

JUVENILE FALSE CONFESSIONS: JUVENILE PSYCHOLOGY, POLICE INTERROGATION TACTICS, AND PROSECUTORIAL DISCRETION

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INTRODUCTION

On March 1, 2006, police took Brendan Dassey, an adolescent and mentally disabled individual, into custody where he confessed to his cooperation in the murder of Theresa Halbach with his uncle, Stephen Avery. Police interrogated Brendan and he gave a statement that he had no information regarding Theresa’s murder. Yet, four months later, police interrogated him again. A video of Brendan’s interview, shown in the Netflix documentary series *Making a Murderer*, shows police officers accusing him of lying, presenting false evidence, and leaking case evidence. Police kept telling Brendan, who has an IQ of seventy-three, that everything was going to be okay and that they wanted to protect him. This could have influenced him into believing that by telling investigators what they wanted to hear, he would be able to get out of the situation. Ultimately, the police’s interrogation tactics sealed Brendan’s fate—he is currently still in prison serving his sentence and will have to wait thirty years until he has a chance for parole.

Unfortunately, Brendan’s case is common. There have been a number of high profile cases in which young, often mentally disabled, individuals have confessed to a crime they did not commit. Most of these false confessions can be attributed to the interrogation tactics that law enforcement and prosecutors force suspects to undergo. This occurs after detectives perform an initial investigation, where they must determine, to a reasonable degree of certainty, if a suspect committed a crime.¹ Once they have determined a suspect’s guilt, they begin with the interrogation process.² Because the purpose of an interrogation is to elicit incriminating statements from individuals who police presume to be guilty of a crime, the techniques used often rely on deception, persuasion, psychological influence, and coercion in order to reach that objective.³ However, police and prosecutors alike are in the position to uphold justice and, thus, have a duty to understand the psychology of juveniles and use their power to push for reforms.

According to the Innocence Project, a national litigation and public organization dedicated to exonerating wrongfully convicted individuals, interrogation techniques diminish an individual’s cognitive abilities through duress, coercion, intoxication, ignorance of the law, fear of violence, infliction of harm, misunderstanding of the situation, and threat of harsh sentences.⁴ In an analysis conducted by the Innocence Project, of the 351 wrongfully convicted criminals later cleared

¹ Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 6 (2010).

² *Id.*

³ Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 907–08 (2004).

⁴ *False Confessions or Admissions*, INNOCENCE PROJECT, <https://www.innocenceproject.org/causes/false-confessions-admissions/> [<https://perma.cc/X7TS-98DV>] (last visited Nov. 18, 2017).

by DNA evidence, 28 percent (ninety-nine) of those convictions were based on false confessions.⁵

Organizations such as the Innocence Project help free wrongfully convicted individuals, but, more importantly, they shed light onto our failed justice system—particularly how it affects vulnerable individuals, like juveniles. In order to minimize false confessions, especially amongst juveniles, prosecutors should be aware of juveniles' vulnerabilities and susceptibility to making false confessions. The purpose of this Note is to examine the relationship between psychological development in adolescents, false confessions, and police interrogation and what prosecutors can do to alleviate this problem. Part I will discuss the influence confessions have in court, and notable examples of false confessions. Part II will discuss developmental brain differences between juveniles and adults, how these differences can affect juveniles' ability to understand and waive their *Miranda* rights, and how they respond to interrogation techniques. Part III will discuss prosecutors' duty to ensure justice, their interest in preventing false confessions, and how their relationship with police can help enact reforms. Part IV will discuss the possible reforms and measures that prosecutors can implement to minimize false confessions in juveniles such as videotaping interrogations, changing police procedures for juveniles, and updating *Miranda* warnings.

I. INFLUENCE OF CONFESSIONS AND NOTABLE EXAMPLES

Confessions have a strong influence on the perceptions and decision-making of officials and jurors because most individuals assume that confessions are true.⁶ Even if police elicit a confession unsupported by case evidence by using questionable interrogation tactics, confession evidence tends to define the case against a defendant. Confessions set in motion a series of events in which the defendant is significantly more likely to be incarcerated prior to trial, charged, pressured to plead guilty, and ultimately convicted.⁷ Because jurors view confessions as convincing evidence of guilt, false confessions are the leading cause of wrongful convictions, especially in youth.⁸ According to Keith A. Findley and Michael S. Scott, two Clinical Professors from the University of Wisconsin, the presence of a confession creates confirmatory and cross-contaminating biases, which lead officials and jurors to interpret all other case information in the most

⁵ *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> [<https://perma.cc/4435-P8US>] (last visited Nov. 18, 2017).

⁶ Richard A. Leo & Deborah Davis, *From False Confession to Wrongful Conviction: Seven Psychological Processes*, 38 J. PSYCHIATRY & L. 9, 19 (2010).

⁷ Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 477 (1998).

⁸ *Id.* at 494.

inculpatory way.⁹ Once a suspect makes a confession, police officials will typically close the investigation and misinterpret or completely disregard evidence of innocence.¹⁰ Below, this Note will discuss several notable examples of cases in which the State convicted innocent individuals of a crime because of a false confession despite evidence suggesting otherwise.

In 1996, Damon Thibodeaux was twenty-two years old and had a job as a deck man, when he was convicted of the murder of his step-cousin, Crystal Champagne, and sentenced to death.¹¹ Police found Crystal Champagne dead along a levee, and suspected Damon of her murder because of his family relation to her.¹² During the investigation, he denied being involved with the crime, but because of investigators' coercive interrogation tactics, he confessed to murdering and sexually assaulting Crystal.¹³ Damon may have confessed for a number of reasons.¹⁴ One reason may be that the police interrogated him for ten hours, only fifty-four minutes of which were recorded.¹⁵ Another reason may be that investigators told Damon that he had failed a polygraph test when, in fact, he had not.¹⁶

Once Damon confessed, however, his confession was inconsistent with how the crime was committed.¹⁷ Damon said that the wire he used to strangle Crystal was white, when in fact it was red.¹⁸ Also, maggots had consumed and degraded the evidence post-mortem, so there was no sign of sexual assault or semen in the victim's body.¹⁹ Although there was no physical evidence linking Damon to the murder, the jury was convinced by his confession and two eyewitnesses who selected Damon's photo as the person they saw pacing near the body, and the jury subsequently sentenced Damon to death.²⁰

In 2007, the Parish District Attorney, the Innocence Project, and Damon's legal team began reinvestigating his case.²¹ Forensic experts systematically refuted all the evidence that police and prosecutors used to link Damon to the crime.²² The statement that Damon gave said he sexually assaulted the victim,

⁹ Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 316 (2006).

¹⁰ See Leo & Davis, *supra* note 6, at 20.

