dare. Right? That kind of thing. I've heard that before. . . . This is reality. And the reality is, Rick, we want your side of the story. How did you do it? Why did you do it? Did someone make you do it? Did someone bully you into doing it, or dare you to do it? . . .

Officers sometimes "blamed the victim" to reduce guilt and to provide a rationale to excuse juveniles' conduct:

I'm tellin' you, okay . . . because what it looks like is that you had a bad relationship which you were getting out of and that you were mad and you were upset and probably rightly so . . . from what little I know of Carson [former boyfriend-victim]. I know he can be a pain in the butt, okay? And I can probably understand where you're coming from if you were mad at him and wanted to get back at him, okay? And, yes, I know you're human and that when your relationship and stuff like that happens, it's a hard thing to deal with, especially when people aren't very nice to you, okay?

Officers suggested that a juvenile was a victim, rather than an offender, as in the case of a girl charged with possessing a weapon that the officer thought she was holding for her boyfriend:

I think you know this whole shooting incident, I think you're kind of the victim of a circumstance, you know what that means. I think maybe you were holding something that you shouldn't have gotten a hold of, you know what that means?

Self-defense is a well-recognized excuse to criminal liability and officers offered a youth involved in a gang shooting with this less serious explanation for his behavior:

Who pulled the gun? You know who pulled the gun. Okay. I know you know. You know, so we've got to get this taken care of. If you pull the gun because you're afraid of getting stabbed, then that's a whole different ball game, isn't it? Okay. So, who pulled the gun?

#### b. Sympathy and Understanding

Officers expressed sympathy and understanding and occasionally analogized their relationship with juveniles to that of counselors rather than interrogators:

You know what we're trying to do here is to help you guys out, okay, because there's some obviously you know Selby Siders [St. Paul gang], there's a fight there all the time. Somebody's gonna get killed, okay, and you don't want to be part of that, you're young, you're sixteen, . . . Yeah, you got your whole life ahead of you. Okay, I'm just trying to find out who was there so we can talk to them, so we can tell them you have to stop doing this because somebody's gonna get hurt. You know what counseling means? . . . Okay, police do that too. We sometimes act as counselors and we talk, like I'm here talking to you, I don't want to see this happen to you, cause you know at sixteen, you've got your whole life ahead of you. . . . Who were you with, some of your friends, I mean I'm not going to haul them in here, but I'd like to know who they are so that if we have to talk to them, that this isn't the kind of behavior. . . .

An officer, while questioning a youth about a robbery, expressed empathy and described how he would feel if his own child was in the youth's situation:

I got a kid a year younger than you [inaudible] he did something and I lost my son to [inaudible] something like this I would—it would just break my heart. Especially if he didn't do it. Especially if he didn't do it. . . . You're too young to be going through something like that. Are you afraid of being honest?

#### c. Minimizing Seriousness

Notwithstanding accessorial liability,<sup>197</sup> officers sometimes minimized juveniles' role in a crime to make it easier to confess. During questioning for robbery and aggravated assault, the officers suggested that if the youth beat the victim, then he could not have shot him:

So if I—so if I got a witness that says Jay-Jay hit him with a stick and I say Jay-Jay did you hit him with a stick, you say yeah, I hit him with a stick, that means you can't be shooting him. That just proves that you didn't shoot the gun. . . . Well, the only way we're gonna prove that is with your honesty and you tell us the same story that corroborates with what the witnesses say. . . . You're—you're afraid to tell us that you hit him with the stick because you think that's a bad thing. The bad thing here was shooting the man. He's alive . . . [inaudible] shot in the leg and he's not gonna die. . . . [inaudible] can't you. You can. You can, and you know what I . . . why are you here first? There's a reason we brought you here first, right? Because you got the least to lose. Because what did you do? You hit the man with a stick. That was it.

#### d. Appeal to Honor and Self-Interest

Officers frequently appealed to suspects to tell the truth. In many instances, they offered to investigate further or to work on behalf of a truth-

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<sup>197</sup> See, e.g., MINN. STAT. § 609.035 (2005) (imposing substantive criminal liability on an accessory who aids, advises, conspires, or encourages another to commit a crime); WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 576-84 (1986).



telling youth. They also predicted that prosecutors and judges would look more favorably on youths who admitted responsibility.<sup>198</sup>

Okay, about what happened. I, I'm willing to work on your behalf to prove that you weren't part of that, what your part was, wasn't, what led to the ultimate conclusion. Okay? Obviously things happened. Obviously, there's all sorts of reasons that fights start and everything like that. But, ah, keep in mind that I'm, I'm treating you respectfully here, but I also expect you to be truthful with me. . . . I can't say how many times I've talked to judges and can say, yeah, Tom was . . . Tom seemed remorseful or Tom was cooperative. Tom gave me his side. And I can't say how many times I've talked to judges . . . This kid is an asshole, I've said that too . . .

Okay, we [two interrogating officers] work together. I know all the prosecuting attorneys up there. Anoka County is smaller than Ramsey County. You realize that don't you. I know all the prosecuting attorneys up there too, all the juvenile attorneys. You know. I could say, hey, you're cooperative, you're helping us get stuff back, you're showing us something. You know, you're showing us something, you know, you're making a step in the right direction. How does that look good before a judge? Huh? How do you think that looks? Rather than sitting there like a hard-ass, no, I didn't do it. And then you wait to be convicted. You wait to be found guilty of something with a bad attitude. You know, that doesn't look good, so . . .

Officers used flattery and appeals to honor to induce juveniles to make admissions. Sometimes, flattery was as simple as "You're a good kid, you don't want to screw that up." In other cases, officers told juveniles that it "took real guts" to admit guilt and urged them "to be a man":

What you gonna do, man? It's time to step up to the plate, be a man. Tell me what happened with this. . . .

The complete truth. I'm not gonna spoon . . . I'm not gonna spoon feed you what I know. I need you to be a man. Even though you're seventeen-years-old, I need you to make a decision like a man and not . . . and from your heart and from your mind. Give me the truth and don't let the other people speak for ya. That . . . that's all it is. Nothing between me and you, because I'm gonna write down what you tell me, but I just . . . I can't imagine if this goes to court that you want to go into court not being truthful. Bad deal. Bad . . . bad way to go. It . . . it is, James, and I know that's gotta make sense to you when you think about it in your mind. It's like . . .

In one extended version, the officer advised the youth that it took a "real man" to admit a serious mistake, to clear his conscience, and to get on with his life:

Yea. You know it, so now's the time to be the man. Okay? And a real man can admit that he made mistakes, and this obviously is a big mistake, that was made, right? And now's the time to start letting it out, figure things out. Let us take care of business, let you take care of business so you can reconcile with this and carry on with

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<sup>198</sup> *Accord* Leo, *Miranda's Revenge*, *supra* note 87, at 277 (reporting that detectives invoked the reactions of a skeptical judge or an unforgiving prosecutor).

your young life. Got it? . . . You made decisions, you made decisions at the beginning of this night that you knew that could affect you for a long time. Okay? The bottom line. You chose to do 'em. Bottom line. Okay? Don't blame anybody else here but yourself. Alright? And that's what I'm trying to tell you is that now's the time for you to clear your conscience. Clear your mind. Put it right down on the table. Tell me everything that happened from the start to the end, so we can take care of business.

In about one-third (29%) of the cases, officers appealed to self-interest and pointed out that if juveniles' confessed, then they would feel better afterward or the court could deal with them more leniently:

'Cause right now, I know from my frickin' heart that you got a boulder on your shoulder about the size of Mt. Everest . . . I mean, you gotta feel like the whole weight is on your shoulders. Yeah, I know you do . . . I've been here before with people. I know how you feel. But you gotta trust me when I tell ya I need the truth and I don't mean part of the truth, I need the whole truth, and I'll write the truth as you give it. And if you're . . . if after you tell me the truth, you tell me you're sorry, I'm gonna write down that you said you're sorry. That you never wished it would have happened. That if you could trade places with the kid you'd do it. I'll write down whatever you tell me, but you gotta give me the truth to write down. And that's the whole thing. It's bullshit . . .

Well, whatever you're wrestling with in your mind . . . start putting this behind ya, water under the bridge and you gotta get on with the rest of your life. Otherwise it's gonna eat ya up. It will eat you up. Whatever you say . . . whatever you say ain't gonna shock me. I've heard it and seen it all, okay? Whatever you have to say ain't gonna shock me.

All I can say is . . . you know we're not . . . I'm not going to talk to you and I'm not going to come back next week and say, hey did you change your mind? Do you really want to talk to us now? Now is your opportunity. Okay, 'cause once I leave this door, and I'm sure it's true for him, once we leave this door, we're just going to go back up and type up our petitions and we'll see you in court tomorrow morning and then set a court date and you know how it goes. You've been there before. Then you go to court and words will be words and the cards will be stacked. What do you say?

Police told juveniles that prosecutors who charged them and recommended sentences reacted more favorably to youths who cooperated, told the truth, or assisted officers to investigate or recover guns:

Ah, I wouldn't arrest you today, but I'd write up my report and that would be up to the county attorney to determine whether they arrest you. Now if you made a good will effort and if I got the gun, certainly I would mention that to the county attorney that . . . you helped out in retrieving that gun. Will that help you, yes? Can I guarantee you you won't be arrested down the line? No, I can't do that. But if you go out and locate the gun and give it to me today, I'm not going to arrest you . . . You could be charged down the line. I'm going to be straight up with you. The county attorney could charge you with touching that gun but, again like I said, if you find the gun and if I recover the gun or if you give it to me or whatever you want to do . . . however you want to do it, and I say that Sam helped me out getting the gun

and I don't think I could have found the gun without his help, you tell me, does that help you? Yeah, it would help you a lot. I cannot promise that the county attorney will not charge you with something. I cannot promise you that. Okay, if I was the county attorney, I could promise you that. But I'm not. All I know is that somebody got shot and you're saying, Marvin shot.

Interrogators also advised youths that juvenile court judges viewed more favorably suspects who confessed and assumed responsibility. For example, a judge could impose a concurrent sentence on a juvenile suspected of burglaries in several counties if he admitted his role:

Now, if there's anything else you want to tell me, we can get this all out and get it all in one lump sum. Any other burglaries or anything like that you've been involved in? Because, you know, if you get charged with this burglary and we found out, you know, a couple days down the road that you did do these other ones in McLeod or Carver County, you're gonna get charged again. This way, if you did any and you admit to it, we can lump it all together. There'd probably be like one sentence instead of, you know, being charged down the road again. I kind of stumbled through that, but do you understand what I'm trying to say? . . . If you did anything else, now's the time to tell us and put it all together and then you're done with it.

