

# **Brendan Dassey: A True Story of a False Confession**

**Additional Written Materials for Continuing Legal Education**

**Page 1: Reducing Risks: An Executive's Guide to Effective  
Juvenile Interview and Interrogation**

**Page 45: The Truth About Juvenile False Confessions**

# REDUCING RISKS:

An Executive's  
Guide to Effective  
Juvenile Interview  
and Interrogation



OJJDP



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- The subject matter expertise of the contributing authors:

Steven Drizin, *Co-Founder*  
Center on Wrongful Convictions of Youth at  
Northwestern University School of Law  
Chicago, Illinois

James Nawoichyk, *Detective (Retired)*  
Orangetown Police Department  
New York

Laura Nirider, *Attorney*  
Center on Wrongful Convictions of Youth at  
Northwestern University School of Law  
Chicago, Illinois

Joshua Tepfer, *Attorney*  
Center on Wrongful Convictions of Youth at  
Northwestern University School of Law  
Chicago, Illinois

- The knowledge and experience of the training team:

Corinthia Campbell, *Detective*  
Arlington Police Department  
Texas

Grant Gildon, *Detective*  
Arlington Police Department  
Texas

Robert Listenbee, *Chief*  
Juvenile Unit, Defender Association of Philadelphia  
Pennsylvania

Theresa McQuaid, *Lieutenant*  
Baltimore County Police Department  
Maryland

Derrick Morrison, *Attorney*  
Dallas County Public Defender's Office  
Texas

Mary Murphy, *Detective Lieutenant*  
Rockland County District Attorney's Office  
New York

Rourke Stacy, *Deputy Public Defender*  
Los Angeles Public Defender's Office  
California

Paul Zipper, *Sergeant*  
Massachusetts State Police

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# TABLE OF CONTENTS

Why Does This Issue Matter To Police Chiefs? . . . . .	1
Introduction. . . . .	3
Why Question Kids Differently? A Look Inside the Adolescent Brain . . . . .	4
<i>J.D.B. v. North Carolina: A New Era for Juvenile Interrogations</i> . . . . .	5
<b>Recommended Best Practices: Juvenile Interrogations. . . . .</b>	<b>7</b>
Child-Sensitive Behavioral Analysis . . . . .	7
Care with <i>Miranda</i> Warnings . . . . .	7
Presence of a Friendly Adult . . . . .	7
Length of Questioning . . . . .	8
Time of Questioning . . . . .	8
Avoid Use of Deception. . . . .	8
Avoid Promises of Leniency and Threats of Harm . . . . .	9
Questioning Style . . . . .	11
Electronic Recording . . . . .	12
<b>Recommended Best Practices: Investigative Follow-up . . . . .</b>	<b>13</b>
<b>Applying Common Sense Lessons About Children . . . . .</b>	<b>14</b>
<b>Conclusion . . . . .</b>	<b>15</b>
<b>Key Cases . . . . .</b>	<b>16</b>
Decisions Involving:	
Juveniles and <i>Miranda</i> Rights . . . . .	16
Police Coercion and Voluntariness of Juvenile Statements . . . . .	16
Unreliable Confessions . . . . .	17
Differences Between Juveniles and Adults . . . . .	17
<b>Sample Documents. . . . .</b>	<b>19</b>
Sample Juvenile Pre-Interview/Interrogation Checklist . . . . .	19
Sample Interview Plan . . . . .	21
Sample Juvenile Rapport-Building Plan . . . . .	24
Worksheet – Is This Juvenile Interview Custodial? . . . . .	27
Worksheet – Assessing Competency . . . . .	29
Sample Juvenile <i>Miranda</i> Warnings. . . . .	33
Sample Parental Waiver. . . . .	35



# WHY DOES THIS ISSUE MATTER TO POLICE CHIEFS?

**T**HE JUVENILE INTERVIEW AND INTERROGATION LANDSCAPE IS UNDERGOING AN UNPRECEDENTED UPHEAVAL. OVER THE PAST DECADE, NUMEROUS STUDIES HAVE DEMONSTRATED THAT JUVENILES ARE PARTICULARLY LIKELY TO GIVE FALSE INFORMATION – AND EVEN FALSELY CONFESS – WHEN QUESTIONED BY LAW ENFORCEMENT. BASED ON THIS RESEARCH, COURT DECISIONS ARE LEADING POLICE TO QUESTION JUVENILES DIFFERENTLY THAN ADULTS.

Overall, law enforcement is not adequately trained in interviewing and interrogating juveniles. While there are numerous courses available in forensic interviewing of children who may be victims, there are few training courses that target techniques for interviewing and interrogating youth who may be suspects or witnesses. Interview and interrogation is standard training for law enforcement agencies, however, it typically does not cover the developmental differences between adults and youth nor does it cover recommended techniques to be used on youth versus adults. This often leads law enforcement practitioners to use the same techniques on youth as with adults.

Additionally, confessions may lose their evidentiary value if the interrogators who secured them did not follow up-to-date juvenile interrogation best practices. For instance, if a confession is suppressed as involuntary, then any prosecution becomes that much more difficult – and a guilty defendant may escape justice.

Here are a few other reasons to be concerned:

- **Wrongful Convictions:** False confessions are a leading cause of wrongful convictions of youth. A youth who falsely confesses may end up in the juvenile justice system or serving time in an adult prison.
- **Public Safety:** When the real perpetrator walks free, law enforcement fails to provide its core function – public safety. When a juvenile is prosecuted on the basis of a false confession, the true perpetrator remains a hazard to the community, denying the victim justice, magnifying the impact of the crime and eroding public confidence in the justice system.
- **Impact on Juveniles:** If child development-informed practices are not integrated into juvenile interview and interrogations, it is inevitable that the youth being interrogated will be impacted. Law enforcement, using inappropriate interrogation techniques, have the potential of deeply affecting youth, including emotional and psychological impact, development of a negative perception and/or mistrust of law enforcement and the justice system, and even traumatization.



## Questionable Interrogation Techniques Invite Media Scrutiny

Media outlets are increasingly publicizing stories involving questionable confessions. In 2001, the Chicago Tribune published a series of front-page articles under the heading “Cops and Confessions.” To compile the series, three journalists waded through thousands of Chicago murder cases and found 247 that involved false, coerced, or otherwise tainted confessions. In the subsequent articles, the Tribune identified the involved detectives by name. In fact, one front-page story entitled *Veteran Detective’s Murder Cases Unravel* was devoted entirely to the alleged wrongdoing of one high-ranking officer. The Tribune’s interest in these cases isn’t unique; many other media outlets around the country have not hesitated to name individual officers in stories about proven or suspected wrongful convictions.<sup>1</sup>

<sup>1</sup> Maurice Possley, Steve Mills and Ken Armstrong, “Veteran Detective’s Murder Cases Unravel,” *Chicago Tribune* (Chicago, IL), Dec. 17, 2001 (accessed August 16, 2012). <http://www.chicagotribune.com/news/watchdog/chi-011217confession,0,2469824.story>.

- **Reputational Harm:** Stories of wrongful convictions, especially those involving young people, understandably attract public interest. It is also the case with situations involving likely-guilty individuals who cannot be prosecuted due to mistakes by interrogators. If an officer takes a false confession from a child – or takes a true confession that later must be thrown out – then he or she may find him or herself and the police agency in the public eye. These situations harm the individual, the agency, the local government, as well as erode public confidence in the justice system.
- **Cost to City:** Taxpayers foot the bill when an individual falsely confesses or is wrongfully convicted. Take a look at some recent payouts in false confession and wrongful conviction cases involving juveniles around the country:
  - Thaddeus Jimenez (Illinois, 2012):** Jury awarded \$25 million to a 13-year-old boy who was convicted of murder on the basis of a 14-year-old witness's false statement to police
  - Jeffrey Deskovic (New York, 2011):** \$6.5 million settlement paid to 16-year-old boy who falsely confessed during interrogation
  - Michael Crowe (California, 2011):** \$7.25 million settlement paid to 14-year-old boy who falsely confessed during interrogation
  - Anthony Harris (Ohio, 2008):** \$2.2 million settlement paid to 12-year-old boy who falsely confessed during interrogation
  - E. H. (Illinois, 2005):** \$6.2 million settlement paid to eight-year-old boy who falsely confessed during interrogation
  - R. G. (Illinois, 2005):** \$2.2 million settlement paid to seven-year-old boy who falsely confessed during interrogation
- **Cost to Individual Officers:** In some cases, individual police officers have been held personally liable. In 2010, a jury awarded Donny McGee \$1.3 million after he was tried for murder based on a problematic confession. (McGee was acquitted of the crime.) Each of the three interrogating officers was ordered to pay \$110,000 in punitive damages.



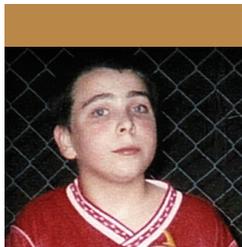
### The Cost of Wrongful Convictions

A 2011 study by the non-partisan Better Government Association and the Center on Wrongful Convictions at the Northwestern University School of Law concluded that wrongful convictions have cost Illinois taxpayers \$214 million and resulted in the imprisonment of innocent people for a total of 926 years. By all accounts, the study's estimates were conservative; for instance, it did not include the 11 most recent Illinois exonerations (all of which occurred in 2011-2012) or civil suit payouts in false confession cases that did not result in convictions. The study concluded that the taxpayer-borne cost of wrongful convictions will continue to rise precipitously, easily surpassing \$300 million within the next several years.<sup>2</sup>

<sup>2</sup> John Conroy & Rob Warden, "A Tale of Lives Lost, Tax Dollars Wasted and Justice Denied," *Better Government Association*, June 18, 2011 (accessed August 16, 2012), [http://www.bettergov.org/investigations/wrongful\\_convictions\\_1.aspx](http://www.bettergov.org/investigations/wrongful_convictions_1.aspx).

# INTRODUCTION

**A** LEGALLY OBTAINED, RELIABLE CONFESSION USUALLY BECOMES THE CENTERPIECE OF A PROSECUTION. THIS MAKES SENSE – NO EVIDENCE IS MORE VALUABLE THAN A DEFENDANT’S OWN ADMISSION OF GUILT. INDEED, ONE LEADING LEGAL EVIDENCE MANUAL HAS STATED THAT “THE INTRODUCTION OF A CONFESSION MAKES THE OTHER ASPECTS OF A TRIAL IN COURT SUPERFLUOUS.”<sup>3</sup>



“[I confessed] because I was tired, I was scared, they wouldn’t accept anything else from me... They kept giving me suggestions, giving me some narratives that would make sense and I just picked the ones I thought they wanted to hear the most.”

– Thomas Cogdell, age 12 (Camden, AR), conviction reversed<sup>4</sup>

Juveniles may be especially vulnerable to the pressures of interrogation, which can cause them to give involuntary or even false confessions. In order to preserve the evidentiary value of a juvenile’s confession, the officer taking that confession must act with great caution. This publication provides an overview of the issues, latest research, and legal developments related to questioning juveniles. It then offers juvenile interrogation best practice tips that reflect these developments. Equipped with this knowledge, law enforcement can be confident that any juvenile statements they obtain will be voluntary and reliable. In turn, they can be assured that our

streets will be safer and the right suspects will be successfully prosecuted.

We begin by examining why juveniles are more vulnerable than adults during interrogation – a vulnerability that is categorically shared by every juvenile, no matter how intelligent or mature. This universal reality can be explained in part by taking a look inside the adolescent brain.



