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Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions

Laurel LaMontagne*

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"Only a child who is very hardened in false-hood, very fearful of consequences, or else truthful, will reiterate 'it is so anyway,' even to tears in the face of evidence he cannot rebut, while others will confess or simulate a false confession as the easiest issue."1

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I. INTRODUCTION

On September 24, 1827, a twelve-year-old African American boy was working in a cornfield as a servant for Joshua Bunn. In the afternoon, Bunn’s neighbor, Catharine Beakes, was murdered. The boy denied knowing anything about the murder, but was sent to prison based on his proximity to the crime scene. Bunn testified that the boy was “passionate, mischievous, insolent, but does not bear malice[,]” indicating his belief that the boy had not murdered his neighbor. After five months in prison filled with taunts and accusations, the boy confessed. Before he confessed, he was falsely told that evidence corroborating his guilt existed. In less than three hours, a jury convicted him of murder and sentenced him to death. The court stated, “If a naked confession [lacking corroborating evidence] of this kind is sufficient to convict an adult, it is sufficient to convict defendant.” The court further reasoned that the boy’s age made the jury “more cautious in admitting the confessions” and more likely “to resolve [their] doubts in his favour.” Although State v. Guild is almost 200 years old, it bears shocking resemblance to the way in which juvenile confessions are treated today.

In 1993, three eight-year old boys were brutally murdered in West Memphis, Arkansas. A month after the murders, police spent more than seven hours interrogating seventeen-year-old Jessie Misskelley, Jr., who had an IQ of seventy-two, borderline for mental retardation. Misskelley confessed to the crime, while also implicating sixteen-year-old Jason Baldwin and eighteen-year-old Damien Echols. Misskelley’s confession, however, contained factual inaccuracies with regard to the time of death and the method used to bind the victims. Prosecutors, however, argued that the three teenagers bound, stabbed, and sexually abused the three victims as part of a satanic ritual. In 2011, after almost a decade in jail, the three suspects entered Alford pleas, and were freed after new forensic evidence cast their guilt into doubt.

3. Id.
4. Id. at 188.
5. Id. at 170.
6. Id. at 179.
7. Id. at 173.
8. Guild, 10 N.J.L at 175.
9. Id. at 177.
10. Id. at 190.
13. See Avila et al., supra note 11.
14. Id.
15. Id.
16. An Alford plea is a plea in which the defendant pleads guilty in court, but does not admit the crime and maintains his innocence. See BLACK’S LAW DICTIONARY 83 (9th ed. 2009).
17. See Avila et al., supra note 11.
On January 21, 1998, the Crowe family of Escondido, California, awoke to find twelve-year-old Stephanie Crowe dead on her bedroom floor, covered in blood. On the night Stephanie had been killed, a police officer had pulled up in the Crowe family driveway after a neighbor phoned to report seeing a transient man knocking on doors and looking for a young girl. The officer watched as an open door next to the garage was closed, and at 9:58 p.m., he reported that the transient had left the scene. The next day, police found the transient, Richard Tuite, and quickly fingerprinted him at the station. They assumed his record was clean, and failed to run a background check that would have revealed multiple arrests and his history of mental illness. Police discounted Tuite as a suspect; they were already focused on Stephanie’s fourteen-year-old brother, Michael. During Michael’s interrogation, police used lies, false promises, and isolation techniques to extract a confession. Michael finally relented to intense interrogation efforts, confessing to Stephanie’s murder and telling the police, “I’m only saying this because it’s what you want to hear.” As the interrogation progressed further, the content of Michael’s statements changed, reflecting his belief that he was actually guilty of Stephanie’s murder: “I’m not sure how I did it. All I know is I did it.” On the eve of Michael’s trial, DNA tests were conducted on the clothes of Richard Raymond Tuite, the transient who had been seen wandering the Crowe neighborhood the day of Stephanie’s murder, indicating that he was the actual murderer. After being released, Crowe explained his false confession, stating, “Eventually, they wear you down to where you don’t even trust yourself. You can’t trust your memory anymore.”

From the outside, it may be hard to understand why these juveniles confessed to a crime they clearly did not commit. Yet these cases, coupled with new research

20. Id.
21. Id.
22. Id.
23. Id.
24. See Bell, supra note 18.
27. See Bell, supra note 18.
29. See Del Q. Wilber, Teen Tormented by an Erroneous Charge of Murder, BALTIMORE SUN (Apr. 23, 2001), http://articles.baltimoresun.com/2001-04-23/news/0104230226_1_state-police-ekton-nightmares (discussing the 1998 case of sixteen-year old special needs student Allen Chesnet, who was targeted as a suspect in the gruesome murder of his fifty-two-year old neighbor Beulah Gay Honaker. Police lied to Allen and told him that his DNA had been found at the crime scene, and fed him details about the crime. Chesnet came to believe that if he told police what they wanted to hear, they would let him go. Eventually, Allen confessed and was charged with murder, ultimately spending six months in jail, until police found the real killer, Christopher Thomas.).
that will be discussed in detail, show that juvenile false confessions are a serious and significant problem. Part II will describe types of false confessions and how a confession can be proven false. Part III will detail changes in the brain that influence juvenile behavior. Part IV will discuss experimental psychology studies that provide evidence for the problem of juvenile false confessions. Part V will detail procedural points of vulnerability in regard to false confessions, focusing on waiver of \textit{Miranda} rights and the interrogation process. Part VI will detail ethical considerations facing law enforcement and prosecutors, while Part VII will discuss procedural safeguards and potential reforms for addressing the problem of juvenile false confessions.

