BEHIND CLOSED DOORS: WHAT REALLY HAPPENS WHEN COPS QUESTION KIDS

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Much of what passes for knowledge about police interviewing practices is no more than assumption and conjecture. Such knowledge probably owes more to television, films, or novels than to any informed understanding of what happens in police interview rooms. Because of the secrecy that has always surrounded police-suspect interviews and the traditional reluctance of police officers to allow outsiders access to the interview room, debates on the crucial questions of interview procedures had to be conducted in something of an information vacuum.1

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INTRODUCTION

Police interrogation raises difficult legal, normative, and policy questions because of the State’s need to solve crimes and obligation to protect citizens’ rights. These issues become even more problematic when police question juveniles. For more than a century, justice policies have reflected two competing visions of youth: vulnerable and immature versus responsible and adult-like. A century ago, Progressive reformers emphasized youths’ immaturity and created a separate juvenile court to shield children from criminal trials and punishment.² By the end of the twentieth century, lawmakers adopted “get tough” policies, which equated adolescents with adults and punished youths more severely.³


Over the past three decades, these changes have transformed the juvenile court from a social welfare agency into a second-class criminal court. The direct results—institutional confinement—and collateral consequences—transfer to criminal court, use of delinquency convictions to enhance sentences, or sex offender registration—preclude fewer protections for interrogating juveniles than questioning adults.

For more than a century, the Supreme Court’s interrogation decisions attempted to balance the state’s need for information from suspects with protecting autonomy and freedom from police coercion. The Fifth Amendment privilege against self-incrimination is the bulwark of the adversary process and presumes equality between the individual and the state. The Court has used three constitutional strategies—Fourteenth Amendment due process voluntariness, Sixth Amendment right to counsel, and Fifth Amendment privilege against self-incrimination—to regulate interrogation, restrict coercive pressures, and preserve the adversarial balance. The Court in *Miranda v. Arizona* used the Fifth Amendment to

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6 The theoretical idea of an adversarial model is that a passive umpire adjudicates a dispute between two equal parties: the state and defendant. See Mirjan Damaska, *Structures of Authority and Comparative Criminal Procedure*, 84 YALE L.J. 480, 524 (1975). The Fifth Amendment privilege furthers three interrelated values. One is to promote factual accuracy—to insure the reliability of the process. See *In re Gault*, 387 U.S. 1, 47 (1967) (“The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth.”). A second is to prevent governmental oppression by making the individual unavailable to the state as a source of evidence and limiting the pressure the state can bring to bear on the individual in pursuit of its own goals. *See id.* (“One of its purposes is to prevent the state, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his conviction.”). Third, the adversarial process promotes respect for individual dignity and autonomy. *See id.*

7 The Court’s Fourteenth Amendment due process decisions focus on whether a suspect’s statement was voluntary under the totality of the circumstances. Mark A. Godsey, *Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self-Incrimination*, 93 CALIF. L. REV. 465, 490–91 (2005). See generally *Developments in the*
fashion the *Miranda* warning, protecting suspects from the compulsive pressures of custodial interrogation. Over three decades, *Miranda* doctrine has transmogrified from a safeguard for suspects to a safe-harbor for police. If police warn a suspect and secure a waiver, then courts will admit nearly every subsequent statement regardless of the tactics used to obtain it.

Despite the importance of interrogation, we know remarkably little about what actually happens when police question suspects. Police, prosecutors, defense lawyers, and judges do not have the time or training to systematically analyze interrogation practices. Police have resisted incursions into interrogation rooms by behavioral scientists, whom they regard as potential critics. Law professors, psychologists, and criminologists who write about interrogation lack access to venues where police question suspects. Appellate courts base rules of interrogation on a biased sample of unrepresentative cases. Most of what we think we know about interrogation derives from aberrational cases—false-confessions and wrongful convictions—or from television programs and movies that misleadingly depict police questioning suspects. In the four decades since *Miranda*, we have few empirical studies about what actually happens in an interrogation room, and none about how police question juveniles.

This Article begins to fill the empirical void. It focuses on the role of interrogation at the inquisitorial heart of our nominally adversarial

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8 See [*Law: Confessions*, 79 Harv. L. Rev. 935, 954–84 (1966) (discussing the shift from common law to due process analyses of voluntariness)]. The Court excluded statements police elicited by psychological or physical coercion because they were unreliable, overwhelmed a person’s free will, and used tactics a free society cannot condone.

The Court’s Sixth Amendment decisions concluded that suspects needed tactical and strategic advice of counsel at interrogation because a confession was a critical stage that determined the outcome of proceedings. E.g., *Massiah v. United States*, 377 U.S. 201, 205 (1964); *Escobedo v. Illinois*, 378 U.S. 478, 490 (1965).


10 See [*REBECCA MILNE & RAY BULL, INVESTIGATIVE INTERVIEWING: PSYCHOLOGY AND PRACTICE* 74 (1999)] [hereinafter Milne & Bull, Investigative Interviewing].


12 This article is part of a larger study that examines police interrogation practices, how juveniles respond to their questioners, the impact of *Miranda* waivers on case processing, the role of parents at interrogations, and the impact of geographic locale, race, and gender on
It analyzes quantitative and qualitative data of 307 interrogations police conducted of sixteen- and seventeen-year-old youths whom prosecutors charged with felonies. Unlike most states, Minnesota has required police to record interrogations for nearly two decades. The tapes and transcripts enable me to describe what happens when police interrogate serious young offenders. These analyses also test developmental psychologists’ hypotheses about adolescents’ competence to exercise *Miranda* rights. For three decades, psychologists have questioned whether young people possess the competence to exercise rights. While their research demonstrates younger and mid-adolescent youths are not as competent as adults, it suggests most youths sixteen years of age and older understand *Miranda* on par with adults.

Part I reviews the law governing interrogation of juveniles and contrasts it with psychologists assessments of juveniles’ competence to exercise rights. Part II examines interrogation practices, post-*Miranda* impact-studies and empirical research on interrogation. Part III describes the study’s data and methodology. Part IV presents quantitative and qualitative data about what happens when police question serious offenders. It focuses on juveniles’ waivers of *Miranda* rights, techniques police use to question them, length of interrogations, and outcomes. Part V recommends policy changes based on these analyses.

I. INTERROGATING JUVENILES

The Supreme Court has decided more cases about interrogating youths than any other issue in juvenile justice. Although the Court has repeatedly cautioned that youthfulness adversely affects juveniles’ ability to exercise *Miranda* or make voluntary statements, it has not required special procedures to protect young suspects. Rather, it endorsed the adult waiver standard of “knowing, intelligent, and voluntary” to gauge juveniles’ *Miranda* waivers.16
A. Interrogating Juveniles: Youthful Vulnerability and Adult Standards

In the decades prior to Miranda, the Court adopted a protectionist stance and cautioned trial judges to examine closely how youthfulness affected the voluntariness of confessions.\footnote{17} The Court in Haley v. Ohio found involuntary the confession of a fifteen-year old boy whose youth and inexperience left him vulnerable\footnote{18} to “overpowering” police interrogation.\footnote{19} The Gallegos v. Colorado Court found age was a special circumstance\footnote{20} that rendered a fourteen-year-old boy’s confession involuntary.\footnote{21} In In re Gault, the Court reiterated its concerns over youthfulness adversely affecting the voluntariness of juveniles’ statements.\footnote{22} The Gault Court granted delinquents most procedural rights—notice, hearing, counsel, and cross-examination—based on Fourteenth Amendment due process.\footnote{23} It also granted Fifth Amendment privilege

\begin{footnotes}
\item[17] Supreme Court decisions about youth reflect competing liberationist and protectionist policies. Feld, Bad Kids, supra note 2, at 106–08; Jessica Owen-Kostelnik et al., Testimony and Interrogation of Minors: Assumptions About Maturity and Morality, 61 AM. PSYCHOL. 286, 287–90 (2006). A paternalistic stance protects children from their own immature judgment, provides them additional safeguards, and denies rights because of their presumed inability to exercise them responsibly. \textit{Id.} at 288. A liberationist model portrays youths as autonomous and adult-like and treats them as it does other responsible actors. \textit{Id.}

\item[18] \textit{Haley}, 332 U.S. at 599–600 (“That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. . . . \[W\]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic.”).

\item[19] \textit{Id.} at 600–01 (“The age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police toward his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction.”).

\item[20] 370 U.S. 49, 54 (1962) (“[A] 14-year-old boy, no matter how sophisticated . . . is not equal to the police in knowledge and understanding . . . and . . . is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. . . . Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had.”).

\item[21] \textit{Id.} at 55 (“The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or a friend—all these combine to make us conclude that the formal confession on which this conviction may have rested was obtained in violation of due process.”).

\item[22] See 387 U.S. 1, 52 (1967) (“[A]uthoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.”); \textit{see also} Thomas Grisso, Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis, 68 Calif. L. Rev. 1134, 1137 (1980) [hereinafter Grisso, Juveniles’ Capacities to Waive Miranda Rights] (“Gault recognized that even greater protection might be required where juveniles are involved, since their immaturity and greater vulnerability place them at a greater disadvantage in their dealings with the police.”).

\item[23] Gault, 387 U.S. at 30; Feld, Criminalizing Juvenile Justice, supra note 4, at 154–55 (analyzing constitutional bases for Court’s juvenile due process decisions).
\end{footnotes}
against self-incrimination in delinquency proceedings.\textsuperscript{24} It recognized that the Fifth Amendment contributes to accurate fact-finding \textit{and} maintains the adversarial balance between the individual and the state.\textsuperscript{25}

The Court’s due process decisions fostered a convergence between juvenile and criminal courts and converted the former into a scaled-down criminal court.\textsuperscript{26} Some analysts advocate relaxed safeguards in juvenile courts to foster a rehabilitative or preventive mission.\textsuperscript{27} In the words of two such analysts:

Permitting a juvenile to remain silent during interrogation or trial could easily reduce reliability and efficiency in the typical case, concerns that arguably trump the lesser autonomy interests at stake in the juvenile context. . . . Many technical rules that have developed around \textit{Miranda} would not need to be followed by law enforcement officials.\textsuperscript{28}

\textsuperscript{24} \textit{Gault}, 387 U.S. at 49–50. In extending the Fifth Amendment privilege against self-incrimination to delinquency proceedings, the Court held:

It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to “criminal” involvement. In the first place, juvenile proceedings to determine “delinquency,” which may lead to commitment to a state institution, must be regarded as “criminal” for purposes of the privilege against self-incrimination.

\textit{Id.}\textsuperscript{25} Id. at 47. The Court recognized a number of significant benefits of the Fifth Amendment privilege against self-incrimination:

The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not mere fruits of fear or coercion, but are reliable expressions of the truth. . . . One of its purposes is to prevent the state, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his convictions.


\textsuperscript{28} \textsc{Christopher Sloborg} \& \textsc{Mark R. Fondacaro}, \textit{Juveniles at Risk: A Plea for Preventive Justice} 116–17 (2011); see also Scott \& Grisso, \textit{Developmental Incompetence}, supra note 27, at 796 (advocating a reduced competency standard in juvenile court).
However, the Supreme Court’s opinions in *In re Winship* and *Breed v. Jones* recognized juvenile courts’ criminal aspects, and *Gault* highlighted their adversarial character.

The Court in *Fare v. Michael C.* held that the “totality of the circumstances” test used to evaluate adults’ waivers governed juveniles’ waivers as well.29 By the Court’s reasoning, *Miranda* provided an objective basis to evaluate waivers.30 The Court denied that youths’ developmental differences required special procedural protections31 and required children to assert their rights clearly.32

*Miranda* provided that if police question a suspect who is in custody—arrested or “deprived of his freedom of action in any significant way”—they must administer a warning.33 The Court in *J.D.B. v. North Carolina* considered “whether the *Miranda* custody analysis includes consideration of a juvenile suspect’s age,”34 and reasoned that age was an objective fact that would affect whether a person felt restrained.35

Most state courts use *Michael C.*’s totality framework for juveniles and adults.36 Trial judges consider characteristics of the offender—age, education, I.Q., and prior police contacts—and the context of interrogation—location, methods, and length of questioning—when they evaluate *Miranda* waivers.37 Appellate courts do not assign controlling weight to

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30 442 U.S. at 724–25.

31 See id. at 729–30 (Marshall, J., dissenting) (arguing that the Court should have adopted broader protection of juvenile suspects by holding that a juvenile’s request for any person who represents their interests be treated as a Fifth Amendment invocation).


34 *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401 (2011); see also id. at 2406 (concluding that courts should consider how a thirteen-year-old youth’s age would affect his feelings of custodial restraint).

35 Id. “[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality.” Id.


37 See, e.g., *Michael C.*, 442 U.S. at 727 (1979); *West v. United States*, 399 F.2d 467, 469 (5th Cir. 1968).
any factor,38 and the totality approach provides no meaningful check on trial judges’ discretion.39 Judges find valid waivers by children as young as ten years of age with no prior police contacts, with limited intelligence, and without parental assistance.40 About ten states require a parent to assist juveniles in the interrogation room,41 although commentators question the policy assumptions or utility of their participation.42 The Minnesota Supreme Court has rejected a parental presence requirement and uses Michael C.’s totality approach to gauge juveniles’ Miranda waivers.43

38 Feld, Bad Kids, supra note 2, at 118.


40 See Feld, Juveniles’ Waiver of Legal Rights, supra note 39, at 112–13; Feld, Juveniles’ Competence to Exercise Miranda Rights, supra note 11, at 32 n.18; Feld, Police Interrogation of Juveniles, supra note 11, at 224 n.19; King, supra note 29, at 456–57.


43 See, e.g., State v. Burrell, 697 N.W.2d 579, 597 (Minn. 2005) (noting that repeatedly requesting a parent before and after a Miranda warning may render a waiver or statement involuntary); State v. Nunn, 297 N.W.2d 752, 755 (Minn. 1980); State v. Loyd, 212 N.W.2d 671, 677 (Minn. 1973).
B. Developmental Psychology, Judgment, and Self-Control

Roper v. Simmons barred states from executing offenders for murder they committed when younger than eighteen years of age because of reduced culpability.44 Graham v. Florida extended Roper and banned life without parole sentences for non-homicide crimes.45 Miller v. Alabama and Jackson v. Hobbs banned mandatory life sentences without parole for youths who kill.46 The Court’s “children are different” jurisprudence reasoned that states could not punish youths as severely as adults. The Court attributed juveniles’ tendency to act impulsively and without full appreciation of consequences to their immature judgment and limited self-control.47 Greater susceptibility to peer influences diminished their criminal responsibility.48 These developmental characteristics—immaturity, impulsivity, and susceptibility to social influences—heighten youths’ vulnerability in the interrogation room.

Developmental psychologists distinguish between cognitive ability and maturity of judgment. The former bears on youths’ ability to understand and make a knowing and intelligent waiver and the latter on voluntariness and susceptibility to coercive pressures. By mid-adolescence, most youths’ cognitive abilities compare with adults—they can distinguish right from wrong and reason similarly.49 However, the ability to...

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44 Roper v. Simmons, 543 U.S. 551, 569 (2005). Roper attributed their reduced culpability to three factors:

[A] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults . . . . [T]hese qualities often result in impetuous and ill-considered actions and decisions; (2) [J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and (3) [T]he character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.

Id. See generally Feld, A Slower Form of Death, supra note 3 (analyzing the Court’s three rationales to support reduced culpability).

45 Graham v. Florida, 130 S. Ct. 2011, 2026 (2010) (“Developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.”).


47 Roper, 543 U.S. at 569; Graham, 130 S. Ct. at 2032.

48 Roper, 543 U.S. at 569; Graham, 130 S. Ct. at 2032.

49 See 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, 407–09 (1999) [hereinafter Steinberg & Cauffman, The Elephant in the Courtroom]; see also Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice 164 (2008) [hereinafter Scott & Steinberg, Rethinking Juvenile Justice] (comparing cognitive competence of adolescents and adults); Laurence Steinberg et al., Are Adolescents Less Mature Than Adults? Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop”, 64 AM. PSYCHOL. 583, 584 (2009) [hereinafter Steinberg et al., Are...
make good choices with complete information in a laboratory differs from the ability to make adult-like decisions under stressful conditions with incomplete information.\textsuperscript{50} Research conducted by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice distinguishes between cognitive ability and psychosocial maturity of judgment—risk assessment, temporal orientation, capacity for self-regulation, and susceptibility to external influences.\textsuperscript{51} While most youths sixteen years of age or older exhibit cognitive abilities comparable with adults, they do not develop mature judgment and adult-like competence to make decisions until their twenties.\textsuperscript{52}

1. Immature Judgment and Risk Perception

Youths’ short- and long-term time perspective, risk perception, and appreciation of future consequences differ from adults.\textsuperscript{53} Differences in

\textit{Adolescents Less Mature Than Adults?} (noting that the American Psychological Association affirmed the maturity of adolescent girls to make abortion decisions without parental assistance).

\textsuperscript{50} See L. P. Spear, \textit{The Adolescent Brain and Age-Related Behavioral Manifestations}, 24 \textit{NEUROSCIENCE & BIOBEHAVIORAL REV.} 417, 423 (2000) (“[U]nlike adults, adolescents may exhibit considerably poorer cognitive performance under circumstances involving everyday stress and time-limited situations than under optimal test conditions.” (citation omitted)); Laurence Steinberg & Elizabeth Cauffman, \textit{Maturity of Judgment in Adolescence: Psychological Factors in Adolescent Decision-Making}, 20 \textit{LAW & HUM. BEHAV.} 249, 812–13 (1996) [hereinafter Steinberg & Cauffman, \textit{Maturity of Judgment in Adolescence}] (“These findings from laboratory studies are only modestly useful, however, in understanding how youths compare to adults in making choices that have salience to their lives or that are presented in stressful unstructured settings (such as the street) in which decision-makers must rely on personal experience and knowledge.”); see also Steinberg et al., \textit{Are Adolescents Less Mature Than Adults?}, supra note 49, at 586 (“[W]hereas adolescents and adults perform comparably on cognitive tests measuring the sorts of cognitive abilities . . . that permit logical reasoning about moral, social, and interpersonal matters—adolescents and adults are not of equal maturity with respect to the psychosocial capacities . . . such as impulse control and resistance to peer influence.”).