¹¹ *Damon Thibodeaux*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/damon-thibodeaux/> [<https://perma.cc/G42M-YTPN>] (last visited Nov. 18, 2017).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

but, in reality, there was no evidence that she was sexually assaulted.²³ The cord used to strangle the victim had blood that did not match Damon's DNA.²⁴ Furthermore, the two eyewitnesses who had identified Damon stated that they had seen Damon's photo in the media prior to selecting his photo out of an array of photos, which could have primed them to choose Damon's photo.²⁵ In addition, they claimed they saw Damon the day after police discovered the victim's body—when Damon was already in custody.²⁶ Furthermore, the prosecution's own expert stated that before the original trial, Damon falsely confessed based on fears of the death penalty.²⁷ The State never conveyed all of this information to the original defense team.²⁸ The court eventually agreed to overturn Damon's conviction and his death sentence, and Damon was finally released, after serving fifteen years on death row.²⁹

The Central Park Jogger case was another high-profile case that led to the wrongful conviction of five juveniles through false confessions. On April 19, 1989, Trisha Meili was exercising in Central Park when she was beaten, raped, and left unconscious until she was found hours later.³⁰ Police arrested five juveniles: Kharey Wise, age sixteen, Kevin Richardson, age fourteen, Antron McCray, age fifteen, Yusef Salaam, age fifteen, and Raymond Santana, age fifteen.³¹ Although they initially denied any involvement in the rape of Meili, after hours of interrogation, all of them confessed to the attacks committed at the park and incriminated one another to the assault and rape of Meili.³² In the Ken Burns documentary, *The Central Park Five*, the five boys—now men—discussed how police officers coerced them into confessing to the rape of Meili.³³ Even though their statements were contradictory, and forensic testing of blood and semen was inconclusive, they were convicted of rape and sentenced to between five and fifteen years in prison.³⁴ Four had completed their sentences when, in 2002, Matias Reyes, an individual unrelated to the group, confessed to the rape of Meili.³⁵ In

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Greg Stratton, *Transforming the Central Park Jogger into the Central Park Five: Shifting Narratives of Innocence and Changing Media Discourse in the Attack on the Central Park Jogger, 1989–2014*, 11 CRIME MEDIA CULTURE 281, 285 (2015).

³¹ *Id.*

³² Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHOL. REV. 53, 58 (2007).

³³ THE CENTRAL PARK FIVE (Sundance Selects 2012).

³⁴ Stratton, *supra* note 30, at 285–86.

³⁵ *Id.* at 286.

2014, the five men accepted a forty-one million dollar settlement from the New York City police department.³⁶

Other cases, like that of Johnny Lee Wilson, a mentally disabled youth, who confessed to the murder of a seventy-nine-year-old woman,³⁷ or Allen Chestnut, a sixteen-year-old, who also confessed to a murder after being presented false evidence,³⁸ have resulted in the same narrative.³⁹ Juries found all of these young men guilty of crimes they did not commit based on false confessions.⁴⁰

The preceding examples illustrate the devastating effects false confessions can have on an individual's life. Although there is not an accurate count of false confessions, researchers have conducted a number of studies to help understand other aspects of the false confession phenomenon. In a 2004 study, Steven Drizin, Clinical Professor at Northwestern University School of Law, and Richard A. Leo, Associate Professor of Criminology at University of California Irvine, analyzed 125 cases of proven false confessions and found that 62 percent of false confessors were under the age of twenty-five and 35 percent were under the age of eighteen.⁴¹ In a 2006 study, researchers found that younger age groups (sixteen to seventeen years) were significantly more likely to report having made a false confession to the police than the older groups.⁴² Similarly, another analysis of 340 exonerees found that 42 percent of juvenile exonerees gave a false confession compared to 8 percent of adult exonerees.⁴³ Furthermore, the same study also found that the younger the juvenile, the more likely they were to have given a false confession: eleven to fourteen year-olds were more than two times more likely than fifteen to seventeen year-olds to falsely confess—at rates of 74 percent and 34 percent respectively.⁴⁴ Clearly, there is a systemic issue of false confessions in the criminal justice system and even more so when it comes to juveniles.

³⁶ *Id.* at 281.

³⁷ *Retarded Man Set Free After 8 Years in Prison*, N.Y. TIMES (Oct. 1, 1995), <http://www.nytimes.com/1995/10/01/us/retarded-man-set-free-after-8-years-in-prison.html?mcubz=0> [<https://perma.cc/UDP7-54ZA>].

³⁸ Scott-Hayward, *supra* note 32, at 53.

³⁹ *Id.* at 54.

⁴⁰ *Id.* at 57–58.

⁴¹ Drizin & Leo, *supra* note 3, at 891, 945.

⁴² Gisli H. Gudjonsson et al., *Custodial Interrogation, False Confession and Individual Differences: A National Study Among Icelandic Youth*, 41 PERSONALITY & INDIVIDUAL DIFFERENCES 49, 56 (2006).

⁴³ SAMUEL R. GROSS & MICHAEL SHAFFER, THE NAT'L REGISTRY OF EXONERATIONS, EXONERATIONS IN THE UNITED STATES, 1989–2012, at 58, 60 (2012).

⁴⁴ *Id.* at 60.

II. WHY DO JUVENILES MAKE FALSE CONFESSIONS?

A. *Cognitive Development in Adolescents and the Criminal Justice System*

Adolescence is a period characterized by hormonal and physical changes as well as changes in identity, self-consciousness, and cognitive flexibility.⁴⁵ Brain imaging studies have demonstrated that the adolescent brain undergoes significant changes in regions near the frontal lobe, which is important for a variety of skills that help adults control and coordinate behaviors and thoughts, collectively known as executive function.⁴⁶ Executive function includes a number of skills important for decision-making, selective attention, voluntary response inhibition, and working memory, and each of these executive functions has a role in cognitive control, such as making plans, filtering out useless information, and inhibiting impulses.⁴⁷

In the criminal justice system, these cognitive performances are important because they affect an adolescent's decision to commit a crime, their ability to participate in criminal proceedings, and most important for this Note, their ability to respond to police interrogation.⁴⁸ Researchers have found that emotions and social influences largely impact adolescents' decisions because adolescents typically use the amygdala, the part of the brain responsible for emotions, when making decisions, whereas adults more often use the prefrontal cortex, the part of the brain involved in logical decision-making, to make decisions.⁴⁹ Because adolescents are more impulsive, are easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards),⁵⁰ and are less able to weigh in on the long-term consequences of their actions, they become more receptive to coercion.⁵¹ These developmental differences can lead juveniles into making false confessions because it affects their ability to understand and waive their *Miranda* rights, and influences their ability to respond to interrogation techniques. The cases of Brendan Dassey, Damon Thibodeaux, and Michael Crowe (discussed below), illustrate how these developmental differences influence adolescents' interrogations.

⁴⁵ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 465 (2009).

⁴⁶ Sarah-Jayne Blakemore & Suparna Choudhury, *Development of the Adolescent Brain: Implications for Executive Function and Social Cognition*, 47 J. CHILD PSYCHOL. & PSYCHIATRY 296, 301 (2006).

⁴⁷ *Id.*

⁴⁸ *See generally id.*

⁴⁹ Laurence Steinberg, *Cognitive and Affective Development in Adolescence*, 9 TRENDS COGNITIVE SCI. 69, 71 (2005).

⁵⁰ Steinberg, *supra* note 45, at 470.

⁵¹ Scott-Hayward, *supra* note 32, at 55.