\section*{II. The False Confession}

\subsection*{A. Classification}

Using theories of social influence, Kassin and Wrightsman in 1985 introduced a classification scheme to distinguish between three types of false confessions: (1) voluntary; (2) coerced-compliant; and (3) coerced-internalized.\footnote{The Psychology of Evidence and Trial Procedure 76-77 (Saul M. Kassin & Lawrence S. Wrightsman, eds., 1985).} In a voluntary false confession, the juvenile gives incriminating statements without external pressure.\footnote{Id.} Voluntary false confessions are made for a variety of reasons like a desire for attention or fame, an attempt to protect the real offender, or difficulty distinguishing fantasy and reality.\footnote{See Michael S. Perry, Tyler Edmonds, Nat'l Registry of Exonerations, http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3200 (last visited Nov. 2, 2013) (describing the case of Tyler Edmonds, a thirteen-year-old who confessed to shooting his half-sister's husband in order to protect her from the death penalty); see also Jon F. Sigurdsson & Gisli H. Gudjonsson, Psychological Characteristics of 'False Confessors'. A Study Among Icelandic Prison Inmates and Juvenile Offenders, 20(3) Pers Indiv Diff. 321, 329 (1996); see also Drizin & Leo, supra note 28 (describing their study examining 125 false confessions made between 1971 and 2001, 63% of which were made by individuals under the age of 25).} In a coerced-compliant confession, the juvenile makes the confession during the pressure of a police interrogation, typically retracting the confession after the interrogation has ended.\footnote{See The Psychology of Evidence and Trial Procedure, supra note 30, at 78 (discussing the 1977 case of Peter Reilly, an eighteen-year-old who reported finding his mother murdered, and eventually came to believe that he was responsible for her death ("Well, it really looks like I did it", despite physical evidence that exonerated him after two years in prison); Reilly v. Leonard, 459 F. Supp. 291 (D. Conn. 1978).} Finally, in a coerced-internalized confession, the vulnerable juvenile starts to believe that he is actually responsible for the crime, like Michael Crowe.\footnote{The Psychology of Evidence and Trial Procedure, supra note 30, at 78.} The latter two types of false confessions can be attributed to the pressures (physical custody, isolation, confrontation, despair) of the interrogation process coupled with the juvenile's hope that compliance may lead to an immediate instrumental gain (going home, ending the interview).\footnote{Id. at 77-78.}
In 1997, Leo and Ofshe extended this model, distinguishing between coerced-compliant and stress-compliant false confessions. A coerced-compliant false confession is offered in response to coercive techniques like threats or promises aimed at overcoming the juvenile’s will. For example, an interrogator might tell a fourteen-year-old that once he confesses, he will be able to go home or get something to eat. In this case, the juvenile erroneously believes that the short-term benefits of confessing outweigh the uncertain long-term costs, or as Gisli Gudjonsson puts it, “the perceived immediate gains outweigh the perceived and uncertain long-term consequences.” A stress-compliant false confession, conversely, is offered in response to extensive mental or physical stressors. In this situation, the police interrogator uses a confrontational style to maximize the juvenile’s stress and prevent him from declaring his innocence.

B. Proving a Confession is False

False confessions can be disproved in four ways: (1) the juvenile confesses to a crime that did not happen (i.e. murder victim found alive.); (2) it would have been physically impossible for the juvenile to commit the crime (i.e. he was in another state at the time.); (3) the real perpetrator can be identified and his guilt established; or (4) when scientific evidence, like DNA, establishes the juvenile’s innocence.

Unfortunately, research suggests that both laypeople and police have difficulty recognizing a false confession. Researchers taped prison inmates making two confessions – one confession to their actual crime, and a false confession to a crime they did not commit. Laypeople and police had difficulty determining which crime that individual had actually committed, with accuracy rates ranging from 42% to 64%, highlighting the inherent difficulty a juror faces in determining whether or not a videotaped confession is accurate. Overall, common sense behavior cues, like the
suspect’s posture or lack of eye contact, are not good indications of whether a suspect is telling the truth or a lie.48

Further, research suggests that jurors presented with a false confession are unable to discount it when reaching a verdict.49 Although subjects will say that a false confession did not influence their verdict, the statistics suggest otherwise. Mock jurors in the control group convicted an individual 19% of the time when no confession was offered.50 Another group of jurors were presented with the same evidence as the control group and a coerced confession that they were instructed to disregard – this group convicted the same individual from 44% (high pressure interrogation setting) to 50% (low pressure interrogation setting) of the time.51

Criminology statistics also reinforce the notion that jurors accept coerced confessions – in one sample, 81% of innocent individuals who had made a false confession and pled not guilty were convicted by juries.52 Per Drizin and Leo’s reasoning, false confessions are “‘inherently prejudicial and highly damaging to a defendant, even if it is the product of coercive interrogation, even if it is supported by no other evidence, and even if it is ultimately proven false beyond any reasonable doubt.’”53 Further, the confession is likely to be treated by the jury as more probative of guilt than any other piece of evidence.54 Jurors believe that a defendant will not make a confession that runs counter to his interest unless that confession is true. Simply stated, “[t]he idea that an individual would [falsely] confess to a crime, particularly a horrific crime such as murder or rape, without being subject to physical torture, runs counter to the intuition of most people.”55 Why, then, would a juvenile confess to something they did not do?

III. WHY CONFESS? ANATOMICAL CHANGES IN THE DEVELOPING BRAIN AND CONSEQUENT BEHAVIOR

Juvenile brains are far less developed than adult brains, and this development has a role in the decision-making process.56 The prefrontal cortex is in charge of the brain’s executive functions, and is responsible for decision-making, planning, and

50. Id.
51. Id.
53. Id. at 961.
54. See Ofshe & Leo, supra note 36, at 984.
personality expression.\textsuperscript{57} Research on post-mortem brains and MRI studies have confirmed that this part of the brain develops last, well beyond the early childhood years.\textsuperscript{58} During this time, white matter increases in the frontal lobe – this increase in white matter can be attributed to a process called myelination.\textsuperscript{59} During myelination, a white, fatty, insulating material known as myelin wraps around the axon of the neuron.\textsuperscript{60} Axons are the parts of the neurons that conduct an electrical impulse, known as an action potential.\textsuperscript{61} The action potential, in turn, permits the neuron to release a chemical signal known as a neurotransmitter (like serotonin, dopamine, or glutamate) that has effects on various brain functions like cognition, learning, and short-term memory.\textsuperscript{62} As these processes become more efficient, the developing adolescent exhibits greater control over thoughts and behavior.\textsuperscript{63}

During adolescence, the network of connections between neurons also changes. Early in postnatal development, an individual develops an excess of synaptic connections ("synaptogenesis") that facilitate communication between neurons.\textsuperscript{64} As the individual enters adolescence, synaptic density begins to decrease in a process known as "pruning."\textsuperscript{65} During this process, frequently used connections are strengthened, whereas infrequently used connections are eliminated.\textsuperscript{66} As the prefrontal cortex continues to mature, the adolescent’s control over executive functions increases.\textsuperscript{67} MRI studies have also shown that connections in the corpus callosum, the bridge between the right and left hemispheres, also increase during puberty, providing for increased decision-making skills.\textsuperscript{68}

Together, myelination and pruning result in a more efficient brain that can respond appropriately to the external environment. As these brain structures are not fully developed, teenagers may be able to recognize that an activity is dangerous, but lack the ability to put the brakes on their behavior. Consequently, juveniles are more prone to risky behavior than adult, and often act impulsively. Moreover, juveniles are less likely to inhibit their emotional and physical responses, and think critically about a
situation before taking action. These immaturities make juveniles especially prone to influence in the decision-making process; consequently, they respond differently than adults when it comes to waiver of *Miranda* rights and the interrogation process. When faced with options in an interrogation, juveniles tend to act impulsively and prioritize an immediate outcome without balancing it against future consequences. According to Saul Kassin, "[f]or the myopic adolescent, confession may serve as an expedient way out of a stressful situation." Compounding this problem is the fact that most youths in the juvenile justice system have psychological disorders or developmental disabilities. Thus, while a juvenile may have mature cognitive faculties, they are made vulnerable by their psychosocial immaturities. As described by Buffie Merryman, "[j]uveniles tend to rely on emotions in decision making rather than the frontal lobe, and often 'respond more strongly with gut response than they do with evaluating the consequences of what they’re doing.'"