\textsuperscript{53} See Scott & Steinberg, \textit{Blaming Youth}, supra note 52, at 813 (“[E]ven when adolescent cognitive capacities approximate those of adults, youthful decision-making may still differ due to immature judgment. The psychosocial factors most relevant to differences in judgment include: (a) peer orientation, (b) attitudes toward and perception of risk, (c) temporal perspective, and (d) capacity for self-management. . . . [I]mmature judgment can affect outcomes because these developmental factors influence adolescent values and preferences that drive the cost-benefit calculus in the making of choices.”).
knowledge, experience, and impulse control contribute to poorer decisions. A person must be able to think ahead, delay gratification, and restrain impulses to exercise good judgment, and adolescents underestimate risks, use a shorter frame, and focus on gains rather than losses. Sixteen- and seventeen-year-olds are more present-oriented and perceive fewer risks than do either younger or older subjects. Youth regard not engaging in risky behaviors differently than do adults because the appetite for risk peaks at sixteen or seventeen years of age and then declines into adulthood.

2. Neuroscience: Judgment and Impulse Control

Neuroscientists attribute differences in how adolescents and adults think and behave to brain maturation. The prefrontal cortex (PFC) of
the frontal lobe of the brain regulates executive functions such as abstract thinking, strategic planning, and impulse control—skills necessary to exercise legal rights.\textsuperscript{59} The amygdala (the limbic system) controls emotional and instinctual behavior—the fight-or-flight response—and in stressful situations, adolescents rely more heavily on the amygdala and less heavily on the PFC than do adults.\textsuperscript{60} Novel circumstances and emotional arousal challenge youths’ ability to exercise self-control.\textsuperscript{61} Graham noted that impaired judgment, risk-calculus, and short-term perspective adversely affected youths’ ability to exercise rights and impaired defense representation.\textsuperscript{62}

\textit{During Postadolescent Brain Maturation}, 21 J. NEUROSCIENCE 8819 (2001) [hereinafter Sowell et al., \textit{Mapping Continued Brain Growth}] (discussing significant changes in brain structure prior to adulthood); Spear, \textit{supra\ }note 50, at 438 ("[T]he adolescent brain is a brain in flux, undergoing numerous regressive and progressive changes in mesocorticlimbic regions.");

\textsuperscript{59} See Staci A. Gruber & Deborah A. Yurgelun-Todd, \textit{Neurobiology and the Law: A Role in Juvenile Justice?}, 3 Ohio St. J. Crim. L. 321, 323 (2006) ("The frontal cortex has been shown to play a major role in the performance of executive functions including short term or working memory, motor set and planning, attention, inhibitory control and decision making."); Tomás Paus et al., \textit{Structural Maturation of Neural Pathways in Children and Adolescents: In Vivo Study}, 283 SCIENCE 1908, 1908–10 (1999).

\textsuperscript{60} See David E. Arrendondo, \textit{Child Development, Children’s Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making}, 14 STAN. L. \& POL’Y REV. 13, 15 (2003) ("Adolescents tend to process emotionally charged decisions in the limbic system, the part of the brain charged with instinctive (and often impulsive) reactions. Most adults use more of their frontal cortex, the part of the brain responsible for reasoned and thoughtful responses. This is one reason why adolescents tend to be more intensely emotional, impulsive, and willing to take risks than their adult counterparts."); Abigail A. Baird et al., \textit{Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents}, 38 J. AM. ACAD. CHILD \& ADOLESCENT PSYCHIATRY 195, 198 (1999).

\textsuperscript{61} See Scott & Steinberg, \textit{Blaming Youth}, \textit{supra\ }note 52, at 816, (summarize the interaction between the PFC—the executive functions—and the limbic system—associated with impulsive or instinctual behavior).

[R]egions of the brain implicated in processes of long-term planning, regulation of emotion, impulse control, and the evaluation of risk and reward continue to mature over the course of adolescence, and perhaps well into young adulthood. At puberty, changes in the limbic system—a part of the brain that is central in the processing and regulation of emotion—may stimulate adolescents to seek higher levels of novelty and to take more risks; these changes also may contribute to increased emotionality and vulnerability to stress. At the same time, patterns of development in the prefrontal cortex, which is active during the performance of complicated tasks involving planning and decision-making, suggest that these higher-order cognitive capacities may be immature well into middle adolescence.

\textit{Id.}; \textit{see also Allison Redlich et al., Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults}, 21 BEHAV. SCI. \& L. 393, 403 (2003) [hereinafter Redlich et al., \textit{Pre-Adjudicative and Adjudicative Competence}].

\textsuperscript{62} Graham v. Florida, 130 S. Ct. 2011, 2032 (2010) ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings. . . . Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense.").
C. Juveniles’ Ability to Meet Legal Standards

Despite the Court’s repeated references to developmental differences, most states use adult legal standards to gauge juveniles’ Miranda waivers. If youths differ from adults in understanding Miranda, in ability to exercise rights, or in susceptibility to social influences, then the law may hold them to a standard that few can meet. Some juveniles simply do not understand the words of Miranda warnings. Police use hundreds of versions of the Miranda warning. Psychologists contend that the vocabulary, concepts, and reading levels required to understand Miranda exceed the ability of many adolescents. Some concepts—the meaning of a right, the term appointed to secure counsel, and waive—require a high-school education and render Miranda incomprehensible to many juveniles. Dumbed-down juvenile warnings often are longer than those used for adults and inhibit understanding.

1. Understanding Miranda: Knowing and Intelligent

Thomas Grisso has studied juveniles’ ability to exercise Miranda rights for more than three decades and reports that many youths do not adequately understand the warning. Half (55.3%) of juveniles, as con-
trasted with less than one-quarter (23.1%) of adults, did not understand at least one of the warnings and only one-fifth (20.9%) of juveniles, as compared with almost half (42.3%) of adults, grasped the entire warning. Sixteen- and seventeen-year-old juveniles understood *Miranda* about as well as did adults, but substantial minorities of both groups misunderstood some components. Age-related improvements in comprehension appear in other studies. Younger teens consistently understood *Miranda* even less well than did those in their mid-teens. *Miranda*’s language put the warning beyond the comprehension of many mid-teen delinquents, and its concepts beyond the grasp of many younger juveniles. Even youths who understand *Miranda*’s words may be una-

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70 See Kassin et al., *Police-Induced Confessions*, supra note 39, at 8 ("[U]nderstanding of adolescents ages 15–17 with near-average levels of verbal intelligences tends not to have been inferior to that of adults. But youths of that age with IQ scores below 85, and average youth below age 14, performed much poorer, often misunderstanding two or more of the warnings."); Jodi Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 LAW & HUM. BEHAV. 723, 736 (2005) [hereinafter Viljoen & Roesch, *Competence to Waive Interrogation Rights*] ("Youth’s general intellectual ability, verbal ability, attention, and executive functioning increased with age. This indicates that young adolescents may not yet have acquired the cognitive abilities necessary to adequately understand and participate in legal proceedings.").

71 See Grisso, *Juveniles’ Capacities to Waive Miranda Rights*, supra note 22, at 1160 (reporting that the majority of juveniles younger than fifteen years of age “failed to meet both the absolute and relative (adult norm) standards for comprehension . . . [and] 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."); Jodi Viljoen et al., *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 BEHAV. SCI. & L. 1, 9 (2007) [hereinafter Viljoen et al., *Adjudicative Competence and Comprehension*] (reporting substantially impaired understanding by youths younger than sixteen).

72 See Rogers et al., *Comprehensibility and Content*, supra note 64, at 80 ("The synergistic effects of poor reading comprehension, low intelligence, and comorbid mental disorders are likely to have catastrophic effects on *Miranda* comprehension and subsequent reasoning."); Richard Rogers, *A Little Knowledge Is a Dangerous Thing . . . Emerging Miranda Research and Professional Roles for Psychologists*, 63 AM. PSYCHOL. 776, 779 (2008) [hereinafter Rogers, *A Little Knowledge*].

ble to exercise the rights as well as adults. Juveniles do not fully appreciate the function or importance of rights, or view them as an entitlement, rather than as a privilege that authorities allow, but which they may unilaterally withdraw.

A person must be able to understand proceedings, make rational decisions, and assist counsel to be competent to stand trial. Development limitations impair youths’ competence, similar to how mental illness or retardation may render adults incompetent. Many juveniles younger than fourteen years of age were as severely impaired as adults found incompetent to stand trial, and many older adolescents exhibited substantial impairments. Their compromised competence equally affects their ability to exercise Miranda rights.
2. Susceptibility to Adult Authority and Social Influence: Voluntariness

Roper and Graham emphasized that youths’ susceptibility to social influences reduced culpability.  
Miranda characterized custodial interrogation as inherently compelling because police dominate the setting, control information, and create psychological pressures to comply. 
Youths are not full-fledged citizens, and we expect them to answer questions posed by parents, teachers, police, and other adults. Children questioned by authority figures acquiesce more readily to suggestion during questioning. 
They seek an interviewer’s approval and respond more readily to negative pressure. 
Under stress of a lengthy interrogation, they may impulsively confess falsely rather than consider the consequences. 

80 See Miranda v. Arizona, 384 U.S. 436, 455–58 (1965). See generally GISLI H. GUDJONSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK (2003) [hereinafter GUDJONSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS] (“[I]nterrogative suggestibility [is defined as ‘t]he extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as the result of which their subsequent behavioral response is affected.’” (citation omitted)).

81 See Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C. L. Rev. 891, 1005 (2004) [hereinafter Drizin & Leo, The Problem of False Confessions] (finding that juveniles’ ‘eagerness to comply with adult authority figures, impulsivity, immature judgment, and inability to recognize and weigh risks in decision-making,” puts them at greater risk to confess falsely); Kassin et al., Police-Induced Confessions, supra note 39, at 8 (“[Y]outh under age 15 . . . are more likely to believe that they should waive their rights and tell what they have done, partly because they are still young enough to believe that they should never disobey authority.”). Juveniles are more vulnerable to suggestion during questioning than adults. 


83 See Steinberg & Cauffman, Maturity of Judgment in Adolescence, supra note 50, at 261; see also GRISO, JUVENILES’ WAIVER OF RIGHTS, supra note 42, at 158–59; Grisso et al., Juveniles’ Competence to Stand Trial, supra note 67, at 357; Owen-Kostelnik et al., supra note 17, at 292 (“[J]uvenile offenders . . . are more susceptible than adult offenders to negative feedback from authority figures, because they demonstrate an increased tendency to change their previous answers . . .”).
The Court requires suspects to invoke *Miranda* rights clearly and unambiguously. However, some groups—juveniles, females, or racial minorities—may speak indirectly or assert rights tentatively to avoid conflict with those in power. *Davis v. United States* recognized that requiring suspects to invoke rights clearly could prove problematic for some. Even older youths who understand *Miranda* may feel more constrained, more susceptible to power differentials, and less able to voluntarily relinquish rights.

II. *Miranda* and Interrogation: Then and Now

The *Miranda* Court had no direct evidence or empirical studies of how police questioned suspects. It had no way to assess how psychological tactics like isolation, confrontation, and minimization affected a suspect’s willingness to talk. The Court used training manuals as a proxy for interrogation practices. The techniques recommended in Inbau and Reid’s *Criminal Interrogation and Confessions*—the leading manual at the time—provided a surrogate for actual practices. The Reid Method remains the leading training program in the United States and underlies most contemporary interrogation practice, and its ubiqu-

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86 Davis, 512 U.S. at 460 (“[R]equiring a clear assertion of the right to counsel might disadvantage some suspects who—because of fear, intimidation, lack of linguistic skills, or a variety of other reasons—will not clearly articulate their right to counsel although they actually want to have a lawyer present.”).
87 FELD, KIDS, COPS, CONFESSIONS, supra note 12, at 58.
88 See Miranda v. Arizona, 384 U.S. 436, 448 (1966) (“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.”).
91 See Miranda, 384 U.S. at 449 n.9 (“The methods described in Inbau & Reid, Criminal Interrogation and Confessions . . . have had rather extensive use among law enforcement agencies . . . .”)
uity provides a research framework.\textsuperscript{93} Miranda noted that isolating a suspect to eliminate psychological supports and using interrogation tactics to overcome resistance creates the compulsive pressures of custodial interrogation.\textsuperscript{94}

A. Interrogation Tactics

Once police conclude a suspect is probably guilty, they build the strongest case they can for the prosecution. The police try to outsmart the suspect, overcome his resistance, and elicit an incriminating statement.\textsuperscript{95} After the suspect waives his or her rights, police may use the same strategies they used prior to Miranda to obtain a confession.\textsuperscript{96}

1. The Reid Method: Accusatory Interrogation

Social psychologists describe the Reid Method’s manipulations as maximization and minimization techniques.\textsuperscript{97} Maximization tactics “convey the interrogator’s rock-solid belief that the suspect is guilty and that all denials will fail. Such tactics include making an accusation, overriding objections, and citing evidence, real or manufactured, to shift
the suspect's mental statement from confident to hopeless. Minimization techniques "provide the suspect with moral justification and face-saving excuses for having committed the crime in question. Using this approach, the interrogator offers sympathy and understanding; normalizes and minimizes the crime." Psychologists contend that many Reid techniques imply threats or promise leniency.

The Reid Method claims that interrogators can use verbal and non-verbal cues—behavioral symptom analysis—to distinguish between guilty and innocent suspects and to question them accordingly. It prescribes a nine-step sequence to increase stress, weaken resistance, provide face-saving rationales, and encourage confessions. The Reid Method does not modify interrogation tactics to accommodate developmental differences between adolescents and adults. It teaches police

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98 Kassin et al., Police-Induced Confessions, supra note 39, at 12.

99 Id. at 14.

100 See id. at 12 ("[I]t is particularly common for interrogators to communicate as a means of inducement, implicitly or explicitly, a threat of harsher consequences in response to the suspect's denials." (citation omitted)); Kassin & Gudjonsson, supra note 89, at 43 ("[T]he 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.'").

101 See Meyer & Reppucci, Police Practices & Perceptions, supra note 82, at 760 (describing how Reid Method interrogation begins with a "Behavioral Analysis Interview," where police decide if an interviewee is a "prime suspect" by observing whether the interviewee exhibits verbal and non-verbal deceptive behaviors such as "gaze aversion, unnatural body postures," "touching and scratching," "lack of confidence, and delays in response"). Psychologists question the theoretical underpinnings and scientific validity of the Reid Method. See id. ("Unfortunately, . . . many of these verbal and non-verbal behaviors have little discriminant function in the identification of liars versus truth-tellers." (citation omitted)); see also Gudjonsson, The Psychology of Interrogations and Confessions, supra note 80, at 80, at 12 ("[n]belie and [Reid] 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.").

102 See Fred E. Inbau et al., Criminal Interrogation and Confessions 212–16 (4th ed. 2004); Leo, Police Interrogation and American Justice, supra note 92, at 119 ("[P]sychological interrogation . . . is a strategic, multistage, goal-directed, stress-driven exercise in persuasion and deception, one designed to produce a very specific set of psychological effects and reactions in order to move the suspect from denial to admission."); see also Gudjonsson, The Psychology of Interrogations and Confessions, supra note 80, at 10–21 (presenting the bases of the Reid Method: "[b]reaking down denials and resistance" and "[i]ncreasing the suspect’s desire to confess"); Stephen J. Schulhofer, Reconsidering Miranda, 54 U. Chi. L. Rev. 435, 452 (1987) [hereinafter Schulhofer, Reconsidering Miranda] (arguing that the tensions police create in the custodial environment are designed to overcome a suspect’s reluctance to talk).

the interrogation “principles . . . discussed with respect to adult suspects are just as applicable to the younger ones.”

2. PACE and PEACE: Investigative Interview

Interrogations in the England and Wales are less accusatory and designed to elicit information rather than to secure a confession. The Police and Criminal Evidence Act (PACE 1984) required police to record interrogations. The mnemonic PEACE—“Planning and Preparation,” “Engage and Explain,” “Account,” “Closure,” and “Evaluate”—describes the five components of the British interview approach. Police, psychologists, and lawyers collaborated to develop a less confrontational, information-gathering method of interviewing. Whereas Reid

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104 INBAU ET AL., supra note 102, at 298. Reid-trained police view adolescents to be as competent as adults and use similar tactics with both. See Meyer & Reppucci, Police Practices & Perceptions, supra note 82, at 761; see also Jessica O. Kostelnik & N. Dickon Reppucci, Reid Training and Sensitivity to Developmental Maturity in Interrogation: Results from a National Survey of Police, 27 BEHAV. SCI. & L. 361, 370–74 (2009) [hereinafter Kostelnik & Reppucci, Reid Training and Sensitivity] (reporting that Reid-trained officers are less sensitive to developmental differences than are non-Reid trained officers and use with younger offenders the same techniques used with adults: isolation, psychological manipulation, and deceit).


106 Police and Criminal Evidence Act, 1984, c. 60, § 60; see MILNE & BULL, INVESTIGATIVE INTERVIEWING, supra note 10, at 73–76; GUJDONSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS, supra note 80, at 22 (“Since 1991 there has been mandatory tape-recording [in England and Wales] of any person suspected of an indictable offence who is interviewed under caution.” (citation omitted)); Bull & Soukara, Four Studies, supra note 105, at 81–82.

107 MILNE & BULL, INVESTIGATIVE INTERVIEWING, supra note 10, at 159. The PEACE approach encourages officers to establish rapport, to obtain a free narrative, to use open rather than leading questions, and then provide meaningful closure by summarizing information and answering any questions. See id. at 157–67; Kassin et al., Police-Induced Confessions, supra note 39, at 28.

108 See GUJDONSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS, supra note 80, at 53; see also MILNE & BULL, INVESTIGATIVE INTERVIEWING, supra note 10, at 157–67 (describing the goal of the interview as to gather as much information as possible to create an accurate factual picture, rather than simply to elicit a confession). PEACE techniques differ substantially from the Reid Method. Investigators conduct interviews as a search for truth rather than a quest for a confession, and the approach prohibits the use of trickery. See Bull & Soukara, Four Studies, supra note 105, at 81–83; S. Soukara et al., What Really Happens in Police Interviews of Suspects? Tactics and Confessions, 15 PSYCHOL. CRIME & L. 493, 500 (2009) [hereinafter Soukara et al., What Really Happens]. Advocates of the PEACE approach criticize Reid Method as “contrary to the principles of good investigative interviewing.” Bull & Milne, Attempts to Improve the Police Interviewing
training equates juveniles and adults, PACE recognizes youths’ vulnerabilities and requires the presence of an “appropriate adult” at a juvenile’s interview.\textsuperscript{109}

Minnesota interrogation practices reflect both Reid and PEACE elements. The Minnesota Supreme Court, in \textit{State v. Scales}, required police to record custodial interviews,\textsuperscript{110} and police trainers developed less confrontational strategies to question suspects.\textsuperscript{111} Training protocols advocate use of open-ended questions to obtain a free narrative and to elicit information rather than to conduct the “recorded interview with the goal of getting a confession.”\textsuperscript{112}

\section*{B. Police Interrogation: Empirical Research}

In the decades since \textit{Miranda}, psychologists, criminologists, and legal scholars have conducted remarkably few empirical studies of how

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\textsuperscript{109} See \textsc{Colin Clarke & Rebecca Milne}, \textsc{National Evaluation of the PEACE Investigative Interviewing Course 32} (2001); \textit{see also} \textsc{Milne & Bull, Investigative Interviewing, supra note 10}, at 57–58; \textit{Bull & Soukara, Four Studies, supra note 105}, at 84–87. It uses open-ended questions to gather information, rather than simply to confirm a pre-existing assumption. \textit{See Milne & Bull, Investigative Interviewing, supra note 10}, at 22–24; \textit{Bull & Soukara, Four Studies, supra note 105}, at 84–87.