B. *Miranda Rights Comprehension*

In *Miranda v Arizona*,⁵² the United States Supreme Court decided that, in order to protect individuals against self-incrimination and police interrogation, certain procedural safeguards had to be established.⁵³ A *Miranda* warning will inform suspects:

You have the right to remain silent. Anything you say can be used against you in court. You have the right to a lawyer. If you cannot afford one, one will be appointed for you before questioning if you wish. If you choose to answer any questions, you may stop at any time to consult your lawyer.⁵⁴

The *Miranda* Court established that the suspect must understand the vocabulary in the warning, the meaning of the rights, and the consequences of waiving the rights, as well as provide the waiver without police coercion.⁵⁵ Police officers are required to inform suspects of these rights; otherwise, whatever the suspects say in response to questioning cannot be used as evidence.⁵⁶

Courts have recognized that juveniles are at risk of poor comprehension of *Miranda* rights. In *People v. Lara*,⁵⁷ the California Supreme Court held that juveniles might not understand the consequences of waiving their *Miranda* rights, thus failing to meet the “intelligent” requirement for a valid waiver.⁵⁸ More recently, in *Fare v. Michael C.*,⁵⁹ the Supreme Court held that courts should apply the “totality of the circumstances” test in juvenile proceedings.⁶⁰ Under the totality of the circumstances test, courts consider a variety of factors, including the defendant’s age, intelligence, maturity, and prior experience with criminal proceedings, together with the details of the interrogation such as the time elapsed between arrest and confession, when the juvenile gave the confession, and whether the police informed the defendant of their *Miranda* rights.⁶¹

Research on juvenile comprehension of *Miranda* rights has demonstrated that very few juveniles understand their *Miranda* rights with current police procedures.⁶² A 1980 study found that only 20.9 percent of juveniles demonstrated adequate understanding of all the components of the *Miranda* rights compared to 42.3 percent in an adult group.⁶³ Specifically, juveniles under the age of fifteen

⁵² *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

⁵³ Naomi E. Sevin Goldstein et al., *Juvenile Offenders’ Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 359 (2003).

⁵⁴ *Id.*

⁵⁵ Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1134 (1980).

⁵⁶ *Id.* at 1137.

⁵⁷ *People v. Lara*, 432 P.2d 202, 212 (Cal. 1967).

⁵⁸ Goldstein et al., *supra* note 53, at 360.

⁵⁹ *Fare v. Michael C.*, 442 U.S. 707, 728 (1979).

⁶⁰ Goldstein et al., *supra* note 53, at 360; Scott-Hayward, *supra* note 32, at 64.

⁶¹ Grisso, *supra* note 55, at 1135.

⁶² Scott-Hayward, *supra* note 32, at 65.

⁶³ Grisso, *supra* note 55, at 1153.

did not understand their right to remain silent and right to counsel.⁶⁴ IQ seems to be an even better predictor of *Miranda* comprehension than age.⁶⁵ According to a 2002 study, an IQ score of seventy to seventy-nine is “cognitively impaired.”⁶⁶ Grisso found that fifteen and sixteen year-olds with IQ scores below eighty failed to meet the proper standards of *Miranda* comprehension identical to adults with the same level of IQ.⁶⁷ Fifteen and sixteen year-olds with average intelligence could understand their rights as well as the seventeen to twenty-two year-olds of similar intelligence.⁶⁸ Grisso’s study also found that prior court experience was unrelated to understanding *Miranda* rights.⁶⁹ Other studies have examined youths’ understanding of their right to an attorney and right to remain silent. For example, one study found that juveniles do not understand that they are entitled to consult with an attorney before interrogation, or have an attorney present during interrogation.⁷⁰ Juveniles also tend to believe that lawyers only protect the innocent, and that a judge can later revoke the right to remain silent.⁷¹

In addition to poor comprehension of *Miranda* rights, adolescents tend to weigh the short-term consequences of their decisions more heavily.⁷² This might cause a juvenile to waive his or her *Miranda* rights in the belief that they will be able to go home.⁷³ By waiving the right to remain silent, the possibilities of a juvenile making an incriminating statement increases significantly.⁷⁴ Juveniles are also inclined to make choices that comply with the wishes of authority figures, which explains why juveniles might feel compelled to answer police officers’ questions rather than remain silent.⁷⁵

Both Brendan Dassey’s and Damon Thibodeaux’s cases are useful examples of how juveniles can misunderstand or inadvertently waive their *Miranda* rights. Would either of these boys been convicted if they had proper knowledge of their *Miranda* rights and invoked them to avoid a false confession? Both Brendan and Damon underwent long hours of interrogations.⁷⁶ If they had possessed proper knowledge of their *Miranda* rights, they would have recognized that they had the

⁶⁴ *Id.* at 1160.

⁶⁵ *Id.* at 1155.

⁶⁶ *Meaning of an IQ Score/IQ Scale*, 123 TEST, <https://www.123test.com/interpretation-of-an-iq-score/> [<https://perma.cc/ZQU6-28ZC>] (last visited Nov. 4, 2017) (citing Wilma C. M. Resing et al., *The Classification of Intelligence Scores: Proposal for an Unambiguous System*, 37 PSYCHOL. 244 (2002)).

⁶⁷ Grisso, *supra* note 55, at 1160.

⁶⁸ Goldstein et al., *supra* note 53, at 361.

⁶⁹ *Id.*

⁷⁰ *Id.* at 366.

⁷¹ *Id.*

⁷² Scott-Hayward, *supra* note 32, at 65.

⁷³ *Id.*

⁷⁴ *Id.* at 66.

⁷⁵ *Id.*

⁷⁶ *Damon Thibodeaux*, *supra* note 11; *Making a Murderer* (Netflix 2015).

right to remain silent, which could have prevented them from making incriminating statements. They could have also invoked their rights to have a lawyer present to help them through the interrogation process and ensure that the police were not coercing them into a confession.

C. Juveniles who Falsely Confess

In addition to the effects of IQ and age on comprehension of *Miranda* rights, adolescents are also more suggestible than adults, making them more easily persuaded or coerced during interrogations.⁷⁷ Suggestibility has also been shown to have a significant correlation to intelligence, memory, personality variables, and self-esteem.⁷⁸ Compared to adults and youth with normal IQs, juveniles with lower IQs are more likely to be suggestible and may be more vulnerable to giving false confessions.⁷⁹ Based on a sample of 6,000 youths involved in the juvenile justice system, the average IQ was eighty-one, which is considered to be below average for the entire population.⁸⁰ Research has also found that convicted male youths are more likely than non-offending adults to concede to suggestive questions when their performance was subjected to criticism and negative feedback.⁸¹ Furthermore, adolescents may be more responsive to interpersonal pressure during interrogation and may be more prone to offer untrustworthy testimony when interrogators criticize or pressure them.⁸²

Contrary to the belief that prior experience in the criminal system makes juveniles more experienced at being interrogated, research has found that the rate of false confessions goes up with juveniles that are interrogated more than once.⁸³ For example, one study found that for juveniles that underwent interrogation once, the false confession rate was only 3 percent, but for juveniles that underwent interrogation more than once, that rate rose to 12 percent.⁸⁴ The study suggested that youths' special vulnerability leads to the rise in the number of false confessions.⁸⁵ Some of the false confessors reported vulnerabilities included more anxiety, depression, and anger problems, poorer self-esteem, and less parental support.⁸⁶ This suggests that false confessors were more emotionally disturbed than other participants.⁸⁷

⁷⁷ Goldstein et al., *supra* note 53, at 361.