Apart from specific benefits, like concurrent sentences, officers told juveniles that admitting responsibility positively impressed sentencing judges:

You know what, this isn't a typical thing. If you admit to it, you know, but you minimize it. I'm telling ya that minimizing is gonna hurt you because it's not the truth [inaudible]. I feel bad, I really do, you know. This is what I did, I—I feel responsible, I feel bad, and you know what I'm gonna—I'm gonna do what I can to make this whole thing [inaudible] and that is to tell the truth. That's all you can do, right? . . . So when the judge looks at this and the jury looks at this, he'll say what did the kid say? He said he felt bad, and he told the truth. Okay?

What good is it? The good is, Ron, listen to me and I'm telling you this, okay, the good is for you to tell us the truth so that when this does go to court, do you hear what I'm saying, this does go to court, cause it will go to court, that the judge can say hey, Ron was willing to cooperate, Ron was willing to help, Ron was remorseful, Ron was sorry that he did this crap. . . . Judge knows that you were telling us this, but hey, yeah, I'm sorry I did this shit. I made a mistake. I got caught, I'm going to be a man enough to say yes, I did. I got caught, let's make it right. And now's your time to make it right, Ron, not when this goes to court. Not when it gets to the stage of going to court.

I'll tell you though, if the judge thinks you're lying, the consequences are much more severe than if the judge thinks you're telling him the truth. It means it's a big difference going in . . . but there's a big difference going in there in front of a guy and trying to cop the bad boy attitude, thinking that this is not big thing, than it is going in there a humbled man, ready to accept the consequences for his actions. And taking it like a man and moving on. And, making it a mistake so you can gain some life experience out of it. Okay? That's the difference.

## B. JUVENILES' RESPONSES TO INTERROGATION

Police interrogate juveniles in order to elicit admissions or confessions; to obtain leads to other witnesses and evidence; to pin down alibis; and to get youths to commit to a story with which prosecutors subsequently may impeach them. This section describes how juveniles responded. Classifying interrogation outcomes necessarily involves making subjective judgments.<sup>199</sup> Initially, I report categorical responses: whether a youth gave a full confession;<sup>200</sup> whether a juvenile made incriminating admissions;<sup>201</sup> or whether the juvenile denied involvement.<sup>202</sup> I assess how

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<sup>199</sup> Cassell & Hayman, *supra* note 65, at 862 (observing that evaluating the outcomes of interrogations involves a degree of subjectivity); Wald et al., *supra* note 83, at 1643-47.

<sup>200</sup> *Black's Law Dictionary* defines a confession as a "voluntary statement made by a person . . . wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it." BLACK'S LAW DICTIONARY 296 (6th ed. 1990). Several analysts distinguish between confessions and admissions. See, e.g., Ofshe & Leo, *Decision to Confess Falsely*, *supra* note 2, at 991.

I classified a juvenile's statements as confessions when they admitted that he committed the crime or when his cumulative responses satisfied all of the elements of the offense, i.e., act and intent. The following provides an example of the types of juvenile responses that I coded as a confession:

Q: Okay. And what do you know about the aggravated robbery? Were you involved in it?

A: Yes.

Q: And what was your part?

A: Um, I don't know, just to hold them up I guess . . .

<sup>201</sup> *Black's Law Dictionary* defines an admission as the "avowal of a fact or circumstances from which guilt may be inferred, but only tending to prove the offense charged, and not amounting to a confession of guilt." BLACK'S LAW DICTIONARY, *supra* note 200, at 48.

I classified a juvenile's statements as admissions when they linked her to the crime or provided direct or circumstantial evidence of some element of the offense. Admissions often occurred when a get-away driver, look-out, or co-defendant acknowledged participating, but denied primary responsibility. The following provides an example of the types of juvenile responses that I coded as an admission:

Q: What did you say. What were you doing?

A: I was just sitting there watching Curtis [assault and rob a victim].

Q: You went in someone's face though too, right?

A: No.

Q: You helped Curt, though, didn't you. Didn't you kind of serve like as back-up?

A: I was, but I didn't do nothing.

<sup>202</sup> I classified a juvenile's statements as denials when the suspect disavowed any knowledge or responsibility for the crime or gave explanations that did not include any incriminating admissions. The following provides an example of a juvenile's response that I

juveniles' attitudes during interrogation affected the outcome. Characterizing youths' demeanor from a tape or transcript involves impressionistic judgments. Fortunately, police write detailed notes, and about half their reports included officers' impressions and comments about juveniles' demeanor and behavior. Officers reported whether they believed suspects told the truth or lied; indicated whether they cooperated or resisted,<sup>203</sup> and described youths' behavior during questioning.<sup>204</sup> Based on my own impressions and the officers' notes, I categorized youths as cooperative or resistant. I also present quantitative and qualitative data about their reactions to questioning—whether they responded positively or negatively, whether they offered excuses or justifications, and whether they sought information.

As Table 5 reports, juveniles confessed and admitted all the elements of the offense in less than one-fifth of the cases (17%). However, they provided some statements of evidentiary value in about half (53%) of the cases, for example, admitting that they served as a "look out" during a robbery or participated with others during a burglary even if they did not personally steal property. In about one-third (30%) of the cases, juveniles denied criminal involvement or made no incriminating admissions.<sup>205</sup>

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coded as a denial:

Q: Again, understanding I'm a police officer and we just went over your rights, do you want to talk to me about why you're here.

A: Yeah, why am I?

Q: You're here for criminal damage to property.

A: Of what?

Q: A vehicle.

A: When was that at?

[two questions later]

Q: No? OK. So you're telling me that you have . . . you're not involved and you don't know what I'm talking about?

A: Uh-uh [negative].

<sup>203</sup> For example, an officer who interviewed one juvenile described him as "cooperative and forthright throughout the interview."

<sup>204</sup> For example, an officer who interviewed one juvenile noted that he "became increasingly agitated during the interview, his demeanor varied between sarcastic and angry. [He] became increasingly hostile and asked for a lawyer and I ended the interview. As he was leaving the room, he turned in the doorway and glared at me and was yelling obscenities."

<sup>205</sup> Viljoen, Klaver & Roesche, *supra* note 49, at 261 (interviewed delinquents held in detention who retrospectively reported that: (13%) they had asserted their right to silence; (31%) they had denied involvement in the offense; and (55%) they had confessed).

Leo's research reported that police obtained successful outcomes in about three-quarters (76%) of the cases in which suspects waived their *Miranda* rights, and the Yale-New Haven study reported that about two-thirds (64%) of interrogations produced incriminating evidence.<sup>206</sup> Cassell and Hayman only reported successful outcomes in half (54.3%) of cases, but they included cases in which police did not attempt to question suspects at all and non-custodial as well as custodial interrogations.<sup>207</sup>

**Table 5**  
*Outcome of Interrogation Compared to Youths' Attitude*

Outcome of Interrogation	Youths' Attitude					
			Cooperative		Resistant	
	N	Percent	N	Percent	N	Percent
Confession	9	17	9	24	0	0
Admission	28	53	23	62	5	31
Denial	16	30	5	14	11	69
Total	53	100	37	70	16	30

Cooperative, polite, or remorseful juveniles gave incriminating statements far more often than did hostile, resistant, or belligerent youths. As Table 5 reports, about two-thirds of juveniles (70%) exhibited a cooperative demeanor, while one-third (30%) appeared resistant. The vast majority (86%) of cooperative juveniles confessed or made incriminating admissions, while a large majority (69%) of resistant juveniles did not provide useful admissions. The fact that nearly one-third of youths resisted the police and two-thirds of them did not incriminate themselves provides some evidence of juveniles' competence in the interrogation room.

<sup>206</sup> Leo, *Inside the Interrogation Room*, *supra* note 82, at 280-81; Wald et al., *supra* note 83, at 1566, 1589 (recalculating data from Table 12. Table F-7 reported that interrogation was unproductive in 30% of cases and that suspects refused to talk in an additional 12% of cases.). Evans' study of police interrogation of juveniles in England also reports that "[i]n 76.8 per cent of cases suspects readily confessed. . . . Indeed, this open admission usually occurred in the first sentence or so of the interview." EVANS, POLICE INTERVIEWS, *supra* note 93, at 29.

<sup>207</sup> Cassell & Hayman, *supra* note 65, at 868. Cassell and Hayman attribute Leo's higher interrogation success rate to the fact that he studied only suspects who were in fact interrogated, the interrogations occurred in stationhouse custody, and experienced detectives conducted the interrogations. *Id.* at 876. Those same features characterize the interrogations in this study as well.

**Table 6**  
*Juveniles' Responses to Interrogation*

<b>Positive Responses to Interrogation</b>		
	N	Percent
Provide Account	48	91
Agree	18	34
Extended Narrative	7	13
Alibi	4	8
<b>Number of Positive Responses</b>		
	N	Percent
0	5	9
1	23	43
2	21	40
3	4	8
Total	53	100
<b>Negative Responses to Interrogation</b>		
	N	Percent
Dispute Fact	26	49
Deny or Reject	21	40
Lack of Knowledge	9	17
Poor Memory	7	13
Partial Silence	2	4
Withdraw Statement	1	2
<b>Number of Negative Responses</b>		
	N	Percent
0	17	32
1	9	17
2	24	45
3	3	6
Total	53	100

<b>Excuses and Rationales for Offense</b>		
	N	Percent
Minimize Responsibility	17	32
Give Motive or Reason	17	32
Minimize Offense	15	28
Blame Victim	12	23
Do My Time	3	6
Accept Scenario	2	4
<b>Number of Excuses or Rationales</b>		
0	19	36
1	15	28
2	11	21
3	3	6
4	5	9
Total	53	100
<b>Seeking Information</b>		
	N	Percent
Seek Information	18	34
Seek Disposition	13	25
Repeat Question	8	15
Seek Early Release	3	6
<b>Number Seeking Information During Interrogation</b>		
0	24	45
1	21	40
2	4	8
3	3	6
4	1	2
Total	53	100

In addition, I coded juveniles' responses to police questions into four general categories: positive; negative; rationalizing involvement; and seeking information.<sup>208</sup> Just as officers' interrogation strategies differed, juveniles did not make unitary or mutually exclusive responses. As Table 6 reports, in nearly every case (91%), juveniles gave some positive responses to questions. They provided accounts or explanations that might contain incriminating admissions. They agreed with officers' assertions or factual

<sup>208</sup> See *supra* note 135 and accompanying text.



statements. They sometimes gave extended narratives or monologues, interspersed with occasional prompts, which contained their side of the story. Less frequently, they offered alibi statements.

In about half (49%) of cases, juveniles responded negatively to some or all of the questions. These negative responses included disputing assertions, rejecting inferences, denying involvement, denying knowledge, failing to remember, and selectively refusing to respond to questions. In about one-third (32%) of cases, juveniles rationalized or excused their offenses or adopted themes suggested by interrogators. In such instances, juveniles minimized their role, offered a reason for their actions, played down the seriousness of the offense, blamed the victim, or decided to “do their time” without implicating others. Finally, in one-third (34%) of cases, juveniles sought information from their interrogators. They inquired about facts known to the police, asked about the likely disposition of the case, or inquired about release from custody.