\textsuperscript{110} 518 N.W.2d 587, 592 (Minn. 1994).

\textsuperscript{111} \textit{See Neil Nelson, Strategies for the Recorded Interview} (2006) (on file with author) (describing, as part of a police interrogation training program, various aspects of interrogation and questioning). “[T]he interview is used to gather information, not look for a confession. . . . Your goal is to remove the adversarial nature of the interview.” \textit{Id.} at 17. Minnesota trainers teach police to avoid minimization tactics because accusatorial tactics do not play well on tape when reviewed by fact-finders. \textit{Id.} at 11–12. The purpose of the interview is “[t]o gather information (not to get a confession) as part of a thorough and exhaustive investigation.” \textit{Id.} at 4.

\textsuperscript{112} \textit{Id.} at 10. Neutral, open-ended questions and a free narrative give the suspect an opportunity to provide information without putting her on the defensive. The strategy emphasizes rapport with the suspect: “[b]e friendly, receptive, non-adversarial. Be polite and respectful; doing so will help enforce the non-adversarial atmosphere and will demonstrate that you expect politeness and respect in return.” \textit{Id.} at 18. The officer attempts to develop a partnership with the suspect:

Set yourself up as the simple and impartial carrier of facts. You are the vehicle that takes the story to the higher power—the people who decide the suspect’s fate (e.g., charging attorney, judge, jury). . . . Say that you are not the person who decides that the suspect’s story is unworthy. Continually reinforce your role as partner and messenger, rather than decision-maker.

\textit{Id.} at 18–19.
police question people.113 Research in the late-1960s evaluated whether police warned suspects and how warnings affected their ability to obtain confessions.114 However, only the 1967 Yale–New Haven study actually observed police question suspects.115 In the mid-1990s, Richard Leo conducted the only field study of interrogation in the United States.116 Criminologists and legal scholars have used indirect methods to study tapes and transcripts of interrogation.117 Analyses of PACE recordings


115 See Michael Wald et al., Interrogations in New Haven: The Impact of Miranda, 76 YALE L.J. 1519, 1533–58, 1613 (1967) (observing police interrogation of suspects and concluding “not much has changed after Miranda”).

116 In 1992–93, Richard Leo observed 122 interrogations at a major urban police department and reviewed sixty videotaped interrogations performed by two other police departments. Leo, Miranda’s Revenge, supra note 11, at 263; Leo, Inside the Interrogation Room, supra note 93, at 268.

117 See, e.g., Feld, Kids, Cops, and Confessions, supra note 12, at 6 (analyzing 307 interrogation tapes and transcripts); Cassell & Hayman, supra note 113, at 851–52 (attending prosecutor charge screening sessions and interviewing police about interrogations); Feld, Juveniles’ Competence to Exercise Miranda Rights, supra note 11, at 62–63 (analyzing 66
in England have generated a substantial body of empirical research. Psychologists Saul Kassin, Gisli Gudjonsson, and associates have conducted extensive laboratory research for decades, although these studies lack the external validity of custodial interrogation. Studies of false confessions provide another glimpse into how police interrogate suspects and highlight the vulnerability of younger suspects.

III. DATA AND METHODOLOGY

In 1994, the Minnesota Supreme Court in State v. Scales used its supervisory power to regulate admissibility of evidence and required police tapes and transcripts of interrogation of sixteen- and seventeen-year-old felony delinquents in one county in Minnesota; Feld, Police Interrogation of Juveniles, supra note 11, at 248–49; King & Snook, supra note 92, at 674 (analyzing forty-four recorded criminal interrogations in Canada to assess the prevalence of Reid Method tactics); Weisselberg, Mourning Miranda, supra note 90, at 1521; Weisselberg, Saving Miranda, supra note 90, at 134–40 (analyzing police training manuals).

See Milne & Bull, Investigative Interviewing, supra note 10, at 75–76; see, e.g., Gudjonsson, The Psychology of Interrogations and Confessions, supra note 80, at 59–60, 79–80 (employing sophisticated quantitative and qualitative methods to code and analyze tapes and transcripts of interrogations); Roger Evans, Royal Comm’n on Criminal Justice, The Conduct of Police Interviews with Juveniles (1993) [hereinafter Evans, The Conduct of Police Interviews] (analyzing PACE transcripts of police interviews of juveniles); Bull & Soukara, Four Studies, supra note 105, at 84–93 (analyzing audio tapes of interrogations to see whether interviewers employed the PEACE approach and which tactics helped the interviewer obtain a confession); Roger Evans, Police Interrogations and the Royal Commission on Criminal Justice, 4 Policing & Soc’y: Int’l J. Res. & Pol’y 73, 79–80 (1994); John Pearse et al., Police Interviewing and Psychological Vulnerabilities: Predicting the Likelihood of a Confession, 8 J. Community & Applied Soc. Psychol. 1 (1998) [hereinafter Pearse et al., Police Interviewing and Psychological Vulnerabilities].


See, e.g., Brandon L. Garrett, Convicting the Innocent: Where Criminal Prosecutions Go Wrong 279 (2011) [hereinafter Garrett, Convicting the Innocent] (reporting false confessions in 16% of wrongful convictions); Barry Schick et al., Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted (2000); Drizin & Leo, The Problem of False Confessions, supra note 81 at 902 (noting that false confessions occur in about 14–25% or more of cases of wrongful convictions and DNA exonerations); Garrett, Judging Innocence, supra note 39, at 66, 89 (reporting that of 200 DNA exonerated juveniles 11% were juveniles and many wrongful convictions contained false confessions); Samuel R. Gross et al., Exonerations in the United States: 1989 Through 2003, 95 J. Crim. L. & Criminology 523, 545 (2005) (analyzing 340 criminal exonerations between 1989 and 2003 and reporting that 42% of juveniles gave false confessions); Richard A. Leo & Richard J. Ofshe, The Consequence of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Integration, 88 J. Crim. L. & Criminology, 429, 429 (1998) (“[P]olice-induced false confession ranks amongst the most fateful of all official errors.”).
lice to record custodial interrogations.\textsuperscript{121} \textit{Scales} held 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.”\textsuperscript{122} Nearly two decades later, just over a dozen states require police to record interrogations.\textsuperscript{123}

This study analyzes \textit{Scales} tapes and transcripts, police reports, juvenile court petitions, and sentences associated with the felony offense for which police interrogated youth. Delinquency trials of sixteen- and seventeen-year-old youths charged with felony offenses are public proceedings.\textsuperscript{124} County attorneys in Minnesota’s four largest counties allowed me to search their closed files of sixteen- and seventeen-year-old youths charged with a felony\textsuperscript{125} and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{121} 518 N.W.2d 587, 592 (Minn. 1994).
\item \textsuperscript{122} Id. The Minnesota court in \textit{Scales} adopted the reasoning of the Alaska Supreme Court in \textit{State v. Stephan}, 711 P.2d 1156, 1159 (Alaska 1985):
\begin{quote}
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 \textit{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 [\textit{Stephan}] court held that recording “is now a reasonable and necessary safeguard . . . .” A recording requirement also discourages unfair and psychologically coercive police tactics and thus results in more professional law enforcement.
\end{quote}
Id. at 591 (citation omitted).
\item \textsuperscript{124} \textit{Minn. Stat.} § 260B.163(1)(c)(2) (2005). At the request of the County Attorneys, this study focused on older felony delinquents to obviate some privacy concerns. However, many files included information about younger juveniles—e.g., co-offenders—whose identity remained confidential.
\item \textsuperscript{125} Police conducted most of the interrogations in this study between about 2003 and 2006. Anoka, Dakota, Hennepin, and Ramsey Counties are the four most populous of Minnesota’s 87 counties and account for almost half (47.6%) the state’s population and nearly half (45.6%) the delinquency petitions filed. See Field, \textit{Kids, Cops, and Confessions}, supra note 12, at 272, for a more complete description of the methodology and data summarized here.
\end{itemize}
\end{footnotesize}
to copy those in which police interrogated or juveniles invoked Miranda. 126

I analyzed 307 files of juveniles charged with felonies that invoked or waived Miranda. I reviewed police reports and other documents to learn about the crime, the context of interrogation, and evidence police possessed when they questioned a suspect. I coded each file to analyze where, when, and who was present at an interrogation, how police administered Miranda, whether juveniles invoked or waived, how officers interrogated them, how they responded, and how invoking Miranda affected case processing. 127 The 307 files reflect some sample selection bias because they are charged cases, serious delinquents, more likely to go to trial, and perhaps include more juveniles who waived Miranda. 128 Despite these caveats, the study includes a range of serious crimes and analyzes the largest number of routine felony interrogations ever aggregated in the United States. 129 More than 150 officers from more than

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126 The court orders authorized access to juvenile courts’ files and included confidentiality stipulations to protect juveniles’ identity. The orders provided:

> 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 In re Request of Professor Barry C. Feld to Access Ramsey County Attorney’s Juvenile Delinquency Felony Files (June 1, 2004) (on file with author). I personally transcribed interrogation tapes and coded all of the files to address confidentiality concerns. Confidentiality restrictions precluded use of multiple coders and inter-rater reliability scores.


128 The sample includes only juveniles whom prosecutors charged with a felony and for whom an interrogation or invocation record exists. Other evidence being equal, prosecutors are more likely to charge suspects who waive than those who invoke Miranda because they have plea bargain advantage. Police made these Scales recordings during custodial interrogation, and the files do not include unrecorded, non-custodial interviews. The felony cases in which prosecutors charged that contained transcripts may differ in some ways from those in which juveniles invoked Miranda or which police did not forward for charging, those cases that prosecutors did not charge, or those that they charged but which did not contain transcripts. Minnesota excludes cases of sixteen- or seventeen-year old youths charged with Murder I from juvenile court jurisdiction, Minn. Stat. 260B.007(6)(B) (2011); see also Barry C. Feld, Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform, 79 MINN. L. REV. 965, 1051–57 (1995), and prosecutors filed transfer motions against some other youths charged with the most serious offenses. Marcy Rasmussen Podkopacz & Barry C. Feld, The End of the Line: An Empirical Study of Judicial Waiver, 86 J. CRIM. L. & CRIMINOLOGY 449, 462–468 (1996) [hereinafter Podkopacz & Feld, The End of the Line]. As a result, the sample under-represents some of the most serious crimes: murder, criminal sexual conduct and armed offenses.

129 See generally Saul M. Kassin et al., Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs, 31 LAW & HUM. BEHAV. 381, 397 (2007) [hereinafter Kassin et al., Police Interviewing and Interrogation] ("In an era of electronic re-
fifty agencies interviewed these suspects. I interviewed police, prosecutors, defense lawyers, and juvenile court judges to elicit their views, learn from their experience, and validate my findings.

IV. Real Interrogation

These analyses focus on three aspects of routine felony interrogation. After describing characteristics of the youths in this study, I examine youths who invoked or waived *Miranda*. I analyze how police questioned the vast majority of youths who waived. Finally, I focus on how long police questioned them and the outcomes of interrogations.

A. Characteristics of Juveniles Whom Police Interrogated

As Table 1 indicates, males comprised the vast majority (89.3%) of the 307 youths whom police questioned. Prosecutors charged more than half (55.0%) with felony property offenses—burglary, larceny, and auto-theft. They charged nearly one-third (31.6%) the youths with crimes against the person—murder, armed robbery, aggravated assault, and criminal sexual conduct. They charged the remaining youths with drug crimes (6.2%), firearm offenses (5.5%), and other felonies (1.6%).

130 The variability of interrogation strategies reflect officers’ training and experience, on-the-job learning, and personal styles rather than scientifically evaluated techniques. See Richard A. Leo, *The Third Degree and the Origins of Psychological Interrogation in the United States*, in *INTERROGATIONS, CONFESSIONS AND ENTRAPMENT* 37 (G. Daniel Lassiter ed., 2004); Allison D. Redlich & Christian A. Meissner, *Techniques and Controversies in the Interrogation of Suspects: The Artful Practice Versus Scientific Study*, in *PSYCHOLOGICAL SCIENCE IN THE COURTROOM: CONSENSUS AND CONTROVERSY* 124 (Jennifer L. Skeem et al. eds., 2009). We do not know how community contexts, police department cultures, or interrogation practices vary or how those variations affect suspects’ waivers or invocations. See Evans, *The Conduct of Police Interviews*, supra note 118, at 21–22. Police likely adjusted their interrogation tactics to accommodate Scales’ recording requirement. See, e.g., Nelson, supra note 111, at 11–12 (“Before Scales, minimizing was a standard technique, part of your work product; cops used it as a tactic to get bad guys to confess; since Scales, a defense attorney can attack every misleading thing you say to the suspect because it has been recorded.”).

131 I interviewed nineteen police officers, six juvenile prosecutors, nine juvenile defense lawyers, and five juvenile court judges from both urban and suburban counties. The police officers averaged 18.4 years of professional experience; the prosecutors averaged 14.5 years; the public defenders averaged 13.3 years; and the juvenile court judges, 16 years. I interviewed sergeants, detectives or investigators, and school resource officers, of the ranks and specialties that conduct most custodial interrogations of juveniles. The recorded interviews lasted between 30 and 80 minutes, averaged about 45 minutes, and provided thick descriptions of the process. I conducted saturation interviews until no new data, themes, or conceptual relationships emerged. See Feld, *Kids, Cops, and Confessions*, supra note 12, at 280–81, for a more complete description of the methodology.
TABLE 1
CHARACTERISTICS OF JUVENILES INTERROGATED

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<tr>
<td>Current Placement</td>
<td>17</td>
<td>5.5</td>
</tr>
</tbody>
</table>

\(^1\)Crimes against property include: burglary, theft of a motor vehicle, arson, receiving stolen property, possession of stolen property, possession of burglary tools, criminal damage to property, theft, forgery, theft by swindle, and credit card fraud.

\(^2\)Crimes against the person include: aggravated and simple robbery, aggravated assault, murder and attempted murder, criminal vehicular homicide, criminal sexual conduct, and terroristic threats.

\(^3\)Drug crimes include: sale or possession of a controlled substance—crack, methamphetamine, marijuana, codeine, ecstasy, heroin—possession of a forged prescription, and tampering with anhydrous ammonia equipment (methamphetamine).

\(^4\)Firearm crimes include: possession of a firearm, discharge of a firearm, theft of a firearm, possession of an explosive device, and drive-by shooting.

\(^5\)Other offenses include fleeing from a police officer.
Nearly one-third (30.6%) of the juveniles had no prior arrests. Police previously had arrested more than one-third for status offenses (15.3%) or misdemeanors (22.8%). About one-third of these youths (35.1%) had one or more prior felony arrests. More than half (57%) of these youths had prior juvenile court referrals. Nearly one-third (29.9%) were under juvenile court supervision—probation, placement, or parole status—when police questioned them. About half of the youths were white (52.1%) and the remainder (47.9%) members of ethnic and racial minority groups—Black, Hispanic, Native American, and Asian. Black juveniles accounted for more than one-third (34.9%) of the sample. Compared with the counties’ sixteen- and seventeen-year-old felony caseloads, this group included more males and youths charged with property and violent crimes, fewer charged with drug offenses, and more with prior court referrals.132

B. To Waive or Not to Waive: That is the Question

When police take suspects into custody and interrogate them, Miranda requires police to warn them to dispel the inherent coercion of custodial questioning.133 Police had formally arrested the vast majority (86.6%) of these juveniles prior to questioning, and made a Scales recording of all of these interviews.134 Police detained nearly two-thirds (61.7%) of the youths whom they questioned and released the others to their parents.135 More than half (55.7%) of interrogations took place in police stations and another quarter (23.1%) at juvenile detention centers.136 Thus, police questioned more than three-quarters (78.8%) of youths in interrogation rooms.137 Nearly one-tenth (8.1%) of interrogations took place in a police car at the place of arrest and the others in juveniles’ homes (6.2%) or schools (6.2%).138


133 Miranda assumed that the coercive pressures of interrogation arose when a person was in custody, “deprived of his freedom of action in any significant way,” and questioned. Miranda v. Arizona, 384 U.S. 436, 444 (1966); see also Rhode Island v. Innis, 446 U.S. 291, 300 (1980) (defining interrogation).

134 Feld, Kids, Cops, and Confessions, supra note 12, at 62.

135 Id.

136 Id.

137 Id.

138 Id.
1. **Miranda Framework: Custody + Interrogation = Warning**

Decades of court-approved formulae have reduced *Miranda* to a litany that officers read from a card or waiver form.\(^{139}\) Researchers report many versions of *Miranda* whose length and complexity vary considerably.\(^{140}\) Although some jurisdictions use a juvenile *Miranda* warning, paradoxically these may be more complex than adult versions.\(^{141}\) Every juvenile in this study received a proper *Miranda* warning and one-fifth (19.5\%) of the files contained an initialed and signed warning form.

Although *Miranda* requires police to warn suspects, officers have no incentive to encourage them to invoke their rights. One of *Miranda*’s root contradictions is that “it assumes that these suspects can receive adequate advice and counseling about their constitutional rights from adversaries who would like nothing more than to see those rights surrendered.”\(^{142}\) This inherent contradiction requires officers to engage in a quasi-confidence game—“systematic use of deception, manipulation, and the betrayal of trust in the process of eliciting a suspect’s confession.”\(^{143}\)

Police used several tactics to predispose suspects to waive *Miranda* without alerting them to its significance or consequences—admonishing her to tell the truth, minimizing the warning, or telling the suspect that it is “his only opportunity to tell his side of the story.”\(^{144}\) An interrogator must establish rapport, develop trust, and maintain a positive relationship to obtain a waiver.\(^{145}\) The initial stages of an interrogation often provide

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\(^{140}\) Although warnings necessarily convey the basic constitutional information, one survey of 560 *Miranda* warnings reported 532 unique wordings. Rogers et al., *An Analysis of Miranda Warnings*, *supra* note 63. A second survey of 385 warnings reported 356 unique versions. Rogers et al., *The Language of Miranda Warnings*, *supra* note 64, at 126; see also Rogers, *A Little Knowledge*, *supra* note 72, at 778–79 (examining variation in length and reading level of *Miranda* warnings).