⁷⁸ Gisli H. Gudjonsson & Krishna K. Singh, *Interrogative Suggestibility and Delinquent Boys: An Empirical Validation Study*, 5 PERSONALITY INDIVIDUAL DIFFERENCES 425, 430 (1984).

⁷⁹ G. Richardson et al., *Interrogative Suggestibility in an Adolescent Forensic Population*, 18 J. ADOLESCENCE 211, 214 (1995).

⁸⁰ Goldstein et al., *supra* note 53, at 361.

⁸¹ *Id.*

⁸² Gudjonsson et al., *supra* note 42, at 56.

⁸³ *Id.* at 56.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 57.

D. Police Interrogation Techniques

Adolescent psychological development has a significant role—especially taking into consideration the interrogation process. Most interrogation manuals recommend using a two-step process.⁸⁸ The first step is an interview to determine if a suspect is guilty or innocent.⁸⁹ If interrogators determine that the suspect is guilty in the first step, the second step is an interrogation.⁹⁰ During an interrogation, police confront the suspect with his or her suspected guilt, offer explanations or excuses that might justify a crime, and show sympathy.⁹¹ Then, police attempt to manipulate the suspect using techniques that rely on psychological manipulation to break the suspect down and encourage him or her to confess, often by recounting details of the crime.⁹² Although these techniques might be effective for obtaining confessions from adults, they become unreliable when police use them on youth offenders.⁹³ Police use two methods during interrogations: minimization and maximization techniques.⁹⁴ The purpose of these techniques is to manipulate suspects into thinking that it is in their best interest to confess to a crime.⁹⁵ Both techniques rely on tactics such as lying, deception, and the contamination error to manipulate suspects into confessing.⁹⁶

*1. Techniques:**a. Maximization*

Maximization is a technique that involves multiple tactics designed to show that there is an irrefutable belief that the suspect is guilty and all denials that the suspect states will fail.⁹⁷ Some examples of these tactics include citing real or manufactured evidence, overriding objections, and making accusations directly to the suspect.⁹⁸ Interrogators do this to shift the suspect's mental state from confident to hopeless.⁹⁹ In addition, interrogators will make threats that, if the suspect continues to deny the accusations, he or she will get a harsher sentence.¹⁰⁰

In Brendan Dassey's interview, investigators used maximization by repeatedly telling Brendan. "[Y]ou need to be honest with us and so far you're not

⁸⁸ Scott-Hayward, *supra* note 32, at 66.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 67.

⁹³ *Id.*

⁹⁴ Kassin et al., *supra* note 1, at 12.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

being 100 percent honest.”¹⁰¹ After police officers constantly repeated to Brendan the importance of honesty, they fed him certain facts and evidence of the case before Brendan mentioned any information, including that there was a body in a bonfire and because of this, he should have seen some body parts.¹⁰² Police criticized Brendan for lying and told him that his mom said that Brendan should be honest with them.¹⁰³ When Brendan ultimately confessed, he did not offer any information that was not portrayed in the media or fed to him by investigators. For example, one of the investigators asked Brendan “Who shot her in the head?” to which he responded, “He did.”¹⁰⁴ When investigators asked him why he had not told them this previously, Brendan responded, “I couldn’t think of it.”¹⁰⁵ The officers’ harassment and beratement, coupled with the injection of facts from the investigation, exemplify the maximization technique and ultimately led to Brendan’s confession.

b. Minimization

Minimization tactics, on the other hand, give the suspect a moral justification and face-saving excuses for having committed a crime.¹⁰⁶ Interrogators offer sympathy and understanding and use this to normalize or minimize the behavior or crime that the suspect allegedly committed.¹⁰⁷ For example, the interrogator can say, “I understand why you would commit the crime; I would have done the same thing if I were you.” Another example of minimization would be if the interrogator suggested to the suspect that the crime was spontaneous, provoked, accidental, or due to peer pressure as opposed to premeditated.¹⁰⁸ In Brendan’s interview, police officers told him that they wanted to protect him, and told him that “Let’s be honest here Brendan. If you helped him, it’s OK, because he was telling you to do it. You didn’t do it on your own.”¹⁰⁹ This affirmation likely cause Brendan to believe he would not be punished if he confessed to a crime he did not commit.

¹⁰¹ *Interview by Mark Wigert & Tom Fassbender with Brendan Dassey*, in Mishicot High School, at 447 (Feb. 27, 2006) http://www.stevenaverycase.org/wp-content/uploads/2016/02/Brendan-Dassey-Interview-at-School-Transcript-2006Feb27_text.pdf [https://perma.cc/3W45-NSGW].

¹⁰² *Id.* at 551–53.

¹⁰³ *Interview by Inv. Mark Wigert & Special Agent Tom Fassbender with Brendan Dassey*, in Manitowoc Cty. Sheriff’s Dep’t, at 547 (Mar. 1, 2006), http://www.stevenaverycase.org/wp-content/uploads/2016/02/Brendan-Dassey-Interview-Transcript-2006Mar01_text.pdf [https://perma.cc/KBP4-ZYK8].

¹⁰⁴ *Making a Murderer*, *supra* note 76.

¹⁰⁵ *Id.*

¹⁰⁶ Kassin, *supra* note 1, at 12.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Interview by Inv. Mark Wigert & Special Agent Tom Fassbender with Brendan Dassey*, *supra* note 103, at 552.

2. *Tactics*

a. *Lying and Deception*

Lying and deception during interrogations have been implicated in the majority of documented police-induced false confessions.¹¹⁰ Research shows that once a suspect sees an outcome that is inevitable or inescapable, cognitive and motivational forces induce suspects to confess.¹¹¹ In order to achieve this, investigators will introduce false evidence such as fingerprints, blood, hair, eyewitness identification, or failed polygraphs even if the evidence does not exist.¹¹² This is a permissible technique¹¹³ and it is even recommended during police training.¹¹⁴

An example of this tactic used against juveniles is in the case of Michael Crowe.¹¹⁵ Michael was a fourteen-year-old boy and charged with the murder of his twelve-year-old sister.¹¹⁶ He was incarcerated for six months before his release, when police ultimately found evidence of his sister's blood on a vagrant, exonerating him of the crime.¹¹⁷ Police interrogated Michael three times, beginning the day that his sister was murdered.¹¹⁸ Police told him that there was evidence that proved he had killed his sister.¹¹⁹ The police said they found Michael's hair in his sister's hand.¹²⁰ Police also gave him a voice stress analysis test, and told him that he had failed the test when he had not.¹²¹ Eventually, Michael fell victim to these overzealous interrogation tactics and confessed.¹²² He later said, regarding his interrogation, "Nobody told me that police are legally allowed to lie during interrogations. Instead, I started believing maybe I'd blocked the whole thing out."¹²³ According to Scott-Hayward, evidence suggests that an adult's use of these techniques can alter a child's memory of an event.¹²⁴ The use of deception combined with prolonged interrogations would psychologically wear anyone down—especially a juvenile who is particularly susceptible to these tactics in the first place.

¹¹⁰ Kassin, *supra* note 1, at 12.

¹¹¹ *Id.* at 16.