Recently, in *Roper v. Simmons*, the Supreme Court acknowledged that juveniles have a diminished capacity and that they are susceptible to immature behavior. The Court described juveniles as a vulnerable population, citing their "comparative lack of control over their immediate surroundings." The Court’s opinion, delivered by Justice Kennedy, also cited "the scientific and sociological studies" that tend to confirm "a lack of maturity and an underdeveloped sense of responsibility" amongst youth. Justice Kennedy then went on to discuss how juveniles are susceptible to outside pressures, and how they are not permitted to vote, serve on juries, or get married without parental consent. Despite the Court’s recent acknowledgment in *Roper* of adolescence as a distinct developmental stage, courts have not extended this *parens patriae* philosophy to juvenile waiver of *Miranda* rights and the interrogation process.

**IV. Experimental Psychology Studies**

Experimental psychology studies have shown that false confessions can be induced in a laboratory setting, providing another avenue to better understand the

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74. *Id.*
75. *Id.* at 569.
76. *Id.*
dynamics of what goes on in a closed-door police interrogation. In 1996, Kassin and Kiechel conducted a study in which college students engaged in a computer task (a “reaction-time study”) and were told to not hit the ALT-key as this would cause the computer to crash and result in data loss. In one set-up, students had to type rapidly; in another condition, students typed at a more reasonable pace. Experimenters also varied the use of false incriminating evidence by having one condition in which a confederate told the experimenter that they witnessed the subject hit the ALT-key, and another condition in which the confederate told the experimenter that they had not witnessed anything. Students in the fast-pace/confederate witness condition all confessed to hitting the key and causing the computer to crash when asked by the experimenter. Across conditions, 69% of the students were willing to sign a statement saying they were responsible for the computer crash and the resulting loss of data. Thus, although a high percentage of all students demonstrated compliant behavior, this percentage was markedly increased amongst students in the fast-paced condition who were also offered fabricated evidence of their guilt by the confederate. Here, the researchers concluded “that the presentation of false incriminating evidence – an interrogation ploy that is common among the police and sanctioned by many courts – can induce people to internalize blame for outcomes they did not produce.”

In a later study, Redlich and Goodman investigated the influence of age on false confessions. Using Kassin and Kiechel’s experimental set-up, they examined three age groups: twelve to thirteen year olds, fifteen to sixteen year olds, and college students. In half of the situations, the experimenter left the room and returned with a printout of all the keys that had been supposedly struck during the trial, providing the subjects with further evidence of their guilt. Subjects were then asked to sign a confession stating that they had pressed the ALT-key, and that they would return to the lab and spend ten hours reentering all the lost data. Overall, the younger participants were significantly more likely to sign the confession – 78% of the twelve to thirteen year olds signed, 72% of the fifteen to sixteen year olds signed, and 59% of the college students signed. This age discrepancy was exacerbated when the experiments looked at just the experimental groups who had been shown the false printouts confirming

78. Id. at 126.
79. Id.
80. Id.
81. Id. at 127.
82. Id.
83. Kassin & Kiechel, 7 PSYCHOL. SCI. at 127.
84. Id.
86. Id. at 144.
87. Id. at 146.
88. Id. at 146-47.
89. Id. at 148.
their guilt.90 Here, 73% of the twelve to thirteen year old signed, 88% of the fifteen to sixteen year olds signed, and 50% of the college students signed.91

A follow-up study by Horselenberg, Merckelbach, and Josephs in 1996 sought to increase the immediate and explicit negative consequences of making a false confession.92 Replicating the same scenario, researchers told students that they had observed them hit the SHIFT-key, and that they were responsible for the loss of important data.93 The researchers then told the students that, because of this behavior, they would lose 80% of their financial fee for participation.94 The experimenter then left the room and asked students to think about what had happened and to sign a handwritten confession that they were responsible for the loss of data and would forfeit most of their fee.95 82% of the participants signed the confession, while 58% exhibited confabulation, offering details about when, why, and how they hit the SHIFT-key.96

In 2004, another similar paradigm was used to study false confessions amongst an even younger population.97 Here, fifty primary school children were individually instructed to perform tasks on a computer and avoid touching the SHIFT-key as it would crash the computer.98 After a few minutes, the experimenter crashed the computer, and entered the room, asking the child, “You pressed the SHIFT-key, didn’t you?” and children who denied pressing this key were done with the study.99 Those children who falsely admitted to hitting the shift key were told that the session would continue.100 Next, a confederate entered, and asked the child what had happened to the computer.101 The confederate recorded what the student said, looking to see if the child would confess and had internalized responsibility for the computer crash.102 Overall, 36% of the children confessed falsely to hitting the Shift key, and 89% of this subset demonstrated internalized responsibility through phrases like, “I hit the SHIFT-key and then the computer crashed.”103 These children confessed even when the confederate’s statement was the only evidence of their guilt, once again demonstrating the suggestibility associated with youth.104

Although all of these studies took place in a lab and did not involve a crime, they show that juveniles are extremely willing to comply with authority figures, with or without false incriminating evidence. They also show that even in an out-of-

90. Id.
91. Redlich & Goodman, 27 LAW & HUM. BEHAV. at 148.
93. Id. at 5.
94. Id.
95. Id.
96. Id.
97. See generally Ingrid Candel et al., “I Hit the Shift-Key and then the Computer Crashed”: Children and False Admissions, 38 PERSONALITY & INDIVIDUAL DIFFERENCES, 1381 (2005).
98. Id. at 1383-84.
99. Id. at 1384.
100. Id.
101. Id.
102. Id.
103. Candel et al., 38 PERSONALITY & INDIVIDUAL DIFFERENCES at 1384-85.
104. Id. at 1385.
custody setting with far less at stake, juveniles can easily be manipulated into confessing falsely.

V. OUTSIDE THE LAB: TWO POINTS OF VULNERABILITY IN THE INTERROGATION PROCESS

The behaviors observed in experimental psychology studies closely resemble those observed in real world police interrogations. Juveniles are easily manipulated by authority figures who take advantage of their vulnerabilities, getting juveniles to waive their *Miranda* rights and submit to a highly coercive interrogation.

A. Waiver of Miranda Rights

False confessions are likely to occur once juveniles waive their *Miranda* rights, a Fifth Amendment procedural “protection” extended to them by *In re Gault*.