\(^{141}\) See Rogers et al., *Comprehensibility and Content*, *supra* note 64, at 71 (reporting that warnings are longer and require higher level of reading ability). Even “dumbed-down” versions of *Miranda* are “problematic for younger adolescents, ages 13 to 15, who lack sufficient reading comprehension.” Rogers et al., *Comprehensibility and Content*, *supra* note 64, at 72. Vocabulary and concepts make it more difficult for youth to understand an oral warning than a written one. See Rogers, *A Little Knowledge*, *supra* note 72, at 780.


\(^{143}\) Leo, *Miranda’s Revenge*, *supra* note 11, at 261. Leo compared an officer eliciting a *Miranda* waiver and confession to a confidence man manipulating his victim “through false representations, artifice, and subterfuge.” *Id.* at 265.

\(^{144}\) *Id.* at 272.

\(^{145}\) INBAU ET AL., *supra* note 102, at 91.
an opportunity to soften-up a suspect and allay his fears. The Court in Pennsylvania v. Muniz allowed police to ask booking questions before they warn, and these conversations may predispose suspects to waive. In about half of the cases (52.8%), police gave the Miranda warning immediately after identifying the suspect. In the other half of cases (47.2%), police first asked booking questions—name, age and date of birth, address and telephone number, grade in school, and the like—and sometimes used juveniles’ responses to engage in casual conversations, to put youths at ease, and to accustom them to answering questions.

2. Negotiating Miranda Warnings

Police can comply with Miranda and predispose suspects to waive. They may nod while reading the warning to cue the suspect to agree or tell the person that the interview provides his only opportunity to tell his story. They may warn in a way that obscures their adversarial relationship with the suspect. Training manuals instruct police to blend the warning into the conversation, to describe it as a formality,
or to summarize the evidence, which a suspect can explain only if he waives.\textsuperscript{154} \textit{Dickerson v. United States} noted that \textit{Miranda} is “embedded in routine police practice to the point where the warnings have become part of our national culture.”\textsuperscript{155} Officers regularly refer to suspects’ familiarity with \textit{Miranda} from television and movies.\textsuperscript{156} \textit{Miranda}’s cultural ubiquity may detract from youths’ distinguishing its protections from background noise or meaningless ritual.\textsuperscript{157}

Police conveyed to juveniles the value of talking—“telling their story” and “telling the truth”—before they gave a warning.\textsuperscript{158} They characterized it as an administrative formality to complete before the suspect can talk.\textsuperscript{159} They sometimes referred to it as “paperwork” to emphasize its bureaucratic quality.\textsuperscript{160} A waiver form provides a vehicle to convert \textit{Miranda} into a bureaucratic exercise.\textsuperscript{161} Officers sometimes preceded the warning with a recital of evidence against a youth, which created a pressure to waive and explain it.\textsuperscript{162}

\begin{thebibliography}{99}
\bibitem{154} See Weisselberg, \textit{Mourning Miranda}, \textit{supra} note 90, at 1562.
\bibitem{155} 530 U.S. 428, 430 (2000); see \textit{Leo & White}, \textit{supra} note 90, at 434–35 (“Interrogators may also de-emphasize the significance of the \textit{Miranda} warnings by referring to their dissemination in popular American television shows and cinema, perhaps joking that the suspect is already well aware of his rights and probably can recite them from memory.”); see also \textit{Baldwin}, \textit{supra} note 1, at 337 (“The [English and Welsh] police caution (like, say, the wording of an oath in court or the Lord’s Prayer) can easily take on the form of an empty ritual or an unthinking recitation.”).
\bibitem{156} \textit{Feld, Kids, Cops, and Confessions}, \textit{supra} note 12, at 81 (“I’ll read it out loud to ya and then I’ll let you read it through if you want. It’s a Warning and Consent to Speak. Basically you’ve heard the \textit{Miranda} warning on \textit{Cops} and TV and stuff. I’m gonna read you your rights like you see on TV.’’”).
\bibitem{157} See Naomi E. Sevin Goldstein et al., \textit{Juvenile Offenders’ \textit{Miranda} Rights Comprehension and Self-Reported Likelihood of Offering False Confessions}, 10 \textit{Assessment} 359, 366 (2003) (“Despite increased exposure to the \textit{Miranda} warnings from depictions in television and movies, juvenile offenders today understand their rights in much the same way adolescents did generations ago.”).
\bibitem{158} \textit{Feld, Kids, Cops, and Confessions}, \textit{supra} note 12, at 80. One officer prefaced the advisory by saying:

“I just started investigating yesterday, and 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. Under law, I have to advise you of your \textit{Miranda}, your legal rights, per \textit{Miranda}, and I’ll read those now.”

\textit{Id.}
\bibitem{159} \textit{Id.} (‘‘Okay, due to the fact that you are in custody, I have to advise you of your \textit{Miranda} rights before I do any questioning. I do want you to listen to these rights, because these are your rights.’’).
\bibitem{160} \textit{Id.} (‘‘We can go through a little bit of paperwork. Let me explain a few things to you, and then if you want to, you can sign right there.’’)
\bibitem{161} \textit{Id.} at 81 (“‘I need you to initial down the side and when I’m all done reading ‘em to ya, sign your full name at the bottom. And that’s just for your rights. That’s just all this covers right here is your \textit{Miranda} advisory, okay?’’”)
\bibitem{162} \textit{Id.} at 81–82. In one interview, the officer prefaced \textit{Miranda} with some circumstantial evidence:

\end{thebibliography}
3. Waive or Invoke Miranda

After police warn a suspect, she may either waive or invoke their rights. The Supreme Court requires suspects to unambiguously invoke their rights to silence and to counsel.\textsuperscript{163} Police establish that juveniles understand their rights by reading the warning and then eliciting an affirmative response.\textsuperscript{164} After officers have read the rights to a youth, they asked, “Do you understand that?” Juveniles acknowledged the warnings on the record—the Scales tape—and, in some departments, signed a Miranda form. Every juvenile claimed to understand Miranda, and those who waived indicated a willingness to do so.

Despite youths’ apparent understanding, researchers question whether juveniles grasp the warning.\textsuperscript{165} Juveniles lack adults’ competence to understand and appreciate important legal terms.\textsuperscript{166} Their appearances of comprehension—a claim to understand, a failure to question, or absence of signs of confusion—may reflect compliance with

\textsuperscript{163} See Davis v. United States, 512 U.S. 452, 459 (1994) (right to counsel); Berghuis v. Thompkins, 130 S. Ct. 2250, 2260 (2010) (right to silence); see also Fare v. Michael C., 442 U.S. 707, 723–24 (1979) (finding that a juvenile’s request to speak with his probation officer was not an invocation).

\textsuperscript{164} See Wurie, Miranda’s Waning Protections, supra note 153, at 81 (“[T]he government can establish a valid Miranda waiver by simply demonstrating that the suspect understood the meaning of the Miranda warnings; it need not show that he understood the consequences of waiving . . . .”).

\textsuperscript{165} Grisso, Juveniles’ Waiver of Rights, supra note 42, at 38; supra notes 67–78 and accompanying text; see also Grisso, Juveniles’ Capacities to Waive Miranda Rights, supra note 22, at 1166; Grisso et al., Juveniles’ Competence to Stand Trial, supra note 67, at 356.

\textsuperscript{166} See, e.g., Regina M. Huerter & Bonnie E. Saltzman, What Do “They” Think? The Delinquency Court Process in Colorado as Viewed by the Youth, 69 Denver U. L. Rev. 345, 353 (1992) (reporting that, of the juvenile defendants interviewed, only half understood their court proceedings); Karen Saywitz et al., Children’s Knowledge of Legal Terminology, 14 Law & Hum. Behav. 523 (1990) (showing that children often mishear legal terms and do not know the terms’ definitions); Trudie Smith, Law Talk: Juveniles’ Understanding of Legal Language, 13 J. Crim. Just. 339 (1985) (“[J]uveniles’ grasp of certain legal words and phrases suggests that . . . their understanding of legal language is moderate and is confined to procedural terms. They do not understand technical terms.”); Rogers, A Little Knowledge, supra note 72, at 779 (“In 45.1% of the jurisdictions, younger juvenile offenders . . . could not be expected to have adequate comprehension of [Miranda] Component 4 [the right to free counsel] even if they read above their expected grade levels.”); see also supra notes 64–78 and accompanying text.
authority or passive acquiescence. However, judges rely on objective indicators—Scales tapes, signed forms, and police testimony—rather than clinical assessments of subjective understanding to evaluate juveniles’ waivers.

a) Waiving Miranda

Although Berghuis v. Thompkins approved implied waivers, police in this study consistently obtained express waivers. After they asked juveniles whether they understood the warning, they concluded the waiver process, “Bearing in mind that I’m a police officer and I’ve just read your rights, are you willing to talk to me about this matter?”

Another version of the waiver formula ended, “Having these rights in mind, do you wish to talk to us now?”

Miranda reasoned that police must warn a suspect to dispel the inherent coercion of custodial interrogation. Justice White’s Miranda dissent asked why those same compulsive pressures do not coerce a waiver as readily as an unwarned statement. Research confirms White’s intuition that, after police isolate suspects in a police-dominated environment, a warning cannot adequately empower them. Post-Miranda studies reported that most suspects waived and confessed. The Yale–New Haven study concluded, “[W]arnings had little impact on sus-

167 Bull, Investigative Interviewing of Children, supra note 109, at 17 (“Vulnerable witnesses can spend much of their lives trying to appear competent and, therefore, may be especially unwilling to admit ‘I don’t know’ . . . .” (citation omitted)); Rogers, A Little Knowledge, supra note 72, at 781 (arguing that suspects may pretend to understand Miranda warnings to avoid appearing ignorant).

168 Berghuis v. Thompkins, 130 S. Ct. 2250, 2262 (2010); see also Weisselberg, Mourning Miranda, supra note 90, 1582 nn.356–57 (listing decisions upholding admission of statements based on implied Miranda waivers in every federal court and appellate courts in forty-two states and the District of Columbia, all predating Berghuis).

169 FELD, KIDS, COPS, AND CONFESSIONS, supra note 12, at 93; see supra Table 2.

170 FELD, KIDS, COPS, AND CONFESSIONS, supra note 12, at 93.

171 Id.


173 Miranda v. Arizona, 384 U.S. 436, 536 (1966) (White J., dissenting) (“The Court apparently realizes its dilemma of foreclosing questioning without the necessary warnings but at the same time permitting the accused, sitting in the same chair in front of the same policemen, to waive his right to consult an attorney.”).

174 See Godsey, supra note 7, at 528–29 (observing how continued questioning can lead a suspect to “feel harassed” and how, even after a Miranda warning has been given and understood, an interviewer may impose penalties on suspects to “provoke speech or punish silence”); Welsh S. White, False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions, 32 HARV. C.R.-C.L. L. REV. 105, 119–20 (1997) [hereinafter White, False Confessions and the Constitution] (“[E]ven when a suspect has nothing to conceal, he may experience anxiety because of the dynamics of the interrogation process.”); see also Weisselberg, Mourning Miranda, supra note 90, at 1537–38 (“[I]nterrogation . . . works by increasing suspects’ anxiety, instilling a feeling of hopelessness, and distorting suspects’ perceptions of their choices by leading them to believe that they will benefit by making a statement.”).
pects’ behavior.”175 Leo reported that more than three-quarters (78%) of suspects waived their rights.176 Observers of police–prosecutor charging conferences reported that 83.7% of adult suspects waived.177 A survey of police estimated that 81% of adult suspects waived.178 Research in England reported that half to two-thirds of people whom police questioned confessed, a more stringent outcome measure than simply waiving.179

Juveniles waive *Miranda* at higher rates than do adults—around 90%.180 Juveniles’ higher waiver rates may reflect lack of understanding, inability to invoke effectively, or less experience or prior involvement with the justice system.181 Table 2 reports that the vast majority of youths (92.8%) waived *Miranda*.182 Interviews with justice system personnel confirmed the validity of this finding—nearly all delinquents waived *Miranda*.183

People waive and talk for a variety of reasons. From childhood on, parents teach their children to tell the truth—a social duty and a value in itself. The compulsion inherent in the interrogation room amplifies social pressure to speak when spoken to and to defer to authority. Justice personnel suggested that juveniles waived to avoid appearing guilty, to

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175 Wald et al., *supra* note 115, at 1563.
176 Leo, *Inside the Interrogation Room*, *supra* note 93, at 276.
178 Kassin et al., *Police Interviewing and Interrogation*, *supra* note 129, at 389.
179 Pearse et al., *Police Interviewing and Psychological Vulnerabilities*, *supra* note 118, at 1–2 (reporting confession rates of 55–62% in several studies).
180 See *Goldstein & Goldstein, Evaluating Capacity to Waive Miranda*, *supra* note 65, at 50 (stating that studies conducted in the 1970’s found rates of waiver by juveniles to be over 90% and a study in 2005 found the rate of waiver to be 87%); Grisso, *Juveniles’ Waiver of Rights*, *supra* note 42, at 36 (reporting that juveniles refused to talk during interrogations at a “considerably smaller” rate than adults); Grisso & Pomiciter, *Interrogation of Juveniles*, *supra* note 67, at 333–34 (finding 90.6% of juvenile felony suspects chose to talk when interrogated); Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants*, *supra* note 73, at 261 (reporting that, in a retrospective study of delinquents held in detention, 13.15% reported they had asserted their right to silence).
182 Because this sample represents youths whom police questioned and prosecutors charged, the waiver rate may be inflated somewhat. Some justice system personnel suggested that prosecutors are more likely to charge suspects who waived than those who invoked.
183 When asked how many juveniles waived *Miranda*, one officer said, “Almost all of them. I couldn’t even tell you the last time a kid told me he didn’t want to talk.” *Felid, Kids, Cops, and Confessions*, *supra* note 12, at 95. Another estimated 90% talk: “[N]ot very many kids that don’t talk to you.” *Id.* Another police officer said, “I haven’t had very many not speak to me. I would have to say 95% of them or more talk.” *Id.* A second confirmed, “I’d say better than 95%.” *Id.* And a third said, “Vast majority. I’d say high 90s.” *Id.* A suburban prosecutor observed, “We don’t have very sophisticated criminals. Maybe 10% refuse to talk.” *Id.* Almost all personnel thought that 90% or more of youths waived *Miranda*, and none estimated that fewer than 80% waived. *Id.*
tell their story, or to minimize responsibility.\textsuperscript{184} Some thought they waived because they did not expect severe sanctions or believed that they could mitigate negative consequences.\textsuperscript{185} Others ascribed waivers to naïve trust and lack of sophistication.\textsuperscript{186} Others attributed waivers to a desire to escape the interrogation room—the compulsive pressures *Miranda* purported to dispel.

b) Invoking *Miranda*

*Fare v. Michael C.* cited the defendant’s prior experience with police to find a valid waiver.\textsuperscript{187} Criminologists report a relationship between prior arrests and *Miranda* invocations.\textsuperscript{188} Post-*Miranda* research reported that defendants with prior arrests gave fewer confessions than did those with less experience.\textsuperscript{189} About one-third (35.1\%) of the

\textsuperscript{184} One officer said, “They want to look cooperative. If they didn’t do it, why would they invoke? Even those who’ve been in prison think they’re going to outsmart us.” *Id.* Another officer explained, “Kids always talk. Whether they think they can outtalk you or outsmart you, most of them realize, they got to talk.” *Id.* at 95–96. Another officer said, “Some kids just can’t wait to tell you exactly their side of the story. They’re used to telling teachers and parents their side of the story, and they want their side heard.” *Id.* at 96. A prosecutor concurred that juveniles waive “because it’s their opportunity to either admit and mitigate any of the negative outcomes they see will happen, or to spin the story in a way that makes it appear that their role is less culpable.” *Id.*

\textsuperscript{185} *Id.* As one officer observed:

“Most kids are generally honest, especially the ones that are new to the system. Most of them understand that they’re not going to get thrown away for life. If they confess they took the car, they’re going to be on probation. I think most of them understand that. They want to tell you, get it done, get it over with, and move on.” *Id.*

\textsuperscript{186} A public defender explained:

“They’re much more likely to talk because they think, ‘I can get out of my situation if I just explain and I’m truthful. I’m going to get some help. They’re not going to prosecute me. This is what my parents want me to do.’ I mean their mind-set is much more trusting of adults, so they’re not as aware of the sense of danger from talking.” *Id.*

\textsuperscript{187} 442 U.S. 707, 726 (1979); see also Grasso, *Juveniles’ Waiver of Rights*, supra note 42, at 64 (“[A] juvenile’s . . . extensive prior experience has sometimes been cited by judges as suggesting greater understanding of *Miranda* warnings due to more frequent exposure to them and familiarity with court processes.”).

\textsuperscript{188} See Leo, *Inside the Interrogation Room*, supra note 93, at 286 (“[A] suspect with a felony record . . . was almost four times as likely to invoke his *Miranda* rights as a suspect with no prior record and almost three times as likely to invoke as a suspect with a misdemeanor record.”).

\textsuperscript{189} See, e.g., Kassin, *On the Psychology of Confessions*, supra note 119, at 218 (“[I]ndividuals who have no prior felony record are more likely to waive their rights than are those with a history of criminal justice ‘experience’. “); Leiken, * supra* note 114, at 21 tbl.4 (reporting that defendants with more prior arrests and felony convictions gave fewer confessions than did defendants with fewer arrests or convictions). Research on juveniles is consistent. Grasso, *Juveniles’ Waiver of Rights*, supra note 42, at 37 (reporting that juveniles’ rate of refusal to talk increased with the number of prior felony referrals they had experienced).
Table 2

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JUVENILES WHO WAIVE OR Invoke BY PRIOR RECORD*

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**Statistically Significant at: $\chi^2(1, N = 300) = 5.7, p < .05$

1Seven juveniles (2.3%) initially waived their *Miranda* rights and subsequently invoked them during interrogation, at which point interrogation ceased. Because they were truncated interrogation, I exclude them from analyses of police interrogation tactics.

juveniles whose interrogations I studied had one or more felony arrests at the time of questioning.\(^{190}\) Table 2 reports that juveniles with one or more prior felony arrests waived their rights at significantly lower rates (86.9%) than those with fewer or less serious police contacts (94.9%).