¹¹² *Id.* at 17.

¹¹³ *Frazier v. Cupp*, 394 U.S. 731, 739 (1969).

¹¹⁴ Saul M. Kassin, *Internalized False Confessions*, in 1 HANDBOOK OF EYEWITNESS PSYCHOLOGY: MEMORY FOR EVENTS 175, 180 (Michael P. Toglia et al. eds., 2007); Martin Innes, *Police Interrogation and American Justice*, 116 AM. J. SOC. 674 (2010) (book review).

¹¹⁵ Scott-Hayward, *supra* note 32, at 57.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 67.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 57.

¹²² *Id.*

¹²³ *Id.* at 68.

¹²⁴ *Id.* at 61.

Another common deceptive tactic is misrepresenting the seriousness of the crime or its consequences in order to manipulate the suspect into confessing.¹²⁵ Police officers cannot explicitly promise that the suspect will get a lighter sentence if they confess, but the officer can suggest that the consequences will be lighter if the suspect confesses.¹²⁶ For example, an officer can say, “Just confess, if you do you will be taken care of.”¹²⁷ Additionally, the expectation that a confession will result in a suspect’s release is a common reason juveniles falsely confess.¹²⁸ This was seen in the Central Park Jogger case.

All of the teenagers in the Central Park Jogger case claimed that they waived their rights and agreed to a police interrogation because they thought the police would allow them to leave.¹²⁹ Furthermore, one of the defendants, Kharey Wise, stated that the officer who interrogated him explicitly told him that if he confessed, the officer would let him go home.¹³⁰ Sadly, courts consistently hold that these types of deceptive tactics do not render a confession involuntary.¹³¹ These tactics are only some of a large number of tactics that police use to psychologically break suspects and coerce them into confessing to anything to get them out of the situation.

b. The Contamination Error

Confession contamination is “the transfer of inside information—nonpublic details about the crime that only the true perpetrator could have known—from one person to another person during a police investigation.”¹³² The contamination itself usually happens during the interrogation process, when the interrogator already has an idea of how the crime took place and may inadvertently cause the suspect to accept that particular account of the story.¹³³ The interrogator achieves this by using loaded questions to inadvertently—or deliberately—inform the suspect with facts of the crime, and the suspect is then expected to recite the same facts in the confession.¹³⁴ That the suspect has knowledge of the facts of the case lends credibility and shows a facade of corroboration.¹³⁵ Confession contamination is the final element in solidifying a suspect’s confession and is incredibly subversive when used in combination with other interrogation tactics.¹³⁶ This

¹²⁵ *Id.* at 68.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 69.

¹³² Laura H. Nirider et al., *Combating Contamination in Confession Cases*, 79 U. CHI. L. REV. 837, 847 (2012).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 848.

tactic helps shape the confession into a clear and composed account of what happened during the act of the crime and proves to a jury that the suspect had to have committed the crime.¹³⁷

The interrogation of Brendan Dassey is yet again an excellent example of this tactic.¹³⁸ During the interrogation, interrogators fed Brendan facts of the case.¹³⁹ For example, Brendan talked about seeing a bonfire outside of the property, but nothing suspicious in the fire.¹⁴⁰ He never mentioned a body being in the bonfire, but the police said that he had to have seen hands or feet in the bonfire, and told him that the body of the woman was in the bonfire.¹⁴¹ After they fed him this information, Brendan started to relay that information back to the police.¹⁴² Even worse, there was a point where one of the police officers told him, “All right, I’m gonna come out and ask you. Who shot her in the head?”¹⁴³ After that, Brendan said it was Steven Avery.¹⁴⁴ At no point previously did he mention anything about a gun or the woman being shot.¹⁴⁵

3. *Result of Interrogation Tactics*

The interrogation methods employed by police officers and the tactics used to get a confession results in two types of false confessions: coerced-compliant, and coerced-internalized.¹⁴⁶ Prosecutors and police officers need to be aware of both types of false confessions, since these confessions are a direct result of interrogation tactics.

In social psychology, compliance describes when a person changes their public behavior for instrumental purposes such as short-term personal gain.¹⁴⁷ Coerced-compliant false confessions happen when a suspect confesses to avoid or escape an aversive interrogation or gain a promised or implied reward from the police or interrogators.¹⁴⁸ The common victims of these types of confessions are individuals whom are vulnerable to social influence—like juveniles.¹⁴⁹ The important difference between coerced-compliance and coerced-internalized confessions is that suspects *know* they are innocent in the former.¹⁵⁰ Juveniles are

¹³⁷ *Id.*

¹³⁸ *Id.* at 849.

¹³⁹ *Id.* at 851.

¹⁴⁰ *Id.* at 850.

¹⁴¹ *Id.*

¹⁴² *Id.* at 851.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Saul M. Kassir & Lawrence S. Wrightsman, *Confession Evidence*, in *THE PSYCHOLOGY OF EVIDENCE AND TRIAL PROCEDURE* 77–78 (Saul M. Kassir & Lawrence S. Wrightsman eds., 1985).

¹⁴⁷ *Id.* at 77.

¹⁴⁸ *Id.* at 78.

¹⁴⁹ *Id.* at 77–78.

¹⁵⁰ *Id.* at 77.

psychologically vulnerable to police tactics; they respond by giving false confessions even if they know that they are innocent, simply to escape the situation they are in. An example of this type of confession would be the Damon Thibodeaux case, discussed previously.¹⁵¹ Damon was worn down and knowingly confessed to get out of his interrogation.¹⁵² In his fatigued state, he assumed that evidence would clearly show that he was innocent and the police would promptly release him.¹⁵³ Little did he know that at the time the false confession would seal his fate and land him on death row.¹⁵⁴

Conversely, in coerced-internalized false confessions, suspects actually believe they committed the crime due to coercive interrogation tactics.¹⁵⁵ Normally, in these cases, the suspect is confused, anxious, and sleep deprived.¹⁵⁶ Michael Crowe's false confession is a notable example of this type of false confession. Police used intense interrogation tactics to break Michael down; they lied to him and told him they found his hair in his sister's hands.¹⁵⁷ Not only do coerced-internalized false confessions cause innocent individuals like Michael to be wrongfully imprisoned, but they also have a psychological and traumatic nature to them.¹⁵⁸

These types of false confessions are a direct result of the interrogation tactics discussed earlier. The tactics combined with the susceptibility of juveniles leads to juveniles making up such a large portion of false confession exonerations in the United States. Police officers and prosecutors have the responsibility to implement reforms and procedures to curb the problem of false confessions in juveniles.

III. PROSECUTOR'S DUTY

A. *Prosecutors' Duty to Seek Justice*

Prosecutors have the professional ethos "The duty to seek justice."¹⁵⁹ With this ethos in mind, there is no straightforward answer as to what prosecutors should do in cases with manipulated or coerced confessions, but the law offers a choice.¹⁶⁰ This choice is sometimes described as "prosecutorial discretion."¹⁶¹

¹⁵¹ *Damon Thibodeaux*, *supra* note 11.

¹⁵² *Id.*

¹⁵³ *See id.*

¹⁵⁴ *Id.*

¹⁵⁵ Kassir & Wrightsman, *supra* note 146, at 78.