## The Englewood Four and Juvenile False Confessions

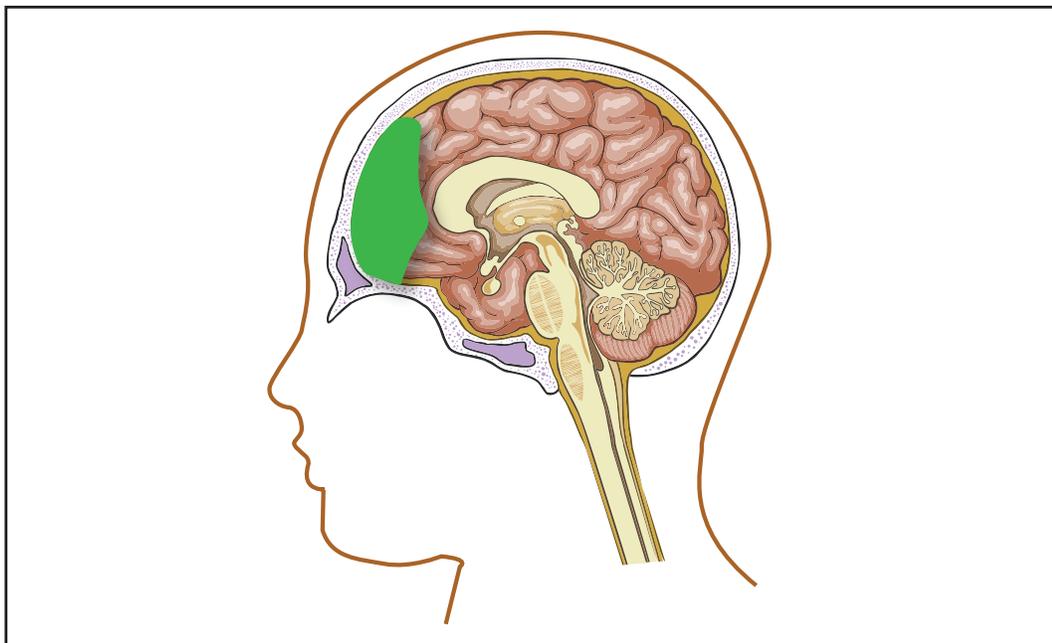
In November 1994, the body of a 30-year-old woman was discovered in a dumpster in Chicago’s south-side Englewood neighborhood. She had been sexually assaulted and strangled to death. Investigators had few leads until a teenager allegedly offered to provide information in exchange for leniency for a friend in custody. Police did not believe his initial story and interrogated him. Eventually, he confessed to acting as a lookout while four other teenagers raped and murdered the woman. Those four other teenagers – whose ages ranged from 15 to 17-years-old – also confessed during police interrogations, resulting in adult convictions and decades-long prison sentences. Prosecutors dropped charges against the initial confessor after his statement was suppressed. In 2011, DNA from fluids found inside the victim’s body was finally identified. It did not match any of the five charged teenagers. Instead, it belonged to an adult named Johnny Douglas, who had raped and strangled two other women to death in the years after the four convicted teenagers went to prison. Based on this DNA, the convicted teenagers – who had become known as the Englewood Four – were exonerated more than 17 years after they were arrested. Johnny Douglas was killed on the streets in 2008 and was never brought to justice for this crime.

<sup>3</sup> Charles T. McCormick, *Handbook of the Law of Evidence* (St. Paul, MN: West, 1983), 316.

<sup>4</sup> Thomas Cogdell, interview by Phil McGraw, *Dr. Phil Show*, May 9, 2012 (air date) (accessed August 8, 2012), <http://drphil.com/shows/show/1843>.

# WHY QUESTION KIDS DIFFERENTLY? A LOOK INSIDE THE ADOLESCENT BRAIN

TECHNOLOGIES, LIKE THE MAGNETIC RESONANCE IMAGE (MRI), HAVE ENABLED SCIENTISTS TO STUDY THE ADOLESCENT BRAIN LIKE NEVER BEFORE. WE NOW KNOW THAT SIGNIFICANT CHANGES IN THE STRUCTURE AND FUNCTION OF THE BRAIN OCCUR DURING ADOLESCENCE, PARTICULARLY IN THE PRE-FRONTAL CORTEX.



## Pre-Frontal Cortex

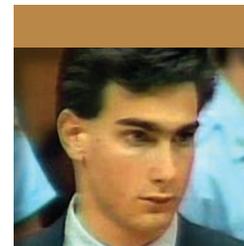
Located right behind the forehead, the pre-frontal cortex is responsible for judgment, problem-solving, and decision-making. It regulates impulsive behavior by acting as a brake on the parts of the brain that are activated by fear and stress.

Because the pre-frontal cortex is not fully developed until the end of adolescence, it does not regulate a teenager's judgment and decision-making as well as in adults. This explains certain classic adolescent traits that every parent already recognizes:

- Difficulty weighing and assessing risks, which can lead to unsafe decisions like skateboarding on a railing or driving too fast

- Emphasis on immediate rewards rather than long-term consequences, which can contribute to poor choices like having unprotected sex
- Vulnerability to external pressure, which can result in negative decisions like joining gangs or caving in to peer pressure

These traits also make adolescents particularly likely to respond to the fear and stress of interrogation by making involuntary or false statements. This is a reality that has recently been embraced by the United States Supreme Court.



**"It's like having an 18-wheeler driving on your chest and you believe that the only way to get that weight off your chest is to tell the police whatever they want to hear ... even admitting to a murder."**

– Marty Tankleff, age 17 (Long Island, NY), conviction reversed<sup>5</sup>

<sup>5</sup> Marty Tankleff, "48 Hours Mystery- Part II: Prime Suspect," *CBS News*, December 5, 2007 (accessed August 8, 2012), [http://www.cbsnews.com/2100-18559\\_162-610304.html](http://www.cbsnews.com/2100-18559_162-610304.html).

# J.D.B. v. North Carolina: A New Era for Juvenile Interrogations

JUVENILE INTERROGATIONS AND CONFESSIONS HAVE CAPTURED THE ATTENTION OF THE UNITED STATES SUPREME COURT MORE THAN ANY OTHER ISSUE IN JUVENILE JUSTICE. THE COURT FIRST TACKLED THESE ISSUES MORE THAN 60 YEARS AGO, WHEN IT ISSUED ITS FIRST FOUNDATIONAL DECISION ADVISING LAW ENFORCEMENT TO QUESTION CHILDREN WITH SPECIAL CARE. AFTER RETREATING FROM THIS POSITION DURING THE 1970S, 1980S, AND 1990S, THE COURT HAS RECENTLY REASSERTED IN *J.D.B. v. NORTH CAROLINA* THAT ADOLESCENTS UNDER 18 NEED TO BE TREATED DIFFERENTLY THAN ADULTS DURING QUESTIONING. THIS DECISION HAS CHANGED THE LEGAL LANDSCAPE IN A WAY THAT REQUIRES POLICE OFFICERS TO CHANGE HOW JUVENILE SUSPECTS ARE QUESTIONED.

In *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), a 13-year-old suspected of two burglaries was interrogated in a school conference room by police officers and school officials. He was not Mirandized, however, because officers believed he was not “in custody” during questioning. In other words, they would have allowed him to end questioning and leave the conference room at any time. In holding that he should have been Mirandized, the United States Supreme Court concluded that when police decide whether a child has been taken into custody – and thus whether he is entitled to the *Miranda* warnings – the police must take age into account: “It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.”

The court, however, went a step further, finding that the risk of false confession is “all the more troubling – and recent studies suggest, all the more acute – when the subject of custodial

interrogation is a juvenile.” It supported this conclusion by relying both on advances in brain science and on common sense: “These observations restate what any parent knows – indeed, what any person knows – about children generally.”

The *J.D.B.* decision drew on – and gave new relevance to – several older U.S. Supreme Court cases relating to juvenile interrogations, including *Haley v. Ohio*, 332 U.S. 596 (1948), *Gallegos v. Colorado*, 370 U.S. 49 (1962), and *In re Gault*, 387 U.S. 1 (1967). These three decisions expressed deep skepticism concerning the voluntariness and reliability of juvenile confessions:

- “That which would leave a man cold and unimpressed [during an interrogation] can overawe and overwhelm a lad in his early teens.” (*Haley v. Ohio*, 332 U.S. 596 (1948).)

- “A 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.... A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not.” (*Gallegos v. Colorado*, 370 U.S. 49 (1962).)
- “Authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.” (*In re Gault*, 387 U.S. 1 (1967).)

In short, *J.D.B.* has reinvigorated a long-understood truth: juveniles experience interrogation differently than adults. Law enforcement must accordingly treat juveniles differently than adults during questioning. Police and courts are already starting to apply these lessons across the country.



### The Reality of Juvenile False Confessions

Over the past four years, the United States Supreme Court has stated twice that the pressures of custodial interrogation can cause a “frighteningly high percentage” of people to falsely confess, while also noting that the risk of false confession is particularly great when the person being interrogated is a juvenile.<sup>6</sup> Real-world studies of wrongful convictions support the Supreme Court’s conclusions:

- A study of 340 wrongfully convicted people found that 42% of the juveniles studied had falsely confessed, compared with only 13% of adults.<sup>7</sup>
- A study of 125 proven false confessions found that 32% involved individuals under age 18.<sup>8</sup>
- The most recent study on juvenile wrongful convictions found that juveniles were almost twice as likely as adults to falsely confess.<sup>9</sup>

Experimental studies have also consistently confirmed these findings. One study that asked both juveniles and adults to sign a false confession found that a majority of juveniles did so without uttering a single word of protest.<sup>10</sup>

<sup>6</sup> *Corley v. U.S.*, 129 S. Ct. 1558 (2009); *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

<sup>7</sup> Samuel Gross et al., “Exonerations in the United States 1989 through 2003,” *Journal of Criminal Law and Criminology* 95, no. 2 (2005): 523-560.

<sup>8</sup> Steven A. Drizin and Richard A. Leo, “The Problem of False Confessions in the Post-DNA World,” *North Carolina Law Review* 82 (2004): 891.

<sup>9</sup> Joshua A. Tepfer, Laura H. Nirider, & Lynda Tricarico, “Arresting Development: Convictions of Innocent Youth,” *Rutgers Law Review* 62, no. 4 (2010): 887.

<sup>10</sup> Allison D. Redlich & Gail S. Goodman, “Taking Responsibility For an Act Not Committed: Influence of Age and Suggestibility,” *Law and Human Behavior* 27, no. 3 (2003): 141.

# RECOMMENDED BEST PRACTICES: JUVENILE INTERROGATIONS

THESE CHANGES IN THE LEGAL LANDSCAPE MEAN THAT POLICE OFFICERS MUST ADAPT. IN PARTICULAR, OFFICERS WHO INTERROGATE JUVENILES MUST NOT ONLY OBSERVE THE SAME PRECAUTIONS THEY TAKE WITH ADULTS – PROVIDING FOOD AND WATER, ALLOWING THE SUSPECT TO TAKE BATHROOM BREAKS AND REST WHEN TIRED, AND SO ON – BUT THEY MUST USE DIFFERENT AND MORE APPROPRIATE INTERROGATION TACTICS THAT REFLECT THE DIFFERENCES BETWEEN ADULTS AND TEENAGERS. THIS IS TRUE EVEN WHEN THE JUVENILE IS AN OLDER TEENAGER. THESE RECOMMENDATIONS APPLY EQUALLY TO INTERVIEWS AND INTERROGATIONS OF YOUTH FOR BOTH SERIOUS CRIMES AND MINOR DELINQUENT ACTS OR STATUS OFFENSES.

## Child-Sensitive Behavioral Analysis

Many interrogation trainers suggest that during initial interviews, experienced police interviewers can tell whether a subject is being truthful or deceptive by observing the subject's behavior and choice of words. Behaviors that are thought to indicate lying include fidgeting, slouching, and lack of eye contact.<sup>11</sup> Often, interviewers are encouraged to proceed to a full-blown interrogation if behavioral cues indicate that the subject is lying.

Children and teens, however, may commonly slouch, avoid eye contact, and exhibit similar behaviors regardless of whether they are telling the truth – particularly in the presence of authority figures. Officers should not interpret these everyday teenage mannerisms as indicators of deception. Rather, officers should decide to interrogate juveniles based on concrete evidence such as witness statements and forensics.

## Care with *Miranda* Warnings

Even intelligent children and teenagers often do not fully understand their *Miranda* rights, which can require a tenth-grade level of comprehension.<sup>12</sup> This reality has been reflected around the country, as courts have been increasingly willing to throw out a child's confession even after they appear to validly waive their *Miranda* rights. To ensure that a juvenile's statement is admissible in court, officers should read each warning slowly, stopping to ask the child after each individual

warning to explain it back in his or her own words. Further, officers should read juveniles simplified *Miranda* warnings that require only a third-grade comprehension level:

1. You have the right to remain silent. That means you do not have to say anything.
2. Anything you say can be used against you in court.
3. You have the right to get help from a lawyer right now.
4. If you cannot pay a lawyer, we will get you one here for free.
5. You have the right to stop this interview at any time.
6. Do you want to talk to me?
7. Do you want to have a lawyer with you while you talk to me?

When appropriate, law enforcement should also inform young suspects that speaking to police may subject the child to adult criminal consequences. Importantly, police should make sure that the child understands the concept of “adult criminal consequences” – along with any other concepts that the child may not grasp – before proceeding with questioning.

## Presence of a Friendly Adult

It is essential to involve a “friendly adult” in the juvenile interrogation process and to allow him or her meaningful

<sup>11</sup> Fred E. Inbau et al., *Criminal Interrogation and Confessions*. Burlington, MA: Jones & Bartlett Learning, 2013.

<sup>12</sup> Richard Rogers et al., “The Language of *Miranda* Warnings in American Jurisdictions: A Replication and Vocabulary Analysis,” *Law and Human Behavior* 32, no.2 (2008): 124.



**“It was a pretty long two hours and all I could hear throughout those two hours was that they were going to give me help if I confessed... I never thought of the consequences. I just said it because they wanted me to.”**

– Nga Truong, age 16 (Worcester, MA), confession suppressed<sup>13</sup>

opportunities to privately consult with the juvenile throughout the interrogation. Traditionally, the friendly adult is a parent or a youth officer, although each presents different challenges.