Juveniles provided several different kinds of positive responses to their interrogators, such as telling their story, agreeing with officers’ accounts, or giving a narrative. Juveniles inclined to cooperate with police typically did so from the outset of the interrogation. For example, a juvenile charged with criminal sexual conduct responded to his interrogator’s first question with an unequivocal admission:

Q: Okay. Why don’t, instead of me just asking questions, why don’t you tell me why I’m here.

A: Because I sexually offended a foster kid at my foster home.

Juveniles who resisted during interrogation commonly disputed officers’ assertions (49%) or rejected their implications (40%). When interrogators questioned youths charged with armed robbery, they vehemently denied involvement:

Q: Where’s . . . where’s the nylon stockings that you guys used . . . over your head?

A: I don’t have no stocking over my head. I keep telling you that. I did not have no stocking on my head.

Just like that I ain’t got no reason to lie about [inaudible]. No, I don’t got no reason to even, you know, do none of this shit that whatever’s on paper or whatever man. I’m trying to make something for my girlfriend so we . . . you don’t hear about me and my brothers in the newspapers. I ain’t got time for this shit, man.

After an officer completed the *Miranda* warning process, she asked the BAI opening question, “Do you know why you’re here?” to which the youth responded “That’s what I want to know, why am I here?” A girl,

whom police charged with assaulting a female officer, denied an assault and claimed that the police attacked her:

Q: Okay, you hit her though?

A: What I'm supposed to do? She was grabbing on me . . . hitting me and everything else, and I'm trying to get her off of me. And I'm trying to see what the other police. I didn't do nothing. Then they sprayed me with mace and then they pinned me with bats and stuff.

Q: How many times did you hit her?

A: I didn't hit her. . . . I don't fight with the police. The police were fighting with me. I've got marks on me too.

Q: But I mean, I asked you . . . you know, why did you fight with her and what are you supposed to do? You don't fight with the police.

A: Just let them beat me down . . . Maybe they'll cut off circulation, when they finish choking me.

Sometimes, juveniles responded to officers' questions with partial silence:

So, in other words, you're not going to admit to doing it? [long pause] No? Yes? What? [long pause] What does shaking your head mean? You're not going to admit to doing it? You're shaking your head no.

In other cases, juveniles declined to implicate others and chose to "just do time":

Q: How are we supposed to resolve this and get this taken care of without you bein' straight with us?

A: I don't know, I just . . . I'll just take care of it by myself.

Q: How you gonna do that?

A: Do the time and get out.

Q: Do the time and then get out? You think that's fair that you do that alone?

A: Yeah, what's the point of havin' both of us in here. I'm gonna still be in here so what's the point of havin' Ralph in.

Several juveniles expressed reluctance to cooperate because they did not want their confederates to know that they had implicated them:

A: But um, I don't want any of my boys hearing this stuff, what you're going to tell them . . . like this tape.

Q: No no, I won't play that tape for any of your boys. Okay. Your boys ain't going to find out from me, Matthew [another investigating officer] or any of the people I found out. The only way your boys are going to find out is if you tell your boys.

Once police reassured youths that they would not reveal from whom they obtained information, juveniles became more forthcoming:

A: It's like . . . no one will hear this will they?

Q: Well, it's taped, so people know what we're saying. But who do you . . . . But you mean you don't want to snitch on the people that were there? . . . You don't want to snitch on them.

A: I don't know. I mean, I just don't want like, you know, like people out there to know.

Q: That it was you that said? Well, three people are arrested and it could have been any of the three that said something. I mean, how are they gonna know? I mean we're not gonna advertise this tape. Know what I mean? It isn't like the report. The report isn't public. In the public report it will say um, how many people got arrested? Three? Or four?

A: Well I guess all four of us got took in.

Q: So the public part will say four people arrested for attempted robbery. That's all it will say in public. The people can't get the narrative part of the report. I mean, I understand why you don't want to say their names. We are gonna find out who they are, you know? . . . And then, when you think about it, if you were them right now, do they you know that you were arrested do you think? . . . Yeah, and what are they gonna think?

A: That I'm telling you their names.

Q: Even if you didn't tell me, what are they gonna think?

A: That I told you their names.

Q: Yeah. They're gonna think it anyway, don't you think? So you see, with you not telling me, we're not going to be able to do anything about it because we don't even know who they are. You know what I mean? I know it's a tough situation and you're a juvenile so you'd be going to the juvenile detention center not the adult detention center. When they get arrested they'll be going to a whole different building.

Even when juveniles resisted, officers sometimes obtained incriminating evidence, such as when a juvenile admitted to standing outside a store as a lookout during a robbery:

Q: You just acted as the lookout?

A: Did not go in the store. Not at all.

Q: Just acted as look out, that's all?

A: That's it.

Q: That's all you did?

A: I did not go in the store.

Q: Acted as lookout while . . . while Frankie went in and did his lick. No?

A: Yes.

Recall, police suggested themes to neutralize offenders' guilt or to justify or excuse their conduct. Juveniles employed similar rationales to minimize responsibility, minimize the offense, or to blame the victim.<sup>209</sup> About one-third (32%) of juveniles used rationales to excuse or explain themselves. For example, a girl minimized responsibility for a burglary by suggesting that her confederate misunderstood her desire to retaliate against a former boyfriend:

A: I was joking around at first and I was like, oh, yeah, whatever. I got this key to this, to my ex-boyfriend's house. But I know he's got a bunch of stuff that's stolen, whatever, and ah . . . Tom's [co-defendant] like oh, yeah, I'll take it and I was joking at first, you know.

Q: Okay . . . but you told him to go over there, is that correct?

A: In a joking way, yes . . .

Q: This was just to get back at Frank [ex-boyfriend], correct, for what he did to you . . . or what he was doing to you?

A: Yes.

Juveniles explained that they did not use loaded weapons and took precautions because they did not intend to hurt anyone:

Q: Okay. Did you point the gun at—at either one of these girls?

A: Um, let's make an understanding of this. I didn't want no one to get hurt.

Q: Uh-huh.

A: In the first place, the safety was on the whole time, and it wasn't a gun, it was a BB gun . . . Which the first girl knew and she probably already told you. I could tell she knew because of the way she looked at me and that's why she said "are you joking." . . . And I pointed the gun at her like this . . . And you could clearly see that it's a BB gun from the front.

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<sup>209</sup> MATZA, *supra* note 192; Sykes & Matza, *supra* note 191, at 666-69.

Juveniles involved in group crimes emphasized their minor involvement in the crime. As noted above, juveniles untutored in the law of accessorial liability more readily admitted to serving as a lookout rather than to actively participating in an armed robbery. Similarly, a juvenile who committed a burglary with several other youths insisted that he did not personally remove any of the items stolen from the homes he entered:

A: I didn't steal nothin'.

Q: Well, they're [co-defendants] saying you did.

A: Who's "they"? They . . . Dave and Cary? . . . Well, I didn't take nothin' out of the house . . . So therefore I didn't rob the house.

Q: I know you were there.

A: I was there, yeah.

Just as juveniles commit their crimes in groups and place loyalty to peers above the abstract demands of the law, they also use peer pressure to excuse or explain their actions. During several interrogations, youths claimed to be victims of negative peers and "bad influences":

Because I don't know. They—they're just—they're just the wrong crowd to hang around with. . . . Because they're always making me do the wrong—the wrong decisions.

Youths regularly sought information from officers about the progress of the investigation. Juveniles inquired about the status of their victims: "I just want [to] know is Richie alive or not." Juveniles asked about the apprehension of other youths: "Was I the only one that was taken to jail?" They offered to cooperate with police in order to secure earlier release from custody: "There wouldn't be any a way I could get out of here fast if I helped you all out?" Some juveniles' inquiries resembled the "re-initiation" of interrogation described in *Oregon v. Bradshaw*:<sup>210</sup> "What's going to happen to me now?" For example, at the conclusion of an interrogation, juveniles asked how prosecutors or judges would view their cases:

A: So what's going to happen?

Q: At this time, I'm going to put the case together and get it to the county attorney and . . .

A: What's the worst thing that can happen?

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<sup>210</sup> 462 U.S. 1039 (1983).

Juveniles also expressed concern for how a judge would react: "When I ask you if ah, I'm going to jail, I mean after all this."

### C. LENGTH OF INTERROGATION

**Table 7**  
*Length of Interrogation by Type of Offense and Weapons*

		Overall		Person		Property		Drugs		Firearms		
Time												
(minutes)	N	%	N	%	N	%	N	%	N	%	N	%
1-15	35	66	20	65	10	71	3	100	2	40		
16-30	5	9	3	74	2	86	0		0			
31-45	5	9	2	81	1	93	0		2	80		
46-60	4	8	3	90	1	100	0		0			
61-90	4	8	3	100	0		0		1	100		
Total	53	100	31		14		3		5			

  

Cases Involving Firearms							
		Overall		No Gun		Gun	
Time							
(minutes)	N	Percent	N	Percent	N	Percent	
1-15	35	66	30	79	5	33	
16-30	5	9	4	89	1	40	
31-45	5	9	3	97	2	53	
46-60	4	8	1	100	3	67	
61-90	4	8	0		4	100	
Total	53	100	38		15		

Almost all cases of proven false confessions involved lengthy interrogation.<sup>211</sup> In forty-one of the fifty-three interrogations I studied, I measured interrogation length directly either by timing the tape or because the officer orally stated the beginning and ending times of questioning. In the other cases, I estimated the length of interrogation based on the number

<sup>211</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 948-49 (reporting that police questioned 84% of suspects who confessed falsely for six hours or longer).

of pages of the transcripts.<sup>212</sup> Table 7 reports the overall length of time that police questioned juveniles, the length of time by type of offense, and the length of time by whether the offense involved a firearm.

Cases involving firearms presented the most striking feature affecting lengths of interrogations. Although police questioned only one-quarter (25%) of suspects for more than thirty minutes, they interrogated 60% of juveniles charged with primary firearms offenses for longer than thirty minutes. Because the number of cases in which a firearm violation was the primary charge was small, I compared the lengths of interrogation in all cases in which juveniles used guns—for example, armed robbery, aggravated assault, and firearms possession—with cases in which juveniles used other weapons—for example, knives, blunt instruments, and automobiles—or no weapons. Police concluded 89% of interrogations in cases in which juveniles did not use guns in thirty minutes or less. By contrast, police questioned nearly two-thirds (60%) of juveniles in all cases involving guns for more than thirty minutes. Guns provide an indicator of offense seriousness,<sup>213</sup> and police questioned these juveniles more extensively and aggressively. Leo also reported a relationship between seriousness of offense and length of interrogation.<sup>214</sup>

### 1. Coerced Confessions and Guns

For about one-third of a century prior to *Miranda*, the Supreme Court relied on the Fourteenth Amendment Due Process Clause to review confessions in state criminal cases.<sup>215</sup> By the early 1960s, the Supreme Court excluded confessions obtained by interrogation methods that raised doubts about their reliability and truthfulness, that created risks that an innocent person might confess falsely, or that overwhelmed suspects' "free-

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<sup>212</sup> By cross-tabulating the number of pages with the length of time of interrogation in the forty-one cases in which I had both, I was able to approximate the lengths of interrogations for the cases in which I had only transcripts and no start-stop times.