Several factors likely contribute to more invocations by those with more extensive contacts. Youths who waived at prior interrogations may have learned that confessing redounds to their disadvantage. Spending time with lawyers enhances youths’ understandings of their rights, and prior arrests also give them opportunities to learn about rights and legal proceedings.\(^{191}\) Youths questioned previously may have learned to resist the pressures of interrogation. Prior felony arrests are a reasonable proxy for understanding how to navigate the justice system.\(^{192}\) Prior arrests provide opportunities to hear the *Miranda* warning, experience interrogation...

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\(^{190}\) See Viljoen & Roesch, *Competence to Waive Interrogation Rights*, supra note 70, at 737 (finding that juveniles with prior arrests had increased “appreciation of the right to counsel and understanding of adjudicative proceedings” and that juveniles’ “time spent with attorneys was [a]n even stronger predictor of understanding of interrogation rights and appreciation of adjudicative proceedings”).

tion, consult with counsel, and learn the consequences of waiving.\textsuperscript{193} Justice personnel described youths who invoked \textit{Miranda} as “sophisticated,” “savvy,” “streetwise,” “gang-involved,” or the like.\textsuperscript{194}

C. Interrogation Tactics: On the Record

Police question suspects to obtain incriminating admissions or leads to other evidence—physical evidence, other participants, witnesses, or stolen property—which strengthen prosecutors’ cases and facilitate guilty pleas.\textsuperscript{195} They seek suspects’ statements—true or false—to pin them down, to control changes they later make in their stories, and to impeach their credibility.\textsuperscript{196} Police described their roles to the 285 juveniles who waived as dispassionate fact-finders.\textsuperscript{197} Minnesota trains officers to describe themselves as neutral report writers who want to learn what happened to put in a statement for prosecutors and judges to evaluate.\textsuperscript{198} They advise suspects that the interview is their opportunity to “tell their story.”\textsuperscript{199}

\textsuperscript{193} \textit{Id.}

\textsuperscript{194} \textit{Id.} A police officer described youths who invoke as “more streetwise. They’ve been in the system. They know that talking to us isn’t going to help them; it’s just going to help us get them convicted. They’re more streetwise, they’re tougher kids. They know the game.” \textit{Id.} at 100. A public defender described them similarly:

[“They’re] the ones who have been through the system before and are more savvy, are a little more streetwise. They’ve dealt with police officers before. Probably they’ve had either a lawyer or somebody give them advice that it’s not a good idea to talk to police in previous cases. Or if they’ve given a statement before and it’s turned around and used against them actually. Savviness or experience with the criminal justice system. The kids who have experience tend not to give up their rights as easily as first-timers.”]

\textit{Id.} at 99–100. A prosecutor attributed youths’ invocations “largely [to] prior exposure to the system. . . Certain juveniles develop street smarts, savvy about the system. Those are the juveniles—repeated customers—who develop resistance to talking to the police because they’ve learned.” \textit{Id.} at 100. A judge described youth who invoked as “kids who’ve been through the system before, are more sophisticated. They’re sometimes gang involved. They know more about the criminal justice system. It’s not necessarily the severity of the crime, it’s more their own level of sophistication.” \textit{Id.} at 99–100.

\textsuperscript{195} \textit{Id.} at 104.

\textsuperscript{196} \textit{Id.} at 104–05.

\textsuperscript{197} \textit{Id.} at 105–06.

\textsuperscript{198} \textit{Id.} at 105.

\textsuperscript{199} \textit{Id.} at 108. Several officers gave similar descriptions of their standard opening to an interrogation:

[“]You just go in and tell them that this is your opportunity to tell me your side of the story. I’ve already got the other side of the story. I just want to hear what you say happened, and then I’m going to write it up and send it on. And they’ll decide. But if you don’t want to tell me your side of the story, then they’re just going to believe what this guy is telling them.[“]

\textit{Id.}
1. Maximization Techniques

Police may use a double-barreled approach to overcome resistance and elicit confessions: maximization and minimization. Maximization strategies overstate the seriousness of a crime, exaggerate the strength of the evidence, and emphasize the futility of denials. Minimization techniques offer sympathy, provide neutralizing themes and moral justifications, offer face-saving alternatives, or shift blame to others to induce a confession.

Police reported that they used maximization techniques regularly. They initially encouraged a suspect to commit to a story—true or false—and then used confrontational tactics to challenge the version. Table 3 summarizes maximization strategies police used: confront with evidence (54.4%); accuse of lying (32.6%); exhort to tell the truth (29.5%); ask Behavioral Analysis Interview questions (28.8%); challenge inconsistencies (20.0%); emphasize seriousness (14.4%); and accuse of other crimes (8.4%).

In nearly one-third (30.9%) of interrogations, police did not use any maximization tactics. In another quarter (23.1%), they used only one. This suggests that most juveniles did not require a lot of persuasion or intimidation to talk. Police used three or more maximization tactics in fewer than one-third (31.6%) of cases.

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200 See Feld, Kids, Cops, and Confessions, supra note 12, at 110; Kassin et al., Police-Induced Confessions, supra note 39, at 12; Kassin, The Psychology of Confession Evidence, supra note 94, at 223; see also Leo, Inside the Interrogation Room, supra note 93, at 278–79 ("[Interrogators] use . . . 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 generally Kassin & Gudjonsson, supra note 89, at 42–44 (describing the interrogation process, including the use of minimization).

201 See Kassin et al., Police-Induced Confessions, supra note 39, at 12 ("Maximization [is] designed to convey . . . that the suspect is guilty and that all denials will fail."); Kassin, The Psychology of Confession Evidence, supra note 94, at 223 ("Maximization uses 'scare tactics' designed to intimidate a suspect believed to be guilty.").

202 Kassin, The Psychology of Confession Evidence, supra note 94, at 223 ("Minimization is 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.").

203 Feld, Kids, Cops, and Confessions, supra note 12, at 110.
Research involving adult suspects in England and Wales shows that detectives typically confront a suspect with evidence. In about half (54.4%) of the interrogations I studied, police confronted juveniles with evidence. They most often referred to statements from witnesses or co-offenders or physical evidence. In most cases, DNA, fingerprint, or other forensic evidence will not be available in the short time between an arrest and interrogation. Police sometimes described an investigation as

\( See \) EVANS, THE CONDUCT OF POLICE INTERVIEWS, supra note 118, at 33 (“[I]nterviewers stat[ed] or hint[ed] that [scientific] evidence, for example finger print evidence, would be or had been found and that therefore there was no point in denying the offence.”); MILNE & BULL, INVESTIGATIVE INTERVIEWING, supra note 10, at 78 (reporting that police pointed out contradictions between suspects’ and co-defendants’ or witnesses’ accounts, confront them with evidence, and urge them to tell the truth); Soukara et al., What Really Happens, supra note 108, at 495 (“[P]olice interviewers devoted most of their interviewing time to telling the suspects about the evidence against them and then accusing the suspects . . . .”); see also Leo, Miranda’s Revenge, supra note 11, at 277 (describing how U.S. interviewers similarly appeal to “the weight of the incriminating evidence . . . against the suspect”).

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TABLE 3

MAXIMIZATION QUESTIONS: TYPES AND FREQUENCY

<table>
<thead>
<tr>
<th>Interrogation Strategy</th>
<th>N</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confront with Evidence</td>
<td>155</td>
<td>54.4</td>
</tr>
<tr>
<td>Accuse of Lying</td>
<td>93</td>
<td>32.6</td>
</tr>
<tr>
<td>Tell the Truth</td>
<td>84</td>
<td>29.5</td>
</tr>
<tr>
<td>BAI Questions</td>
<td>82</td>
<td>28.8</td>
</tr>
<tr>
<td>Confront</td>
<td>57</td>
<td>20.0</td>
</tr>
<tr>
<td>Trouble</td>
<td>41</td>
<td>14.4</td>
</tr>
<tr>
<td>Accuse Other Crimes</td>
<td>24</td>
<td>8.4</td>
</tr>
</tbody>
</table>

Number per Interrogation

<table>
<thead>
<tr>
<th>Number</th>
<th>N</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>95</td>
<td>30.9</td>
</tr>
<tr>
<td>One</td>
<td>71</td>
<td>23.1</td>
</tr>
<tr>
<td>Two</td>
<td>44</td>
<td>14.3</td>
</tr>
<tr>
<td>Three</td>
<td>38</td>
<td>12.4</td>
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<tr>
<td>Four</td>
<td>24</td>
<td>7.8</td>
</tr>
<tr>
<td>Five</td>
<td>24</td>
<td>7.8</td>
</tr>
<tr>
<td>Six</td>
<td>9</td>
<td>2.9</td>
</tr>
<tr>
<td>Seven</td>
<td>2</td>
<td>.7</td>
</tr>
</tbody>
</table>

\( See \) generally Leo, POLICE INTERROGATION AND AMERICAN JUSTICE, supra note 92, at 139 (“Evidence ploys are used to make a suspect perceive that the case against him is so overwhelming that he has no choice but to confess because no one will believe his assertions of innocence.”).
if they already had evidence. 206 In other instances, they questioned youths about potential evidence that investigation would reveal. 207 They asked how a juvenile would respond to hypothetical evidence—“what if I told you that” someone had identified him or police found his fingerprints. 208 In another version, officers asked juveniles “is there any reason why” his DNA might be on a gun or he would appear on surveillance video. 209

In about one-third (32.6%) of cases, officers accused juveniles of lying. They equally often (29.5%) urged juveniles to be honest and tell the truth. “You gotta give up the truth, the whole thing. The only thing that can help you is the truth.” 210 Officers reaffirmed their roles as objective fact-gatherers and neutral conduits who would convey juveniles’ statements to prosecutors and judges. 211 Police intimated that their recommendations could affect prosecutors’ charge evaluations and judges’ decisions. 212 They cautioned that prosecutors and judges reacted negatively to an implausible story and predicted that judges responded more favorably to truthful defendants. 213

The Reid Method instructs police to ask emotionally-charged Behavioral Analysis Interview (BAI) questions early in an interview to provoke a reaction and to distinguish between innocent and guilty people. 214 They posit that innocent and guilty people respond differently to emo-

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206 Feld, Kids, Cops, and Confessions, supra note 12, at 115. For example, an officer might describe the process that would lead to evidence as if it had already occurred: “What if I said we’ve got a witness that saw you take it [the car]?” Id.

207 Id.

208 Id.

209 Id.

210 Id. at 119.

211 Id. One officer reassured a suspect:

“That’s all I want is the truth. You tell me you’re telling the truth and I’ll put that in the report. Because 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.”

Id.

212 Id. at 124.

213 Id. at 124, 133–34. An interviewer warned one juvenile:

[“]You have got to think about what the judge is going to say to you, because we’re going to do a detailed report on what happened during this interview that is being taped. If I’m a judge and I’m listening to somebody that is cooperative with the police, willing to help them out, I’m going to be a little more lenient if I was a judge. If I’m a judge and I hear a guy doing what you’re doing, saying you know what—’I’m not giving that up’—what do you think the judge is going to do? Do you think he’s going to give you a harder punishment[?”]

Id.

214 See Inbau et al., supra note 102, at 173–206 (recommending investigators begin interrogations with a BAI, giving illustrations of response-provoking questions and examples of how they work from actual interviews, explaining how to analyze suspects’ responses, and describing specialized BAI questioning techniques).
tionally provocative questions, which enables investigators to classify them appropriately. Leo reported BAI questions in about 40% of interrogations. In this study, BAI questions occurred in about one-quarter (28.8%) of interviews, most frequently: “Do you know why I have asked to talk to you here today?”

In one-fifth (20%) of cases, officers challenged suspects’ assertions. They pointed out inconsistencies, disputed claims, and questioned youths’ credibility to increase their anxiety. Officers regularly described juveniles’ claims of innocence as “bullshit.” Although many interviews began with an invitation to “tell his story,” police warned that it was time-limited—take it or leave it. If youths did not take advantage of this opportunity to explain their involvement, they might regret it later if other co-offenders tried to shift responsibility or make a deal at their expense.

2. Minimization Techniques

Minimization tactics use themes to reduce or neutralize guilt by offering excuses or justifications, by suggesting a less odious motivation, or by shifting blame to a victim or accomplice. Police used minimization techniques...

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215 Id.; see, e.g., id. at 180 (“[T]he motivation question should be asked. . . . In most crimes, an innocent suspect can be expected to offer a reasonable motive for the crime. . . . Conversely, the motive question is very threatening to the guilty suspect because he knows exactly why he committed the crime . . . .”). Despite Inbau and Reid’s claims of diagnosticity, see supra note 101 and accompanying text, police cannot accurately distinguish between truth-tellers and liars, see Kassin & Gudjonsson, supra note 89, at 37 (“[P]sychological research . . . has failed to support the claim that groups of individuals can attain high average levels of accuracy in judging truth and deception. . . . [T]raining programs produce, at best, small and inconsistent improvements[,] and . . . police investigators . . . perform only slightly better than chance, if at all.” (citation omitted)), and BAI questions do not provoke expected responses from liars and truth-tellers. See Aldert Vrij, et al., An Empirical Test of the Behavior Analysis Interview, 30 LAW & HUM. BEHAV. 329 (2006) (“[T]he BAI questioning led to differences between liars and truth-tellers but the difference was in the opposite direction to that anticipated by Inbau et al.”).

216 Leo, Inside the Interrogation Room, supra note 93, at 278 tbl.5.
217 Feld, Kids, Cops, AND Confessions, supra note 12, at 120.
218 Id. at 121.
219 Id.
220 Id.
221 Id.
222 See Leo, Police Interrogation and American Justice, supra note 92, at 153 (“[M]inimizing . . . ‘themes’ . . . work by shifting the blameworthiness of the act from the suspect to another person; by attributing the blameworthiness to the social circumstances that allegedly led to the act; or by redefining the act in a way that appears to minimize, reduce, or even eliminate the suspect’s culpability because the act now seems less criminal or no longer criminal at all.”); Kassin, The Psychology of Confession Evidence, supra note 94, at 223; see also Inbau et al., supra note 102, at 232 (“[T]he investigator should . . . present[ ] a ‘moral excuse’ for the suspect’s commission of the offense or minimiz[e] the moral implications of the conduct.”). See generally Kassin et al., Police-Induced Confessions, supra note 39, at
tion tactics in less than one-fifth (17.3%) of interrogations, far less frequently than they used maximization tactics (69.1%). Even though prosecutors charged all these youths with felonies, one officer explained that “most of these are fairly minor, so you don’t have to do a whole lot of minimizing.” Table 4 reports that officers used themes to reduce suspects’ guilt in 15.4% of cases; appealed to self-interest in one-tenth (11.9%) of cases; and expressed empathy in one-tenth of cases (10.5%). The relative absence of minimizing statements is consistent with English and Welsh research showing such tactics are rarely used in recorded interviews and with Minnesota police training, which discourages their use.

### Table 4

<table>
<thead>
<tr>
<th>Interrogation Strategy</th>
<th>N</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neutralization</td>
<td>44</td>
<td>15.4</td>
</tr>
<tr>
<td>Appeal to Self Interest</td>
<td>34</td>
<td>11.9</td>
</tr>
<tr>
<td>Empathy</td>
<td>30</td>
<td>10.5</td>
</tr>
<tr>
<td>Appeal to Honor</td>
<td>25</td>
<td>8.8</td>
</tr>
<tr>
<td>Minimize Seriousness</td>
<td>15</td>
<td>5.3</td>
</tr>
<tr>
<td>Third Parties</td>
<td>10</td>
<td>3.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number per Interrogation</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>254</td>
<td>82.7</td>
</tr>
<tr>
<td>One</td>
<td>33</td>
<td>10.7</td>
</tr>
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<td>Two</td>
<td>14</td>
<td>4.6</td>
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<tr>
<td>Three</td>
<td>5</td>
<td>1.6</td>
</tr>
<tr>
<td>Four</td>
<td>1</td>
<td>.3</td>
</tr>
</tbody>
</table>

The Reid Method teaches police to develop a theme to neutralize suspects’ guilt and minimize their responsibility, making it easier for them to confess.

Criminologists explain how youths rationalize delin-

29–30 (discussing how minimization techniques’ implicit promises of leniency can lead innocents to confess and suggesting possible solutions to limit this danger).

223 Infra Table 4.

224 Supra Table 3.

225 FELD, KIDS, COPS, AND CONFESSIONS, supra note 12, at 127.

226 See Soukara et al., What Really Happens, supra note 108, at 502 (“The tactics deemed by several psychologists to be the most problematic (i.e. intimidation, minimisation, situational futility, and maximization) never or almost never occurred.”).

227 NELSON, supra note 111, at 11–12.

228 See INBAU ET AL., supra note 102, at 232 n.6 (“Psychologists refer to this internal process as techniques of neutralization. Those classifications are remarkably similar to what
quent behavior using similar neutralizations and minimizations. Many themes derive from responsibility-reducing criminal defenses: provocation, intoxication, duress, and insanity. For example, delinquents may reject mental illness—insanity—as an excuse, but embrace the idea of “going crazy” or “being mad” to rationalize conduct. Police sometimes suggested that getting mad, losing control, or excitement accounted for youths’ misconduct. Intoxication explains bad behavior and drinking alcohol or using drugs lessened a juvenile’s responsibility for his behavior. Juveniles are more likely than adults to commit crimes in groups, and police diffuse responsibility by suggesting they succumbed to negative peer influences, shifting blame to others.

we refer to as themes (for example, ‘denial of responsibility,’ ‘denial of injury,’ ‘denial of victim,’ and ‘condemnation of the condemners’).

E.g., Gresham M. Sykes & David Matza, Techniques of Neutralization: A Theory of Delinquency, 22 AM. SOC. REV. 664 (1957) (arguing that neutralizations defuse guilt and reduce culpability, allowing youths to lessen their own responsibility, blame victims, or provide mitigating justifications).

DAVID MATZA, DELINQUENCY AND DRIFT 69–98 (1964) (arguing that juveniles drift into delinquency by using rationales that resemble legal justifications for crimes and that release them from moral constraints). Matza states, “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 beyond a point countenanced in law.” Id. at 74.

Officers regularly used themes of being “out of control”: “I can understand you’re whipped up. You’re adrenalized. You’ve seen this going on. You’re in a frenzy, that sometimes you just do stuff and you don’t remember what happened. Could it have been that things just kind of got out of control and that you just got wrapped up in it and kicked him a couple of times?”

Id. at 83–85.