A U.S. Department of Justice study revealed that in some jurisdictions, 80-90% of juveniles waive their *Miranda* rights and move forward in court proceedings without the presence of an attorney.

A typical *Miranda* warning is read when a suspect is in custody, and it includes the right to remain silent, the right to have an attorney present during police interrogation, and the right to end questioning. *Miranda* warnings are often delivered in a way that affords a defendant the least Constitutional protection:

> [P]olice routinely deliver the *Miranda* warnings in a perfunctory tone of voice and ritualistic behavioral manner, effectively conveying that these warnings are little more than a bureaucratic triviality. . . . While it may be inevitable that police will deliver *Miranda* warnings less than enthusiastically, some investigators very consciously recite the warnings in a trivializing manner so as to maximize the likelihood of eliciting a waiver. It is thus not too surprising that police are so generally successful in obtaining waivers.

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107. What are your Miranda Rights?, *MIRANDAWARNING.ORG*, http://www.mirandawarning.org/whatareyourmirandarights.html (last visited Jan. 1, 2014); see also Presumed Guilty: Know Your Rights, PBS.ORG, http://www.pbs.org/kqed/presumedguilty/6.0.0.html (last visited Jan. 1, 2014) (A typical *Miranda* warning reads: “You have the right to remain silent. Anything you say or do may be used against you in a court of law. You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future. If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish. If you decide to answer any questions now, without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney. Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?”).
In order to be admissible as evidence, the court applies a "totality of the circumstances" test that purportedly considers factors like the defendant's age, education, intelligence, background, experience, and mental capacity. Justice Frankfurter described the difficulties in not having a bright line rule for determining whether Miranda was voluntarily waived before an interrogation, stating, "No single litmus-paper test for constitutionally impermissible interrogation has been evolved." Further, the Supreme Court has held that this "totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved" because the test allows the court "to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved."

Although judges can consider the age of the child in deciding if Miranda has been waived, judges have a tendency to hold that any waiver was knowing and voluntary. According to Feld, judges apply the totality of the circumstances test, and "exclude only the most egregiously obtained confessions and then only on a haphazard basis." Holding a juvenile's waiver is made knowingly and voluntarily contradicts empirical evidence. In a study examining Miranda comprehension, juveniles were "Mirandized" and asked what the warning meant. None of the juveniles understood a Miranda warning as meaning they could end police questioning. This lack of comprehension is not surprising. To understand the standard language in a Miranda warning, suspects need a reading level varying between 6th and 10th grade, or higher. This is above the literacy level of most of those arrested. The National Adult Literacy Survey revealed that "70% of prison inmates read at or below the sixth grade level," and that 20-70% of juveniles in

9R&sig=iPv_eS8SZZ9q0l6CvLIJN37rwo0&hl=en&sa=X&ei=UD3LUpvKMovaoATSYLIBg&ved=0CGEQ6AEwBgfve_snippet&q=false%20physical%20evidence&f=false.
112. See Fare, 442 U.S. at 725; see also J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011) (holding that a juvenile's age should be considered in deciding whether the juvenile was in custody and properly "Mirandized").
113. Fare, 442 U.S. at 725.
115. Id.
117. Id. at 1152.
119. See Rogers et al., supra note 118, at 132.
delinquency proceedings are estimated to have learning disabilities (compared to about 5% of the general population.) Additionally, the sentences in Miranda warnings are usually long and syntactically complex, comprising the juvenile’s ability to understand. Concepts such as “appointment of counsel” and “the use of statements against you” are not explained to juveniles, who lack the requisite background knowledge. Examining this comprehension, Grisso in 1980 found that 63.3% of the juveniles (compared to 37.3% of adults) he surveyed misunderstood at least one key word in the Miranda warning — these key words included consult, attorney, interrogation, appoint, entitled, and right. Some youth also believe that judges can punish them for invoking the right to remain silent.

In People v. Gonzalez, a confession was used in adult court to convict a sixteen year-old boy of attempted first-degree murder. The boy had an IQ of sixty-seven, and was not able to read beyond a first grade level. He told the court he did not understand the Miranda rights the police had read to him, and that he had initialed the waiver so that the police would stop questioning him.

On appeal, the court applied a totality of the circumstances test to determine whether the boy had knowingly waived his Miranda rights. The court stated, “mental deficiency of itself does not render a statement involuntary.” Then, the court proceeded to explain that the defendant, having the cognitive capacities of a nine-year-old, did not offer any proof that he was unable to understand his rights. They cited precedent in which juveniles with an IQ even lower than sixty-seven were held to knowingly waive their Miranda rights.

In addition to lacking the requisite comprehension skills, police often employ coercive tactics in getting juveniles to waive Miranda so that they can proceed with
the interrogation. Researcher Barry Feld looked at Minnesota interrogation records for juveniles and found that 56% of the time, police did not give immediate Miranda warnings. Instead, the police interrogator attempted to establish a relationship with the juvenile, encouraging them to tell the truth and "pre-dispose the suspect to waive her rights and talk with police." Steven Drizin describes Miranda as "little more than a speed-bump for officers when questioning adults and even less of an obstacle when interrogating juveniles."

Further, juveniles tend to believe in the accuracy of the criminal justice system. Innocent people also believe that their innocence will be transparent, and they are more willing to cooperate. In one study, half of the subjects committed a mock theft of $100. All of the subjects were then "arrested" and told of their rights. 81% of subjects in the innocent condition were willing to sign a waiver and talk with the experimenters, whereas only 36% of those in the guilty condition were willing to sign this waiver. The innocents then explained why they waived their rights by stating that they had nothing to hide. Consequently, the Miranda warning often fails to protect innocent suspects, as they are most willing to talk with police when they did nothing wrong.

B. The Interrogation

Social psychology provides one lens through which to understand the interrogation process. Stanley Milgram's 1974 research on obedience to authority figures demonstrates that individuals will perform acts averse to their conscience when so instructed by an authority figure. In this classic study, undergraduate subjects were led to believe that they were administering a series of electric shocks to a student in another room – 65% of the study participants went ahead in administering the final 450-volt shock. Milgram described the results of his study:

I set up a simple experiment at Yale University to test how much pain an ordinary citizen would inflict on another person simply because he

136. Id. at 74.
140. Id. at 213.
141. Id.
142. Id. at 215.
143. Id. at 216.
144. Id.
146. Id.
was ordered to by an experimental scientist. Stark authority was pitted against the subjects’ strongest moral imperatives against hurting others, and, with the subjects’ ears ringing with the screams of the victims, authority won more often than not. The extreme willingness of adults to go to almost any lengths on the command of an authority constitutes the chief finding of the study . . . .147