<sup>213</sup> Marcy Rasmussen Podkopacz & Barry C. Feld, *The End of the Line: An Empirical Study of Judicial Waiver*, 86 J. CRIM. L. & CRIMINOLOGY 449, 468 (1996) (describing the influence of guns as a significant factor influencing juvenile court judges' waiver decisions).

<sup>214</sup> Leo, *Inside the Interrogation Room*, *supra* note 82, at 297 (reporting that the more serious the crime, the longer the detectives spent questioning the suspect. High seriousness crimes were more than twice as likely—42% vs. 20%—as low seriousness crimes to result in long interrogations (more than one hour); and low seriousness crime were approximately three times as likely—53% vs. 18%—as high seriousness crimes to result in a short interrogation (less than thirty minutes). *Id.*

<sup>215</sup> See, e.g., *Developments in the Law: Confessions*, 79 HARV. L. REV. 935, 941-55 (1966); Godsey, *supra* note 59, at 474-97; White, *What Is an Involuntary Confession Now?*, *supra* note 98, at 2029-41.

will.”<sup>216</sup> Legal scholars criticize the “voluntariness” test as subjective, amorphous, and incapable of consistent judicial administration.<sup>217</sup> Despite its manifest deficiencies, “voluntariness” remains an element of *Miranda* waivers and the touchstone for admissible confessions.

The Court has identified several factors that may render a confession involuntary: physical brutality,<sup>218</sup> threats of physical or psychological harm,<sup>219</sup> prolonged interrogation,<sup>220</sup> deprivation of physical necessities such as food and water,<sup>221</sup> and the like. It has condemned promises of leniency or inducements in exchange for admissions of guilt.<sup>222</sup> Although routine interrogation techniques—minimizing offense seriousness, offering to investigate, suggesting that judges view confessions favorably—implicitly promise leniency, they fall within the ambit of judicially permitted police practices. On the other hand, courts view as problematic explicit threats and physical harm or quid pro quo promises of leniency because they might induce an innocent person to confess falsely.<sup>223</sup> Courts bar such tactics regardless of the trustworthiness of a confession in a particular case.<sup>224</sup>

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<sup>216</sup> *Developments in the Law: Confessions*, *supra* note 215, at 940-55; Jerome H. Skolnick & Richard A. Leo, *The Ethics of Deceptive Interrogation*, 11 CRIM. JUST. ETHICS 3, 4-5 (1992) (describing three rationales for “voluntariness” decisions: 1) truth-finding or reliability; 2) substantive fairness and integrity of the justice process; and 3) deterrence of offense police practices); White, *Miranda’s Failure*, *supra* note 98, at 1217-21 (reviewing the Court’s application of due process standards of voluntariness prior to and after *Miranda*); Young, *supra* note 3, at 435.

<sup>217</sup> See, e.g., White, *Miranda’s Failure*, *supra* note 98, at 1218 (noting that in the absence of extreme cases of threats, force, or prolonged interrogation, voluntariness focuses on interrogators practices and individual’s characteristics with no determinative factors).

<sup>218</sup> *Brown v. Mississippi*, 297 U.S. 278, 281-83 (1938) (condemning as involuntary a confession extracted by using physical brutality and torture).

<sup>219</sup> *Arizona v. Fulminante*, 499 U.S. 279, 283-84 (1991) (holding involuntary a confession based on fear of threats of physical violence); *Beecher v. Alabama*, 389 U.S. 35, 38 (1967) (holding involuntary a confession extracted from the wounded defendant at gunpoint and whom police threatened to kill).

<sup>220</sup> *Ashcraft v. Tennessee*, 322 U.S. 143, 154 (1944) (holding involuntary a confession obtained after thirty-six hours of continuous interrogation).

<sup>221</sup> *Brooks v. Florida*, 389 U.S. 413, 414-15 (1961) (holding involuntary a confession obtained after depriving the suspect of food and water).

<sup>222</sup> See, e.g., *Fulminante*, 499 U.S. at 283 (holding that the offer by an FBI informant-inmate to protect the imprisoned defendant from other inmates’ credible threats of physical violence rendered the defendant’s confession involuntary); White, *What Is an Involuntary Confession Now?*, *supra* note 98, at 2029-41.

<sup>223</sup> See, e.g., *Fulminante*, 499 U.S. at 285 (rejecting a rule that any promises undermine the voluntariness of confessions); White, *Miranda’s Failure*, *supra* note 98, at 1234-40 (analyzing cases and studies in which threats or promises of leniency affected voluntariness of confession).

<sup>224</sup> White, *Miranda’s Failure*, *supra* note 98, at 1235-36 (arguing that “interrogators



However, the Court in *Chavez v. Martinez*<sup>225</sup> ruled that coercive interrogation tactics do not violate a suspect's Fifth or Fourteenth Amendment rights until the state offers the statements as evidence because until the trial, one cannot be "compelled to be a witness against himself in a criminal case." *Martinez* did not endorse torture, but the fractured Court did not find brutal questioning a violation of a "clearly established constitutional right" or "conscience shocking."<sup>226</sup>

Two interrogations in this study raised issues of voluntariness.<sup>227</sup> In both cases, police questioned juveniles for the longest period of time (one to one and a half hours), used the most maximization interrogation techniques, and ultimately made explicit, quid pro quo promises of leniency. Both problematic interrogations involved efforts by police to recover guns used or stolen by juveniles. In the first case, police questioned a juvenile about possessing and firing an AK-47 automatic rifle at a house after residents ejected him from a party. Police arrested the youth a week after the incident, questioned him unsuccessfully for more than one hour, and then terminated the interrogation. The officer later returned, conducted a second interrogation, and made an explicit quid pro quo offer of leniency. She threatened the juvenile that if he did not confess, cooperate, and recover the gun, then the prosecutor would file a motion to certify him as an adult and, if convicted, he would face a mandatory minimum of five years in prison; but if he cooperated and recovered the gun, then the state would prosecute him as a juvenile. The following quid pro quo offer initiated the second interrogation:

Q: Okay. I'll get right to the point. Um. I talked to the county attorney this morning and you're being charged with possession of a firearm by a minor which is a felony. . . . Okay. I'm just . . . I'm just going to lay it out for you.

A: So am I going to jail for very long?

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should thus be prohibited from making statements (or engaging in conduct) that would be likely to lead the suspect to believe that he will suffer serious adverse consequences if he doesn't confess or be granted significant leniency if he does" because of the dangers that such offers could induce even an innocent person to confess).

<sup>225</sup> 538 U.S. 760, 770 (2003).

<sup>226</sup> *Id.* at 764-66. *Martinez* sued Officer Chavez in a § 1983 alleging a violation of his constitutional rights for Chavez' allegedly coercive interrogation. During an altercation with police, police shot Martinez five times. Chavez questioned Martinez in the emergency room immediately after the altercation where he was being treated for his life-threatening gunshot wounds. On seven occasions, Martinez told Chavez, "I'm dying," and repeatedly asked him to stop questioning, but Chavez persisted. The State never charged Martinez with a crime or attempted to use his statements against him.

<sup>227</sup> See Godsey, *supra* note 59, at 488-99.

Q: Just relax, okay? This is only going to take a couple of minutes, okay?

A: I'm going to jail.

Q: Yeah, you're going to jail, okay.

A: That's bullshit, dude.

Q: Now let me finish, because what I have here is an offer for you. One time. You're being charged with possession of a firearm by a, by an ineligible person because you're a juvenile. Okay. I'm just asking you if you understand what I said. Do you understand that? . . . Okay. And you're being charged with reckless discharge of a firearm in the city. Okay? . . . Do you understand those two things? . . . All right, what is in question, what hasn't been decided yet, at least not to my knowledge, and that won't be decided by the police, will be decided by the county attorney's office, is whether or not you will get um certified as an adult or that they'll move to certify you as an adult. Do you know what that means?

A: Yeah, I know what that means.

Q: Okay. And, like I say, that's what's still up in the air, certifying you as an adult. Okay. And here's your deal. As you know, we have not recovered the gun.

A: There ain't no fucking gun, that's what I'm trying to tell you.

Q: Okay. Like I say I don't have much time to do this and I'm not going to take much time to do this. Okay. The deal is or the offer is . . . we can get our hands on that gun, get it off the street, then maybe there is a chance that you won't be certified as an adult. [long pause] If you're certified as an adult and you're convicted of possession of firearms and you're ineligible, you'll get an adult sentence and an adult sentence is five years. There's no possibility of it being any less. That's five years in St. Cloud [Reformatory] or Stillwater [Prison] or something like that . . . Okay. Do you need time to think about it or do you want to tell me to forget it or what do you want to do?

A: I don't want to go to fucking prison for no five years.

Q: Tell me where the gun is.

A: And what . . . what . . . what happens if . . . to me if I give you the gun?

Q: Then, there's a possibility that you'll get treated like a juvenile.

A: I don't want no fucking them . . . I don't want no possibility.

Q: What are you going to do, Rocky?

A: You guys want a gun?

Q: [Long pause] So, that's what the deal is, that's what the deal is.

A: So look what I got to deal with.

Q: Yes, it's a rock and a hard place.

The juvenile agreed to the deal and accompanied police to the home of a friend where they recovered the gun. He later pled guilty and received an EJJ blended sentence.<sup>228</sup>

In the second case, two officers questioned a juvenile who participated with an adult in an armed robbery of an acquaintance at a trailer home. One officer had investigated the youth for a burglary that occurred a week earlier at his neighbor's house, during which thieves stole several firearms. They believed that the juvenile used the stolen guns in the robbery. Police questioned the youth at length (one to one and a half hours) and used a number of maximization techniques. The two officers—a woman (Q(F)) and a man (Q(M))—used gender roles to conduct a “good cop-bad cop” interrogation. The female officer initially questioned the juvenile for about fifteen minutes without success and then the male officer intervened for the first time:

Q(M): Yeah, um well, Rick, you and me, familiar with me from over at your house, right? . . . That was me. I was kind of a nice guy wasn't I, nice to your Mom, nice to you, I asked you about the burglary over at your neighbor's house. . . . [Harsh tone of voice] And I was very nice about that, wasn't I, about your involvement? And in fact, I listened to you and your Mom both say oh no, I wouldn't have done anything like that, I'm staying out of trouble, I been in trouble. Okay. Well, the game's changed a little bit here, hasn't it? Now you're here, now you're on our turf. I'm not over at your house, now you don't have mommy by your side any more. Understand that? . . . You're in some serious trouble, my friend. And I sat there . . .

A: For what?

Q(M): Agg [Aggravated] Robbery. Agg robbery. Think about this . . . Seventeen-years-old, close to being an adult, you're damned lucky you're not an adult.

A: I didn't do it.