¹⁵⁶ *Id.*

¹⁵⁷ Scott-Hayward, *supra* note 32, at 67–68.

¹⁵⁸ *See id.* at 72.

¹⁵⁹ Bruce A. Green, *Why Should Prosecutors "Seek Justice"?*, 26 *FORDHAM URB. L.J.* 607, 611 (1999).

¹⁶⁰ *Id.* at 619.

¹⁶¹ *Id.*

Prosecutors have an immense power of choice, and prosecutors could use this choice to better alleviate the problem of false confessions in juveniles.

The power of prosecutorial discretion can be used in any number of ways, such as: discretion to allege wrongdoing against a suspect who has yet to be charged with a crime, discretion to decide whom to investigate, discretion to determine whom to charge with a crime, discretion regarding what charges to bring and where to bring them, discretion as to the degree of certainty a prosecutor must have of the suspect's guilt, discretion as to whether a prosecutor brings charges against multiple defendants or one defendant when only one of them could have committed the crime, or discretion to determine whether a prosecutor should intervene when the defendant is represented by an incompetent lawyer.¹⁶² All of these choices—and the many others prosecutors face—are not easy to make. They all raise ethical dilemmas as to what should guide decisions when there is no law to follow. Considering the ethos of the prosecutor, prosecutors should be guided by the desire not to convict innocent people for crimes they did not commit.¹⁶³ But what motivation do prosecutors have in following this ethos? The motivation given most often is the deep-rooted power of the prosecutor himself and as the professional role of a representative of the sovereign.¹⁶⁴

An age-old saying goes: “With great power comes great responsibility.” Prosecutors are some of the most powerful lawyers in modern society and they should use this power with restraint and with their ethos in mind. There are three principle reasons prosecutors are the most powerful lawyers.¹⁶⁵ First, prosecutors represent the most powerful client: the sovereign.¹⁶⁶ With that representation comes immense resources that the government has from the federal level down to even the local level.¹⁶⁷ Not only do governments give prosecutors financial resources, but representing the sovereign also unlocks the power and resources of the police department and other investigative agencies.¹⁶⁸ The difference in resources between the prosecutors and the defendants, whom they are going up against, is vast.¹⁶⁹ Most criminals that prosecutors charge are indigent and lack the resources to defend themselves.¹⁷⁰ Considering that these individuals' lives and liberties are on the line puts an enormous burden on prosecutors to ensure they use restraint and responsibility when exercising their power. This burden is even stronger when dealing with juveniles, who lack the knowledge and capacity to assist themselves through the legal process.¹⁷¹

¹⁶² *Id.* at 619–20.

¹⁶³ *Id.* at 622.

¹⁶⁴ *Id.* at 625.

¹⁶⁵ *Id.* at 626.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

The second reason prosecutors are more powerful than other lawyers is that the sovereign gives many powers to prosecutors, including the power to issue arrest warrants, authorize wiretaps, grant immunity from prosecution, decide whom to charge and which charges to bring, and initiate criminal proceeding and interrogations.¹⁷² Because prosecutors can make such important decisions throughout the life cycle of an investigation, they have the opportunity to ensure justice is done without imprisoning innocent people—particularly juveniles.

Finally, prosecutors' offices have unchecked authority to exercise the sovereign's power on behalf of the sovereign.¹⁷³ This not only gives prosecutors enormous power, but also enormous freedom.¹⁷⁴ Prosecutors, judges, and commentators have all identified that the powers that prosecutors have put them in a unique ethical posture.¹⁷⁵ The Seventh Circuit has stated that

The Department of Justice wields enormous power over people's lives, much of it beyond effective judicial or political review. With power comes responsibility, moral if not legal, for its prudent and restrained exercise; and responsibility implies knowledge, experience, and sound judgment, not just good faith.¹⁷⁶

Therefore, prosecutors need to use this responsibility bestowed upon them not only to prosecute criminals, but also to ensure that the innocent are free from prosecution, that justice remains the primary ethos for prosecutors, and that they do not wrongly imprison the simple-minded, juveniles, and the mentally handicapped due to police interrogation tactics and false confessions.

B. Prosecutors' Interests

On top of the responsibilities that prosecutors have to uphold their broad duty to seek justice, prosecutors also juggle their own personal interests, like their reputation, potential embarrassment, and costs of prosecuting innocent suspects and juveniles who falsely confess.¹⁷⁷ Prosecutors should weigh these other interests when deciding how to process a case with a juvenile who may have falsely confessed or when implementing precautions to ensure juveniles do not falsely confess.

First, when an innocent suspect pleads guilty to a crime, the integrity of the criminal justice system is called into question.¹⁷⁸ When the public learns that a defendant is innocent, the public loses confidence in their local criminal justice

¹⁷² *Id.*

¹⁷³ *Id.* at 627.

¹⁷⁴ *Id.* at 628.

¹⁷⁵ *Id.*

¹⁷⁶ *United States v. Van Engel*, 15 F.3d 623, 629 (7th Cir. 1993).

¹⁷⁷ See F. Andrew Hessick III & Reshma M. Saujani, *Plea Bargaining and Convicting the Innocent: The Role of the Prosecutor, the Defense Counsel, and the Judge*, 16 *BYU J. PUB. L.* 189, 190–98 (2002).

¹⁷⁸ *Id.* at 205.

system, which prosecutors have a duty to uphold.¹⁷⁹ Wrongful convictions of juveniles also contribute to public perception that prosecutors are an intrusive government body that can take away innocent person's liberty.¹⁸⁰ Again, this harms prosecutors' public reputations and damages professional relationships.¹⁸¹ All of these consequences lead to a prosecutor's loss of credibility.¹⁸²

Wrongful convictions lead to embarrassment and damage to prosecutors' reputations. When a conviction is overturned on appeal, the prosecutor who handled the case at the trial level is blamed for wasting resources to charge and try an innocent juvenile.¹⁸³ The government has to bear those costs as well as the costs of appeals, re-trials, and all other investigation efforts to find the real offender, not to mention the possible lawsuits and compensatory damages for the wrongfully imprisoned suspect.¹⁸⁴ For example, in Texas, forty-five wrongful convictions have been estimated to cost taxpayers \$8.6 million.¹⁸⁵ Additionally, the costs of housing the wrongfully convicted are high.¹⁸⁶ The Department of Justice funded a study of 24,120 inmates who were wrongfully convicted and imprisoned, and estimated that the average state corrections cost per inmate is around \$28,325.¹⁸⁷ This study estimated that the national annual expenditure for housing innocent suspects is at \$683 million.¹⁸⁸ Even more staggering is that this figure did not include defendants wrongfully detained in local, military, or federal prisons, as well as all the inmates who are still awaiting trial.¹⁸⁹

All these interests emphasize the responsibility that prosecutors have in upholding the ethos of the duty to seek justice. If prosecutors will not take action to avoid convicting innocent juveniles for that reason, then they should do it for the sake of their own reputation, the reputation of their office and the criminal justice system, and the taxpayers' pocket books.

C. Prosecutor's Relationship with Police

In general, police officers' and prosecutors' relations are not connected enough to allow prosecutors to control the procedures of the police department.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 206.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*; See also CTR. FOR PROSECUTOR INTEGRITY, AN EPIDEMIC OF PROSECUTOR MISCONDUCT 8–9 (2013).