Officers regularly suggested that youths succumbed to peer-pressure to mitigate their responsibility:

“[“]Rick [the suspect] knew he made a mistake. Maybe Rick was forced to do it. I know how peer pressure goes. You know, I went along to be with the crowd, because I thought it was cool at the time. . . . ‘Come on, let’s be cool and do it. Come on, let’s do it. Let’s do it for the dare.’ Right? . . . 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?”

FELD, KIDS, COPS, AND CONFESSIONS, supra note 12, at 130.
regularly refer to errant children’s behavior as a mistake, and police regularly described juveniles’ delinquency as a mistake to mitigate responsibility.\textsuperscript{236} Police appealed to juveniles’ self-interest in one-tenth (11.9\%) of cases.\textsuperscript{237} They told them they would feel emotional relief,\textsuperscript{238} prosecutors and judges would view them more favorably,\textsuperscript{239} and intimated they might deal with them more leniently.\textsuperscript{240} Officers minimized a youth’s crime by comparing it with more serious offenses.\textsuperscript{241} Even a serious crime—a drive-by shooting—could have been worse if the shooter had

\textsuperscript{236} Id. An interrogator explained away juvenile’s suspected crime by characterizing it as a mistake:

“Now I can understand that at your age, you don’t think about the future too much; you think about today. Because of that, you’re young and you make mistakes. I can understand because you’re human and you’re young and you make mistakes. But you have to be man enough to face up to it here and tell the system that ‘Yeah, I made a mistake and I’m sorry for it, and I’m going to change.’”

\textsuperscript{237} Supra Table 4.

\textsuperscript{238} Interrogators referred to a juvenile’s burden of emotional guilt and, as part of the youth’s emotional expiation, assured they would convey the youth’s feelings of remorse about the crime to the authorities:

“[Y]ou 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. . . . But you gotta trust me when I tell you . . . I need the whole truth and I’ll write the truth as you give it. And 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.”

\textsuperscript{239} Police told juveniles that the prosecutors and judge reacted more favorably to youths who cooperated, told the truth, or assisted officers:

[“]’[Y]ou’re cooperative. You’re helping us get stuff back. You’re showing us something . . . You’re making a step in the right direction.’ 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.[”]

\textsuperscript{240} Interrogators advised juveniles that judges viewed suspects who confessed and assumed responsibility more positively:

[“]’If you did something that you know you shouldn’t have, and you ‘fess up to it and tell me everything that happened, and you express remorse, and you acknowledge that it was a stupid kid thing to do, a mistake, that is going to be seen way more favorably than sticking with this story that you have come up with and making me put that down on the report and presenting it to a judge. Put yourself in the judge’s shoes. If you were going to give leniency, do you think that you would give it to the guy who is obviously lying through his teeth . . . or would you rather give a little leniency to the guy who is stepping up to the plate, acknowledging the stupid kid mistake that he did, and is willing to acknowledge that he screwed up?’”

\textsuperscript{241} Police questioning a juvenile about a burglary told him:

[“]’Y’ou’ve already said that you went into your neighbor’s house. All we need to know is your side of the story—I mean, error in judgment? People make it all the time. Now, it’s not like you went in and robbed some old lady and beat her to death, okay? You went into someone [sic] house.’”

\textsuperscript{Id. at 137.}
hit the intended target. Officers minimized the seriousness of what happened, compared with what could have happened:

“The big thing is nobody got hurt here. I mean, this is a serious matter, but it could—it could be a lot worse. It really could. . . . Nobody, nobody got killed, nobody got hurt. I mean, this is still a serious thing. Everybody makes mistakes. But now is your time for you to tell your version of it.”

Id.

Officers sometimes reminded juveniles, “This is juvenile not adult. You’re not going to prison. The purpose of juvenile is rehabilitation, not punishment. We want to get you help.”

Id.

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“The big thing is nobody got hurt here. I mean, this is a serious matter, but it could—it could be a lot worse. It really could. . . . Nobody, nobody got killed, nobody got hurt. I mean, this is still a serious thing. Everybody makes mistakes. But now is your time for you to tell your version of it.”

Id.

243 Officers sometimes reminded juveniles, “This is juvenile not adult. You’re not going to prison. The purpose of juvenile is rehabilitation, not punishment. We want to get you help.”

Id.

244 See Feld, Kids, Cops, and Confessions, supra note 12, at 144–45. Police elicited a confession when a juvenile admitted that he committed the crime with supporting details or his cumulative responses satisfied all of the elements of an offense, i.e., act and intent. Id. at 145–46. Questioners received an admission when it linked a youth to a crime or provided direct or circumstantial evidence of one or more elements of the offense. Id. at 146. Admissions often occurred when a get-away driver, look-out, or co-defendant admitted participating, but minimized her role. See id. Denials occurred when a juvenile disavowed knowledge or participation or gave an explanation that did not include any incriminating admissions. Id. at 147.

245 See generally Cassell & Hayman, supra note 113, at 862 (observing that evaluating the outcomes of interrogations involves a degree of subjectivity); Wald et al., supra note 115, at 1643–47 (categorizing interrogations as “successful” or “unsuccessful” based on whether suspects talked and on whether they confessed).

246 Feld, Kids, Cops, and Confessions, supra note 12, at 145.

247 Soukara et al., What Really Happens, supra note 108, at 495 (citing John Pearse & Gisli H. Gudjonsson, Police Interviewing Techniques at Two South London Police Stations, 3 Psychol., Crime & L. 63 (1996)).
against them” and interrogation tactics have little impact on whether they subsequently admit.

### Table 5
**Outcome of Interrogation and Youths’ Attitude**

<table>
<thead>
<tr>
<th>Outcome of Interrogation</th>
<th>Youths’ Attitude*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cooperative</td>
</tr>
<tr>
<td>Confession</td>
<td>N</td>
</tr>
<tr>
<td></td>
<td>167</td>
</tr>
<tr>
<td>Admission</td>
<td>85</td>
</tr>
<tr>
<td>Denial</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>227</td>
</tr>
</tbody>
</table>

*Statistically Significant at: $\chi^2(1, N = 285) = 7.84, p < .001$

Other studies report similar high rates of success. The Yale–New Haven study reported that more than half (57%) of interrogations preceded by *Miranda* warnings produced some evidence. Leo reported three-quarters (78%) of adult suspects waived *Miranda* and two-thirds (64%) made an incriminating statement or a partial or full confession. Police investigators estimated that two-thirds (68%) of suspects made incriminating statements. Psychologists Rebecca Milne and Colin Clarke, a police officer at the time of the study, evaluated interrogations by six English and Welsh police forces and reported confessions in 40% of cases and partial admissions in another 25%. Another English and Welsh study concluded juvenile suspects “readily confessed” in three-quarters (77%) of cases.

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250 Wald et al., supra note 115, 1565 tbl.11 (showing that 50 warned interrogations out of 87 produced evidence).  
251 Leo, *Inside the Interrogation Room*, supra note 93, at 276 tbl.3.  
252 *Id.* at 280 tbl.7. If interrogations terminated upon a suspect’s invocation of *Miranda* are excluded, the amount of successful interrogations rises to over three-fourths (76%). *Id.* at 281.  
253 Kassin et al., *Police Interviewing and Interrogation*, supra note 129, at 392.  
255 Evans, *The Conduct of Police Interviews*, supra note 118, at 29 ("[T]his open admission usually occurred in the first sentence or so of the interview.").
About one-third (29.8%) of juveniles provided statements of some evidentiary value—for example, admitting that they served as a look-out during a robbery or participated in a burglary, even if they did not personally steal property. Justice personnel agreed that most juveniles made some incrimination admissions. Only a small proportion (11.6%) of juveniles gave no incriminating information. Forms of resistance included non-cooperation, steadfast denial of knowledge or participation, lying, evasion, silence, or blame shifting.

2. Attitudes and Outcomes

Juveniles’ attitudes affect the exercise of police discretion. For less serious crimes, a deferential attitude reduces likelihood of arrest, and a contumacious one increases it. Youths’ attitudes affect how police

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256 Supra Table 5.

257 A police officer said, “‘Most of them will pretty much tell you the whole truth, but not necessarily all the truth. They may still want to hide a little bit of what they did because they know they were wrong. It could be very embarrassing for them.” Feld, Kids, Cops, and Confessions, supra note 12, at 146. A judge observed,

“[Juveniles] just talk [when police question them]. They just cough it up. Some of them are deceitful and more clever, but they still talk. Some of them think they can talk their way out of it, but they’re dealing with a professional investigator, and that normally doesn’t end well for them.”

Id.

258 Supra Table 5.

259 Feld, Kids, Cops, and Confessions, supra note 12, at 147.


261 See Bittner, supra note 260, at 82. For research on the impact of adults’ demeanor on arrest decisions, see generally Wayne R. LaFave, Arrest: The Decision to Take a Suspect into Custody 146–47 (1965) (“[A]n officer . . . might arrest a person who ordinarily would not be arrested . . . solely because he has incurred the disfavor of a particular officer[ ] . . . .”); Jerome H. Skolnick, Justice Without Trial: Law Enforcement in Democratic Society 89–90 (1966) (“[W]hen [the street patrolman] encounters arrogance or hostility on the part of the citizenry, he may be tempted to make strong claims of authority . . . .”). For research on how youths’ demeanor affects arrest decisions, see generally Aaron V. Cieciur, The Social Organization of Juvenile Justice (Transaction Publishers 1995); Bittner, supra note 260, at 81–83 (“The decision of what has to be done takes shape in a relationship to how the young people act toward the intervening patrolmen.”); Irving Piliavin & Scott Briar, Police Encounters with Juveniles, 7 Am. J. Soc. 206 (1964) (observing the influence of juveniles’ attitudes and police prejudice on officers’ decisions to arrest, cite, or admonish apprehended juvenile offenders).
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and probation officers perceive them, impute moral character, and respond to them.262

Juveniles’ attitudes during interrogation ranged the gamut—”some are scared to death, and others, it’s almost a joke.”263 Many officers described youths as scared, especially “the kids that are new to the process.”264 Although police described some youths as confrontational, justice system personnel viewed most youths as compliant or submissive: “I would say that 90% or more would probably be cooperative, and the other percentage would be the frequent fliers, so to speak.”265 Several officers used the same expression—”dear in the headlights”—to describe youths’ demeanor.266 Public defenders described their clients as humbled or defeated.267

Police reports frequently describe juveniles’ demeanor and behavior during interrogation. Officers documented whether they believed sus-

262 See CICOUREL, supra note 261, at 40 (“The decision to arrest, file a petition, and recommend, for example, probation, a foster home, a boys’ ranch, or the youth authority seemed directly influenced by oral remarks and physical gestures which are difficult to document and may never appear on official records.”); see also Bittner, supra note 260, at 81–85 (“[P]olicemen tend to be sensitive concerning respect[ ] . . . . They apparently believe that anyone who would risk being rebellious and unruly in their presence can be counted on to go even further if left alone.”); cf. Robert M. Emerson, Role Determinants in Juvenile Court, in HANDBOOK OF CRIMINOLOGY 621, 626 (Daniel Glaser ed., 1974) (“[T]he power to arrest and to initiate court action becomes a strategic weapon used to . . . threaten[ ] the youth into better behavior. . . . [C]ourt action may be initiated when a policeman has his authority assaulted or challenged in what otherwise might be an inconsequential encounter with a youth.”). Compare WILLIAM A. WESTLEY, VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM, AND MORALITY 85–86 (1970) (“[W]ith the quiet, repentant, fearful child . . . , the police will attempt to deal with the problem themselves. . . . The older delinquents[ ] . . . become a threatening group for the policeman. Many find that they can no longer treat [these delinquents . . . as children, since boys of this age are particularly obnoxious to the policeman.”), with Donald J. Black & Albert J. Reiss, Jr., Police Control of Juveniles, 35 AM. SOC. REV. 63 (1970) (“When the suspect behaves antagonistically toward the police, the [arrest] rate is higher . . . . [H]owever . . . the arrest rate for encounters involving very deferential suspects is . . . the same as that for the antagonistic group. . . . [J]uveniles who are . . . particularly liable to arrest may be especially deferential toward the police as a . . . self-defense.”).

263 FELD, KIDS, COPS, AND CONFESSIONS, supra note 12, at 150. One officer used the term “felony mouth” to describe “kids trying to be men who have no men in their lives.” Id. at 151. One consequence, the officer explained, was that “cops take them to jail to teach them who is boss. Felony mouth will get you a ride to the jail.” Id.

264 Id. at 150.

265 Id. at 151.

266 Id.

267 One explained:

[“]Most of the time, they’re just sort of very monotone. I almost feel like I’m watching someone that’s just given up. There’s kind of a hopelessness to being interviewed by police. Occasionally, you get the really conduct disordered kids who really cop an attitude, but they’re the exception to the rule. Most of the kids are fighting off the tears, maybe trying to act tough, but very monotone. On the videos, their heads are down. They just feel like they’ve already been beat.”

Id.
pects told the truth or lied and whether suspects cooperated or resisted.268 Reports described youths’ emotional or behavioral responses to their interrogators.269 Based on my impressions and officers’ reports, I characterized youths’ attitudes as either cooperative or resistant.270 As Table 5 reports, the vast majority of juveniles (79.6%) exhibited a cooperative demeanor, and only one-fifth (20.4%) appeared resistant. Not surprisingly, the vast majority (96.5%) of cooperative juveniles confessed or made incriminating admissions.271 By contrast, fewer than one in ten (8.5%) resistant juveniles confessed, and almost half (43.1%) provided no useful admissions.272 One-tenth (11.6%) of youths denied involvement, but those who exhibited resistant attitudes accounted for more than three-quarters of them (75.8%).

3. Corroborating Evidence

Police question suspects to elicit incriminating statements or leads regarding other evidence: witnesses, co-offenders, or property. “[A] principal purpose—if not the primary purpose—of interrogation is to obtain information such as the location of physical evidence.”274 Some commenters, however, have contended “police rarely obtain[] incriminating fruits” from interrogations.275 Table 5 reports how often interrogations yielded corroborating evidence. I defined corroborating evidence as evidence police did not possess prior to questioning—e.g. leads to physical evidence, a crime scene

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268 Id. at 151–52. One report noted the juvenile “was cooperative. He stated he was sorry he stole the items.” Id. at 152. Another officer’s report described the juvenile whom he questioned as “cooperative and forthright throughout the interview.” Id. An officer described another youth as “not very cooperative. He was kind of just sit there and stare down at his legs [sic].” Id. Police implied that youths’ attitudes and cooperation would affect how the justice system treated them: “For what it’s worth, two people were arrested. If that guy spills the beans, tell [sic] me everything I ask him—because you won’t—if he does, he looks more cooperative than you. And you’re okay with that? Because I’m going to mark you down as uncooperative.” Id.

269 “Marvin’s demeanor during my interview showed no remorse. Marvin at times had a flat affect and at other times appeared to be slightly amused by my questions.” Id. Police described youths’ behavior as well. An officer depicted a juvenile who 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.” Id.

270 Other research, using similar categories, described 80% of suspects as “cooperative” or “remorseful.” Baldwin, supra note 1, at 332 tbl.1.

271 Supra Table 5.

272 Id.

273 Id.


275 Cassell & Hayman, supra note 113, at 880–81. But see Wald et al., supra note 115, at 1593–95 (explaining that the analyzed interrogations produced information which implicated accomplices and solved other crimes committed by the suspect).
diagram, identity of a co-offender or unknown witness. By this standard, fewer than one-fifth (18.2%) of interviews yielded information that police did not already have.276 Some police attributed the relatively low-yield of corroborating evidence to time pressure and volume of cases under which they labored.277 Once they obtained an admission, which they did quickly, they seldom pressed youths for additional evidence.278 Prosecutors confirmed interrogations did not often lead to corroborating evidence but attributed that to good preliminary investigation.279

4. Length of Interrogation

Police typically interrogate innocent suspects for six hours or longer before eliciting false confessions.280 Are lengthy interrogations common? Or are lengthy interrogations and the concommitant risk of false confessions outliers from routine questioning? If the latter, then should policy makers limit the length of interrogations to preserve the integrity of the justice process?

Table 6 reports the length of interrogations, the length of time by type of offense, and the length of time by whether the offense involved a firearm.281 Routine felony interrogations are brief. Police completed three-quarters (77.2%) of felony interviews in less than fifteen minutes and nine-tenths (90.5%) in less than thirty minutes.282 In the longest interviews, police questioned three youths (1.1%) for more than one and one-half hours.283 Although prosecutors charged all the interviewed

276 Supra Table 5.
277 Feld, Kids, Cops, and Confessions, supra note 12, at 154.
278 One officer said, “They’re used to, ‘Alright you gave it to me. I don’t need anything else. We’re out of this room.’ If, had the cop asked one more question down the road—‘Did you tell anyone else about that?’—that does not show up because it’s not part of those cases.” Id.
279 A prosecutor said, “I don’t see that very often. I don’t know if that’s because by the time the police talk to that suspect they have done such a good job with their investigation that they have everything else, but I don’t see very often that it leads to other evidence.” Id.
280 See Drizin & Leo, The Problem of False Confessions, supra note 81, at 948 (“[I]nterrogation-induced false confessions tend to be correlated with lengthy interrogations in which the innocent suspect’s resistance is worn down[ ] . . . .”); infra notes 363–368 and accompanying text.
281 To measure length of interrogation, in some cases, I directly timed the tape. In most transcripts, officers stated the times at the beginning and ending of an interrogation. In other cases, to approximate the length of interrogations for which I had only transcripts, I estimated the duration of interrogation from the length of the transcript by cross-tabulating the transcript pages and length of interrogations in cases in which I had both. Feld, Kids, Cops, and Confessions, supra note 12, at 155.
282 Infra Table 6.
283 Feld, Kids, Cops, and Confessions, supra note 12, at 156.
youths with felonies, these brief interrogations are unlikely to elicit false confessions.284

**Table 6**
LENGTH OF INTERROGATION BY TYPE OF OFFENSE* AND WEAPON**

<table>
<thead>
<tr>
<th>Time (minutes)</th>
<th>Overall</th>
<th>Person</th>
<th>Property</th>
<th>Drug</th>
<th>Firearms</th>
<th>Other</th>
</tr>
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<tbody>
<tr>
<td>1 - 15</td>
<td>220</td>
<td>77.2</td>
<td>62</td>
<td>67.4</td>
<td>131</td>
<td>83.4</td>
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<td></td>
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<td>15</td>
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<td>3</td>
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<tr>
<td>16 - 30</td>
<td>38</td>
<td>13.3</td>
<td>20</td>
<td>21.7</td>
<td>13</td>
<td>8.3</td>
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<td>1</td>
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<td>31+</td>
<td>27</td>
<td>9.5</td>
<td>10</td>
<td>10.9</td>
<td>13</td>
<td>8.3</td>
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<td></td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>285</td>
<td>92</td>
<td>157</td>
<td>16</td>
<td>15</td>
<td>5</td>
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</table>

Cases Involving Firearms

<table>
<thead>
<tr>
<th>Time (minutes)</th>
<th>Overall</th>
<th>No Gun</th>
<th>Gun</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 15</td>
<td>220</td>
<td>192</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td></td>
<td>80.3</td>
<td>60.9</td>
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<tr>
<td>16 - 30</td>
<td>38</td>
<td>29</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12.1</td>
<td>19.6</td>
</tr>
<tr>
<td>31+</td>
<td>27</td>
<td>18</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7.5</td>
<td>19.6</td>
</tr>
<tr>
<td>Total</td>
<td>285</td>
<td>239</td>
<td>46</td>
</tr>
</tbody>
</table>

*Statistically Significant at: $\chi^2(1, N = 285) = 32.3, p < .05$
**Statistically Significant at: $\chi^2(1, N = 285) = 9.4, p < .01$

The brevity of these interviews was initially surprising, but interrogations of even two or three hours are exceptional.285 Various studies have reported that interrogations lasted less than one hour in 85% of cases,286 one hour in about three-quarters (71.3%) of cases,287 thirty minutes in 87% of cases,288 fifteen minutes in 71.4% of cases,289 and 30 minutes in 80% of cases and one hour in 95%.290 Inbau and Reid advise against interrogations that last longer than four hours,291 a duration substantially longer than observed in any research.