Q(M): [interrupting] Listen! Listen. Okay. Agg robbery out of Ramsey County. And guess what? It all comes back to the burglary, doesn't it? Guess where those guns came from? They came from your neighbor's house. Guess where the neighbor's house is? Two doors from where you live. Guess when all this stuff happened? March 14th, okay. So right now, my friend, you are sitting here in some real deep doo-doo. And this is your chance. She's giving you the opportunity to tell the truth . . . [interrupting] Now listen. She's giving you the opportunity. Now I'm giving you the opportunity. And I'm not here to play games. The Circle Pines Lexington police department knows all about you. When I told them about this pick-up, man they were like, we're thrilled.

A: I'm sure they were.

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<sup>228</sup> See *supra* note 134 and accompanying text.

Q(M): You don't have any friends on the police department there. You don't have any friends in your neighborhood. You've got no friends. Right now you're on your own. You're out here dangling. You're going to be in the system before long. And I'll talk to your probation officer in Anoka County if need be.

A: Well, I didn't talk to him.

Q(M): Let me tell you something, I'll talk to him. But, this is your chance. Instead of sitting here lying and insulting us, you start coming clean with some of the information, now maybe Detective Banner, is trying to tell you, well look, maybe you went along with this, maybe Russ is the bad guy in this deal, but if you don't spill your beans, you're going down just as hard as he is. You know that? You are. You're in it just as deep as he is. So, this is time to come clean, and what I'm looking for is this. We got guns floating around out there. These cops are really nervous about that. I don't like that either. The thing that police dislike the most is knowing that there are stolen guns out there, that can potentially be used to kill somebody. Do you understand that? . . . Do you understand the seriousness of it? . . . I want to know where those guns are. And I know you were involved. . . .

Q(F): [soft female voice] Well, one thing I should point out too here, if I could, Rick, that these things, these incidents, his report and my report are so close together even though they're different jurisdictions, different counties, they would be tried together too, if we get some cooperation.

Eventually, the police offered a quid pro quo exchange of release from pre-trial detention in return for assistance recovering the stolen guns:

Q(M): The thing about it is, too, we're at a point now, with your cooperation, um, are you going to stay in lock-up? . . . I . . . I don't know. You know, that's something that's something that we could talk about here

Q(F): Absolutely.

Q(M): You know we could talk about this deal. You know . . . ah, you know, you got to work with us, though, you got to show us something, buddy.

A: I'm going to be in lock-up, no matter what.

Q(M): Hey, hey, we're, right now, Detective Banner picked you up on probable cause. You can be released at any time. You understand that? . . . Okay, you know, that's what we're saying, we're willing to . . . we're willing to work with you on it. You work with us, we'll work with you. Okay. That's what we're saying. [Long pause] Who says you've got to be here tomorrow night? Right now, Detective Banner has the say so. . . . Or even tonight. You know. So I mean, what we're looking for, Rick, we're looking for cooperation. We're looking for your help, and we can help you. This is . . . this is a two way street. But if you shut down, if you close down . . . right now, you're scared and that's understandable. Hey, everybody makes mistakes. Everybody makes mistakes. I got guys that are . . . talk to guys twice your age that do dumber things than what you've done. Okay. You're just a kid, we can write this off to youthful stupidity, right, but gosh, I mean, when you get to be eighteen-, nineteen-, twenty-years-old, you're going through the adult system, you know a little different

ballgame. Right now, you're a juvenile, you're fortunate for that. This other kid is not so lucky. But, you know, that's what we're trying to work with you on here. You're a juvenile.

Q(F): What we're saying is that if you get the information, Richard, that I feel is genuine, and I think you know what that means, that I could make some phone calls today and try to get you out today.

The juvenile confessed to the robbery shortly thereafter. In both cases, police made explicit quid pro quo offers of leniency—trial as a juvenile rather than prosecution as an adult and immediate release from pretrial detention—in exchange for admissions, assistance, and cooperation. In both instances, the juveniles confessed and assisted the officers to recover the guns. In both cases, the juveniles pled guilty, received the deals the police offered, and waived any objection they might have raised to the admissibility of their statements or to the evidence they provided.

## 2. Collateral Evidence

Police interrogate suspects to elicit confessions or admissions. They also use suspects' answers to obtain leads to other evidence and witnesses, to identify codefendants, and the like.<sup>229</sup> Obtaining collateral evidence appears to be a secondary and not especially productive purpose of interrogation.<sup>230</sup> Table 8 reports the number and proportion of cases in which interrogation yielded additional evidence beyond incriminating admissions.

Police obtained some additional evidence in 15% of cases. Most commonly (11%), juveniles identified or corroborated the identity of other participants in the crime. In some instances, police conducted photo line-ups and had juveniles identify their confederates.

Q: [officer presenting suspect with photo array] I want you to look at this and tell me if you recognize anybody in this photo line-up.

A: Donald.

Q: Which one's Donald? Is there anything in that you haven't told us now, you can obviously hear this going on next door. Right?

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<sup>229</sup> See, e.g., Yale Kamisar, *On the "Fruits" of Miranda Violations, Coerced Confessions, and Compelled Testimony*, 93 MICH. L. REV. 929, 1000 (1995) (arguing that "a principal purpose—if not the primary purpose—of interrogation is to obtain information such as the location of physical evidence").

<sup>230</sup> See, e.g., Cassell & Hayman, *supra* note 65, at 880-81 (noting that "police rarely obtained incriminating fruits"); Wald et al., *supra* note 83, at 1593-97; Witt, *supra* note 83, at 326-28.

In addition to identifying participants, juveniles drew diagrams of the crime scene and noted the location of each participant. In a few cases, juveniles provided officers with leads to physical evidence. In the two instances described above, police accompanied juveniles to recover guns.

**Table 8**  
*Interrogation Leading to Other Evidence*

<b>Other Evidence</b>	<b>N</b>	<b>Percent</b>
None	45	85
ID Co-Defendants	6	11
Physical Evidence	4	8
Diagram	3	6
Witness	1	2

  

<b>Frequency of Other Types of Evidence</b>	<b>N</b>	<b>Percent</b>
0	45	85
1	5	9
2	1	2
3	1	2
4	1	2
Total	53	100

#### VII. POLICY IMPLICATIONS

I could not have conducted this research without access to the *Scales* tapes and transcripts and the associated files. These analyses provide some empirical corroboration of developmental psychologists' laboratory research on adolescents' competence during questioning. In the earlier study of juveniles' ability to exercise *Miranda* rights and in this one, sixteen-and seventeen-year-old juveniles appear to exhibit relatively adult-like competence in the interrogation room. These older delinquents charged with serious crimes appeared to understand *Miranda* warnings and, in about the same proportion as adults, exercised their rights.<sup>231</sup> After the vast majority (80%) waived their *Miranda* rights, police interrogated them in

<sup>231</sup> Compare Feld, *Juveniles' Competence to Exercise Miranda Rights*, *supra* note 10, at 82 (reporting that 80% of juveniles waived their *Miranda* rights), with Leo, *Inside the Interrogation Room*, *supra* note 82, at 276 (reporting that 78% of adults waived their *Miranda* rights); see also *supra* notes 158-162 and accompanying text (reporting other *Miranda* waiver studies).

much the same way as they did adults. Police used similar interrogation techniques as in Leo's research and with similar effectiveness. These juvenile suspects and Leo's adults exhibited comparable ability to cooperate or to resist the tactics employed. Police conducted most interrogations in relatively short periods of time and under relatively non-coercive circumstances.

#### A. MANDATORY RECORDING OF ALL INTERROGATION

The similarities in waiver rates, interrogation tactics, and suspects' responses between these older delinquents and Leo's adults suggest that courts, legislatures, and police policymakers should regulate interrogation practices directly rather than provide special procedural protections for sixteen- and seventeen-year-old juveniles.<sup>232</sup> Within the past decade, near-unanimity has emerged among policy groups and scholars to mandate recording of interrogations to reduce coercion, to minimize dangers of false confessions, and to increase the visibility and transparency of the process.<sup>233</sup> Recording creates an objective record of testimonial evidence.<sup>234</sup> It

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<sup>232</sup> Most analysts either endorse a parental presence requirement to assist juveniles during interrogation, *see supra* notes 31-32 and accompanying text, or restrictions on the types of interrogation tactics that police may employ when they question juveniles. *See, e.g.*, McMullen, *supra* note 2, at 1005 (advocating for a per se ban on the use of all deceptive techniques and false evidence when police interrogate juveniles).

<sup>233</sup> *See, e.g.*, GUDJONSSON, PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS, *supra* note 69, at 22 (arguing that "tape-recording, or video-recording, of police interviews protects the police against false allegations as well as protecting the suspect against police impropriety"); Cassell, *supra* note 99, at 553 (arguing for videotaping interrogations unless suspect objects to recording); Drizin & Colgan, *Let the Cameras Roll*, *supra* note 119, at 341-45, 382-89 (describing the impetus behind and the politics of Illinois' adoption of limited requirements to record interrogations); Steven A. Drizin & Marissa J. Reich, *Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions*, 52 *DRAKE L. REV.* 619 (2004); Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 682 (arguing that audio- or videotaping creates an objective record of police questioning to which all parties—police, suspects, prosecutors, defense attorneys, and juries—may refer to determine the truth); Magid, *supra* note 3, at 1210 (arguing that videotaping could ally most concerns about false confessions); Lawrence Schlam, *Police Interrogation of Children and State Constitutions: Why Not Videotape the MTV Generation?*, 26 *U. TOL. L. REV.* 901 (1995); White, *False Confessions and the Constitution*, *supra* note 97, at 153 (1997) (arguing that recording interrogations enables courts to scrutinize police practices; deters police from using abusive interrogation methods; facilitates courts' judgments about the reliability and voluntariness of statements; and reduces reliance on untrustworthy confessions).

<sup>234</sup> *See, e.g.*, Drizin & Leo, *Problem of False Confession in the Post-DNA World*, *supra* note 5, at 997-98 (arguing that "taping leads to a higher level of scrutiny (by police officials as well as others) that will deter police misconduct during interrogation; improve the quality of interrogation practices; and thus increase the ability of police to separate the innocent from the guilty").

provides an independent basis by which to resolve credibility disputes between police and defendants about *Miranda* warnings, waivers, or statements.<sup>235</sup> It reduces the risks of false confessions.<sup>236</sup> A complete record enables the fact finder to determine whether a statement contains facts uniquely known to the perpetrator or whether police supplied those facts to the suspect during interrogation.<sup>237</sup> Recording protects police from false claims of abuse, protects defendants whose credibility is compromised by being charged, and protects innocent suspects from false confessions and wrongful convictions.<sup>238</sup> Recording enhances police professionalism and contributes to more effective investigations.<sup>239</sup>

Police must record the entire investigation—all preliminary interviews and initial interrogations—rather than just a final statement.<sup>240</sup> Only a complete record of every interaction can protect against a final “voluntary” statement that ratifies an earlier coerced statement or against a false

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<sup>235</sup> Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 687 (noting that one reason some police oppose recording is that it provides an objective independent basis on which to resolve credibility disputes and shifts “the balance of advantage between police and suspects in the ‘swearing contest’”).