Although Milgram’s finding that individuals will engage in morally-reprehensible behavior at the request of authority is surprising, this type of behavior is even more shocking when one considers an individual’s willingness to take action aversive to their own interests when so directed by an authority figure. Juveniles often demonstrate this type of compliance in an effort to appease an adult. Richard Leo described this behavior, “[Juveniles] tend to be immature, naively trusting of authority, acquiescent, and eager to please adult figures. They are thus predisposed to be submissive when questioned by police.”148

In an interrogation, the authority figure is able to exact this type of compliance from a young suspect, using guilt presumptive tactics like psychological manipulations, accusation, isolation, and confrontation. These are the same guilt-presumptive tactics are used on adults,149 making juveniles particularly vulnerable to the risk of making a false confession during the interrogation process.150 Professor Andrew E. Taslitz describes this guilt-presumptive interrogation process:

The kid reacts with hostility and defensiveness. These reactions, combined with his powerless speech patterns, lead police to believe he is lying. They close off alternative theories, heightening the pressure on the kid about whose guilt they are now convinced. They make real evidence sound more inculpatory than it is, they deceive him into believing there is still more inculpatory evidence against him, they appeal to his self-interest, and they hammer away at him for hours. Young, isolated, cut off from family and friends, fearful, and rightly seeing no way out, he confesses. Falsely.151

The Reid Technique, developed in the 1940’s by John Reid and Fred Inbau, is one of the most popular interrogation techniques.152 At first, the juvenile suspect is isolated in a small, private room and once the interrogator enters, he confronts the

147. Id.
152. See Kirk A.B. Newring & William O’Donohue, False Confessions and Influenced Witnesses, 4 Applied Psychol. in Crim. Just. 81, 84 (2008) (discussing how the Reid Technique can be used in a laboratory setting to induce college students to falsely confess and even implicate their peers).
suspect, telling the juvenile that he or she is guilty. He bolsters his claim, often with manufactured evidence of this guilt, and refuses to accept the juvenile suspect's denial. The juvenile comes to believe in a worst-case scenario. The interrogator then adopts a façade of sympathy, minimizing the severity of the crime and providing the juvenile with moral justifications for his actions and with statements like "I've seen some prosecutors and judges take cooperation into account." Now, the juvenile comes to see confession as the most efficient means to escape the interrogation room.

The first error the interrogator makes in employing the Reid technique is assuming that the juvenile is guilty based on behavioral cues like lack of eye-contact, slouching, chewing fingernails, or touching his or her nose. Although the creators of the Reid Technique claim their process helps interrogators perceive deception accurately 85% of the time, other empirical studies have shown that the Reid Technique may actually lower judgment accuracy. Per Kassin and Fong, "[T]he Reid technique may not be effective—and, indeed, may be counterproductive—as a method of distinguishing truth and deception." Other studies have shown that investigators trained in using the Reid Technique are no more accurate than untrained individuals in detecting whether a suspect is lying.

In combination with the Reid technique, the interrogator may apply coercive tactics like depriving the suspect of food, sleep, or water, which ultimately induce fatigue and heighten suggestibility. Conversely, they may also combine implicit promises of leniency with threats of harsher punishment to encourage the juvenile's confession. An interrogator may also use role-playing in an attempt to appeal to the juvenile's conscience:

153. Id.
154. See Leo, supra note 108 (describing false physical evidence such as fingerprints or blood samples, the testimony of a nonexistent eyewitness, fake polygraph test results, and staged lineups).
155. See Newring & O'Donohue, supra note 152, at 85.
156. Id.
161. Id.
162. Id. at 513.
164. See Bram v. United States, 168 U.S. 532, 542 (1897) (holding that explicit promises of leniency are forbidden as a violation of due process).
Interrogators routinely project sympathy, understanding, and compassion in order to play the role of the suspect's friend, a brother or father figure, or even to act as a therapeutic or religious counselor. The most well-known role interrogators may feign is, of course, the good cop/bad cop routine, an act which may be contrived by a single officer. While playing one or more of these various roles, the investigator importunes—sometimes relentlessly—the suspect to confess for the good of his case, for the good of his family, for the good of society, or for the good of his conscience. These tactics are deceptive insofar as they create the illusion of intimacy between the suspect and the officer and misrepresent the adversarial nature of custodial interrogation.\footnote{165}

In \textit{Miller v. Fenton}, the police interrogator, Detective Boyce, went so far as to tell the defendant:

> You can see it Frank, you can feel it, you can feel it but you are not responsible. This is what I'm trying to tell you, but you've got to come forward and tell me. Don't, don't, don't let it eat you up, don't, don't fight it. You've got to rectify it, Frank. We've got to get together on this thing, or I, I mean really, you need help, you need proper help and you know it, my God, you know, in God's name, you, you know it. You are not a criminal, you are not a criminal.\footnote{166}

\section*{VI. Ethical Considerations}

\subsection*{A. Deceptive Interrogation Practices and the Police Code of Ethics}

In the United States, many police departments subscribe to a code of ethics that outlines standards of conduct and agency values.\footnote{167} A typical code lists "protect[ing] the innocent against deception," and "the weak against oppression or intimidation" as an obligation of law enforcement.\footnote{168} Although the Fifth Amendment's due process clause condemns obtaining confessions through the use of coercion,\footnote{169} police officers continue to employ deceptive interrogation techniques in an effort to exact compliance from a juvenile subject.

In the past, the Supreme Court afforded juveniles greater protection from these deceptive interrogation techniques. In \textit{Haley v. Ohio}\footnote{170} the Supreme Court recognized that the confession of a fifteen-year-old questioned under highly coercive circumstances should be suppressed:

\begin{footnotesize}
\begin{itemize}
\item \footnoteref{165} See \textit{Leo, supra} note 108, at 68.
\item \footnoteref{166} \textit{Miller v. Fenton}, 796 F.2d 598, 636 (1986).
\item \footnoteref{168} \textit{Id.}
\item \footnoteref{169} See \textit{Brown v. State of Mississippi}, 297 U.S. 278, 280 (1936).
\item \footnoteref{170} \textit{Haley v. State of Ohio}, 332 U.S. 596 (1948).
\end{itemize}
\end{footnotesize}
A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we 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. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. No friend stood at the side of this 15-year-old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning. A photographer was admitted once this lad broke and confessed. But not even a gesture towards getting a lawyer for him was ever made.\footnote{171}

Similarly, in \textit{Gallegos v. Colorado}, the Supreme Court cited Haley's proposition that juveniles should not be judged by "the more exacting standards of maturity."\footnote{172} Although the fourteen-year-old boy was allegedly advised of his right to counsel and did not ask for a lawyer, the Court held that the juvenile was "unlikely to have any conception of what will confront him when he is made accessible only to the police."\footnote{173} The Court also pointed out that the juvenile would not have a full understanding of the consequences of the questions and answers he gave, and would be unable to protect his constitutional rights.\footnote{174}