¹⁸⁵ CTR. FOR PROSECUTOR INTEGRITY, *supra* note 184, at 9.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

In fact, police officers handle the majority—if not the entirety—of the investigative phase of a case.¹⁹⁰ It is only after the police finish the investigation that prosecutors receive the case and decide what kind of charges to pursue, if any.¹⁹¹ Therefore, it can be difficult for prosecutors to directly tell police how they should run investigative procedures.

But prosecutors still have some power to affect police actions, such as their power to control whether a case can go forward.¹⁹² Prosecutors can use this power as leverage to convince police departments to change certain policies and procedures.¹⁹³ For example, prosecutors can tame police excesses in investigations such as an interrogation that was too coercive or had elements of contamination in it.¹⁹⁴ Furthermore, if a prosecutor is handling cases where police have interrogated juveniles, the prosecutor could simply refuse to go forward on these cases unless the police follow the prosecutor's preferred practices, which would promote the duty to ensure justice as well as the prosecutor's own interests.¹⁹⁵ Additionally, it would be in the police department's best interest to ensure they are following their own practices in the best manner possible to promote positive public image, lower incarceration rates, and lower exoneration rates.¹⁹⁶

D. Prosecutor's Duty with Juveniles

Considering that prosecutors have a duty to uphold justice and the power to influence police—as well as personal interests that would benefit from taking action—prosecutors have a large role to play when it comes to juveniles entering the criminal justice system. In order for prosecutors to make well-informed decisions for how to handle juvenile cases, they need to take into account the cognitive development of juveniles and how they react to criminal justice system. This responsibility rests on the prosecutors, policy makers, and mental health professionals to understand the capabilities and characteristics of juveniles.¹⁹⁷ Prosecutors in particular have the power to choose whether a juvenile is prosecuted in the adult system or in the juvenile system.¹⁹⁸ Furthermore, some juveniles may not have the opportunity to be moved into the juvenile system once they are placed in the adult criminal justice system.¹⁹⁹

¹⁹⁰ David A. Harris, *The Interaction and Relationship Between Prosecutors and Police Officers in the U.S., and How This Affects Police Reform Efforts* 1 (Univ. Pittsburgh Sch. of Law Legal Studies Research Paper Series, Working Paper No. 2011-19, 2011).

¹⁹¹ *Id.*

¹⁹² *Id.* at 6.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 6–7.

¹⁹⁵ *Id.* at 7.

¹⁹⁶ *See id.* at 6–7.

¹⁹⁷ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 465 (2009).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 463.

Not only do prosecutors have the power to decide whether a juvenile goes into the adult system or the juvenile system, but prosecutors can also decide *whether* to bring charges against a juvenile in the first place.²⁰⁰ Similarly, prosecutors can decide *which* charges to bring against a juvenile.²⁰¹ Prosecutors essentially have an unlimited amount of discretion when it comes to prosecuting a juvenile.²⁰² Prosecutors need to use this power even-handedly, accompanied by the knowledge of juveniles' development and psychology when deciding whether to initiate particular actions against the juvenile.

Prosecutors can use their power to influence police to benefit juveniles, particularly in choosing which method they feel is most appropriate for handling a case with a juvenile. Using this power, prosecutors can potentially enact reforms to assist in eliminating the casualties of false confessions in juveniles.

IV. REFORMS THAT PROSECUTORS CAN IMPLEMENT

The psychology of juveniles combined with the interrogation tactics discussed above show how prevalent false confessions can be in adolescent suspects. Some of the tactics above may be useful when interrogating adults, but when administered to juveniles, the risk of an interrogation yielding a false confession increases.²⁰³ Current laws in the majority of states fail to address this problem adequately.²⁰⁴ Some states have enacted parental presence requirements and go beyond the "totality of the circumstances" test required by the constitution.²⁰⁵

However, parental presence requirements are inadequate in solving the problem, as shown in the Central Park Jogger case.²⁰⁶ In that case, police interrogated all the juvenile suspects with at least one parent present, but all the suspects still waived their rights and falsely confessed.²⁰⁷ Another approach some states take is mandatory counsel for juvenile interrogations, but high costs make it unlikely other states would adopt this approach.²⁰⁸ However, prosecutors should implement the following reformations, in conjunction with each other, in cases with juveniles to produce reliable confessions: videotaping all juvenile interrogations, updating procedures for juvenile interrogations to prevent false confessions, and updating *Miranda* warnings to help juveniles understand their rights.

²⁰⁰ *Prosecution: Prosecutorial Discretion-Subjects of Prosecutorial Discretion*, JRANK, <http://law.jrank.org/pages/1865/Prosecution-Prosecutorial-Discretion-Subjects-prosecutorial-discretion.html> [https://perma.cc/E9UG-TZYL] (last visited Nov. 18, 2017).

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Scott-Hayward, *supra* note 32, at 69.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 69–70.

²⁰⁶ *Id.* at 70.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

A. Videotaping Interrogations

The simplest reform is videotaping the entirety of every police interrogation. This policy should be mandatory, or at least advised by the prosecutor in individual cases that involve juveniles. However, this method does not guarantee the prevention of juvenile false confessions, but it does guarantee compliance.²⁰⁹ Even so, most scholars agree that recording interrogations is extremely important.²¹⁰ The primary purpose of videotaping interrogations is ensuring that police are complying with all mandatory policies, including proposed reforms.

Certain methods for filming interviews should be used to improve how the judge and jury perceive the interviews. One of the important factors for filming interrogations is the perspective of the camera.²¹¹ Research in mock interviews shows that camera perspective can influence the judge and jury.²¹² When the camera was focused on the defendant, jurors were more likely to believe that the confession was a voluntary one as opposed to when the camera was focused on the interviewer.²¹³ Therefore, it would be important to film the interview in an angle that had both the defendant and the interviewer in the frame at the same time.²¹⁴ This would allow the judge, jury, and prosecutor to better decide whether the police conducted the interview in a neutral, non-coercive manner.²¹⁵

The other added benefit of videotaping all interrogations is the individual benefit for the police officers and prosecutors. The police departments that have adopted this reform have spoken avidly for the benefits because videotaping gives police officers and prosecutors the opportunity to prove that they did nothing wrong in the interrogation process.²¹⁶ This could prove invaluable if a suspect claims that their interrogation was too coercive and manipulative.²¹⁷ Videotaping also allows for police to review all interrogations that they administer, promoting accountability within their own department.²¹⁸ Prosecutors can also review interrogations done by police officers and determine if they implanted information to the suspect in a contamination error.

²⁰⁹ *Id.* at 73.

²¹⁰ *Id.*

²¹¹ See Annemarieke Beijer, *False Confessions During Police Interrogations and Measures to Prevent Them*, 18 EUR. J. CRIME, CRIM. L. CRIM. JUST. 311, 345 (2010).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 346.