<sup>236</sup> Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 997 n.681 (reporting that police fully recorded only 2 of 125 proven false confessions cases and partially recorded only 15 of the remaining false confessions).

<sup>237</sup> E.g., White, *False Confessions and the Constitution*, *supra* note 97, at 132 (arguing that while a statement that leads directly to physical evidence increases its trustworthiness, the existence of corroborating physical evidence “is not likely to provide independent proof of the confession’s reliability”).

<sup>238</sup> Cassell, *supra* note 99, at 554 (citing instances of false confessions in which tape recordings enabled suspects to demonstrate that police fed them the information contained in the confessions); White, *False Confessions and the Constitution*, *supra* note 97, at 155 (arguing that recording does not adversely affect any legitimate law enforcement interests and provides prosecutors with more convincing evidence with which to negotiate better pleas and obtain convictions).

<sup>239</sup> Drizin & Reich, *supra* note 233, at 625 (noting that recording enables police to confront suspects’ prior inconsistent and contradictory statements); Leo, *The Impact of Miranda Revisited*, *supra* note 71, at 683. A complete recording enables an officer to review details of an interrogation that might not have been included in written notes in light of newly obtained facts. SULLIVAN, *supra* note 126, at 6-19 (reporting the results of a nationwide survey of police departments regarding their interrogation recording practices).

<sup>240</sup> GUDJONSSON, *PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS*, *supra* note 69, at 23 (arguing that recording all questioning is necessary to understand what really occurred during interrogation); White, *False Confessions and the Constitution*, *supra* note 97, at 133 (arguing for recording to evaluate whether police communicated critical facts to suspect); White, *What Is an Involuntary Confession Now?*, *supra* note 98, at 2026 (proposing that police record all communications between suspects and interrogators to enable judges to determine whether the police provided suspects with unique facts during untaped interactions).



confession in which suspects repeat back unique facts about the crime previously furnished by the police.<sup>241</sup>

Despite the value of taping interrogations, recordings are not self-executing. If police record an interrogation, then who will review the tape? Few advocates of mandatory taping seem to appreciate the administrative burden it places on the justice system.<sup>242</sup> Police must record each interview as well as interrogation from the start of an investigation without knowing whether they will obtain useful statements. A party who offers a tape in evidence at trial normally furnishes the court with a transcript.<sup>243</sup> However, both the prosecution and defense must review a recording to determine whether it has evidentiary value before they can decide whether to pay for its transcription. Police reports may alert prosecutors to an interrogation's evidentiary value, but they may not disclose *Miranda* errors, coercive questioning, or exculpatory evidence that prosecutors must disclose to the defense.<sup>244</sup> A defense attorney, paralegal, or law clerk should review each tape to determine whether police gave improper warnings or used improper techniques. The quality of recordings can be poor. Because of tedium and

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<sup>241</sup> *E.g.*, EVANS, POLICE INTERVIEWS, *supra* note 93, at 28 (noting that many tapes of British interrogations contained references to interviews conducted prior to the current recording); Kassin, *On the Psychology of Confessions*, *supra* note 95, at 225 (noting that accurate determinations of voluntariness and guilt depend on fact finders seeing "not only the final confession but the conditions that prompted it and the sources of the details that it contained"); White, *False Confessions and the Constitution*, *supra* note 97, at 133 (arguing that without access to a complete transcript, "courts generally should not accept the government's assertion that a confession is reliable because of the facts about the defendant's knowledge that it reveals"); White, *What Is an Involuntary Confession Now?*, *supra* note 98, at 2025 (endorsing independent corroboration to assure the trustworthiness of a confession).

<sup>242</sup> White, *What Is an Involuntary Confession Now?*, *supra* note 98, at 2027 (recognizing that "[r]equiring judges to scrutinize interrogation tapes . . . would be a substantial expenditure of judicial resources . . . [and] a process that would sometimes take several hours").

<sup>243</sup> Minnesota Rule of Criminal Procedure 11.02 provides that at the Omnibus Hearing (suppression), "[i]f either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record." MINN. R. CRIM. P. 11.02 (2005).

<sup>244</sup> *See, e.g.*, Strickler v. Greene, 527 U.S. 263, 281-82 (1999) (requiring the prosecutor to disclose evidence to the defense that is "favorable to the accused, either because it is exculpatory, or because it is impeaching"); Brady v. Maryland, 373 U.S. 83, 86 (1963) (finding a constitutional duty for the prosecution to disclose to the defendant exculpatory evidence within its possession). Evans conducted a detailed comparison of the police reports of the outcomes of interrogations with the taped interviews and reported substantial discrepancies: "In some cases the police record of the interview stated that the suspect had made a confession and in others there was no clear statement about whether or not the suspect had confessed when in the researchers' judgement the suspect had clearly denied the offence." EVANS, POLICE INTERVIEWS, *supra* note 93, at 47.

transcription errors, someone must verify the accuracy of the transcript with the original recording.<sup>245</sup>

Despite these burdens, recording is simple, easy, and absolutely essential to increase the visibility and reliability of police interrogation. The successful experiences of several states and many police departments demonstrate the administrative feasibility of recording.<sup>246</sup> There are *no* legitimate objections to requiring police to record and prosecutors to provide a tape and transcript when the state offers a defendant's statements as evidence. Courts control the evidence they allow parties to introduce in delinquency and criminal proceedings, and judges *must* insist on the best evidence.<sup>247</sup> Police create the conditions—*isolation, incommunicado questioning, and stress*—that make after-the-fact determinations of what occurred during interrogation difficult. No legitimate reasons exist to rely on fallible, biased, and contradictory human memories about secretive and stressful events that occurred several months earlier when it is so easy to obtain an objective and unimpeachable record of the same event.

#### B. LIMITING THE LENGTH OF INTERROGATIONS

Courts and legislatures should consider limiting the length of time that police may interrogate suspects. The Court long has recognized that very lengthy interrogations produce involuntary confessions.<sup>248</sup> Although the Supreme Court consistently has avoided prescribing explicit time limits for *Terry* stops, detentions, or interrogations,<sup>249</sup> state courts and legislatures

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<sup>245</sup> EVANS, POLICE INTERVIEWS, *supra* note 93, at 47 (reporting that when cases go to court, litigants tended to rely on police reports rather than to review the taped interviews); GUDJONSSON, PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS, *supra* note 69, at 85 (noting that transcripts are subject to error: "The simple expedient of checking the typed transcript with the audiotape recording cannot be overlooked, for, without exception, discrepancies were unearthed. In a number of these cases these were major errors, which if left unchallenged would present a serious example of misrepresentation.").

<sup>246</sup> See *supra* notes 120-127 and accompanying text.

<sup>247</sup> The Wisconsin Supreme Court, in *In re Jerrell C.J.*, exercised its supervisory power and required police to record all custodial interrogations of juveniles:

Plainly, this court has authority to adopt rules governing the admissibility of evidence. . . . [T]his court can regulate the flow of evidence in state courts, including the nature of the evidence developed and presented by law enforcement. Today, we regulate the evidence of juvenile confessions resulting from custodial interrogations.

699 N.W.2d 110, 121 (Wis. 2005).

<sup>248</sup> See, e.g., *Ashcraft v. Tennessee*, 322 U.S. 143 (1944) (holding involuntary a confession obtained only after thirty-six hours of nearly continuous interrogation).

<sup>249</sup> See, e.g., *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (holding that a pretrial detention of less than forty-eight hours before probable cause determination does not constitute "unreasonable" delay); *Sharpe v. United States*, 470 U.S. 675 (1985) (refusing to

possess the competency to do so. The majority of all interrogations in this study were surprisingly brief and police concluded three-quarters (75%) in less than thirty minutes. Moreover, the brevity of questioning observed here is consistent with every empirical study that report that police complete the vast majority of interrogations in less than sixty minutes.<sup>250</sup> By contrast, prolonged interrogation—especially in conjunction with youthfulness, mental retardation, or other psychological vulnerabilities—is strongly associated with eliciting false confessions.<sup>251</sup>

Obviously, this study does not lend itself to prescribing specific limits to the lengths of interrogation. However, courts should at least create a sliding-scale presumption that police coerced an involuntary confession as the length of interrogation increases. Police complete nearly all interrogations of juveniles and adults in less than one or two hours. By contrast, they extract the vast majority of false confessions only after interrogating suspects for six hours or longer; those time limits could frame the strength and length of the presumption.<sup>252</sup> A recent review of 125 cases of proven false confession reported that questioning lasted less than six hours in 16% of cases, continued between six and twelve hours in one-third (34%) of cases, persisted for between twelve and twenty-four hours in another one-third of cases (39%), and continued from one to three days in the remaining 11% of cases.<sup>253</sup> Based on the short duration of routine

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hold that detentions in excess of twenty minutes exceed *Terry* limits).

<sup>250</sup> See, e.g., Leo, *Inside the Interrogation Room*, *supra* note 82, at 279 (reporting that officers concluded 71% of interrogations in one hour or less and questioned suspects for more than two hours in only 8% of cases); *supra* Section VI.C.

<sup>251</sup> See, e.g., Drizin & Leo, *Problem of False Confession in the Post-DNA World*, *supra* note 5, at 944-45, 948-949; White, *False Confessions and the Constitution*, *supra* note 97, at 143 (arguing that “an interrogation’s length seems directly related to its likelihood of producing a false confession. In nearly all of the documented cases involving false confessions by suspects of normal intelligence, the interrogation proceeded for several hours, generally more than six.”).

<sup>252</sup> Inbau and Reed conclude that four hours is sufficient to obtain a confession in virtually all interrogations. INBAU, REID, BUCKLEY & JAYNE, *supra* note 3, at xiv; see also Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 948 (reporting the lengths of interrogations and concluding that “interrogation-induced false confessions tend to be correlated with lengthy interrogations in which the innocent suspect’s resistance is worn down”); Kassin & Gudjonsson, *The Psychology of Confession Evidence: A Review*, *supra* note 7, at 60 (arguing for a time limit on the lengths of interrogations because research shows that “in proven false-confession cases in which records were available, the interrogations lasted for an average of 16.3 hours”); Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4, at 459 (noting that in fifteen of sixteen cases of false confessions which included the length of interrogation, police questioned suspects for six hours or more, usually continuously); White, *False Confessions and the Constitution*, *supra* note 97, at 145.