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284 See Welsh S. White, Miranda’s Failure to Restrain Pernicious Interrogation Practices, 99 Mich. L. Rev. 1211, 1225 (2001) [hereinafter White, Miranda’s Failure] (“[I]nterrogations conducted in low profile cases . . . would be much less likely to produce a false confession. In low profile cases, interrogators are generally disinclined to expend the time or employ the range of tactics likely to produce an untrustworthy confession.”). R

285 See Drizin & Leo, The Problem of False Confessions, supra note 81, at 948 (“[M]ore than 90% of normal interrogations last less than two hours.”); Kassin et al., Police Interviewing and Interrogation, supra note 129, at 384 (“[R]outine interrogations tend to be relatively brief encounters, with the modal duration ranging from 20 minutes to an hour.”) (citation omitted). R

286 Wald et al., supra note 115, at 1542 tbl.1. R

287 Leo, Inside the Interrogation Room, supra note 93, at 279 tbl.6. R

288 Cassell & Hayman, supra note 113, at 892 tbl.7. R


290 Kassin & Gudjonsson, supra note 89, at 46. R

291 INBAU ET AL., supra note 102, at 597. But see id. at 237 (“After three or four hours, unless the suspect is showing clear potential for telling the truth . . . , the investigator should..."
I asked justice professionals to estimate the lengths of interviews, and they all agreed that interviews were “very short.” Justice system personnel attributed the brevity of felony interrogations to several factors. Many referred to police workload pressures. Police conducted a form of triage and questioned suspects longer in more serious cases but did not regard most juvenile felonies as serious crimes. Several officers attributed brief interrogations to the relative simplicity of most youth crime and their ability to elicit admissions quickly.

consider terminating the interrogation session and perhaps re-interrogating the suspect at a later time using a different technique.” (emphasis added)).

292 Feld, Kids, Cops, and Confessions, supra note 12, at 157. Their estimates of the average length only ranged from ten to thirty minutes. Id. A veteran officer recollected, “My longest has maybe been an hour.” Id. One judge guessed “fifteen or twenty minutes,” a second judge confirmed “usually ten to twenty minutes,” and a third agreed, “It doesn’t take very long to get them to ‘fess up; twenty minutes.” Id. A prosecutor said the length of interrogations are “very short, usually”: “I would say under ten minutes, the vast majority, under ten minutes.” Id. Public defenders thought that typical interrogations took thirty minutes at most. Id. The longest estimate of average interrogation time was “thirty to forty-five minutes.” Id. These responses confirmed my findings are reasonable and consistent with the experience of legal professionals.

293 One officer explained, “These guys are in the meat grinders. We got to get out of here. I got ten cases I got assigned today. Either you’re going to give this up today—they don’t ask the extra questions, once you told me you did it.” Id.

294 An officer described how police prioritized their caseloads:

[“]When you get to a lot of the minor stuff—the shoplifting, the fights in school, and stuff like that—we get too many of them. The cops are trying to push through those. We’ve got two dozen cases sitting on our desk. You’re not going to spend an hour an hour and half with an assault in school. With an ag[gravated] robbery, you’re going to take the time and effort—just more complexity to the crime. It doesn’t take much time for Joe to tell me, ‘He said my girlfriend is ugly, so I punched him.’”

Id. at 157–58. Prosecutors agreed that volume of cases and police staff reductions precluded extensive interviews with most juveniles:

“it’s a lack of resources now. They just don’t have as much time to devote to juvenile cases unless they’re really serious. I’ve kind of noticed that there isn’t as much effort to try to—I’m not saying coerce a confession—but trying to get to the truth, not calling them on inconsistencies.”

Id. at 158. A juvenile court judge confirmed that workload pressures, a high-level of successful questioning, and the diminishing marginal utility of longer interrogations contributed to the brevity of questioning:

“Police are busy, and they’re moving on with what they need to do. They’re not there to socialize. They’re there to get their job done and move on. They’ve got a ton of work to do in that case and lots of others. So they’re trying to be efficient, and a longer interrogation probably wouldn’t produce more than what they’ve already got.”

Id.

295 Officers attributed brief interrogations to suspects confessing without much prompting:

“If you get them to tell you the truth, there ain’t nothing else to talk about. Once you get the statement from them, once you get the story from them, that’s all you need. You’re not going to sit around and hold their hand all day. Here’s the statement. Let’s move on.”
a) Interrogation and Guns

Detectives question suspects longer about more serious crimes. In this study, a statistically significant relationship appeared between length of interrogation and type of offense. Police questioned a higher percentage of youths charged with property and drug crimes for fifteen minutes or less than they did youths charged with other, more serious offenses. Crimes involving physical evidence—drugs, stolen property, automobiles—may provide more leverage with which to quickly extract confessions.

Cases involving firearms produced longer interrogations. Although police questioned only 9.5% of suspects for longer than thirty minutes, they interrogated twice as many (20%) juveniles whose offenses involved firearms—armed robbery, assault with a gun, firearms possession, or burglary in which youths stole guns—for longer than thirty minutes. Guns provide an indicator of offense seriousness. Police wanted to recover guns and questioned juveniles involved with them longer and more aggressively. Interviewers made implied promises of benefits to induce youths to help recover guns. Police used tactics like those described in *Rhode Island v. Innis* to impress upon suspects the danger guns pose to those in possession of them and to those near them. Officers threatened youths, warning them they could be held

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*Id.*

296 See Leo, *Inside the Interrogation Room*, supra note 93, at 297 (reporting that detectives were twice as likely—42% vs. 20%—to question suspects for more than one hour in high seriousness crimes and about three times as likely to conclude low seriousness interviews in less than thirty minutes).

297 *Supra* Table 6.

298 *Id.*

299 *Id.*

300 See Podkopacz & Feld, *The End of the Line*, supra note 128, at 474 tbl.3 (showing that judges were more likely to transfer juveniles to adult court if they were charged with felonies involving use of a weapon).

301 Feld, *Kids, Cops, and Confessions*, supra note 12, at 159.

302 For example, one interrogator hinted at leniency if a suspect helped locate a gun: “Now if you made a goodwill 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? 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.”

*Id.* at 160.

303 See 446 U.S. 291, 294–95 (1980) (explaining how two arresting officers convinced a suspect in custody to reveal the location of a hidden gun by discussing aloud that it “would be too bad” if a little girl “would pick up the gun, maybe kill herself”).

304 An officer questioned one youth and warned of the dangers the gun posed to innocent bystanders: “We know that that gun is out there. That gun hasn’t been recovered. At least help me find where the gun is, so a young, innocent kid doesn’t pick that up and hurt himself or someone else. Just imagine if that is your younger brother or sister, just
responsible for any crimes committed by others using guns they had stolen or hidden.\textsuperscript{305} Two interrogations in this study raised constitutional issues of voluntariness, and both involved guns.\textsuperscript{306} The questioning of the juveniles implicated in both offenses lasted longer than any other interrogation in this study, used more maximization techniques, and included explicit quid pro quo promises of leniency in exchange for recovering the guns.\textsuperscript{307}

Justice system personnel agreed that guns provide a proxy for seriousness and affected the length of interrogations.\textsuperscript{308} Police associated guns with gangs—another indicator of seriousness.\textsuperscript{309} Police questioned youths to learn who else had contact with the weapon.\textsuperscript{310} Youths knew that guns garnered serious consequences, raised the stakes, and gave them greater incentive to resist interrogators.\textsuperscript{311}
V. POLICY IMPLICATIONS

Theoretically, defendants enjoy the protections of the Due Process Model, an adversarial system in which procedural safeguards force the state to prove its case. In reality, the justice system more closely resembles the Crime Control Model, an inquisitorial system in which defendants’ confessions lead to guilty pleas. Confessions greatly tilt the balance of advantage to the state. Prosecutors charge defendants who confess with more crimes and more serious crimes, set higher bails, and offer fewer plea concessions than they do with defendants who remain silent. Defense attorneys pressure clients who confessed to accept guilty pleas because of reduced negotiating leverage.

Scales recordings have virtually eliminated suppression motions to challenge juveniles’ statements. The paucity of suppression motions

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312 Packer, supra note 13, at 154–73. The Due Process Model represents a commitment to an adversarial process, whereas the Crime Control Model envisions a more inquisitorial justice system. Id. at 157. The Due Process model relies on formal fact-finding at trial buttressed by procedural safeguards to assure reliable findings of legal guilt. Id. at 163, 166–67. The Crime Control Model relies on informal, administrative procedures to separate innocent suspects from probably guilty ones. Id. at 159–60. It envisions an inquisitorial process, views the accused as a primary source of evidence, and relies heavily on interrogation and confessions to fuel guilty pleas. Id. at 187–90, 222–223.

313 See Richard A. Leo, False Confessions: Causes, Consequences and Implications, 37 J. AM. ACAD. PSYCHIATRY & L. 332, 340–41 (2009) [hereinafter Leo, False Confessions] (“Confessions exert a strong biasing effect . . . because most people assume that a confession[] . . . is, by its very nature, true.”).

314 See Cassell, Miranda’s Social Costs, supra note 114, at 443–44 (“[D]efendants who had confessed were less likely to receive a reduction in the number of counts charged against them] . . . [and] were less likely to receive concessions in plea bargaining.”); Richard J. Ofshe & Richard A. Leo, The Decision to Confess Falsely: Rational Choice and Irrational Action, 74 DENV. U. L. REV. 979, 984 (1997) (“Defendants who have confessed are likely to experience greater difficulty making bail[] . . . . If a person has confessed, prosecutors are likely to file charges[ and ‘charge high’ . . . .”); see also Cassell & Hayman, supra note 113, at 909 (“Defendants who confessed were more likely to be convicted—and more likely to be convicted of more serious charges—than those who did not.”); David W. Neubauer, Confessions in Prairie City: Some Causes and Effects, 65 J. CRIM. L. & CRIMINOLOGY 103, 109 (1974) (“When a case is pleaded out, those individuals who have confessed receive fewer concessions from the state than those who have not.”).

315 See Ofshe & Leo, supra note 314, at 984 (“[D]efense attorneys are more likely to pressure their clients [who confessed] to plead guilty because of the high risk of conviction.”); see also Neubauer, supra note 314, at 109 (“A confession makes it unlikely that a defendant will be found not guilty at a jury trial. As such, defense attorneys generally recommend against a trial.”); cf. Kassin et al., Police-Induced Confessions, supra note 39, at 23 (“Upon confession, prosecutors tend to charge suspects with the highest number and types of offenses, set bail higher, and are far less likely to initiate or accept a plea bargain to a reduced charge.”). See generally Peter F. Nardulli et al., The Tenor of Justice: Criminal Courts and the Guilty Plea Process 319–28, 355–59 (1988) (analyzing the effect of defense attorneys on the guilty plea process).

may be attributed to defense lawyers’ heavy caseloads, lack of resources, or courtroom cultures hostile to adversarial litigation. Even when defense counsel file motions, judges rarely exclude statements. Interviews with justice system personnel confirmed that defenders filed few motions to suppress evidence for *Miranda* violations and that *Scales* recordings obviated hearings.

Justice system personnel attributed *Scales*’s reduction of suppression motions to several factors. Police act professionally. There is no ambiguity about warnings and waivers. Most juveniles confess, and the tapes provide unimpeachable evidence. Juveniles’ statements limited defense options and fostered a system of plea bargains, rather than

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317 See Goldstein & Goldstein, *Evaluating Capacity to Waive Miranda*, supra note 65, at 53 (“When explaining the reasons for not filing pretrial motions or aggressively trying cases, attorneys cited large caseloads, limited time, inadequate training, lack of professional support . . . , and courthouse culture.”); see also Patricia Puritz et al., *ABA Juvenile Justice Ctr., A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings* 51 (1995) (“In one jurisdiction, . . . attorneys do not file motions in order to maintain a ‘friendly’ atmosphere in the courthouse . . . .”).

318 See Goldstein & Goldstein, *Evaluating Capacity to Waive Miranda*, supra note 65, at 54 (“[M]otions to suppress confessions under *Miranda* are rarely raised, rarely affect convictions, and rarely serve as the basis of successful appeals.”); Cassell, *Miranda’s Social Costs*, supra note 114, at 393 (“[S]uppression motions are rarely granted . . . .”).

319 A prosecutor estimated that she encountered “maybe one or two a year.” Another prosecutor recalled “six omnibus [suppression] hearings which involved statements, none of which involved suppression, in two and a half years.” One judge reported “maybe one in the last year,” and another described them as “very infrequent, maybe a couple of times a year.” One defense lawyer said she only filed “a couple a year,” another said, “In this year, I filed about three of them,” and a third said, “I’ve had years where I haven’t done it at all, because I haven’t had anything that’s right for trial.”

320 An urban judge attributed the paucity of *Miranda* suppression motions to *Scales* recordings:

> “We haven’t had all that many cases involving full-scale trials that would involve *Scales* tapes . . . . When I was a defense attorney, these cases went to trial regularly . . . . Since *Scales* tapes, I’m finding these cases settle more often than not, so I’m not seeing it very often. It’s usually resolved, and I’m not getting those kinds of cases.”

*Id.* at 167–68.

321 *Id.* at 168.

322 A prosecutor observed:

> “[W]hen the issue regarding the *Scales* interview comes up, there isn’t much to fight about. There is a protocol that the police follow, and they read it verbatim . . . . It’s a standardized protocol. It’s written, and they follow it fairly tightly. It’s tight. We rely on it. They rely on it. The juvenile investigators are extremely careful.”

*Id.*

323 See supra notes 246–259 and accompanying text. One public defender said, “I don’t file them [suppression motions] very often, because our kids do such a good job at hanging themselves.” *Field, Kids, Cops, and Confessions*, supra note 12, at 168. A judge commiserated with public defenders over the obstacles they confront: “I think down here it’s real hard being a public defender, because if your kid has been in custody, he’s likely cooked his own goose by the time you get to him.” *Id.* at 168–69.
trials, in which the crucial issues involved dispositions rather than guilt or innocence. Scales enables professionals to administer an inquisitorial model of justice “on the record,” expedites processing of routine cases, and reserves court resources for complex cases.

A. Protecting Youth in the Interrogation Room

Miranda purported to bolster the adversary system and protect citizens, but warnings have failed to achieve those goals. Post-Miranda decisions have limited its applicability and the exclusionary consequences when police fail to comply. Miranda’s protection only comes into play after police isolate a suspect. It requires only an understanding of the words of the warning, and does not extend to collateral effects.

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324 One judge observed, “Most of our young people are represented by public defenders who are real busy. I think that it’s fair to say that the culture and process down here is sort of slanted toward making a deal.” Id. at 169. Another judges confirmed that, in the vast majority of cases, prosecutors and defense lawyers negotiate dispositions, rather than litigate admissibility of a statement or guilt or innocence:

[“T]hey’ve decided to expend their energy focusing more on settlement and what’s an appropriate disposition and how to best situate things for their clients. . . . [I]n a very large portion of the cases, the focus of things is on can we work out a disposition that everyone can live with or that particularly the child and defense attorney can live with.]” Id.

325 Id. at 170.

326 See Miranda v. Arizona, 384 U.S. 436, 457–58 (1966) (“Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.”).

327 See Weisselberg, Mourning Miranda, supra note 90, at 1577 (“A central assumption of the Miranda Court was that suspects would understand the warnings and be able to act on them. . . . Today’s evidence strongly suggests the contrary. . . .”).

328 See, e.g., New York v. Quarles, 467 U.S. 649 (1984) (recognizing a “public safety” exception to Miranda when an emergency need for answers outweighs Miranda’s prophylactic Fifth Amendment protection); see also Weisselberg, Mourning Miranda, supra note 90, 1577–78 (“[T]he Miranda Court’s high standards for waiver have largely been abrogated by Davis v. United States and lower court cases extending Davis, as well as by decisions finding implied waivers of rights if suspects simply answer questions during interrogation.”).


330 E.g., Oregon v. Mathiason, 429 U.S. 492 (1977) (holding that police did not need to warn a suspect before questioning him at a police station because the suspect was free to leave). See generally Weisselberg, Mourning Miranda, supra note 90, at 1592 (“[W]e have a Miranda rule that is somewhat limited in reach, which sometimes locates warnings and waivers within the heart of a highly structured interrogation process, provides admonitions that many suspects do not understand, and appears not to afford many suspects a meaningful way to assert their Fifth Amendment rights. As a prophylactic device to protect suspects’ privilege against self-incrimination, . . . Miranda is largely dead.”).
eral facts—seriousness of the crime— or an attorney seeking access—or the consequences of waiver. A suspect must assert the right to remain silent by speaking and making a clear invocation.