- **Parent or Guardian.** Many states require police to attempt to notify parents before beginning an interrogation. Even states without this requirement still view the absence of a parent negatively. However, some parents can make the situation worse. If a parent pressures her child to confess, her influence can increase the risk that the child will give a false or involuntary statement. If this happens, the officer should call for a break in the interrogation so the parent can calm down.
- **Youth Officer.** Youth officers are usually police officers who are asked to suddenly switch roles from law enforcement to juvenile advocate – a difficult thing to ask anyone to do. Some youth officers struggle to fulfill this duty. An Illinois court, for instance, threw out a confession after a youth officer advised the child to make admissions during a break in the interrogation. (*People v. Sanchez*, 2011 Ill. App. Unpub. LEXIS 872 (Ill. App. Ct. 2011).) A federal court has also disapproved of youth officers who remain silent during interrogation, calling one such officer a “potted plant.” (*Hardaway v. Young*, 302 F.3d 757 (7th Cir. 2002).) Police should involve other “friendly adults” – like parents or attorneys – rather than youth officers whenever possible.

## Length of Questioning

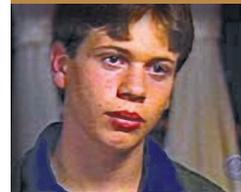
Juveniles can tolerate only about an hour of questioning before a substantial break should occur. A juvenile interrogation should never last longer than four hours. In fact, if a child or adolescent is questioned for a prolonged period of time, the risk that any statement will be either involuntary or unreliable increases substantially with each passing hour.

## Time of Questioning

Officers should be wary of questioning juvenile suspects, especially younger teens and children, in the middle of the night. Even a few hours of sleep deprivation, combined with the stress of interrogation, can increase the risk of false confession. And courts tend to disapprove of late night interrogations, particularly when children are involved.

## Avoid Use of Deception

Currently, the use of deception during an interrogation – such as a false claim that police possess evidence incriminating the suspect – is permissible. However, the changing nature of the legal landscape should make officers think twice before using this technique during juvenile interrogations. The presentation of false evidence may cause a young person to think that the interrogator is so firmly convinced of his guilt that he will never be able to persuade him otherwise.



**“Eventually [the police] just wear you down to where you don’t even trust yourself. You can’t trust your memory anymore.”**

– Michael Crowe, age 14 (Escondido, CA), charges dropped<sup>14</sup>

<sup>13</sup> Nga Truong, “Anatomy of a Bad Confession,” *90.9 WBUR: Boston’s NPR News Station*, December 8, 2011 (accessed August 8, 2012), <http://www.wbur.org/2011/12/08/worcester-coerced-confession-ii>.

<sup>14</sup> Michael Crowe, “The Confession,” *CBS News*, February 11, 2009 (accessed August 8, 2012), [http://www.cbsnews.com/2100-18559\\_162-649381.html](http://www.cbsnews.com/2100-18559_162-649381.html).

In that event, the young person may think that he has no choice but to confess – whether guilty or innocent – in an effort to cut his losses. For this reason, one of the nation’s most well-known interrogation training programs has discouraged the use of false evidence during juvenile interrogations, advising interrogators to avoid such tactics with young children and individuals who have significant mental limitations.<sup>15</sup>

The use of deception also may cause an innocent juvenile – even one who initially had a clear recollection of not committing a crime – to mistrust his memory, accept that the “evidence” proves his guilt, and eventually confess to a crime that he did not commit. These types of false confessions are known as coerced-internalized confessions. In such situations, the pressures of deception-driven interrogation can actually cause a juvenile to believe that he must have committed the crime but suppressed all memories of it.

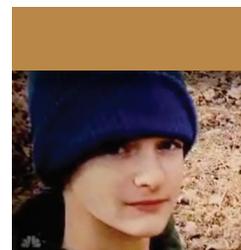
### Avoid Promises of Leniency and Threats of Harm

Many officers are trained to indirectly suggest during interrogation that the suspect will avoid trouble or get help if he confesses. Even these indirect promises of leniency and threats of harm can be inappropriate when the suspect is a juvenile. They can trigger involuntary or false confessions by presenting the juvenile with an offer he can’t refuse: Say what the police want

to hear or face negative consequences. A well-known interrogation training firm expressly advises investigators to avoid interrogations in which a suspect is offered help:

In expressing sympathy and understanding toward a suspect during an interrogation, it is tempting for an investigator to state that it is his desire to “help” the suspect in some way. This may be in the form of an ambiguous statement, such as, “I want to help you out of this thing,” or “I can’t help you unless you help me first.” In other instances the reference to help may be quite specific, such as, “If you tell me what happened, I can get you psychological help,” or “I can get you help for your addiction, if you work with me on this.” Some courts have ruled that such statements represent an implied promise of leniency, and therefore, *investigators should refrain from any references to “helping a suspect out.”*<sup>17</sup>

In particular, many juvenile false confessors have explained that they confessed under the mistaken belief that they would be able to end the interrogation and immediately go home. To that end, interrogators must take special care to ensure that nothing they say could be interpreted as suggesting that the juvenile could go home if he confesses. An innocent youth might jump at such a chance and falsely confess out of a desire to return home, believing that his innocence will be straightened out later.



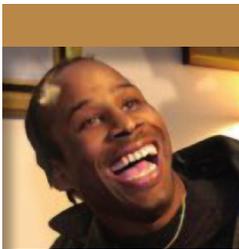
**“I thought if I told them something they’d let me go.”**

– Johnathon Adams, age 12 (Carrollton, GA), conviction reversed<sup>16</sup>

<sup>15</sup> Fred E. Inbau et al., *Criminal Interrogation and Confessions*. Burlington, MA: Jones & Bartlett Learning, 2013.

<sup>16</sup> Johnathon Adams in article by Don Plummer, “Never Say You Did Something You Didn’t”; Freed in Yates Slaying, Boy Details Experience, Atlanta Journal-Constitution (April 19, 2006/ accessed August 21, 2012), <http://groups.yahoo.com/group/JudgedMenAllianceForTomorrow/message/7685>.

<sup>17</sup> Fred E. Inbau et al., *Criminal Interrogation and Confessions*. Burlington, MA: Jones & Bartlett Learning, 2013, 331 (emphasis added).



**“I thought I was going home...I didn’t understand the – the seriousness of what was going on. I didn’t understand exactly what I was getting myself into once I signed that statement.”**

– Calvin Ollins, age 14 (Chicago, IL), conviction reversed<sup>18</sup>

Investigators should also never use the suspect’s juvenile status to persuade him to confess under the pretense that he or she won’t be punished as severely as an adult. Courts have found this tactic unduly coercive. (*Commonwealth v. Truong*, 2011 Mass. Super. LEXIS 61 (Mass. Super. Ct. 2011).)

When interrogating youth, officers should follow these guidelines:

- **Avoid communicating that the suspect will avert or face reduced charges if he confesses.** An Iowa court recently threw out a confession as involuntary when police told the suspect that prosecutors “are much more likely to work with an individual that is cooperating with police than somebody who sits here and says I didn’t do it.” (*State v. Polk*, 2012 Iowa Sup. LEXIS 33 (Iowa Supr. Ct. Apr 6, 2012).)
- **Stay away from unclear or technical language that could be interpreted by a young person as a promise of leniency.** A federal court threw out a young man’s confession as involuntary when a state police officer indicated that he would not pursue charges if the suspect confessed, but failed to explain that the federal government could still press charges. The court called it “utterly unreasonable” to expect the suspect to “parse” the officer’s words. (*U.S. v. Lall*, 607 F.3d 1277 (11th Cir. 2010).)

- **Ensure that the suspect understands the consequences of confessing.** Many juvenile false confessors have explained that they made false statements because they misunderstood the consequences of confessing: they believed they would go home. Similarly, a Massachusetts court recently threw out a 16-year-old’s murder confession as involuntary when the suspect was led to believe she would be placed in foster care, as opposed to prison, as a result of confessing. The court found that she “never understood the implications of her statements.” (*Commonwealth v. Truong*, 2011 Mass. Super. LEXIS 61 (Mass. Super. Ct. 2011).)
- **Refrain from suggesting that you can help the suspect if he confesses.** One Florida court threw out a confession as involuntary when the interrogator told the suspect that he would help him if he confessed but failed to explain the limits of his ability to do so. (*Ramirez v. State*, 15 So.3d 852 (Fla. App. Ct. 2009).) Other courts have gone even further, ruling that any suggestion of “help” in exchange for a confession may constitute an impermissible implied promise of leniency. Therefore, an investigator should avoid suggesting that he or she could help a suspect, even when trying to express sympathy or understanding.



### Combining Interrogation Tactics: 1 + 1 = 0

One of the nation’s most widely used interrogation manuals instructs police to avoid combining suggestions of leniency with false evidence claims. It asks police to consider an interrogation in which (1) false evidence is used to convince the suspect that he would be found guilty of the crime and sent to prison regardless of his stated innocence; and (2) the suspect is made to believe that if he confesses, he will be afforded leniency. Under those conditions, “it becomes much more plausible that an innocent person may decide to confess.” (Fred E. Inbau et al., *Criminal Interrogation and Confessions* (Burlington, MA: Jones & Bartlett Learning, 2013).) This is especially true when the person being interrogated is a juvenile.

<sup>18</sup> Calvin Ollins, *Dateline NBC*, Television, (2002; New York City: National Broadcasting Co., Inc.), Transcript accessed August 8, 2012), <http://www.hks.harvard.edu/dnabook/IL-4%20TEENS%20EXON%20AFTER%2015YRS%20MUR.1st>



**“I was being young, naïve – you know, sixteen years old, not thinking about the long-term implications, but instead being concerned with my own personal safety – I took the out that was being offered, and I made up a story based on the information they fed me during the course of the investigation.”**

– Jeffrey Deskovic, age 16 (Peekskill, NY), conviction reversed<sup>19</sup>

## Questioning Style

How do juveniles who falsely confess know what to say? Many glean information about the crime from their interrogators’ leading questions. An interrogator who asks a juvenile “The clerk was standing by the cash register when the hold-up happened, right?” has inadvertently educated him about how the police think the crime took place. An interrogator who takes a young suspect to a crime scene or shows him photographs of it has done the same thing. In this way, the disclosure of crime scene facts during interrogation can ultimately render a subsequent confession worthless. When a juvenile who has been interrogated with leading questions later describes the crime scene accurately, it is impossible to know whether he or she is speaking from firsthand experience or repeating his interrogators’ words.

When questioning juveniles, officers should observe the following:

### DO:

- Start by using open-ended, free-recall questions that ask the child to produce a narrative: “What did you do last night?”
- Use targeted but open-ended questions to get more information: “You said you were at home last night. Tell me about that.”
- Probe while avoiding outright accusations and deception, if you suspect the juvenile is lying: “Can you help me understand why your mom says that you were out with your friends last night?”
- Use questions beginning with “who,” “what,” “where,” “when,” and “how” to get more information about specific parts of the juvenile’s story: “Where was the clerk standing?”

### DON’T:

- Offer the juvenile options: “Where was the clerk standing, in the back of the store or by the cash register?”
- Use leading questions: “The clerk was standing by the cash register, wasn’t he?”
- Show the suspect crime scene photographs or other pieces of evidence.



### What About Juvenile Witnesses?

While much attention has been focused on the risk of juvenile false confessions, youth are also likely to respond to intense questioning by falsely implicating others, too. One study of wrongfully convicted children and teenagers found that a false statement from a youth – whether it implicated themselves or somebody else – contributed to more than half of the erroneous convictions.<sup>20</sup> Accordingly, many of the cautionary recommendations in this publication should be followed during any interview of a young person, regardless of whether the juvenile is a suspect or a witness.

<sup>19</sup> Jeffrey Deskovic, “Interview with the Man Who Spent 16 Years in Jail Because Sonia Sotomayor Denied His Appeal,” *Unreported*, July 15, 2009 (accessed August 8, 2012), <http://allisonkilkenny.com/tag/russ-feingold>.

<sup>20</sup> Joshua A. Tepfer, Laura H. Nirider, & Lynda Tricarico, “Arresting Development: Convictions of Innocent Youth,” *Rutgers Law Review* 62, no. 4 (2010): 887.



**“I used nothing but standard, approved interrogation techniques and did not act maliciously. There was no yelling, no physical abuse and no cursing. . . . 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. Contrary to our operating procedures at the time, my colleagues and I chose to videotape the interrogation. This is what saved me from making a horrible mistake in the long run. It was a classic false confession case and without the video we would never have known.”**

— Jim Trainum, former detective, Washington, D.C. Metropolitan Police Department<sup>21</sup>

## Electronic Recording

When an interview or interrogation is electronically recorded from start to finish, police have a complete record that can be used to convict the guilty and to ensure that every statement is reliable and voluntary. A recording can also provide officers with invaluable protections against frivolous allegations of abuse. And most electronic recording systems pay for themselves by greatly reducing the need for and duration of costly pre-trial hearings about what happened inside the interrogation room. For these reasons, it is imperative that departments around the country videotape interviews and interrogations from the reading of *Miranda* rights until the end.

Recording is particularly essential when the person being interrogated is a juvenile. The Wisconsin Supreme Court, for instance, has required all juvenile interrogations to be recorded in their entirety, when feasible, because of the particular vulnerabilities of juveniles during interrogations. (*In the Interest of Jerrell C.J.*, 2005.) The same reasoning holds true in every jurisdiction.