<sup>253</sup> Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at

interrogation and the lengthy time associated with police-induced false confessions, some analysts contend that “[r]egardless of the interrogation practices employed, an interrogation should not be allowed to extend beyond some prescribed limit, say six hours.”<sup>254</sup> Because some suspects may confess falsely to terminate a seemingly-endless interrogation, police should advise them of the maximum length of permissible questioning as part of the *Miranda* warning.<sup>255</sup>

### C. POLICE USE OF FALSE EVIDENCE DURING INTERROGATION

The Supreme Court does not prohibit police from deceiving suspects, and trial courts regularly admit confessions elicited with false evidence ploys.<sup>256</sup> Some justify police trickery and deceit on utilitarian and crime control grounds.<sup>257</sup> Because many, if not most, suspects lie, the law should afford police similar latitude. Although lies and deception violate social norms, sometimes they may be necessary to elicit confessions from guilty suspects.

Although I noted some possible instances of false evidence ploys,<sup>258</sup> initially we encounter some definitional difficulties. Should courts prohibit police from feigning sympathy or creating an illusion of a therapeutic

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948 (noting that the lengths of interrogation were not available in all of these cases in which suspects confessed falsely).

<sup>254</sup> White, *Miranda's Failure*, *supra* note 98, at 1233; *see also* Leo, *Inside the Interrogation Room*, *supra* note 82, at 282 (arguing that one form of coercion was “interrogation [that] lasted an unreasonable amount of time (more than six hours)”).

<sup>255</sup> White, *False Confessions and the Constitution*, *supra* note 97, at 144 (arguing that suspects who believe that interrogation will continue until they give a statement should be told at the outset of questioning of the maximum permissible length of questioning).

<sup>256</sup> *See, e.g.*, *Frazier v. Cupp*, 394 U.S. 731 (1969) (upholding the validity of police falsely telling defendant that a confederate already had confessed and implicated him); *Miller v. Fenton*, 796 F.2d 598 (3d Cir. 1986) (allowing police to manipulate a suspect by assuring him he would receive “help” rather than punishment); Gohara, *supra* note 4, at 798-803 (summarizing post-*Miranda* Supreme Court cases involving police use of trickery, deception, and false evidence during interrogation).

<sup>257</sup> *See, e.g.*, Magid, *supra* note 3, at 1197 (arguing that deception in interrogation is necessary to obtain confessions and convictions which protect both victims and innocent people wrongfully charged); McMullen, *supra* note 2, at 986 (noting that “judges, like police, feel that some psychological trickery is necessary to draw confessions out of guilty suspects”); Skolnick & Leo, *supra* note 216, at 9-10 (discussing the morality of deception during interrogation). Despite his advocacy for a prohibition on deception, McMullen acknowledges, “The greatest objection to a ban on deceptive interrogations of juveniles is likely utilitarian: without some trickery, police will be less able to extract confessions from suspects, and thus less likely to convict the guilty and clear the innocent.” McMullen, *supra* note 2, at 999.

<sup>258</sup> *See supra* note 183-184 and accompanying text.

relationship with suspects whom they detest?<sup>259</sup> Is the use of themes to neutralize guilt or provide justifications impermissibly deceptive? May police falsely tell a suspect that her homicide victim survived to minimize the seriousness and induce a confession? Have police lied by omission if they fail to inform a suspect that her victim died and obtain a confession to an assault rather than a homicide?<sup>260</sup> May police confront a suspect with false evidence—for example, made-up or non-existent accomplice confessions, witness identification, or physical or scientific evidence?<sup>261</sup> Should courts distinguish between verbal lies and falsified physical evidence or laboratory reports that may subsequently contaminate the criminal process?<sup>262</sup> How do we reconcile these conflicts in a justice system that values fairness, integrity, and individual autonomy and that also protects public safety and punishes guilty offenders?<sup>263</sup> While we deplore

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<sup>259</sup> See, e.g., *Frazier*, 394 U.S. at 739 (allowing deception that included feigned sympathy that the suspect was a victim of homosexual advances); Magid, *supra* note 3, at 1168 (noting that interrogators may speak sympathetically to suspects for whom they feel “utter revulsion”).

<sup>260</sup> See, e.g., *Colorado v. Spring*, 479 U.S. 567 (1987) (approving the questioning of a defendant about firearms violation even though police intended to parlay interrogation into a seemingly unrelated murder investigation).

<sup>261</sup> See, e.g., Gohara, *supra* note 4, at 801-03 (summarizing cases that find confessions voluntary despite police misrepresentation of the existence of physical evidence; fabricated statements of accomplices implicating suspect; false promises of leniency; misrepresented intention to prosecute or seriousness of offense; false promises to secure psychiatric treatment; and misleading statements about the strength of the evidence available); McMullen, *supra* note 2, at 985 (summarizing cases in which police used testimonial and physical false evidence ploys); Skolnick & Leo, *supra* note 216, at 7 (describing examples of false evidence police use during interrogation: an accomplice has identified the suspect; physical evidence exists that established his guilt; an eyewitness or victim identified him; and interrogation following a “failed” polygraph examination).

<sup>262</sup> See, e.g., *State v. Cayward*, 552 So. 2d 971, 973 (Fla. Dist. Ct. App. 1989) (distinguishing between “police making false *verbal* assertions to a suspect” and cases in which “police actually manufactured false documents” to elicit a confession); *State v. Patton*, 826 A.2d 783, 789 (N.J. Super. Ct. App. Div. 2003) (excluding confession induced by tape recording fabricated by police of witnesses who purported to see defendant commit the crime); Skolnick & Leo, *supra* note 216, at 9 (noting that manufactured evidence may mislead prosecutors who may erroneously introduce it and contaminate the criminal justice process); White, *Miranda’s Failure*, *supra* note 98, at 1243 (distinguishing between misrepresenting the strength of evidence or witness identification and misrepresenting forensic or scientific evidence, which suspect may perceive as irrefutable).

<sup>263</sup> See, e.g., White, *Miranda’s Failure*, *supra* note 98, at 1211 (noting a nearly irreconcilable conflict between “commitments to promoting law enforcement’s interest in obtaining confessions and to protecting individuals from over-reaching interrogation practices”).

lying and deception, should we renounce those tactics absolutely, even if it means that serious criminals remain unconvicted and unpunished?<sup>264</sup>

Due to the paucity of empirical research, we do not know how frequently, effectively, or accurately police use false evidence ploys during interrogation.<sup>265</sup> We do not know how many *additional* guilty suspects respond to false evidence ruses who did not respond previously when confronted with true evidence. Police-induced false confessions occur as “collateral damage” with some regularity during interrogation,<sup>266</sup> but we do not know how often.<sup>267</sup> Because we do not know the prevalence of false evidence tactics or false confessions, we cannot know how false evidence ploys affect the ratios of true confessions by guilty people versus false confessions by innocent ones.<sup>268</sup> Similarly, we cannot estimate whether legitimating or prohibiting lying during interrogation will contribute to or diminish police perjury at suppression hearings or trials.<sup>269</sup>

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<sup>264</sup> Magid, *supra* note 3, at 1198 (arguing that police use deception to elicit confessions from some suspects and that “experience has taught them that it works”); Skolnick & Leo, *supra* note 216, at 7-9 (exploring the moral ambiguity of police deception in the context of fighting crime). Magid further contends that “[g]iven that there is no proof of an unacceptably high rate or number of false confessions, there is no basis for imposing on society the large cost of lost true confessions in order to avoid the much smaller cost of false confessions.” Magid, *supra* note 3, at 1205.

<sup>265</sup> See, e.g., Young, *supra* note 3, at 247 (“The actual number of cases in which police lie is not known, but there are scores of reported decisions involving police lying in interrogations.”).

<sup>266</sup> See, e.g., Drizin & Leo, *Problem of False Confessions in Post-DNA World*, *supra* note 5 (analyzing 125 cases of false confessions); Leo & Ofshe, *Consequences of False Confessions*, *supra* note 4 (analyzing 60 cases of false confessions).

<sup>267</sup> See *supra* notes 101-119 and accompanying text.

<sup>268</sup> Magid, *supra* note 3, at 1192 (arguing that we do not know how often juveniles give false confessions or what role false evidence ploys played in eliciting untrue statements); White, *Miranda’s Failure*, *supra* note 98, at 1222 (arguing that “police-induced false confessions occur frequently enough to create a serious societal problem and that current interrogation practices tend to produce these false confessions”).

<sup>269</sup> Allowing police to lie to suspects during interrogation may weaken normative restraints on lying in other stages of the criminal justice system. For example, police testimony in “drowsy” cases after the Supreme Court’s decision in *Mapp v. Ohio* provides one indicator of police perjury tailored to fit legal restraints. See, e.g., Donald A. Dripps, *Police, Plus Perjury, Equals Polygraphy*, 86 J. CRIM. L. & CRIMINOLOGY 693, 698-701 (1996) (arguing that police perjury is widespread at suppression hearings and advocating for the use of polygraph evidence to resolve the swearing contest between police and defendants); Gohara, *supra* note 4, at 832-34 (arguing that police lying subverts the truth-finding purpose of trials); Magid, *supra* note 3, at 1185 (rejecting the slippery slope argument and contending that “police officers know, and should be expected to know, what is appropriate and lawful during the many different duties they perform—undercover agent, beat officer, interrogator, affiant, and witness”); Young, *supra* note 3, at 464-67 (justifying lying during interrogation may encourage police perjury at suppression hearings and when

Scholars debate the desirability of categorically prohibiting police from confronting suspects with false evidence.<sup>270</sup> Some recommend that judges focus the reliability of statements and decide whether a particular strategy elicited a false confession,<sup>271</sup> while others advocate sweeping legislative prohibitions.<sup>272</sup> Analysts recognize the difficulty of distinguishing between false evidence—such as a claim to possess non-existent fingerprints—and exaggerated evidence—such as the certainty of a witness' identification—or anticipatory evidence that police *will* uncover during an on-going investigation.<sup>273</sup> Police draft offense reports and interrogation notes contemporaneously, and judges at a suppression hearing may find it difficult to determine whether and when police had evidence to which they referred during questioning. Moreover, even if courts or legislators categorically prohibit use of false evidence ploys, then prosecutors, defense attorneys, and judges must establish a causal relationship between false or misrepresented evidence and a defendant's subsequent decision to confess.<sup>274</sup>

We know that deceit, trickery, and false evidence play a significant role in eliciting some false confessions<sup>275</sup> and that *Miranda* does not

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testifying).

<sup>270</sup> Compare, e.g., White, *Miranda's Failure*, *supra* note 98, at 1230 (advocating for a prohibition on certain types of "pernicious" interrogation practices because of their tendency to produce untrustworthy confessions), with Magid, *supra* note 3, at 1187 (calling for courts to focus on the reliability of the confession in each case to protect innocent suspects); see also Gohara, *supra* note 4, at 796 (urging the judicial prohibition of the use of deception during interrogation).

<sup>271</sup> Magid, *supra* note 3, at 1185.

<sup>272</sup> Gohara, *supra* note 4, at 835 (advocating for the legislative prohibition of all misrepresentation and trickery during custodial interrogation).

<sup>273</sup> McMullen, *supra* note 2, at 983-85 (categorizing police deception as false promises of leniency and lies about the strength of evidence); Young, *supra* note 3, at 427-32 (proposing a typology of lying about the strength of the case, the use of false evidence, misrepresentations about degree of culpability, and lies about the circumstances of interrogation itself).