²¹⁷ *Id.*

²¹⁸ *Id.*

A notable example of this benefit is in the Buddhist temple murders in Phoenix, Arizona.²¹⁹ In that case, police interrogated a number of suspects who ultimately falsely confessed.²²⁰ Fortunately for the suspects, their complete interrogations were video recorded by the police.²²¹ Investigators found that the suspects went through a coercive interrogation, which included contamination error, where the police fed the suspects information about the case.²²² Before the suspects went to trial, the police found the actual killers, and the suspects were released because of the videotapes that proved the police coerced their confessions.²²³ This is only one of many benefits of video interrogations.

Finally, videotaping interrogations can lead to enhanced research on the topic of false confessions. Researchers and police alike could comb through videos of suspected false confessions and analyze them to understand how to catch false confessions early on and help police and prosecutors adopt new strategies to avoid false confessions, especially with juveniles.

B. Updating Police Procedures for Juveniles

Prosecutors can and should pressure police departments to update their procedures when directly dealing with juveniles. Less than half of the interrogation procedure manuals that police use discuss false confessions that can occur with suspects.²²⁴ Police commonly perceive themselves to be “human lie detectors,” and believe that they can identify if the suspect gives a truthful or a false confession.²²⁵ Even more so, prosecutors need to pressure police to adopt specific interrogation procedures when interrogating juveniles.

These procedures would include adopting new types of questions and techniques that police would use against juveniles.²²⁶ Research shows that eliminating suggestive and leading questions is the first step in reforming the interrogation process of juveniles.²²⁷ Furthermore, lying and deception tactics used by police should be outright eliminated when interrogating juveniles.²²⁸ In many cases, including that of Michael Crowe, the juvenile suspect stated that he or she did not know police could lie to them.²²⁹ This confuses juveniles, like Michael, and forces them to question their own memory of incidents, which allows the

²¹⁹ Paul G. Cassell, *Protecting the Innocent from False Confessions and Lost Confessions—And from Miranda*, J. CRIM. L. & CRIMINOLOGY 497, 554 (1998).

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ Scott-Hayward, *supra* note 32, at 72.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* at 67–68.

police to manipulate them.²³⁰ Research shows how powerful deception can be in leading a juvenile to falsely confess.²³¹ Simply put, juveniles do not have the mental fortitude or confidence to counter a police officer instigating or lying about evidence that police claim incriminates the child.²³² Any benefit that lying and deception may bring to police departments is vastly outweighed by the detriment of it leading juveniles to falsely confess.²³³

Another procedure prosecutors can suggest police departments adopt is the “double blind” interrogation.²³⁴ The double blind technique can ensure that the statements given by suspects are accurate and help to avoid interrogation contamination.²³⁵ The method is to have the first interrogator not involved in the case, administer the first interrogation.²³⁶ This person has general knowledge of the case but is unaware of the key facts so they can ask questions regarding the incident in question without revealing information that only the actual offender or police would know.²³⁷ After the first interrogation is complete, the second interrogator—the lead investigator who knows all of the facts of the case—would then question the suspect and test their knowledge of the crime scene.²³⁸ Because, multiple interrogations can increase the stress of the situation, police would have to make a judgment call about whether the second interrogation should happen immediately or at a different time. Once it is appropriate to give the second interrogation, the officer or detective who is familiar with the case will ask questions to test the suspect’s knowledge of key facts of the case.²³⁹ The police will then be able to use these facts and see if the evidence obtained or the crime scene itself corroborates them.²⁴⁰

Finally, prosecutors could conduct trainings for police officers and interrogators to learn about the susceptibility of juveniles overall and about the policies that can be made to protect them. This would include adopting procedures that would limit amount of time that the police could interrogate a juvenile or suspects with special susceptibility.²⁴¹ This would also include limiting the amount of times an officer can interrogate a juvenile in a single day.

Unfortunately, the fundamental adversarial nature of interrogations and the criminal justice system make some of these reforms difficult.²⁴² This adversarial

²³⁰ *Id.* at 57, 68.

²³¹ *Id.* at 72.

²³² *Id.* at 72–73.

²³³ *Id.* at 73.

²³⁴ Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1116 (2010).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.* at 1116–17.

²⁴² *Id.* at 1117.

nature creates incentives for police departments to use coercive tactics and procedures.²⁴³ No single reformation will solve the problem, but the more police curb the adversarial nature, especially with juveniles, the more the problem of false confessions with youth will decrease.

C. Updating Miranda Warnings

As the research shows, juveniles are incapable of both understanding *Miranda* rights and using them to their advantage. Furthermore, juveniles can rarely knowingly or intelligently waive their rights to *Miranda* warnings.²⁴⁴ Prosecutors must ensure that police are not simply reciting the *Miranda* rights and receiving a simple yes or no answer.

New Hampshire is a perfect example of how police should administer *Miranda* rights.²⁴⁵ As early as 1985, New Hampshire has led the way in ensuring juveniles adequately understand their rights before they may waive them.²⁴⁶ New Hampshire's *Miranda* warnings for juveniles are a simplified version of the regular *Miranda* warnings, with breaks to explain what each portion of the warning means.²⁴⁷ Then the child is asked if they understand that particular portion.²⁴⁸ An example of this would be:

You have the right to remain silent. This means that you do not have to say or write anything. You do not have to talk to anyone or answer any questions we ask you. You will not be punished for deciding not to talk to us. Do you understand this right?²⁴⁹

The arresting officer continues this procedure through all portions of the *Miranda* rights.²⁵⁰ Once the *Miranda* warning has been properly explained to the juvenile, they can waive their rights and agree to an interrogation.²⁵¹ For further protection, states could add an additional step required before juveniles can waive their rights. This extra step could be a small questionnaire that essentially repeats what the officer said and covers a few main points. This survey would be limited to juveniles or individuals with special needs. The questionnaire could ask the question whether he or she knows what it means to waive their right to silence. The questionnaire could also address whether the juvenile understands that there will be no punishment if they refuse to answer questions.

This would be an initial step for ensuring that juveniles adequately understand what they are getting themselves into when they agree to be interrogated.

²⁴³ *Id.*

²⁴⁴ Scott-Hayward, *supra* note 32, at 70–71.

²⁴⁵ *Id.* at 72.

²⁴⁶ *Id.* at 71.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ State v. Benoit, 490 A.2d 295, 306–07 app. at 1 (N.H. 1985).

²⁵⁰ See Scott-Hayward, *supra* note 32, at 71.

²⁵¹ *Id.*

Ultimately, it will be up to the prosecutors and police officers to decide how far they intend to take the interrogation once a juvenile agrees to police questioning. This is where the other reformations come in—to ensure that police officers do not take advantage of a juvenile that agrees to be questioned.

CONCLUSION

The psychology of juveniles puts them particularly at risk for false confessions when they enter the criminal justice system. Juveniles have fundamental brain differences from adults, not only making them susceptible to police interrogation tactics, but also making it difficult for juveniles to properly understand and waive their *Miranda* rights. Furthermore, these false confessions are extremely powerful as they are often the leading piece of evidence used to convict innocent youths. Prosecutors have the duty to seek justice and the power to lead the way in reforming how juveniles are treated in the criminal justice system; it is also in their best interest to do so. Prosecutors should keep the psychology of juveniles in mind, and pressure police departments nationwide to develop, enact, and adopt new reformations to ensure that police are not taking advantage of juveniles. This should be done to ensure that proper justice, fairness, and care is given to the youth of America.