Rules mandating the electronic recording of interrogations exist in 16 states and the District of Columbia and nearly every other state is currently considering legislation.<sup>23</sup> In addition, with the proliferation of reality crime television, the public and juries expect to see electronic recording at every trial.



**“After reviewing a recorded interrogation, you realize maybe you gave too much detail as you tried to encourage him, and he just regurgitated it back.”**

— Commander Neil Nelson, St. Paul, Minnesota Police Department<sup>22</sup>



### Spotlight on Electronic Recording

Sixteen states and the District of Columbia now require custodial interrogations to be electronically recorded. And more than 450 police departments in all 50 states have voluntarily adopted electronic recording policies.<sup>24</sup> What's the verdict?

- “Virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice.” — Tom Sullivan, former U.S. Attorney (Illinois)<sup>25</sup>
- “If it's done right, there is no more powerful evidence than a videotaped confession there for the defense and the public to see.” — Captain Barney Forsythe, Director of Montgomery County Police Major Crimes Division (Maryland)<sup>26</sup>
- “When videotaping was first forced upon us by the D.C. City Council, we fought it tooth and nail. Now, in the words of a top commander, we would not do it any other way.” — Jim Trainum, former detective, Washington, D.C. Metropolitan Police Department<sup>27</sup>

<sup>21</sup> Jim Trainum, “I Took A False Confession -- So Don't Tell Me It Doesn't Happen!” *Calitics*, last modified September 20, 2007 (accessed August 8, 2012), <http://www.calitics.com/showDiary.do?diaryId=3831>.

<sup>22</sup> “Justice Watch: Keeping an Eye on the Law,” *Christian Science Monitor* (Boston, MA), July 20, 2005 (accessed August 16, 2012), <http://www.csmonitor.com/2005/0720/p16s01-usju.html>.

<sup>23</sup> Grant Fredericks, “Electronic Recording of Interrogations: A Need for Standards and Education for Local & State Law Enforcement Agencies” (Proposal to the International Association of Chiefs of Police, 2012).

<sup>24</sup> *Ibid.*

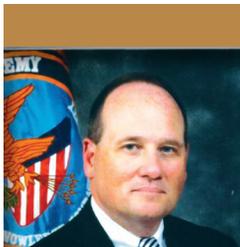
<sup>25</sup> Tom Sullivan, “The Police Experience: recording Custodial interrogations,” *National Association of Criminal Defense Lawyers*, December 2004 (accessed August 16, 2012), <http://www.nacdl.org/Champion.aspx?id=1366>.

<sup>26</sup> Barney Forsythe, “Fact Sheet: Recording Interrogations Has Broad Support,” *Montana Innocence Project* (accessed August 16, 2012), <http://data.opi.mt.gov/bills/2009/Minutes/Senate/Exhibits/jus61a11.pdf>.

<sup>27</sup> Jim Trainum, “I Took A False Confession -- So Don't Tell Me It Doesn't Happen!” *Calitics*, last modified September 20, 2007 (accessed August 8, 2012), <http://www.calitics.com/showDiary.do?diaryId=3831>.

# RECOMMENDED BEST PRACTICES: INVESTIGATIVE FOLLOW-UP

**O**NCE A SUSPECT HAS CONFESSED, SHOULD LAW ENFORCEMENT CLOSE THE CASE? **No.** POLICE INVESTIGATORS SHOULD TAKE A FEW IMPORTANT STEPS AFTER EVERY CONFESSION TO ENSURE THE CONFESSION IS RELIABLE.



**“You can’t take a confession and just lock the guy up and throw away the key and let a jury decide his guilt or innocence. I’m not willing to take that chance.”**

– Major Ron Hunton,  
Cherokee County,  
Georgia, Sheriff’s Office<sup>28</sup>

- **Confirm the confession indicates firsthand knowledge of guilt.** Officers who obtain statements from juveniles must review the electronic recording of the interrogation to determine whether the juvenile provided verifiable details about the crime that were not inadvertently revealed to him or her by police and that he or she would not otherwise be expected to know. Ideally, an officer unconnected to the investigation should perform this review. If the juvenile did not provide these kinds of details, his or her confession may not be accurate.
- **All juvenile interrogations should meet the gold standard.** If a juvenile provides information about a crime that police did not already know and that is later proven true, then his or her confession can be considered reliable.
- **Make sure the confession is corroborated by objective, physical evidence – not just by statements from other juveniles.** If physical evidence contradicts the confession, it may be false.
- **Don’t be fooled by a detailed confession.** The vast majority of proven false confessions contained a surprising number of accurate details, but the suspect’s knowledge of that information was later shown to be the result of interrogators’ disclosure of those details during questioning.



## Reliability Red Flags

Former Cook County (Illinois) Deputy Assistant State’s Attorney Robert J. Milan, who has helped identify and rectify several high-profile false confession cases, advises law enforcement to take a second look at a confession when there is:

- **No relationship between co-defendants.** Several proven juvenile false confessions have involved young people who confessed during interrogation to committing elaborate crimes with strangers or people with whom they did not get along.
- **Incompatible rap sheet.** If a juvenile suspect just confessed to a brutal rape-murder, but the worst thing he’s done before is skip school, then you should take a step back and re-evaluate your evidence.
- **Unbroken alibi.** If a suspect has confessed but later produces a solid alibi, you may have a problem.

<sup>28</sup> Ron Hunton, “Suspect Confessed to Murder He Didn’t Commit,” *ABC News*, March 29, 2006 (accessed August 16, 2012), <http://abcnews.go.com/Primetime/LegalCenter/story?id=1779251&page=2#.UC049v1YV8F>.

# APPLYING COMMON SENSE LESSONS ABOUT CHILDREN

SOME OF THE INFORMATION IN THIS PUBLICATION MAY NOT SOUND ENTIRELY NEW. LAW ENFORCEMENT OFFICERS WHO INTERVIEW CHILD VICTIMS HAVE LONG USED SPECIAL, LOW-PRESSURE QUESTIONING TECHNIQUES, BECAUSE THEY KNOW THAT CHILDREN WHO FEEL PRESSURED MAY TRY TO PLACATE THEIR QUESTIONERS RATHER THAN ANSWER TRUTHFULLY. WHAT IS NEW, HOWEVER, IS A GROWING RECOGNITION THAT ALL JUVENILES SHARE THESE SAME VULNERABILITIES – WHETHER THEY ARE VICTIMS, WITNESSES, OR SUSPECTS – AND THUS SPECIAL CARE SHOULD BE USED WHEN QUESTIONING ANY CHILD OR ADOLESCENT.

In fact, many officers don't need child victim interview training to know that children and adolescents are different than adults. A recent national university research study asked 1,828 law enforcement officers about the general characteristics of children under 14 and adolescents between 14 and 17 years of age and found:

- The vast majority agreed that children and adolescents have reduced comprehension abilities.
- 93.9% agreed that children are suggestible and 84.6% agreed that adolescents were suggestible.
- Most officers agreed that teens often innocently display behaviors that, in adults, are thought to indicate deception, such as lack of eye contact and slouching.

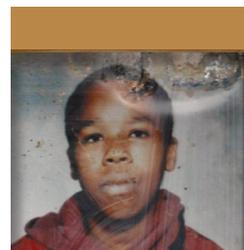
At the same time, however, officers often did not apply this knowledge in the interrogation room:

- Approximately 50% agreed that children, and 78.2% agreed that adolescents, comprehended what was happening during interrogation.
- Only 67.5% agreed that children are suggestible in the interrogation room and 45.6% agreed that adolescents are suggestible in the interrogation room.

- Officers indicated no differences in their ability to detect deception in children and teens as compared to adults.<sup>30</sup>

This gap must be bridged, particularly given the changing legal landscape. Officers must apply their knowledge of youthful vulnerabilities – whether that knowledge arises from common sense, personal (or parental) experience, child victim interview training protocols, or brain science – to all juveniles who are being questioned, whether victim, witness, or suspect.

Systematic training will reinforce this important lesson. In the study discussed above, 76 percent of law enforcement officers expressed a desire for more training on how to question youth, and 60 percent endorsed the development of standardized juvenile questioning procedures. Yet most officers had received fewer than 10 hours of juvenile interview and interrogation training over their entire careers. Presently, the IACP, in partnership with the Office of Juvenile Justice and Delinquency, Office of Justice Programs, U.S. Department of Justice, has the only national law enforcement training program centered on juvenile interview and interrogation.



**“[Being interrogated] felt like I was choking, like there was no more air left in the room.”**

– Robert Taylor, age 15 (Dixmoor, IL), conviction reversed<sup>29</sup>

<sup>29</sup> Robert Taylor, conversation with Josh Tepfer and Laura Nirider at the Northwestern University School of Law, 2011.

<sup>30</sup> N. Dickon Reppucci, Jessica Meyer, and Jessica Kostelnik, “Custodial Interrogation of Juveniles: Results of a National Survey of Police,” in *Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations*, eds. G. Daniel Lassiter and Christian A. Meissner (Washington, DC: American Psychological Association, 2010), 67-80.

# CONCLUSION

From the highest court in the land to trial courts in individual jurisdictions around the country, there is no question that the legal landscape on juvenile interrogation is changing. Practices that have long been approved by courts when questioning adults are now being viewed differently when the suspect is a youth. All of this is informed by an ever-growing body of research that demonstrates that young people

are particularly vulnerable to making false or involuntary statements when subjected to pressure-filled questioning tactics. By following the suggestions throughout this publication – and utilizing the practical tools that follow – law enforcement can increase their chances for successful investigations and prosecutions and decrease the risk of negatively impacting juveniles, liability, and reputational harm.



**“I had that perception that the police were there to help. . . I signed a confession under the pretense that I was going to go home later on that night, but it didn’t work out that way.”**

– Terrill Swift, age 17 (Chicago, IL), conviction reversed<sup>31</sup>

<sup>31</sup> Terrill Swift, interview by Tony Cox, *NPR Tell Me More*, November 23, 2011 (accessed August 8, 2012), [http://www.voicebase.com/voice\\_file/public\\_detail/68508](http://www.voicebase.com/voice_file/public_detail/68508).

## KEY CASES

COURTS HAVE APPLIED DIFFERENT, MORE STRINGENT RULES IN SEVERAL DIFFERENT CONTEXTS RELATED TO THE QUESTIONING OF JUVENILES. TAKE A LOOK AT THIS SAMPLING OF COURT DECISIONS FROM ACROSS THE COUNTRY.

### Decisions Involving Juveniles and *Miranda* Rights

***State v. Fernandez*, 16-2011-CF-06222; 16-2012-CF-00136 (Fl. Circ. Ct. 2012)**

Despite properly read *Miranda* warnings, indications from the minor that he understood each of his rights, and the minor's alert and responsive appearance, a Florida trial court suppressed several confessions made by a 12-year-old boy where multiple experts determined that "it would be difficult for any twelve-year-old boy to understand *Miranda* warnings and the consequences of waiving their rights."

***J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)**

Recognizing that a young person may feel bound to submit to questioning when an adult would not, the U.S. Supreme Court held that officers must consider an individual's age when determining whether he or she is in custody and, in turn, whether *Miranda* rights must be read.

***Commonwealth v. Truong*, 2011 Mass. Super. LEXIS 61 (Mass. Super. Ct. 2011)**

A Massachusetts trial court suppressed the confession of an almost-17-year-old girl to the murder of her daughter, despite validly read *Miranda* warnings, because she did not have the requisite intelligence, knowledge, experience, or sophistication to voluntarily or knowingly waive her rights. The court also held that confronting the suspect with knowingly false statements about her child's cause of death, coupled with suggestions that she would be treated leniently if she confessed *because of* her juvenile status and more harshly if she did not, rendered the interrogation unduly coercive and the confession involuntary.

***T.C. v. State*, 2010 Ark. 208 (2010)**

The Arkansas Supreme Court overturned a 12-year-old honor roll student's delinquency adjudication because he did not knowingly or intelligently waive his *Miranda* rights – which officers had read him twice – before confessing to murder.

### Decisions Involving Police Coercion and the Voluntariness of Juvenile Statements

***Doody v. Ryan*, 649 F.3d 986 (9th Cir. 2011)**

A federal court found that a 17-year-old's confession to nine murders was involuntary given the "intensity" of "twelve-plus sleep-deprived hours of continuous questioning" by a "tag team" of detectives while the boy was seated in a straight-back chair and unaccompanied by an attorney. The court also noted that the suspect's juvenile status was of "critical importance" to its decision.

***In the Interest of Jerrell C.J.*, 283 Wis. 2d 145 (2005)**

The Wisconsin Supreme Court found that a 14-year-old boy's confession to armed robbery was involuntary when, over the course of seven-and-a-half hours in police custody, law enforcement refused to let him speak to a parent, disregarded his repeated denials, and urged him to tell a "different truth" – all tactics that it found troubling in light of the boy's youthfulness. The court emphasized the particular vulnerability of children to false confessions and ordered that all custodial interrogations of youth under age 18 must be electronically recorded, when feasible, from start to finish.