Miranda assumed that a warning would enable suspects to resist the inherent coercion of custodial interrogation. That assumption is demonstrably false. Post-Miranda research reports that eighty percent of adults and ninety percent of juveniles waive their sole protection in the interrogation room. Although Miranda recognized that those compulsive pressures threaten the adversarial process, waivers provide police with a window of opportunity to conduct an inquisitorial examination. Perversely, judges focus on ritualistic compliance with a procedural formality rather than on assessing the voluntariness or reliability of a statement. Miranda remains

Amendment rights focuses . . . on whether the defendant could, merely as a linguistic matter, comprehend the words spoken to him.”); cf. Collins v. Gaetz, 612 F.3d 574, 588 (7th Cir. 2010) (“It is only when the evidence in the case shows that the defendant could not comprehend even the most basic concepts underlying the Miranda warnings that the courts have found an unintelligent waiver.”). See generally Dickerson v. United States, 530 U.S. 428, 442 (2000) (“Miranda requires procedures that will warn a suspect in custody of his right to remain silent and which will assure the suspect that the exercise of that right will be honored.”).

See Colorado v. Spring, 479 U.S. 564, 577 (1987) (“[T]he failure of the law enforcement officials to inform Spring of the subject matter of the interrogation could not affect Spring’s decision to waive his Fifth Amendment privilege in a constitutionally significant manner.”).

See Moran v. Burbine, 475 U.S. 412, 422–24 (1986) (“Events occurring outside of the presence of the suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right”).

Oregon v. Elstad, 470 U.S. 298, 316 (1985) (“This Court has never embraced the theory that a defendant’s ignorance of the full consequences of his decisions vitiates their voluntariness.”).

Berghuis v. Thompkins, 130 S. Ct. 2250, 2263 (2010) (holding that a suspect who speaks has impliedly waived their Fifth Amendment protection).

See Miranda v. Arizona, 384 U.S. 436, 460 (1966) (requiring warnings to bolster the privilege against self-incrimination—the mainstay of our adversary system—and to protect “the dignity and integrity of [U.S.] citizens”).

See supra notes 174–181 and accompanying text.

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation’s most cherished principles—that the individual may not be compelled to incriminate himself.

Id. (footnote omitted).

See, e.g., Missouri v. Seibert, 542 U.S. 600, 608–09 (2004) (“[G]iving the warning and getting a waiver has generally produced a virtual ticket of admissibility; maintaining that a statement is involuntary even though given after warnings and a voluntary waiver or rights requires unusual stamina, and litigation over voluntariness tends to end with the finding of a valid waiver.”). Berkemer v. McCarty, 468 U.S. 420, 433 n.20 (1984) (“[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was ‘compelled’
a necessary, but not sufficient, predicate to assure admissible statements.340

Miranda is especially problematic for younger juveniles. Earlier, I distinguished between youths’ cognitive ability—capacity to understand—and maturity of judgment—proficiency to make decisions and exercise rights. Miranda requires only the ability to understand a warning’s words, which developmental psychologists conclude most sixteen- and seventeen-year-old youths possess. In this study, Scales tapes, waiver forms, and express waivers provide objective evidence that older delinquents purported to understand warnings, and corroborate developmental psychological research that older juveniles function similarly to adults. This consistency inferentially bolsters psychologists’ research that many, if not most, children fifteen or younger do not understand Miranda or possess competence to exercise rights.341 Research on false confessions underscores the unique vulnerability of juveniles, especially younger ones.342

Analysts attribute younger juveniles’ over-representation among false confessors to reduced cognitive ability, immaturity, and increased susceptibility to manipulation.343 They have fewer life experiences, and despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare.


341 See Grisso, Juveniles’ Capacities to Waive Miranda Rights, supra note 22, at 1153 tbl.2; see also Grisso et al., Juveniles’ Competence to Stand Trial, supra note 67, at 356 (“[J]uveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.”).

342 See generally Drizin & Leo, The Problem of False Confessions, supra note 81, at 945 (reporting that youths aged sixteen and seventeen accounted for 16% of false confessions, while youths aged fifteen or younger accounted for 19%, even though they commit fewer serious crimes); Gross et al., supra note 120, at 545 (reporting that in a study of exonerations, 42% of juveniles gave false confessions, compared with only 13% of adults, and among juveniles fifteen years of age and younger, 69% confessed falsely); Garrett, Judging Innocence, supra note 39, at 88–89 (reporting that false confessions occurred in 16% of cases and that juveniles accounted for 39% of false confessors); Joshua A. Tepfer et al., Arresting Development: Convictions of Innocent Youth, 62 Rutgers L. Rev. 887, 904 (2010) (studying factors associated with wrongful convictions of 103 youths—defined as those under the age of twenty—and reporting that one-third (31.1%) of youthful exonerees gave false confessions, a rate of false confessions that was almost double that of adult DNA exonerees (17.8%)).

343 Steven A. Drizin & Greg Luloff, Are Juvenile Courts a Breeding Ground for Wrongful Convictions?, 34 N. Ky. L. Rev. 257, 260 (2007); see Bonnie & Grisso, supra note 76, at 86–93 (“[Y]ouths[ ] . . . may have significant deficits in competence-related abilities due . . . to developmental immaturity.”); Redlich et al., The Police Interrogation of Children and Adolescents, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 107, 114 (G. Daniel Lassiter ed., 2004) [hereinafter Redlich et al., The Police Interrogation of Children] (examining research showing an inverse relationship between age and suggestibility); Ann Tobey et al., Youths’ Trial Participation as Seen by Youths and Their Attorneys: An Exploration of Competence-Based Issues, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE
societal expectations of obedience to authority create pressures to waive. They are more likely than adults to tell police what they think the police want to hear. The stress of interrogation intensifies their desire to extricate themselves by waiving and confessing without considering long-term consequences. When interrogating juveniles, police do not make allowances for these developmental differences. Instead, the tactics employed against youths are those designed to manipulate adults: aggressive questioning, presenting false evidence, and leading
questions—tactics that may create unique dangers in the juvenile interrogation context.

The Supreme Court in *Haley, Gallegos, Gault, Michael C., Alvarado,* and *J.D.B.* either excluded or reversed and remanded judgments affirming the admittance of statements taken from youths fifteen years of age or younger and admitted those obtained from sixteen- and seventeen-year-olds. *Haley* and *Gallegos* recognized that children’s immaturity and inexperience increased the likelihood of involuntary confessions. *J.D.B.* reaffirmed that youthfulness heightened susceptibility to coercion. The Court’s decisions create a de facto line that distinguishes between youths fifteen and younger and those sixteen and older and closely tracks psychologists’ research about youths’ cognitive ability and competence. State courts, legislatures, and policy makers should formally adopt that functional line between older and younger juveniles.

More than three decades ago, the American Bar Association recommended, “The right to counsel should attach as soon as the juvenile is taken into custody by an agent of the state, when a petition is filed against the juvenile, or when the juvenile appears personally at an intake proceeding.”

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348 See Owen-Kostelnik et al., *supra* note 17, at 291, 295 (discussing the use of adult interrogation tactics on children and adolescents); see also Barbara Kaban & Ann E. Tobey, *When Police Question Children: Are Protections Adequate?*, 1 J. CENTER FOR CHILD. & CTS. 151, 156–57 (1999) (comparing the unacceptability of leading questions in interviews of child victims with their common use in interrogations of child suspects); cf. *INBAU ET AL.*, *supra* note 102, at 298 (asserting that the principles of adult interrogation may be applied to juvenile suspects).


350 *In re Gault*, 387 U.S. 1, 4–6, 56 (1966); *Haley v. Ohio*, 332 U.S. 596, 600–01 (1948) (plurality opinion).


354 *Galgvos*, 370 U.S. at 54–55; *Haley*, 332 U.S. at 599–600; see also *King, supra* note 29, at 458 (“[C]hildren are different from adults and require protection from their youth when enmeshed with law enforcement. This is the teaching of *Haley* and *Galgvos*.”).

355 *J.D.B.*, 131 S. Ct. at 2402–03 (“[A] child’s age ‘would have affected how a reasonable person’ in the suspect’s position ‘would perceive his or her freedom to leave.’” (quoting *Stansbury v. California*, 511 U.S. 318, 325 (1994))).
conference, whichever occurs first.” The ABA endorsed mandatory, non-waivable appointment of counsel because it recognized “[f]ew juveniles have the experience and understanding to decide meaningfully that the assistance of counsel would not be helpful.” Contemporary analysts argue that younger juveniles “should be accompanied and advised by a professional advocate, preferably an attorney, trained to serve in this role.” Requiring a child to consult an attorney assures an informed and voluntary waiver.

If youths fifteen or younger consult with counsel, it will somewhat limit police’s ability to secure confessions. However, if younger juveniles cannot understand or exercise rights without legal assistance, then to treat them as if they do denies fundamental fairness and enables the state to exploit their vulnerability. Constitutional rights exist to assure factual accuracy, promote equality, and protect individuals from governmental over-reaching, and inevitably diminish somewhat the state’s ability to fight crime. Michael C. emphasized lawyer’s unique role in the Miranda framework, and Haley, Gallegos, and Gault recognized younger juveniles’ exceptional need for their assistance.

B. Limiting the Length of Interrogations

The Court has recognized that lengthy interrogations produce involuntary confessions and that prolonged questioning of juveniles can co-
erce a statement. Policy-makers should create a sliding-scale presumption of involuntariness or examine more closely a confession’s reliability as length of questioning increases. Police concluded ninety percent of these felony interrogations in less than thirty minutes. Every study reports that police complete most interrogations in less than an hour, and few take as long as two hours. By contrast, interrogations that elicit false confessions are typically lengthy proceedings that wear down an innocent person’s resistance. Prolonged interrogation, especially in conjunction with youthfulness, mental retardation, or other psychological vulnerabilities, is strongly associated with false confessions and may reach a tipping point after more than a few hours.

I cannot prescribe outer time limits because I did not encounter either lengthy or factually problematic interrogations. However, states should create a sliding-scale presumption that police elicited involuntary confession as the length of questioning increases. If police complete nearly all felony interrogations in less than one hour and extract most false confessions only after grilled suspects for six hours or longer, then these times provide parameters to limit interrogations and strengthen the presumption of coercion. Four hours provides ample opportunity to obtain true confessions from guilty suspects willing to talk

365 See Kassin et al., Police-Induced Confessions, supra note 39, at 16; supra notes 282–291 and accompanying text.
366 See Drizin & Leo, The Problem of False Confessions, supra note 81, at 948–49 (“Of the [false confessions] in which the length of interrogation was either reported or could be determined, . . . the average length of interrogation was 16.3 hours, and the median length of interrogation was twelve hours.”); Ofshe & Leo, supra note 314, at 998 (“Some persons are not able to withstand the intensity of interrogation. [I]t may fatigue and debilitate an otherwise normal individual[ . . . .]”); supra note 280 and accompanying text; cf. INBAU ET AL., supra note 102, at 597 (“[R]arely will a competent interrogator require more than approximately four hours to obtain a confession from an offender, even in cases of a very serious nature. . . . Most cases require considerably fewer than four hours.”).
367 See White, False Confessions and the Constitution, supra note 174, at 143 (“[A]n 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.”); see also Drizin & Leo, The Problem of False Confessions, supra note 81, at 944–45, 948–49 (finding that “[m]ost false confessions in our sample come from the young” and only 16% lasted less than six hours); GARRETT, Convicting the Innocent, supra note 120, at 21 (“These forty false confessions are unique and unusual. . . . [A]lmost all of [their] interrogations were prolonged affairs, lasting many hours or even days. Fourteen of these exonerees were mentally retarded, three were mentally ill, and thirteen were juveniles.”).
368 Kassin et al., Police-Induced Confessions, supra note 39, at 16.
369 See, e.g., id. at 28 (recommending police departments set interrogation time limits and require periodic breaks); White, Miranda's Failure, supra note 284, at 1233 (“Regardless of the interrogation practices employed, an interrogation should not be allowed to extend beyond some prescribed limit, say six hours.”).
without increasing the risk of eliciting false confessions from innocent people.

C. On the Record

Within the past decade, legal scholars, psychologists, law enforcement, and justice system personnel have reached a consensus that recording reduces coercion, diminishes dangers of false confessions, and increases reliability. Since Alaska and Minnesota mandated recordings, thirteen more states and the District of Columbia have required police to record interrogations, although some only under limited circumstances. Many police departments have policies to record interrogations for some crimes.

An objective record provides an independent basis to resolve disputes between police and defendants about Miranda warnings, waivers, or statements. A complete record enables the fact finder to decide

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371 See 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, 639–45 (2004) (gathering positive support for mandatory interrogation taping from state commissions, the ABA, state legislatures, state supreme courts, and law enforcement agencies); Sullivan, The Time Has Come, supra note 123, at 178 (“Of the hundreds of experienced detectives to whom we have spoken who have given custodial recording a fair try, we have yet to speak with one who wants to revert to non-recording. . . . [M]any state prosecutors in communities where recordings are made[ ] . . . too are outspoken supporters of custodial recordings.”); see, e.g., Gudjonsson, The Psychology of Interrogations and Confessions supra note 80, at 22 (“[T]ape-recording, or videorecording, of police interviews protects the police against false allegations as well as protecting the suspect against police impropriety.”); Milner & Bull, Investigative Interviewing, supra note 10, at 183–84; Paul G. Cassell, Protecting the Innocent from False Confessions and Lost Confessions—And from Miranda, 88 J. Crim. L. & Criminology 497, 553–55 [hereinafter Cassell, Protecting the Innocent]; Garrett, Judging Innocence, supra note 39, at 91, at 122; Brandon L. Garrett, The Substance of False Confessions, 62 Stan. L. Rev. 1051, 1113–15 (2010) [hereinafter Garrett, The Substance of False Confessions]; Kassin et al., Police-Induced Confessions, supra note 39, at 25–27; Leo, Police Interrogation and American Justice, supra note 92, at 296–303; Sullivan, The Wisdom of Custodial Recordings, supra note 123, at 130–32.


374 See Sullivan, The Time Has Come, supra note 123, at 182–87. Departmental policies may limit recordings to certain classes of felonies like homicides, violent crimes, or serious felonies. Id. at 178.

375 See Sullivan, The Wisdom of Custodial Recordings, supra note 123, at 130–31 ("[P]retial motions to suppress statements and confessions are drastically reduced because there is usually no room for dispute as to what happened. Police officers . . . are spared hostile
whether a statement contains facts known to a guilty perpetrator or supplied by police to an innocent suspect during questioning. Recordings protect police from false claims of abuse. It enables police to focus on suspects’ responses, to review details of an interview not captured in written notes, and to test them against subsequently discovered facts. It avoids distortions when interviewers rely on memory or notes to summarize a statement. Police officers who have switched to recording interviews unanimously express no desire to revert to non-recording. A recorded confession enables prosecutors to avoid suppression hearings, negotiate better pleas, and obtain convictions. It allows defense lawyers to review recordings, rather than rely on clients’ imperfect recollection of a stressful event. It generates substantial savings because police, prosecutors, and defense counsel do not have to prepare for suppression hearings and judges do not have to conduct them.

See Garrett, The Substance of False Confessions, supra note 371, at 1058 (“When custodial interrogations are not recorded in their entirety, one cannot easily discern whether facts were volunteered by the suspect or disclosed by law enforcement.”); White, False Confessions and the Constitution, supra note 174, at 153–55 (arguing for recording to evaluate whether police communicated critical facts to suspect); see, e.g., Garbett, Convicting the Innocent, supra note 120, at 28–31 (describing how police can contaminate suspects’ statements unknowingly).
Police must record all conversations—including preliminary interviews and interrogations, not just suspects’ final statements—for it to be an effective safeguard.383 Otherwise, police may conduct pre-interrogation interviews, elicit incriminating information, and then record a final confession after the “cat is out of the bag”—a variation of the practice condemned in Missouri v. Siebert.385 Only a complete record of every interaction can protect against a final statement that ratifies an earlier coerced one or against a false confession contaminated by non-public facts that police supplied a suspect.386

CONCLUSION

Recordings provide an opportunity to systematically examine what happens in the interrogation room and to adopt policies based on knowledge rather than surmise. The Supreme Court repeatedly insists that American criminal and juvenile justice is an adversary system.387 Such repeated assertions do not alter the reality that states decide most defendants’ guilt in an inquisitorial setting. Most defendants seal their fate in the interrogation room, rendering trial procedures a nullity. Interrogation elicits confessions, and confessions produce guilty pleas.388 Concern about reliability requires procedures to prevent miscarriages of justice such as false confessions and wrongful convictions. Because states do not provide full adversarial testing in every felony case, we need stronger mechanisms to assure factual reliability of inquisitorial justice and elicit true confessions from guilty people.

383 See Gudjonsson, The Psychology of Interrogations and Confessions supra note 80, at 23 (arguing that recording all questioning is necessary to understand what really occurred during interrogation); Welsh S. White, What Is an Involuntary Confession Now?, 50 Rutgers L. Rev. 2001, 2026 (1998) [hereinafter White, What Is an Involuntary] (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).
384 See Slobogin, Toward Taping, supra note 375, at 315.
385 542 U.S. 600, 609–10 (2004) (opinion of Souter, J.) (describing “two-stage interrogations,” where an officer questions an unwarned suspect, obtains an incriminating statement, then reads the suspect a Miranda warning and asks them to repeat the statement).
386 See Garrett, Convicting the Innocent, supra note 120, at 22–33 (describing the process of contamination that can occur during interrogation); White, False Confessions and the Constitution, supra note 174, at 132 n. 192 (“[I]n the absence of . . . the 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.”); see also Kassin, The Psychology of Confession Evidence, supra note 94, at 230 (explaining how even objective videos of interviews can create bias in the viewer); White, What Is an Involuntary, supra note 383, at 2024–26 (endorsing a requirement that suspects’ confessions be corroborated by independent evidence to assure the trustworthiness of taped confessions).
387 For instance, Miranda required the warning “to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.” Miranda v. Arizona, 384 U.S. 436, 469 (1966).
388 See Packer, supra note 13, at 161 (explaining how the Crime Control Model of criminal justice’s “informal administrative fact-finding” creates a presumption of guilt).
For more than half a century, the Court’s limited and ineffectual forays into this arena have allowed public officials to evade their responsibility to assure the fairness and accuracy of the justice system. The judicial and legislative abdication reflects the “recognition that virtually any alternative that meets Miranda’s concerns about custodial pressures will impose infinitely greater burdens on law enforcement than do the Miranda rules themselves.”

Recording imposes no great burden on police, illuminates the inner-workings of the interrogation room, and provides an objective record on which a defendant may appeal to a judge. Because the vast majority of defendants will not receive a trial, judicial review of the record provides an alternative means to assure the fairness and reliability of routine felony justice.

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389 Schulhofer, Miranda’s Practical Effect, supra note 114, at 560.