<sup>274</sup> See, e.g., *Holland v. McGinnis*, 963 F.2d 1044, 1051 (7th Cir. 1992) (ruling that notwithstanding police trickery, deception did not alter the suspect's belief in his actual guilt or innocence or his decision to confess); Ofshe & Leo, *Decision to Confess Falsely*, *supra* note 2, at 1115 (observing that interrogation is a cumulative influence process that makes it difficult to identify a single element that courts should prohibit); White, *Miranda's Failure*, *supra* note 98, at 1233 (noting that police use various combinations of interrogation tactics, which "makes it more difficult to identify particular tactics that are substantially likely to produce untrustworthy confessions").

<sup>275</sup> See Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 907-23; McMullen, *supra* note 2, at 974 (advocating for the prohibition of police deception when interrogating juveniles); White, *False Confessions and the Constitution*, *supra* note 97, at 149 (advocating for "safeguards prohibiting police interrogators from

significantly restrain the interrogation practices police use following waivers.<sup>276</sup> Kassir argues that confronting suspects with false evidence contributes to false confessions and puts the innocent especially at risk.<sup>277</sup> Innocent people who waive their rights in a “guilt presumptive” process confront officers whose preconceptions and professional expectancies lead them to misinterpret and more aggressively question those who deny guilt.<sup>278</sup> Confronting innocent people with false evidence—laboratory reports, fingerprints or footprints, eyewitness identification, failed polygraph tests—may cause them to disbelieve their own innocence or to confess falsely because they believe that police possess overwhelming evidence.<sup>279</sup> Innocent suspects may succumb to despair and confess to escape the rigors of interrogation in the naïve belief that later investigation will establish their innocence rather than seek to confirm their guilt.<sup>280</sup> Good police investigation should precede every interrogation, and officers should possess enough true evidence with which to confront a suspect that they should not need to resort to false evidence. If they do not have substantial evidence of guilt, then they increase the likelihood that they are questioning an innocent person from whom false evidence may elicit a false confession.<sup>281</sup>

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misrepresenting the strength of the evidence against the suspect”).

<sup>276</sup> Gohara, *supra* note 4, at 795 (arguing that “so long as the police comply with *Miranda*, statements obtained through deceptive interrogation practices will almost invariably be admissible”). Once police obtain a valid waiver, they can use powerful psychological manipulations with few legal restraints. White, *Miranda’s Failure*, *supra* note 98, at 1219 n.54 (noting that in 1999 and 2000, state courts suppressed only nine post-*Miranda* waiver confessions as involuntary).

<sup>277</sup> Kassir, *On the Psychology of Confessions*, *supra* note 95, at 218.

<sup>278</sup> *Id.* at 219.

<sup>279</sup> See, e.g., White, *False Confession and the Constitution*, *supra* note 97, at 149 (recommending that courts closely scrutinize misrepresentations that mislead the suspect as to the strength of the evidence against him); White, *Miranda’s Failure*, *supra* note 98, at 1243 (arguing that “[m]isrepresentations relating to forensic or scientific evidence are particularly likely to convince suspects that further resistance is futile”); Young, *supra* note 3, at 477 (advocating for a ban on police lying to suspects).

<sup>280</sup> Kassir, *On the Psychology of Confessions*, *supra* note 95, at 224 (arguing that innocent people falsely accused believe in “a just world and in the transparency of their own blameless status. . . . [T]hose who stand falsely accused also have faith that their innocence will become self-evident to others. As a result, they cooperate with police, often not realizing that they are suspects, not witnesses; they waive their rights to silence, counsel, and a lineup; they agree to take lie-detector tests; they vehemently protest their innocence, unwittingly triggering aggressive interrogation behavior; and they succumb to pressures to confess when isolated, trapped by false evidence, and offered hope via minimization and the leniency it implies. Yet without independent exculpatory evidence, their innocence is not easily detected by others.”).

<sup>281</sup> *Id.* at 225 (arguing that “[b]ecause police are more likely in nature to have proof



## VIII. CONCLUSION

The Court's decisions in *Fare* and *Alvarado* treated juveniles as the functional equals of adults during interrogation. Over the past quarter-century, developmental psychological research consistently has emphasized adolescents' inability to understand or exercise *Miranda* rights and their lack of competence in legal proceedings. Recent research on false confessions further underscores the unique vulnerability of youth and reports that police obtained more than one-third (35%) of proven false confessions from suspects under the age of eighteen.<sup>282</sup> When I began this project, I expected the worst because no one had empirically studied routine interrogation of juveniles.

The Court's rulings in juvenile interrogation cases—*Haley*, *Gallegos*, *Gault*, *Fare*, and *Alvarado*—excluded statements elicited from those fifteen years of age or younger and admitted those obtained from sixteen- and seventeen-year-old youths.<sup>283</sup> This de facto functional line closely tracks developmental psychological research that reports juveniles fifteen years of age and younger lack the ability to exercise *Miranda* rights while older juveniles perform more or less on par with adults in the interrogation room.

Developmental psychologists report that older juveniles exhibit relatively adult-like competence, and this study corroborates that sixteen- and seventeen-year-old juveniles appear to understand and to exercise their *Miranda* rights the same way as do adults.<sup>284</sup> This consistency inferentially

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against perpetrators than innocents, the practice of confronting suspects with real evidence, or even just their own inconsistent statements, is a necessary tool that should increase the diagnosticity of the statements ultimately elicited. To the extent that police misrepresent the evidence, however, both guilty and innocent suspects become similarly trapped, reducing diagnosticity.”).

<sup>282</sup> Drizin & Leo, *Problem of False Confessions in Post-DNA World*, *supra* note 5, at 944-45.

<sup>283</sup> In *Gallegos v. Colorado*, the Court ruled involuntary the confession obtained from “a child of 14.” 370 U.S. 49, 54 (1962). In *Haley v. Ohio*, the Court reversed the conviction of a fifteen-year-old “lad” from whom police obtained a confession at five in the morning after nearly six hours of continuous interrogation by relay teams of police officers. 332 U.S. 596, 599-601 (1948). In *In re Gault*, the Court reversed the conviction of fifteen-year-old Gerald Gault and granted all delinquents procedural protections at trial, including the privilege against self-incrimination. 387 U.S. 1, 42-57 (1967). By contrast, the Court in *Fare v. Michael C.* upheld the waiver of *Miranda* rights by a sixteen and a half-year-old with prior experience with the police. 442 U.S. 705, 707 (1979). And in *Yarborough v. Alvarado*, the Court declined to find the circumstances surrounding the interrogation of a seventeen-year-old youth to be custodial and admitted his statement. 541 U.S. 652, 667-69 (2004).

<sup>284</sup> Compare Feld, *Juveniles' Competence to Exercise Miranda Rights*, *supra* note 10, at 83-84 (reporting that 80% of juveniles waived their *Miranda* rights), with Leo, *Inside the Interrogation Room*, *supra* note 82, at 280-81 (reporting that 76% of adults waived their *Miranda* rights).

bolsters their research findings that juveniles fifteen years of age and younger lack competence to exercise *Miranda* rights.<sup>285</sup> If developmental psychologists are right about one aspect of adolescents' competence, then they are likely correct about the other as well. Accordingly, even if the *Miranda* framework is adequate for older adolescents, it may provide insufficient protection for younger juveniles. Courts and legislatures should formally adopt the functional line that the Court drew and that psychologists discern between the competencies of youths sixteen years of age and older and those fifteen years of age and younger, and provide additional protections for the more vulnerable children.<sup>286</sup>

This study is also remarkably congruent with Leo's observations of police interrogation of adults. Once these juveniles waived their *Miranda* rights, police used the same strategies and tactics to question them. The officers seemed to work from the same standard script and use the same techniques—The Reid Method. These juveniles responded to those tactics, cooperated or resisted, and provided incriminating evidence at about the same rate as did adults. As in Leo's study, the police interrogated the vast majority of these juveniles for a relatively brief period of time. In short, the law treats juveniles just like adults, and police question them just as they do older suspects. After more than a decade of experience with *Scales* tapes, police interrogation in Ramsey County appears more benign and less coercive than popular accounts might suggest.

We still know remarkably little about how police actually interrogate juvenile or adult suspects. The research literature and this study identify three critical policy issues—recording, length of interrogation, and false evidence. First, recording *every* interrogation in its *entirety* would make the process more transparent; increase the reliability of statements; protect police from false claims of abuse; protect defendants from true coercion; reduce the risks of false confessions; enhance police professionalism; and contribute to development of more effective interrogation practices. Recording all interrogations provides criminologists, police professionals, and other scholars with opportunities to study what occurs in the interrogation room. Without adequate empirical knowledge, we cannot formulate sensible policies to protect innocent citizens against miscarriages of justice or to assure conviction of guilty ones. Systematically recording

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<sup>285</sup> Police obtain more false confessions from youths fifteen years of age and younger than they did from sixteen- and seventeen-year-olds, even though the latter commit a much larger proportion of all crimes and of serious crimes. See Drizin & Leo, *Problem of False Confessions in the Post-DNA World*, *supra* note 5, at 945 (reporting that youths aged sixteen and seventeen accounted for 16% of the false confessions, while youths aged fifteen or younger accounted for 19%).

<sup>286</sup> See *supra* notes 28-30 and accompanying text.

*every* interrogation would enable us to study effective techniques, to better calibrate the risks and benefits of different tactics to elicit true confessions from guilty defendants, and to learn better to discern between guilty and innocent suspects.

Based on the limited empirical evidence available, police conclude most interrogations very quickly, even those involving serious crimes. Police in this study concluded three-quarters of interrogations in thirty minutes or less, and none exceeded one and one-half hours. These findings are consistent with every other study of routine interrogation. Conversely, other studies have shown that police extract most false confessions at the end of lengthy and grueling questioning. Police elicited 85% of proven false confessions only after interrogations conducted for six hours or longer. Further empirical studies will enable us better to determine whether lengthy interrogations and the concomitant false confessions are inter-related outliers or occur within the normal range of interrogation. More extensive studies will enable us better to calibrate a “sliding scale” presumption of coercion based on length of interrogation.

Are confronting suspects with false evidence and lying during interrogation necessary evils? Fraud and duplicity by state actors *are* evil, and the law should not condone them unless convinced that the ends justify the means and the benefits outweigh the risks. How often do police use false evidence ploys? How necessary are they to elicit true confessions from guilty suspects? How much marginal benefit do false evidence tactics add to uncontroversial ones, like confronting suspects with true evidence? How much more often do these exceptional tactics elicit false confessions from innocent suspects? If states do not prohibit the practice, then recording interrogations would make these tactics more transparent and visible. As more states record interrogations, opportunities will increase to replicate this type of study in other jurisdictions, with better research designs and more representative samples. A broader and deeper body of knowledge will enable legal policymakers to craft better strategies to protect the innocent and to convict the guilty.