These protections, however, have eroded in more recent years. In \textit{State v. Singer}, the Superior Court of Delaware held that the fifteen-year-old defendant "need not be cloaked with the tender immaturity protection of Haley and Gallegos," and that the defendant's age would not render his confession inadmissible.\footnote{175} Similarly, in \textit{Wilson v. Oklahoma}, the United States Court of Appeals held that the thirteen-year-old defendant could render a voluntary confession despite his assertion that he did not understand his \textit{Miranda} rights and what it meant to have a lawyer present.\footnote{176}

Given the erosion of these protections, police officers are subject to minimal restrictions in the methods they use to interrogate youth. In fact, standard police manuals encourage interrogators to exploit a suspect's weakness.\footnote{177} Under \textit{Frazier v. Cupp}, police officers have the authority to lie to suspects about evidence.\footnote{178} At the same time, these officers subscribe to an ethical code that is meant to set standards for

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\footnote{171}{Id. at 599-600.}
\footnote{172}{Gallegos v. Colorado, 370 U.S. 49, 53 (1962).}
\footnote{173}{Id. at 54.}
\footnote{174}{Id.}
\footnote{176}{Wilson v. Oklahoma, (No. 08-5101), 363 F. App’x 595, 615 (10th Cir. 2010).}
\footnote{178}{Frazier v. Cupp, 394 U.S. 731, 739 (1969) ("The fact that the police misrepresented the statements that Rawls had made is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible.").}
\end{thebibliography}
their practice and establish the credibility of law enforcement. When police officers present juvenile suspects with incontrovertible evidence of their guilt, the juvenile may feel pressured to confess in an effort to obtain more lenient punishment. In one well-known case, seventeen-year-old Martin Tankleff confessed to the murder of his parents after police tricked him into believing that his father had emerged from a coma and claimed his son was responsible. In reality, Tankleff’s father never regained consciousness and died shortly after police told this lie. Tankleff spent seventeen years in jail (of a fifty-year sentence) until forensic evidence suggested others were at fault for the murders.

Given that police are able to lie during the interrogation process, one may question what keeps police from lying when they apply for warrants or give testimony in court. In some places, police deception fosters distrust in the entire system of law enforcement:

Police lying might not have mattered so much to police work in other times and places in American history. But today, when urban juries are increasingly composed of jurors disposed to distrust police, deception by police during interrogation offers yet another reason for disbelieving law enforcement witnesses when they take the stand, thus reducing police effectiveness as controllers of crime.

As studies have already recognized false confessions as a leading cause of erroneous convictions, an officer charged with protecting the innocent against deception should recognize that employing deceptive interrogation tactics runs counter to his public service commitment. (Not surprisingly, the American Psychiatric Association explicitly prohibits psychiatrists from participating in deceptive police interrogations, recognizing that these practices breach basic ethical principles.) Further, an officer may inadvertently supply the defendant with details of the crime.

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181. Id.
182. Id.
183. Jerome Skolnick, “The Ethics of Deceptive Interrogation”, Boat Hall Transcript 23 (Spring 1993), reprinted in MYRON MOSKOVITZ, CASES AND PROBLEMS IN CRIMINAL PROCEDURE: THE POLICE (2010), available at http://books.google.com/books?id=EOJ9USO0i3cC&pg=PT1246&dq=Police+lying+might+not+have+mattered+so+much+to+police+work+in+other+times+and+places+in%09American+history&hl=en&sa=X&ei=dJXLUrC4AaTu2wWft4CQCg&ved=0CC8Q6AEwAA#v=onepage&q=Police%20lying%20might%20not%20have%20mattered%20so%20much%20to%20police%20work%20in%20other%20times%20and%20places%20in%20American+history&f=false.
184. See Kassin et al., supra note 45, at 3; Ronald Huff et al., Guilty Until Proven Innocent: Wrongful Conviction and Public Policy, 32 CRIME & DELINQ. 518 (1996); Arye Rattner, Convicted But Innocent: Wrongful Conviction and the Criminal Justice System, 12 LAW. & HUM. BEHAV. 283 (1988).
through leading questions; these details may reappear in a confession and give the judge or jury a false sense of its credibility.186

England, conversely, has a legislative framework that outlines the powers of the police,187 a model that the United States could consider adopting. This framework was enacted in 1984 when England and Wales passed the Police and Criminal Evidence Act of 1984 (PACE), an act that limits the intentional misrepresentation of evidence.188 Studies suggest that England’s current model of interrogation that focuses on information-gathering is more effective in eliciting true confessions than an adversarial model that relies on police coercion.189

B. False Confessions and Prosecutorial Misconduct

Charges of prosecutorial misconduct are rare, as prosecutorial conduct during criminal investigations and trials is not closely scrutinized.190 Criminal charges against prosecutors are rarely brought.191 In a study of 381 homicide cases in which a new trial was ordered because prosecutors withheld exculpatory evidence (known as a Brady Violation192), a Chicago Tribune analysis found that only two of the prosecutors were indicted.193 Per Walter Steele, “bar grievance committees have paid scant attention to prosecutorial ethicality, and consequently, prosecutors may have developed a sense of insulation from the ethical standards of other lawyers.”194 Some courts have even held that a case does not need to be reversed when a prosecutor violates a rule of professional responsibility, as it constitutes harmless error.195

188. Id.
190. Rachel E. Barkow, Separation of Powers and the Criminal Law, 58 STAN. L. REV. 989, 997 (2006) ("[T]here is a systemic failing in which prosecutors make the key decisions in criminal matters without a judicial check and without any of the structural and procedural protections that govern other executive agencies.").
192. David Kennan, et al., The Myth of Prosecutorial Accountability after Connick v. Thompson: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct, 121 Yale L.J. ONLINE 203, 225 (2011), (explaining that Rule 3.8 of the ABA’s Model Rules of Professional Conduct obligates prosecutors to turn over all evidence, favorable to the defense, in a timely manner; this rule, however, is incredibly vague, thus undermining “its efficacy and enforceability in practice”).
Consequently, false confession cases involving prosecutorial misconduct rarely result in any civil or criminal liability for the prosecutor.