***A.M. v. Butler*, 360 F.3d 787 (7th Cir. 2004)**

A federal court found that the confession of an 11-year-old boy to the murder of an elderly woman was involuntary, despite the presence of a youth officer, because the police responded to the boy's denials by repeatedly accusing him of lying, "a technique which could easily convince a young boy to 'confess' to anything."

***State v. Rettenberger*, 1999 UT 80 (1999)**

Indicating that even inadvertent fact-feeding by police can jeopardize a confession's usefulness in court, the Utah Supreme Court found the 18-year-old defendant's confession involuntary because it "contains little information that was not first provided or suggested by the interrogating officers."

***In re B.M.B.*, 264 Kan. 417 (1994)**

The Kansas Supreme Court found that a 10-year-old boy's confession to sexual assault – given after just 31 minutes of interrogation – was involuntary, after an expert witness who “is normally on the other side of these issues” testified that police questioned the boy using tactics that are only appropriate for adult suspects. Those tactics included downplaying the significance of the charge, suggesting that the crime was an accident, and refusing to accept the suspect's denials. The expert testified that more than half of innocent children questioned in this manner would have acquiesced and confessed.

***Gallegos v. Colorado*, 370 U.S. 49 (1962)**

The U.S. Supreme Court threw out the confession of a 14-year-old boy when it was obtained through an on-and-off interrogation lasting five days, even though the interrogation itself was not particularly heavy-handed. In so concluding, the court found that a teen “is unlikely to have any conception of what will confront him [during an interrogation] . . . or how to get the benefits of his constitutional rights.” The court again suggested that only “adult advice” could give the boy “the protection which his own immaturity could not.”

***Haley v. Ohio*, 332 U.S. 596 (1948)**

Following the midnight arrest and five-hour interrogation of a 15-year-old boy by a team of detectives, the U.S. Supreme Court threw out the boy's confession and reversed his conviction, concluding that teens like Haley are no match for adult interrogators: “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.” The court noted the importance of ensuring that a young person has access to adult counsel: “[A teenager] needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.”

**Decisions Involving Unreliable Confessions*****People v. Swift et al.*, No. 95 CR 9676 (IL Cir. Ct. 2011)**

An Illinois trial court overturned the convictions of four men – all of whom had confessed as teenagers to gang-raping and murdering a woman – in light of the fact that DNA taken from the victim's body matched an older serial rapist and convicted murderer. Noting that the teenagers had all confessed to penetrating the victim, the court questioned the confessions' truthfulness by noting that it was “highly unlikely” that four adolescent males could engage in unprotected sex without leaving any semen behind.

***People v. Rivera*, 962 N.E.2d 53 (IL App. Ct. 2011)**

An Illinois appellate court found that a teenager's detailed confession to sexual assault and murder was not enough to prove him guilty beyond a reasonable doubt, after DNA taken from the victim's body did not match him. The court also noted that the State failed to prove – as it was required to do – that the details in the confession had not been disclosed to him by police during the unrecorded interrogation.

***Crowe v. County of San Diego*, 608 F.3d 406 (9th Cir. 2010)**

A federal court concluded that a 14-year-old boy who confessed to murdering his sister was, along with his juvenile codefendants, an “innocent teenager.” It found that the boy had been compelled to falsely confess when officers used inappropriate questioning techniques, such as lying about the evidence and promising him help rather than imprisonment in exchange for an admission of guilt.

***In re Gault*, 387 U.S. 1 (1967)**

This landmark case provided juveniles with many of the same due process protections already afforded to adults. In concluding that the Fifth Amendment right against self-incrimination must apply to juveniles, the U.S. Supreme Court explained that “authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.”

**Decisions Involving the Differences Between Juveniles and Adults*****Miller v. Alabama*, 132 S. Ct. 2455 (2012)**

The U.S. Supreme Court struck down as unconstitutional all mandatory sentences of life without the possibility of parole for juvenile offenders. Reiterating yet again the same developmental differences between juveniles and adults that were highlighted in *Roper* and *Graham*, the court explained that its decisions relied not only on science, but also on “common sense” and “what every parent knows.”

***Graham v. Florida*, 130 S. Ct. 2011 (2010)**

Expanding on the *Roper* decision, the U.S. Supreme Court concluded that it is unconstitutional to sentence a juvenile convicted of a non-homicide offense to life imprisonment without the possibility of parole. Once again, it relied on the developmental differences between juveniles and adults to reach its conclusion. Of particular relevance to the interrogation context, the court explained that juveniles have “[d]ifficulty in weighing long-term consequences,” a “corresponding impulsiveness,” and a “limited understanding of the criminal justice system and the roles of the institutional actors within it.”

***Roper v. Simmons*, 543 U.S. 551 (2005)**

The U.S. Supreme Court abolished the death penalty for individuals who were younger than 18 at the time of their crimes. Relying on adolescent brain research, the court explained that juveniles make “impetuous and ill-considered” decisions and are “more vulnerable or susceptible to negative influences and outside pressures” than adults. These same traits explain why juveniles are uniquely susceptible to the pressures of custodial interrogation.



## ANYTOWN POLICE DEPARTMENT

123 Main Street  
Anytown, USA 070476



### SAMPLE JUVENILE PRE-INTERVIEW/INTERROGATION CHECKLIST

#### Incident:

Incident #: \_\_\_\_\_

Officer/Investigator: \_\_\_\_\_

Juvenile Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Juvenile Address: \_\_\_\_\_

State's Attorney Consulted: Yes \_\_\_ No \_\_\_

#### Parent/Guardian/Concerned Adult:

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Sex: Male \_\_\_ Female \_\_\_ Transgender \_\_\_ Unknown \_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Relation to Juvenile: Natural \_\_\_ Step \_\_\_ Adoptive \_\_\_ Foster \_\_\_ Grandparent \_\_\_ Other \_\_\_\_\_

Notified: Yes \_\_\_ No \_\_\_

Is Parent/Guardian Required to be Present? Yes \_\_\_ No \_\_\_ Are They Present? Yes \_\_\_ No \_\_\_

If Not Notified –Attempts to Contact:

Person's Name: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ In Person \_\_\_ Phone \_\_\_ Phone # \_\_\_\_\_

By Whom: \_\_\_\_\_

Person's Name: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ In Person \_\_\_ Phone \_\_\_ Phone # \_\_\_\_\_

By Whom: \_\_\_\_\_

#### Is the Interview Custodial? (Refer to the Worksheet–Is This Interview Custodial?)

Yes \_\_\_ No \_\_\_

#### Miranda:

Required: Yes \_\_\_ No \_\_\_

Does the juvenile have the ability to understand their *Miranda* Warnings? (Refer to Worksheet –Assessing Competency) Yes \_\_\_ No \_\_\_

Parental/Guardian Waiver Required: Yes \_\_\_ No \_\_\_

Parental Waiver Completed? Yes \_\_\_ No \_\_\_

Miranda Administered?

Yes \_\_\_ No \_\_\_ If Yes: By Whom \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

**Interview Plan Completed?** Yes \_\_\_ No \_\_\_

**Attorney:**

Currently Retained: Yes \_\_\_ No \_\_\_ Requested Attorney This Incident: Yes \_\_\_ No \_\_\_

If Yes: Name: \_\_\_\_\_

Contact #: \_\_\_\_\_

**Documentation:**

Method of Interview Documentation:

Note Taker: Yes \_\_\_ No \_\_\_

Written: Yes \_\_\_ No \_\_\_

Handwritten: Yes \_\_\_ No \_\_\_

Typed: Yes \_\_\_ No \_\_\_

Video: Yes \_\_\_ No \_\_\_

Audio: Yes \_\_\_ No \_\_\_

Statement Obtained: Yes \_\_\_ No \_\_\_

If Yes: Suspect: \_\_\_ Victim \_\_\_ Complainant \_\_\_ Witness \_\_\_ Other \_\_\_

**Evidence:**

Yes \_\_\_ No \_\_\_

Type: \_\_\_\_\_

Disposition: \_\_\_\_\_

**Local Considerations / Additional State Requirements:**

Age of Majority: \_\_\_\_\_

Deputy Juvenile Officer Presence: \_\_\_\_\_

Other Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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**SAMPLE INTERVIEW PLAN**

**Person Being Interviewed**

Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Status: Suspect \_\_ Victim \_\_ Witness \_\_ Other \_\_

**Incident**

Incident #: \_\_\_\_\_ Incident Date: \_\_\_\_\_ Incident Time: \_\_\_\_\_

Incident Type: \_\_\_\_\_

Incident Location: \_\_\_\_\_

**Summary of the Incident:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Interview**

Primary Interviewer: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Location: \_\_\_\_\_

Is Interview Custodial? Yes \_\_ No \_\_

Miranda Required? Yes \_\_ No \_\_ Who Will Mirandize? \_\_\_\_\_

**Victim(s)/ Complainant(s):**

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

**Suspect(s):**

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

**Witness(es):**

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ STATEMENT OBTAINED: Yes \_\_ No \_\_

**Documentation:**

Note Taker: \_\_\_\_\_

Written: Yes \_\_ No \_\_ Handwritten: Yes \_\_ No \_\_ Typed: Yes \_\_ No \_\_

Video: Yes \_\_ No \_\_ Tested: Yes \_\_ No \_\_ Operator: \_\_\_\_\_

Audio: Yes \_\_ No \_\_ Tested: Yes \_\_ No \_\_ Operator: \_\_\_\_\_

**Significant Evidence:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Gaps in Information/What Are You Missing?**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Goals of the Interview/What Are You Looking to Learn?**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Strategy for Rapport Building (How Are You Going to Break the Ice/Get Them to Talk to You?)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Questions? Write Out What You Want to Know:**

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**How Will You Close the Interview?**

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**Special Considerations/Things to Remember:**

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**Items for Investigative Follow-up/Corroboration After the Interview:**

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## ANYTOWN POLICE DEPARTMENT

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Anytown, USA 070476



### SAMPLE JUVENILE RAPPORT-BUILDING PLAN

**Incident #:** \_\_\_\_\_ **Incident Date:** \_\_\_\_\_ **Incident Time:** \_\_\_\_\_

**Incident Type:** \_\_\_\_\_

**Incident Address:** \_\_\_\_\_

Multiple Juveniles: Yes: \_\_\_\_\_ No: \_\_\_\_\_

Referral Source (if applicable) Name: \_\_\_\_\_

Agency/ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Care Giver \_\_ School \_\_ Law Enforcement \_\_ Mental Health \_\_ Fire Service \_\_

Parent \_\_ EMS \_\_ Result of incident \_\_ Other \_\_\_\_\_

#### Juvenile Information

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Sex: Male \_\_ Female \_\_ Transgender \_\_ Unknown \_\_

Race: White \_\_ Asian \_\_ African American \_\_ Native American \_\_ Hispanic \_\_ Other \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_ Other Identifying # (i.e.; Alien Registration) \_\_\_\_\_

Mother's Name: \_\_\_\_\_ Alive \_\_ Deceased \_\_ In Picture \_\_

Father's Name: \_\_\_\_\_ Alive \_\_ Deceased \_\_ In Picture \_\_

#### Adult #1 Residing With the Child:

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Sex: Male \_\_ Female \_\_ Transgender \_\_ Unknown \_\_

Race: White \_\_ Asian \_\_ African American \_\_ Native American \_\_ Hispanic \_\_ Other \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Employed: Yes \_\_ No: If Yes, Where? \_\_\_\_\_

Marital Status: Married \_\_ Separated \_\_ Divorced \_\_ Remarried \_\_ Widowed \_\_

Relation to Juvenile: Natural \_\_ Step \_\_ Adoptive \_\_ Foster \_\_ Grandparent \_\_ Other \_\_\_\_\_

#### Adult #2 Residing With the Child:

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Sex: Male \_\_ Female \_\_ Transgender \_\_ Unknown \_\_

Race: White \_\_ Asian \_\_ African American \_\_ Native American \_\_ Hispanic \_\_ Other \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Employed: Yes \_\_ No: If Yes, Where? \_\_\_\_\_

Marital Status: Married \_\_ Separated \_\_ Divorced \_\_ Remarried \_\_ Widowed \_\_

Relation to Juvenile: Natural \_\_ Step \_\_ Adoptive \_\_ Foster \_\_ Grandparent \_\_ Other \_\_\_\_\_

### Others Residing With the Child

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

### Employment and Community Activity:

Currently Employed: Yes \_\_ No \_\_ If Yes, Where? \_\_\_\_\_

Career Interests: \_\_\_\_\_

Volunteer Involvement: \_\_\_\_\_

Church Involvement: \_\_\_\_\_

Community Involvement: \_\_\_\_\_

### School Education:

Last Grade Placement: \_\_\_\_\_ Grades Completed: \_\_\_\_\_

School Currently Attending \_\_\_\_\_

Does the minor have an Individual Education Plan (IEP)? Yes \_\_ No \_\_

Are services (tutoring/speech/specialized classes/counseling) provided? Yes \_\_ No \_\_

Describe \_\_\_\_\_

Current Grades (A/B, Passing/Failing) \_\_\_\_\_

Attendance: Attending Regularly \_\_ # Absences Per Week \_\_\_\_\_ # Tardy Per Week \_\_\_\_\_

School Suspensions Yes \_\_ No \_\_ If Yes, When \_\_\_\_\_ How Many \_\_\_\_\_

School Expulsion Yes \_\_ No \_\_ If Yes, When \_\_\_\_\_

### Medical:

ADD/ ADHD Diagnosed: Yes \_\_ No \_\_

Doctor: \_\_\_\_\_ Last Visit: \_\_\_\_\_ Why: \_\_\_\_\_

Current Medications: \_\_\_\_\_

History of Mental Health Issues: Yes \_\_ No \_\_ If Yes, Explain \_\_\_\_\_

Substance Abuse: Yes \_\_ No \_\_ If Yes, Explain \_\_\_\_\_

**Trauma/Crisis/Loss:**

Has there been any significant trauma, crisis or loss in the juvenile's life (e.g., loss of family member or friend, witness to a violent crime, sudden homelessness, separation from a close relative)? Yes \_\_\_ No \_\_\_

If Yes, Explain \_\_\_\_\_

**Friends:**

Close Friends: Yes \_\_\_ No \_\_\_ If Yes, How Many? \_\_\_\_\_ Who? \_\_\_\_\_

Activities With Friends: \_\_\_\_\_

Any friend currently involved with court system? Yes \_\_\_ No \_\_\_ If Yes, Why? \_\_\_\_\_

**Social Media:**

Email (school and personal): \_\_\_\_\_

Twitter: \_\_\_\_\_

Facebook: \_\_\_\_\_

Other (specify): \_\_\_\_\_

Music Preference: \_\_\_\_\_

**Hobbies/Associations/Groups:**

Hobbies (specify): \_\_\_\_\_

Sports (specify): \_\_\_\_\_

School Clubs/Groups/Activities (ie: recycling club, school play, etc.): \_\_\_\_\_

Gang Affiliation: No \_\_\_ Yes \_\_\_ If Yes, Who? \_\_\_\_\_

Appearance/ Dress Style: Goth \_\_\_ Emo \_\_\_ Skater \_\_\_ Jock \_\_\_ Preppy \_\_\_ Nerd \_\_\_ Other \_\_\_\_\_

Other Associations/Groups (include any self-identification by juvenile) \_\_\_\_\_

**Legal History:**

Does the juvenile have an attorney? Yes \_\_\_ No \_\_\_ If Yes, Who? \_\_\_\_\_

Has the juvenile ever been charged with any previous delinquent or criminal acts? Yes \_\_\_ No \_\_\_

If Yes, Explain: \_\_\_\_\_

Is the juvenile on probation? Yes \_\_\_ No \_\_\_ If Yes, What For? \_\_\_\_\_

Who is/was the probation officer? \_\_\_\_\_

**Other Information:**

\_\_\_\_\_  
\_\_\_\_\_



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123 Main Street  
Anytown, USA 070476



### WORKSHEET - IS THIS JUVENILE INTERVIEW CUSTODIAL?

#### Incident:

Incident #: \_\_\_\_\_ Officer / Investigator: \_\_\_\_\_  
Juvenile Name: \_\_\_\_\_ DOB: \_\_\_\_\_

#### Nature of Interview:

Suspect  Victim  Complainant  Witness  Other

#### Interview:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Location: \_\_\_\_\_

#### Check All That Apply:

Residence: Interviewee's Residence  Friend's Residence  Other Residence  School   
School Administrator's Office  SRO's Office  Classroom  Police Station  Juvenile  
Bureau  Detective Bureau  Turnout Room  Lobby  Designated Juvenile Interview  
Room  Office  Outside  Outside School Property  Public Area  Private Property

Describe Setup of Room: \_\_\_\_\_

Can interviewee easily leave if they wanted to? Yes  No

Is this clearly understood by the child? Yes  No

Door Locked? Yes  No

#### Primary Interviewer:

Name: \_\_\_\_\_

Law Enforcement: Yes  No

Rank: \_\_\_\_\_ Uniformed: Yes  No

Weapon Visible: Yes  No

Civilian: Yes  No

School Official  Social Worker  Probation Officer  Other

#### Who Is Present?

Law Enforcement Present In Addition To Primary Interviewer:

Name: \_\_\_\_\_

Rank: \_\_\_\_\_ Uniformed: Yes  No

Weapon Visible: Yes  No

Parent/Guardian/Concerned Person:

Present: Yes  No

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Additional People Present:

Name: \_\_\_\_\_

Relationship: Family  Law Enforcement  School Official  Social Worker

Probation Officer  Clergy

Name: \_\_\_\_\_

Relationship: Family  Law Enforcement  School Official  Social Worker

Probation Officer  Clergy

**Method of Documentation:**

Note Taker: Yes  No

Written: Yes  No

Handwritten: Yes  No

Typed: Yes  No

Video: Yes  No

Audio: Yes  No

---

Conclusion: In your professional opinion after considering the above information, current case law and the totality of the circumstances:

**Is this Interview Custodial? YES  NO**

**IF YES, ADMINISTER *MIRANDA* WARNINGS TO THE JUVENILE.**

---

**“Totality of the Circumstances” Test – Factors:**

- Circumstances of the confession
- Environment
- Methods used to obtain confession
- Suspect’s physical condition
- Suspect’s mental condition
- Length of interview or interrogation
- Age
- Education and intelligence (developmental level, comprehension)
- Experience with juvenile justice system



## ANYTOWN POLICE DEPARTMENT

123 Main Street  
Anytown, USA 070476



### WORKSHEET – ASSESSING COMPETENCY

Incident #: \_\_\_\_\_ Incident Type: \_\_\_\_\_

#### Juvenile Information

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Language Interview Conducted In: \_\_\_\_\_

Interpreter Present: Yes \_\_\_ No \_\_\_ If So Who: \_\_\_\_\_

Was the juvenile given a meaningful/genuine opportunity to consult with a parent/guardian/caring adult? Yes \_\_\_ No \_\_\_

#### *SAMPLE QUESTIONS TO ASSESS COMPETENCY*

##### QUESTIONS

1. How old are you? \_\_\_\_\_
2. When is your birthday? \_\_\_\_\_
3. What year were you born? \_\_\_\_\_ (If the child cannot provide the year, this should be a red flag)
4. What grade are you in? \_\_\_\_\_ (Consider whether the grade is appropriate for the age of the child or whether the child is behind in school)
5. What courses are you studying? \_\_\_\_\_  
(Are the courses appropriate or do they suggest special education placement?)
6. How many days of school do you miss in an average week? \_\_\_\_\_  
a. Why? \_\_\_\_\_
7. How many times each week are you late for school? \_\_\_\_\_  
(Truancy may be an indicator of special education problems)
8. Who are your doctors? \_\_\_\_\_  
a. How often do you see your doctors? \_\_\_\_\_  
b. Why do you see your doctors? \_\_\_\_\_
9. Have you ever talked with a therapist or psychologist? \_\_\_\_\_  
a. Why? \_\_\_\_\_
10. Have you ever been in a hospital? \_\_\_\_\_  
a. Why? \_\_\_\_\_
11. Are you taking any medications? \_\_\_\_\_  
a. What are they? \_\_\_\_\_  
b. Why are you taking them? \_\_\_\_\_  
c. How do the medications make you feel? \_\_\_\_\_ Better? \_\_\_\_\_ Worse? \_\_\_\_\_

## ANOTHER VERSION OF QUESTIONS TO ASSESS UNDERSTANDING / COMPETENCY

Minor's Name: \_\_\_\_\_ Age: \_\_\_\_\_ DOB: \_\_\_\_\_  
 Booking #: \_\_\_\_\_ Completed By: \_\_\_\_\_ Date Completed: \_\_\_\_\_

### QUESTIONS FOR MINOR:

1. Do you go to school? \_\_\_\_\_  
     a. What school? \_\_\_\_\_  
     b. What grade? \_\_\_\_\_
2. Do you know the difference between doing what's right and doing what's wrong?  
     a. Yes: \_\_\_\_\_ b. No: \_\_\_\_\_
3. Give me an example of something right to do: \_\_\_\_\_
4. Give me an example of something wrong to do: \_\_\_\_\_
5. What happens to you when you do something wrong: \_\_\_\_\_

---

The following questions refer to the specific crime being investigated. Use SIMPLE WORDS TO DESCRIBE THE OFFENSE i.e. "to take something that doesn't belong to you" instead of "steal" or "petty theft," "go into a house without permission to take something that isn't yours" instead of "burglary," "start a fight or hit someone" instead of "assault" or "battery," "take someone's property from them by hitting them or scaring them" instead of "robbery," "lookout or help" instead of "aiding and abetting." Ask about the specific sexual activity instead of "oral copulation" or "penetration." Try to have minor explain their answers. Indicate the words used by investigator to describe the crime.

---

6. Do you know it is wrong to (specific crime investigated)?  
     Answer: \_\_\_\_\_
7. Did you know it was wrong to (specific crime investigated)?  
     Answer: \_\_\_\_\_  
     7a. Before (time frame offense occurred)?  
         Answer: \_\_\_\_\_
8. Do you know it is wrong to help someone else (specific crime investigated) \_\_\_\_\_?  
     Answer: \_\_\_\_\_
9. If someone did this to you would it be wrong?  
     Answer: \_\_\_\_\_
10. Were you ever taught it was wrong to (specific crime investigated) \_\_\_\_\_?  
     Answer: \_\_\_\_\_  
     10a. By whom? (i.e.: parent, teacher, etc.)  
         Answer: \_\_\_\_\_
11. What were you taught about it being wrong to (specific crime investigated)?  
     Answer: \_\_\_\_\_

---

Conclusion: State whether in your opinion, the subject knows the difference between right and wrong.

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### **Questions for Parent(s)/Guardian(s)/Teacher/Other (If Applicable)**

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Name of person questioned: \_\_\_\_\_

Relationship: \_\_\_\_\_

Questioned by: \_\_\_\_\_

In Person: \_\_\_\_\_ Via Telephone : \_\_\_\_\_

1. What is the minor's age?

Answer: \_\_\_\_\_

2. Date of birth?

Answer: \_\_\_\_\_

3. Have you taught (minor's name) \_\_\_\_\_ the difference between right and wrong?

Answer: \_\_\_\_\_

4. Does (minor's name) \_\_\_\_\_ know it is wrong to (specific crime investigated) \_\_\_\_\_?

Answer: \_\_\_\_\_

5. Did he/she know it was wrong before the event?

Answer: \_\_\_\_\_

6. Has (minor's name) \_\_\_\_\_ been taught it is wrong to (specific crime investigated) \_\_\_\_\_?

Answer: \_\_\_\_\_

7. How and by whom (i.e. parent, teachers, etc.)?

Answer: \_\_\_\_\_

8. Does (minor's name) \_\_\_\_\_ go to school?

Answer: \_\_\_\_\_

8a. Where?

Answer: \_\_\_\_\_

8b. What grade?

Answer: \_\_\_\_\_

9. Can (minor's name) \_\_\_\_\_ read?

Answer: \_\_\_\_\_

10. Can (minor's name) \_\_\_\_\_ write?

---

Conclusion: State whether in your opinion, the subject knows the difference between right and wrong.

---

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**MIRANDA COMPREHENSION**

Determine if the subject knows the meaning of the following words as per *Miranda*: silent, court, lawyer, appointed, judge, and write the subject’s answers below. If a word is unknown explain the meaning and document explanation.

---

Silent: \_\_\_\_\_  
 Explanation if needed: \_\_\_\_\_

Court: \_\_\_\_\_  
 Explanation if needed: \_\_\_\_\_

Lawyer: \_\_\_\_\_  
 Explanation if needed: \_\_\_\_\_

Appointed: \_\_\_\_\_  
 Explanation if needed: \_\_\_\_\_

Judge: \_\_\_\_\_  
 Explanation if needed: \_\_\_\_\_

---

Was *Miranda* Given? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Did minor indicate they heard and understood their rights? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Did minor give a knowing and intelligent waiver of his/her rights? Yes: \_\_\_\_\_ No: \_\_\_\_\_

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*If it is not documented anywhere else in your department records you can use the following to support how they were advised of Miranda.*

**EXPLANATION OF MIRANDA RIGHTS TO SUBJECT: (example)**

**Question: You have the right to remain silent? What does that mean?**

**Answer: I don’t know**

**Response: It means you don’t have to talk to me if you don’t want to. Now do you understand?**

**Complete the remainder of *Miranda* individually.**

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## ANYTOWN POLICE DEPARTMENT

123 Main Street  
Anytown, USA 070476



### SAMPLE JUVENILE *MIRANDA* WARNINGS

#### Minimum Standard

1. *You have the right to remain silent.*
2. *Anything you say can and will be used against you in a court of law.*
3. *You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.*
4. *Do you understand the rights I have just read to you?*
5. *With these rights in mind, do you wish to speak to me?*

#### *IACP's Model Policy on Interview and Interrogation of Juveniles*<sup>1</sup>

1. *You have the right to remain silent. That means you do not have to say anything.*
2. *Anything you say can be used against you in court.*
3. *You have the right to get help from a lawyer right now.*
4. *If you cannot pay a lawyer, we will get you one here for free.*
5. *You have the right to stop this interview at any time.*
6. *Do you want to talk to me?*
7. *Do you want to have a lawyer with you while you talk to me?*

#### FEMA's Juvenile Fire Setter Intervention Handbook<sup>2</sup>

1. You don't have to talk with us or answer our questions if you don't want to.
2. If you decide to talk with us you have to understand that anything you say can be used against you. We can tell the Probation Officer and the Judge what you tell us.
3. You can talk to a lawyer now if you want to and you can have him with you when we ask our questions.
4. If you want to have a lawyer but you don't have enough money to hire your own, then we will get the judge to get one for you and it won't cost you anything.