In 1989, five African teenagers were arrested for the assault and rape of Trisha Meili in the Central Park Jogger Case. Their names were released to the press before any of them had even been formally charged, and their photos and addresses became front-page news. After grueling interrogations and being told that physical evidence linked them to the scene, the boys confessed to the rape, getting many of the details incorrect. One of the juveniles, Antron McCray, stated that "We was at the tennis courts and then we seen this lady jogging lady. She had on blue shorts and a white, white shirt." In reality, the crime took place at least seven blocks from the area McCray described, and the jogger was wearing long black running tights. Another juvenile, Kharey Wise, said that his friend Kevin "pulled out his knife and cut her legs up, cut her up," despite the prosecution's medical expert testifying that the victim suffered no injuries from a knife. Despite these inconsistencies, the prosecution pushed forward, also relying on false forensics to argue that hairs from the victim matched those found on the defendants (later shown to be false). Prosecutors also did not tell the defense that another rape occurred near Central Park two days before the attack on the jogger. Ultimately, the jury used the false confessions and forensic evidence to convict the five boys. Reverend Calvin O. Butts summed up what had happened in this case to the New York Times, stating that, "The first thing you do in the United States of America when a white woman is raped is round up a bunch of black youths, and I think that's what happened here." In 2002, the boys' convictions were vacated after DNA evidence linked another man, Matias Reyes, to the crime. Despite this exoneration, the assistant district attorney and NYPD maintain that the five teenagers were involved in the crime. Although the five teenagers, now men, are suing New York for wrongful prosecution, they will have

199. Id.
200. Id.
201. Id.
202. Id.
204. Id.
difficulty proving police or prosecutorial misconduct, and overcoming civil lawsuit barriers to prosecutorial immunity. These barriers ultimately prevent prosecutorial accountability, and run counter to the fundamental fairness requirement of the Constitution's due process guarantee. Per Commonwealth of N. Mariana Islands:

Nowhere in the Constitution or in the Declaration of Independence, nor for that matter in the Federalist or in any other writing of the Founding Fathers, can one find a single utterance that could justify a decision by any oath-beholden servant of the law to look the other way when confronted by the real possibility of being complicit in the wrongful use of false evidence to secure a conviction in court.

VII. PROCEDURAL SAFEGUARDS AND POTENTIAL REFORMS

A number of procedural safeguards are necessary to address the problem of juvenile false confessions, especially considering that an increasing number of states are trying juveniles as adults. Fourteen states use fourteen as the cut-off age for trying a youth as an adult, while six states set the bar at thirteen. Kansas and Vermont allow ten-year-olds to be tried as adults. Twenty-three other states have no cutoff, also allowing ten-year-olds to be tried as adults.

A. Juvenile Interrogations Must Be Electronically Recorded

Juvenile interrogations must be electronically recorded so that a complete and objective record of the interrogation exists. This proposition is supported by the American Bar Association:

RESOLVED, That the American Bar Association urges all law enforcement agencies to videotape the entirety of custodial interrogations of crime suspects at police precincts, courthouses, detention centers, or other places where suspects are held for questioning, or, where videotaping is impractical, to audiotape the entirety of such custodial investigations.

FURTHER RESOLVED, That the American Bar Association urges legislatures and/or courts to enact laws or rules of procedure requiring videotaping of the entirety of custodial interrogations of crime suspects at police precincts, courthouses, detention centers, or other

208. See Kennan et al., supra note 192, at 213 (discussing how prosecutorial immunity from tort liability extends to all conduct central to the prosecutor's role as an advocate (i.e. filing criminal charges or presenting evidence to a jury). (Under the recent Supreme Court holding in Connick v. Thompson, 131 S. Ct. 1350, 1353-55 (2011), the scope of this protection has been extended. In this case, prosecutors were given immunity after withholding multiple pieces of evidence at trial that would have cleared the defendant, who as a consequence spent fourteen years on death row.).

209. N. Mariana Islands v. Bowie, 243 F.3d 1109, 1124 (9th Cir. 2001).


211. Id.

212. Id.
Juvenile False Confessions

1. Places where suspects are held for questioning, or, where videotaping is impractical, to require the audiotaping of such custodial interrogations, to provide necessary funding, and to provide appropriate remedies for non-compliance.213

Videotaping allows the jury or judge to see how the juvenile was interrogated and observe whether any overly coercive police tactics were used. It also allows the interrogators to review the record, and look for additional details that were not perceived during the actual interrogation. Reviewing the record is critical—interrogators are prone to attribution errors.214 They will prompt juveniles with leading questions, thereby supplying them with details, and later attribute these details as coming directly from the juveniles.215 Detective Jim Trainum wrote about this happening, and his subsequent review of the recorded interrogation:

Years later, during a review of the videotapes, we discovered our mistake. We had fallen into a classic trap. We believed so much in our suspect’s guilt that we ignored all evidence to the contrary. To demonstrate the strength of our case, we showed the suspect our evidence, and unintentionally fed her details that she was able to parrot back to us at a later time... It was a classic false confession case and without the video we would never have known.216

England has already mandated electronic recording of police interrogations via the Police and Criminal Evidence Act of 1984.217 In the United States, Alaska (Stephan v. State218) and Minnesota (State v. Scales219) already require that interrogations be taped. In Illinois, this recording is mandated in all homicide cases.220 Jurisdictions that have implemented electronic recording of interrogations are pleased with the results, especially given the increased public trust in law enforcement.221 Even the firm that developed the Reed Technique conducted a survey that concluded:


214. See Trainum, supra note 186.

215. Id.

216. Id.


221. Thomas P. Sullivan, Police Experiences with Recording Custodial Interrogations, 1 NW. U. SCH. OF LAW, CTR. ON WRONGFUL CONVICTIONS 9 (2004), http://www.innocenceproject.org/docs/PolicienceXperiences_Recording_Interrogations.pdf. (quoting a number of jurisdictions that mandate recording, like DuPage County, Illinois, which has the following office policy: “Electronic recording of suspect interviews in major crime investigations protects both the suspect and interviewing officers against subsequent assertions of statement distortion, coercion, misconduct or misrepresentation. It can serve as a valuable tool to the criminal justice system, assisting the Court in the seeking of the truth.”)
This reform in interviewing and interrogation practices suggests that the overall benefit of electronic recording in custodial cases is not only feasible, but may have an overall benefit to the criminal justice system. In an era where academicians generalize from laboratory studies and use anecdotal accounts to support claims that police routinely elicit false confessions, electronic recordings may be the most effective means to dispel these unsupported notions.222

Further, an argument could be made that failure to videotape an interrogation constitutes a Brady Violation. A Brady Violation occurs when a prosecutor withholds any favorable and material information from the defense, thus limiting their ability to develop the most appropriate defense.223 Per the Supreme Court, “the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”224 In not videotaping an interrogation, the prosecution can shield the defense from any mitigating information like coercive interrogation techniques or promises of leniency that can make a defendant’s confession appear less reliable.

B. Juveniles Cannot Waive Their Miranda Rights Without an Attorney Present

Juveniles should be required have an attorney present before being allowed to waive their Miranda rights. Confessions given without this protection should not be subject to the totality of the circumstances test at trial. Rather, these confessions should be automatically suppressed as an acknowledgment that juveniles will not have a proper understanding of their rights, and that an unknowing waiver constitutes a violation of the Fifth Amendment’s Due Process clause. Further, having an interested adult present is not sufficient, as adults often encourage juveniles to cooperate with the police.225 Illinois statute 5-170 currently mandates that minors under thirteen, suspected of committing a serious crime, must be represented by an attorney during the entire custodial process, including the reading of Miranda rights.226 Iowa statute §232.11 mandates that a juvenile under sixteen years of age cannot waive the right to an attorney without parental permission.227 Other states including Kansas,

224. Id. at 87.
Massachusetts, Montana, New Jersey, New Mexico, and Washington have similar statutes protecting minors under a certain age. In line with these states, the ABA also endorses the idea that juveniles are afforded access to counsel before being able to waive their *Miranda* rights: The right to counsel in the adult criminal justice system should not be waived by a youth without consultation with a lawyer and without a full inquiry into the youth’s comprehension of the right and capacity to make the choice intelligently, voluntarily, and understandingly.

Requiring an attorney to be present before a juvenile can waive their *Miranda* rights, however, is not the norm. Most states continue to rely on the totality of the circumstances test elaborated in *Fare v. Michael C.*, typically allowing a judge to find that a juvenile waived their *Miranda* rights and failing to protect them from their own vulnerabilities.

C. *Miranda* Warnings Must be Rewritten in Developmentally-Appropriate Language

Given the difficulties juveniles have in understanding *Miranda* rights, these rights need to be rewritten in developmentally appropriate language. I would suggest some variation of the following:

The police want to ask you some questions. You do not have to talk with them. You do not have to answer their questions. They can use anything you say in trying to figure out if you did something that was against the law. If you do not want to talk with the police, you will not get in trouble for being quiet. If you would like an adult to help you decide what to do, you can have your parents here. You can also have a lawyer. A lawyer is someone who is trained in helping you make the best decision for you. This will not cost you any money. If you want to talk to the police, you can stop answering their questions whenever you want. Do you understand what I have just told you? What would you like to do?

Although this rewritten *Miranda* warning would equate with a 3rd grade reading level, it represents a marked improvement over the standard *Miranda* warning that equates with a 9th grade reading level. More juveniles will understand
this version of a Miranda warning, and be able to make a more informed choice as to whether they want to speak with police. Police officers would also benefit juvenile suspects by conducting a check for understanding, a common practice in elementary school classrooms, in which follow-up questions are asked to gauge comprehension.

D. Juveniles Cannot be Subject to the Same Coercive Interrogation Techniques as Adults

In England, the Police and Criminal Evidence Act (PACE) of 1984 regulates the interrogation process, setting out procedures for detained suspects. This law requires that youth have access to a responsible adult to ensure the interview is conducted fairly, and electronically recorded.

Further, British police officers are trained in interviewing procedures, and follow a less confrontational approach known by the mnemonic PEACE (“Preparation and Planning,” “Engage and Explain,” “Account,” “Closure,” and “Evaluate”). During the first preparation phase, the police develop a plan for the interview. Once the interview begins, suspects are encouraged to give a free flowing narrative where close-ended questions are avoided, and false evidence is never presented. Police then offer the suspect the opportunity to explain any discrepancies in their narrative. After the interview, police officers compare the suspect’s narrative to evidence. Since implementing these non-adversarial practices, England has not seen a significant drop in the frequency of confessions. Research has also supported the claim that less confrontational interviewing techniques can lower the rate of false confessions without affecting the rate of true confessions.

The United States should adopt similar interrogation techniques given Miranda’s failure to protect juveniles who may falsely confess when pressed by an authority figure. Time limits on interrogations are also necessary because there is a direct relationship between interrogation time and false confession frequency. Further, juveniles should not be presented with false evidence of their guilt. Juveniles may feel trapped by this false evidence, and conclude that a false confession is the

235. See Kassin, supra note 45, at 13.
236. Id.
238. Id.
239. Id.
240. Id.
241. Id.
242. Id.
244. Drizin & Leo, supra note 52 at 946-47.
only means to end an interrogation. Fred Inabu has also argued against use of false incriminating evidence in juvenile interrogations, writing, "[S]pecial protections must be afforded to juveniles and to all other persons of below-average intelligence, to minimize the risk of untruthful admissions due to their vulnerability to suggestive questioning" and "These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement."

E. Juvenile Defense Attorneys Need the Opportunity Present Expert Testimony on False Confessions

Studies suggest that most jury pools do not have common knowledge on false confessions, especially considering the counterintuitive nature of confessing to a crime you did not commit. Judges, however, will often exclude expert testimony on false confessions, believing it to be within the common knowledge of the jury. In State v. Free, the court stated that expert testimony on false confessions was properly excluded because there was not enough evidence "in the record in this case, to support the proposition that the general public believes that person who confesses must be guilty." Consequently, expert testimony on the interrogation process and the increased vulnerabilities of juveniles should not be excluded, and can aid a jury in determining whether a false confession was made.

The types of expert testimony can be divided into two areas. Experts have macro-level knowledge that goes to the frequency of Miranda waivers and the relationship between false confessions and wrongful conviction. Experts also can testify to dispositional factors, like mental disability, and situational factors, like promises of leniency, that can increase the probability of a false confession.

Many states, however, still follow the Frye test in determining whether expert testimony is admissible. Strict application of this test means that expert testimony is frequently excluded based on its level of acceptance in the scientific field. States using the more liberal Daubert test are more likely to allow this type of expert testimony. California has strong limits on expert testimony about false confessions, only allowing a general discussion of police interrogation methods.

246. Id.
247. Danielle Chojnacki et al., supra note 163, at 11.
248. Id. at 3.
250. Chojnacki et al., supra note 163, at 12-14.
251. Id. at 20.
252. Id.
253. Id.
254. Id.
F. Technology Could Eventually Improve the Accuracy of Juvenile Interrogations

In addition to procedural reforms, technology may one day provide another option in determining whether a juvenile is telling the truth. No Lie MRI., Inc., is currently working to develop brain scans that can detect deception in the brain.256 This technology is able to predict deception based on increased activity in the frontal lobe.257 Although some neuroscientists feel that the scientific reliability of this technology has yet to be proven, it may eventually provide police interrogators with another option.258

Other scientists are developing eye-tracking technology as a deceptiontracking tool,259 while another team is investigating whether micro-gestures, invisible to the naked eye, can be used for the same purpose.260 Although this technology is far from being ready for courtroom use, it represents a potentially promising development.

VIII. Conclusion

Given the high rate of false confessions amongst youth and their increased developmental vulnerabilities, procedural reforms (like electronically recording interrogations) are needed to ensure that juveniles receive the full protection of the law. The law has not changed much since 1827 when State v. Guild was decided. The totality of the circumstances test employed by most courts purports to consider age in determining whether a confession was voluntary, but precedent suggests this consideration can be easily overcome as courts continue to find that juveniles as young as ten knowingly waived Miranda.

257. Id.