<sup>1</sup>International Association of Chiefs of Police, "Interviewing and Interrogating Juveniles" (model policy, Alexandria, Virginia, 2012), 2.

<sup>2</sup>United States Fire Administration, Federal Emergency Management Agency, *Juvenile Firesetter Intervention Handbook*, by Jessica Gaynor, for Social Technical Research Applications, Inc. (January 2002), <http://www.usfa.fema.gov/downloads/pdf/publications/fa-210.pdf>.

### Waiver Questions

1. Do you understand what I have said?
2. Do you want to ask me anything?
3. Do you want to talk with me now?
4. Do you want to have a lawyer, or not?

Adapt according to your jurisdictional requirements.

Fill in the juvenile's response to your questions verbatim.

1. *You have the right to remain silent. That means you do not have to say anything.*  
Do you understand this? \_\_\_\_\_  
Juvenile's Initials \_\_\_\_\_
2. *Anything you say can be used against you in court.*  
Do you understand this? \_\_\_\_\_  
Juvenile's Initials \_\_\_\_\_
3. *You have the right to get help from a lawyer right now.*  
Do you understand this? \_\_\_\_\_  
Juvenile's Initials \_\_\_\_\_
4. *If you cannot pay a lawyer, we will get you one here for free.*  
Do you understand this? \_\_\_\_\_  
Juvenile's Initials \_\_\_\_\_
5. *You have the right to stop this interview at any time.*  
Do you understand this? \_\_\_\_\_  
Juvenile's Initials \_\_\_\_\_
6. *Do you want to talk to me?*  
Do you understand this? \_\_\_\_\_  
Juvenile's Initials \_\_\_\_\_
7. *Do you want to have a lawyer with you while you talk to me?*  
Do you understand this? \_\_\_\_\_  
Juvenile's Initials \_\_\_\_\_

*I have read the above statement of my rights and they have been read aloud to me. I understand what my rights are and I know what I am doing. I agree to answer questions. I do not want a lawyer at this time. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.*

\_\_\_\_\_  
Juvenile Signature

\_\_\_\_\_  
Date / Time

\_\_\_\_\_  
Concerned Adult Signature (if present)

\_\_\_\_\_  
Date / Time

\_\_\_\_\_  
Police Officer / Investigator Signature

\_\_\_\_\_  
Date / Time



## ANYTOWN POLICE DEPARTMENT

123 Main Street  
Anytown, USA 070476



### SAMPLE PARENTAL WAIVER

**Incident #:** \_\_\_\_\_

**Juvenile Name:** \_\_\_\_\_ **DOB:** \_\_\_\_\_

**Parent/Guardian/Concerned Adult:**

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Relation to Juvenile: Natural \_\_\_ Step \_\_\_ Adoptive \_\_\_ Foster \_\_\_ Grandparent \_\_\_ Other \_\_\_\_\_

**MIRANDA WARNING:**

I have been advised that my minor: \_\_\_\_\_ (fill in their name) has been read the following rights and given the opportunity to read them:

1. *You have the right to remain silent. That means you do not have to say anything.*
2. *Anything you say can be used against you in court.*
3. *You have the right to get help from a lawyer right now.*
4. *If you cannot pay a lawyer, we will get you one here for free.*
5. *You have the right to stop this interview at any time.*
6. *Do you want to talk to me?*
7. *Do you want to have a lawyer with you while you talk to me?*

I have been given a meaningful and genuine opportunity to consult with my minor: Yes \_ No \_

*I acknowledge that my minor: \_\_\_\_\_ (fill in their name) understands their rights and has voluntarily and willingly waived their right to an attorney and is willing to answer any questions. I understand that they do not have to answer any questions and that they can stop at any time. I also understand that they may have an attorney present during questioning. No promises or threats have been made to me or my minor and no pressure or coercion of any kind has been used against me or my minor.*

\_\_\_\_\_  
Adult Signature

\_\_\_\_\_  
Date / Time

\_\_\_\_\_  
Police Officer/Investigator Signature

\_\_\_\_\_  
Date / Time

## **International Association of Chiefs of Police (IACP)**

### *Serving the Leaders of Today, Developing the Leaders of Tomorrow*

The IACP is the world's largest police executive membership association with over 20,000 members in 100 countries. The IACP provides resources for law enforcement including training, technical assistance, publications, training keys, model policies, and executive services such as management studies, executive searches, promotional testing, and assessment centers. Visit our website at [www.theiacp.org](http://www.theiacp.org).

**The Improving Law Enforcement Responses to Youth Training and Technical Assistance Project**, which is managed by the IACP in collaboration with the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, is a multi-year initiative focused on increasing the capacity of law enforcement and justice professionals to address juvenile victimization, delinquency, and crime from a holistic perspective. To accomplish this goal, we deliver a portfolio of products and services that:

- Increase the focus on juvenile justice issues.
- Encourage the development of innovative and effective prevention and/or intervention programs.
- Educate law enforcement and others on pertinent juvenile justice issues.
- Improve law enforcement's effectiveness in promoting public safety.

For more information, visit [www.theiacpyouth.org](http://www.theiacpyouth.org).

## **Office of Juvenile Justice and Delinquency Prevention (OJJDP)**

The OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. OJJDP supports states, local communities, and tribal jurisdictions in their efforts to develop and implement effective and coordinated prevention and intervention programs and to improve the juvenile justice system so that it protects public safety, holds offenders accountable, and provides treatment and rehabilitative services tailored to the needs of juveniles and their families. OJJDP, a component of the Office of Justice Programs, U.S. Department of Justice, sponsors research, program, and training initiatives; develops priorities and goals and sets policies to guide federal juvenile justice issues; disseminates information about juvenile justice issues; and awards funds to states to support local programming.

For more information, visit [www.ojjdp.gov](http://www.ojjdp.gov).



**International Association of Chiefs of Police**

515 N. Washington Street

Alexandria, Virginia 22314

1-800-THE-IACP

**[www.theiacp.org](http://www.theiacp.org)**

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# The Truth About Juvenile False Confessions

»»» by Megan Crane, Laura Nirider, Steven A. Drizin



Let's start with a thought experiment. Picture yourself as a thirteen-year-old boy, sitting in your middle school in the midst of class. Without warning, your principal enters your classroom, tells you to come with him, and brings you to a small room in the school's front office. There, three police officers—each wearing a holstered gun—are waiting for you. One officer leaves the room and closes the door behind him, but the detective, the sergeant, and the principal remain in the room with you. They sit you down. They surround you.

The detective reads you the *Miranda* rights and immediately proceeds to accuse you of inappropriately touching your neighbor's three-year-old sister. She does not ask if you did this. Instead, she says that she knows you did this; she has no doubt of your guilt because the evidence proves it; and now you just need to *help yourself* by telling her the truth. (In reality, this detective has no evidence; she has not conducted any investigation and has no reliable reason to presume your guilt.)

Shocked, you respond by stammering out the truth: you did not inappropriately touch that little girl. In fact, you say this over ten times. The detective refuses to listen and tells you that if you take a lie detector test, it will “come back deceptive because you're lying.” Her accusations become increasingly specific and more detailed, providing you with her exact theory about how the alleged crime occurred.

When you start crying, she tells you that the only way you can help yourself is to confess. She offers that you probably touched the little girl for reasons that are completely “understandable”—maybe you were just “curious”—but if not, then

you must have done it for a less understandable reason: touching her “excited” you. If you were just curious, she says, you should say so now in order to “get this over with so we can get you the help you need.” She emphasizes that you “need help” and “the best thing for you right now is to be honest.” She makes clear that if you don’t confess, on the other hand, it will look as though you targeted the little girl out of a more sinister desire for sexual gratification.

Ultimately, you break. You agree that maybe you did touch her for three or four seconds out of curiosity—for excitement. Your so-called confession includes only facts that the detective provided, and none that you offered yourself. You admit guilt because you are scared and just want to go home.

But you don’t go home. You are handcuffed and taken to the police station. Your case goes to court. Luckily, you have an attorney who is willing to do some work for your case. He files a motion to suppress your confession, arguing that you were coerced by police. But the judge doesn’t see it that way. He concludes that you confessed voluntarily because the detective’s voice and manner were “gentle” and “calm,” her questions were “short,” and—incredibly—because the detective was a female. You lose your case and are declared a juvenile delinquent and ward of the state.

This is not a story. This is a reality. This boy is real. He lives in California. We’ll call him John, age 13. John was



»»» ... there is now a general consensus that special care must be used on kids and teenagers in the interrogation room.

labeled a juvenile delinquent, a ward of the state, and a sexual deviant. John lost over two years of his life to a humiliating and terrifying legal battle before the case against him was finally thrown out by the California Court of Appeals—all because a police interrogation at school forced him to falsely confess to a crime he did not commit.

This story may shock you—and it should. The tactics used by police to steamroll a child into confessing to a crime can offend our most basic notions of fairness and justice, not to mention the presumption of innocence that our criminal justice system is supposed to provide. But, while shocking,

the sad truth is that this story is all too common.

Most readers are probably familiar with the tragic case of Brendan Dassey, featured in the Netflix series *Making a Murderer*. Brendan was sixteen years old and intellectually limited when he falsely confessed during police interrogation to helping his uncle assault and kill a young woman. The tactics used against him essentially mirrored those depicted above. Like John, Brendan was pulled out of class to be interrogated. Like John, Brendan was relentlessly accused of lying, when in fact it was the police who falsely claimed that they had evidence proving that he committed a



#### Megan Crane

is co-director of the Center on Wrongful Convictions of Youth at Northwestern’s Pritzker School of Law. She represents individuals wrongfully convicted as juveniles, with a focus on those

who falsely confessed, co-teaches a course on juvenile justice and wrongful convictions, and supervises law students as they co-counsel in post-conviction proceedings.



#### Laura Nirider

is co-director of the Center on Wrongful Convictions of Youth, where she specializes in representing juveniles who have falsely confessed to crimes they did not commit. Nirider has

published, spoken, and appeared in the media extensively concerning police interrogations and false confessions, and she has co-authored the only police interrogation protocol aimed at preventing juvenile false confessions.



#### Steven A. Drizin

is the assistant dean of the Bluhm Legal Clinic and a Clinical Professor at Northwestern’s Pritzker School of Law. He is the co-founder of the law school’s Center on Wrongful Convictions

of Youth. He and Laura Nirider represent *Making a Murderer*’s Brendan Dassey in his appeals.

## The Juvenile Brain



The prefrontal cortex of the brain, shaded in gray, controls judgment, problem-solving, and decision-making. It also helps to regulate impulsive behavior. This area of the human brain is not fully developed until one's early twenties. Scientists link this developmental timeline to vulnerabilities of juveniles in school and police interrogations, including their propensity to confess to criminal activities they may not have actually committed. It is estimated that false confessions play a role in one-third of all wrongful convictions that have been uncovered by DNA evidence, and juveniles are two to three times more likely to confess to crimes they did not commit than their adult counterparts.

*Image source: Database Center for Life Science, Japan.*

*Brendan Dassey was 16 when he was questioned by police in school and confessed to helping his uncle assault and kill a young woman. His case was profiled in the popular 2015 television series "Making a Murderer." Photo: AP Photo/Dan Powers, Pool.*



crime. Like John, the police fed him the facts about the crime that later made his confession look reliable and corroborated. Like John, the police indicated that confessing would help Brendan. And, like John, Brendan—who, after confessing to murder, asked if he would get back to school in time for a school project—did not understand the serious and long-term consequences of his statements.

Brendan and John are not alone. According to the Innocence Project, false confessions played a role in nearly 30% of all wrongful convictions that have been uncovered by DNA evidence. According to the National Registry of Exonerations, which compiles data on wrongful convictions, 221 exonerations since 1989 involved proven false confessions, and we know this number is under representative because it does not account for confessions not yet

proven false nor confessions that did not result in a conviction. And studies of wrongful convictions show that children and adolescents, in particular, falsely confess with startling frequency; indeed, children are two to three times more likely to falsely confess during interrogation than adults. In a study of 125 proven false confessions, 63% of false confessors were under the age of twenty-five and 32% were under eighteen, a strikingly disproportionate result. Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults. And a laboratory study astonishingly found that a majority of youthful participants complied with a request to sign a false confession without uttering a single word of protest.

Why do false confessions happen so often to children? The answer lies

in an all-too-toxic combination: the common use of psychological interrogation techniques like those illustrated above—designed for seasoned adult criminals—that exploit the developmental vulnerabilities of kids. As any teacher will recognize, youths' brains are not yet fully developed in areas relating to judgment and decision-making, giving rise to classic "teenager" traits like impulsivity, vulnerability to pressure and suggestibility, as well as a tendency to be motivated by short-term rewards. Inside the interrogation room, these traits can make kids respond to the pressures of interrogation by deciding that a confession is the only way out of a difficult situation—regardless of its truth.

### The Pressure Cooker of Psychological Interrogation

Most police officers have been trained to conduct interrogations using the Reid Technique, a set of psychological tactics similar to those used on John. The Reid Technique was developed and marketed by John E. Reid & Associates for one purpose—to extract confessions—and for that reason, Reid itself cautions that its technique should only be used when the police are confident the suspect is responsible for the crime being investigated. At its core, the technique is a guilt-presumptive, accusatory, manipulative process—and it packs a powerful psychological punch.

Here's how the Reid Technique trains officers to obtain confessions.

#### Phase 1: Behavioral Analysis, A.K.A. the "Human Lie Detector"

- Engage in nonconfrontational open-ended period of questioning in which the officer is trained to believe he or she can operate as a "human lie detector" by observing and interpreting verbal and behavioral cues.
- Observe a suspect's behaviors as he or she answers questions.

According to Reid, certain behaviors—slouching, lack of eye contact, crossing one’s arms, even scratching one’s nose—may indicate that the person being questioned is lying. Similarly, the method teaches that certain verbal responses can indicate deception, including “I don’t know” and “I can’t recall.”

If you find these claims unconvincing, you are not alone. Time and again, studies have debunked these claims: there is no unique behavior that can reveal deception. In fact, many of the behaviors identified by Reid as “deceptive” are normal adolescent behaviors, especially when a teen is being questioned by adults or other authority figures—like slouching and looking down at the floor. Officers’ mistaken belief that a suspect is lying and thus must be guilty is the first step down the road to wrongful conviction.

## Phase 2: Interrogation

- **Isolate:** Isolate suspect in a small room to increase anxiety. (Although this is often done even before the behavioral analysis interview described above.)
- **Confrontation:** Reenter the room and immediately accuse the suspect of the crime. Exude unwavering confidence in guilt. Be persistent. Repeatedly and relentlessly accuse.
- **Denials:** Reject all denials and cut off all claims of innocence.
- **Make suspect feel as though he has been “caught”:** The officer may use props like a thick file of papers that he claims includes the evidence proving the suspect’s guilt. He may even lie to a suspect, telling the suspect he has evidence—e.g., a fingerprint, a video, or an eyewitness—connecting the suspect to a crime when no such evidence exists.
- **Minimizations or rationalization:** The officer offers a moral or legal

justification which will make it more tolerable for the suspect to admit guilt, like the detective’s suggestion that John was just “curious.”

- **False choice between lesser of two evils:** Officers ask the suspect a question that forces the suspect to choose between two bad choices, one that makes the suspect look like a monster and one that portrays the crime and the offender in a less heinous light. In John’s case, his interrogator essentially gave him a choice between being treated like a curious teenager versus a sexual predator, and implied that he would be treated more leniently if he said he touched the girl out of mere curiosity.
- **Promises of help:** Officers suggest that the only way the suspect can help himself is to confess. For John, the detective told him she would get the help he needs. In Brendan’s case, his interrogators told him that confessing will “set him free” and that everything would be “okay” if he confessed.
- **Promises of leniency:** Interrogators often suggest that the suspect will get help as opposed to punishment, and imply that he or she will be allowed to go home or back to class—so long as the suspect confesses to the more “justified” version of the crime.

By deploying these tactics at the right psychological pressure points, experienced interrogators can be extraordinarily effective in causing a suspect to produce self-incriminating information. Sadly, far too often, that information can be false.

## Phase 3: Confession

- Elicit detailed narrative of the criminal act
- Record confession in writing or on video

A guilty suspect should be able to provide details of the crime that have

not been revealed to the public and should also be able to lead police to information or evidence that was previously unknown to the police. The innocent suspect, however, does not possess this “inside knowledge” of the crime. Recorded interrogations prove that interrogators regularly provide suspects this information during the interrogation, intentionally or not. Such “contamination” usually occurs when interrogators ask leading questions that include information about the crime, such as “you committed this offense with Joe, right?” or “you paid \$20 for the marijuana, didn’t you?” For the innocent suspect, this kind of information disclosure allows him or her to incorporate accurate details about the crime into his or her confession. The result is a false confession which sounds disturbingly—and convincingly—true.

Today, many experts agree that the Reid Technique is psychologically coercive and can lead to false confessions, even when used on adults. Even the U.S. Supreme Court understands this—indeed, they recognized this reality back in 1966. In the landmark 1966 decision *Miranda v. Arizona*, the Court cited the Reid Technique to conclude that the “heavy toll” of custodial interrogation may result in false confessions. More recently, the Court went even further in 2009, in *Corley v. United States*, stating that “there is mounting empirical evidence that these pressures [of psychological interrogation generally, not specific to Reid Technique] can induce a *frighteningly high percentage of people* to confess to crimes they never committed.”

## Kids: Interrogate with Special Care

Given the widespread recognition that the Reid Technique is psychologically coercive, there is now a general consensus that special care must be used on kids and teenagers in the interrogation room. Indeed, in 2011’s *J.D.B. v. North Carolina*, the Supreme Court held that

## Juveniles, *Miranda* Rights, and Confessions Before the Supreme Court

### ***Haley v. Ohio* (1948)**

Following the midnight arrest and five-hour interrogation of a 15-year-old boy by a team of detectives, the U.S. Supreme Court threw out the boy's confession and reversed his conviction, concluding that teens like Haley are no match for adult interrogators: "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." The Court noted the importance of ensuring that a young person has access to adult counsel: "[A teenager] needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him."

### ***Gallegos v. Colorado* (1962)**

The U.S. Supreme Court threw out the confession of a 14-year-old boy when it was obtained through an on-and-off interrogation lasting five days, even though the interrogation itself was not particularly heavy-handed. In so concluding, the Court found that a teen "is unlikely to have any conception of what will confront him [during an interrogation] . . . or how to get the benefits of his constitutional rights." The Court again suggested that only "adult advice" could give the boy "the protection which his own immaturity could not."

### ***In re Gault* (1967)**

This landmark case provided juveniles with many of the same due process protections already afforded to adults. In concluding that the Fifth Amendment right against self-incrimination must apply to juveniles, the U.S. Supreme Court explained that "authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children."

### ***J.D.B. v. North Carolina* (2011)**

Recognizing that a young person may feel bound to submit to questioning when an adult would not, the U.S. Supreme Court held that officers must consider an individual's age when determining whether he or she is in custody and, in turn, whether *Miranda* rights must be read.

the "risk [of false confessions] is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile." Advances in neuroscience support this statement by explaining what "every parent knows" that teenagers are fundamentally different from adults in ways that are critically important to their treatment in the criminal justice system.

The brain's prefrontal cortex is responsible for judgment, problem-solving, and decision-making, and it regulates impulsive behavior by applying brakes to other parts of the

brain that are activated by fear and stress. The prefrontal cortex, however, does not develop fully until one's early twenties, making children and teenagers uniquely vulnerable in the interrogation room for many reasons. Caught at this awkward middle stage of neurological development, children and teenagers are particularly vulnerable to external influence, such as that exerted by the interrogator; they experience a heightened reaction to stress, which is inherent to any interrogation for all suspects; they tend to focus on immediate rewards rather than long-term consequences, such as the idea that a kid

can go home if he confesses; and they struggle to assess risks, a skill required to weigh the potential consequences of confessing to a serious crime. Add to all this kids' "limited understanding of the criminal justice system and the roles of the institutional actors within it," *J.D.B.*, and it is no longer puzzling why kids falsely confess at an alarming rate.

Even John E. Reid & Associates and other law enforcement organizations now recognize that kids need special protections in the interrogation room. In partnership with the Center on Wrongful Convictions of Youth, the International Association of Chiefs of Police (IACP) published a groundbreaking guide in 2012 concerning how to interrogate juvenile suspects. In *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, the IACP emphasizes that "[o]ver the past decade, numerous studies have demonstrated that juveniles are particularly likely to give false information—and even falsely confess—when questioned by law enforcement." Similarly, Reid explains on its website that "[i]t is well accepted that juvenile suspects are more susceptible to falsely confess than adults," and warns that "every interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile."

## The Reality of False Confessions Today

There has been progress: We now know how easily these psychologically coercive techniques can overbear the will of a child. Yet current cases and research indicate that most officers still employ these tactics when questioning juvenile suspects. In a 2014 survey of law enforcement, almost all officers reported frequently using the same interrogation techniques on minors as on adults.

Even worse, in spite of its recognition that "extreme caution and care" are required with juvenile suspects, Reid & Associates appears to be expanding the

use of its technique on kids. In addition to training police interrogators, the company is now marketing its technique to school administrators across the country for use on children at school. (So far, this training has occurred in at least twelve states.) The tactics taught to school administrators are virtually identical to those taught to police and fail to account for kids' vulnerabilities. This is particularly troubling because kids questioned at school have fewer rights than kids questioned by police; principals are usually not required to read a student their *Miranda* rights, for instance, and kids may have more difficulty walking out of a schoolhouse interrogation than a stationhouse interrogation because, as the *J.D.B.* Court recognized, "presence at school is compulsory" and "disobedience at school is cause for disciplinary action." Bottom line: using sophisticated and psychologically potent techniques like the Reid Technique on students is, "throwing caution to the wind." Plainly speaking, it is a recipe for disaster.

## Aftermath of a False Confession

In the wake of *Making a Murderer*, we've heard many people wonder why Brendan is still in prison when his confession was so clearly coerced and false. It's true—and tragic—that Brendan's case is still unresolved. Each level of the Wisconsin state court system rejected his argument that his confession was involuntary and coerced by police, and his case is now before the federal courts. He remains in adult prison, sentenced to spend his life behind bars.

But this, too, is sadly not unique. Confessions are incredibly powerful evidence. A full 81% of proven false confessors whose case went to trial were convicted—and that figure does not account for those false confessors who pled guilty before trial. (Of the first 125 DNA exonerees who falsely confessed, 11% pled guilty.) People,

including judges and juries, are very reluctant to believe that a confession might be false—and the result, too often, can be a wrongful conviction.

Confessions can also contaminate other evidence in a case. A confession can cause police to view other evidence with bias that assumes the confessor's guilt, encourage detectives to ignore exculpatory evidence and alternative suspects, and to end an investigation as soon as they have a confession. Confessions also often impact a defense lawyer's performance because he or she may assume the client's guilt and, in turn, may forego investigating the client's innocence and rush to cut a deal for the client with the prosecutor. While laws in several states now require interrogations to be recorded, such laws by themselves are often not enough to persuade a jury that a confession was coerced unless an expert takes the stand to parse each tactic and explain its effect on the suspect. Troublingly, many courts do not permit such experts to testify.

We are now in a new post-*Making a Murderer* era. The show masterfully presents Brendan's interrogation in a way that makes the falseness of his resulting statement clear; indeed, the show has made the idea of a false confession accessible to a wide-ranging audience for the first time. With any luck, judges will recognize that tactics which may be legitimate when used on adults may be coercive when applied to children and suppress confessions that result from such tactics. With any luck, jurors' and judges' perceptions of confessions may change in the future. They will stop placing blind faith in the reliability of confessions and demand greater corroboration of confessions.

Even further, teachers and parents can also change how this story plays out for their children and students. Teachers should fight the use of the Reid Technique in their schools, and parents should demand that they be notified *before* a principal plans to



## Discussion Questions

1. Do you think it is appropriate for school administrators to adopt police interrogation techniques when questioning students? Why?
2. Do you think that *Miranda* rights should apply when speaking with police on school grounds? When speaking with school officials? Why?
3. Why do you think that confessions, even if false, are so persuasive to juries, and accepted in courts?
4. How might schools, police, and communities ensure that no juvenile falsely confesses to a crime? What practices and safeguards might be put in place?



## Suggested Resources

- Center on Wrongful Convictions of Youth, Bluhm Legal Clinic at Northwestern University Pritzker School of Law  
<http://www.law.northwestern.edu/legalclinic/wrongfulconvictionsyouth/>
- International Association of Chiefs of Police, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, 2012. Available: <http://www.theiacp.org/Portals/0/pdfs/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>
- *Making a Murderer*, Directors Moira Demos and Laura Ricciardi, Synthesis Films & Netflix, 2015.

interrogate their child. Information is power, and *Making a Murderer* has made the public a lot more informed about how interrogation tactics can increase the risk of juvenile false confessions. In short, the tide may be turning. For children like Brendan, John, and so many others: Here's hoping. **IN**