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Juvenile Justice is Not Just Kid Stuff: The Forgotten Side of Fairness and Due Process

Philip Houle

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Juvenile Justice is Not Just Kid Stuff:  
The Forgotten Side of Fairness and Due Process  
by  
Suzanne R. Houle*

Abstract: Juvenile justice is not just kid stuff. Rather, it is the forgotten and ignored side of fairness and due process which as often as not scars juveniles and deprives them of what they see as basic fairness, placing many of them on a road to anti-social and marginalized adulthood. Technical niceties on which much, perhaps too much, of adult criminal justices turns, are even less suited in juvenile proceedings. Firm, clear, and unequivocal tests for waiver of important rights by juveniles of important procedural and substantive rights are necessary if a juvenile's day in court is to have any real meaning, especially in the area of false-confessions where juveniles are particularly susceptible to pressure from the authorities. Lastly, the article proposes how the juvenile justice system could and should be reformed.

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Introduction

It is abhorrent to our sense of justice and fair play to countenance the possibility that someone innocent of a crime may be incarcerated or otherwise punished for a crime which he or she did not commit…

Martin “Marty” Tankleff’s “hell on earth” began during the early morning hours of September 7, 1988. On that day, sixteen-year-old Marty was supposed to be attending the first day of his senior year of high school, but instead woke up to a war zone. He awoke to find both of his parents brutally bludgeoned in the family home. By the time that Marty found his parents, his mother was dead and his father was alive, but unconscious. A hysterical and distraught Marty called 911 and began to perform first aid on his father.

By the time that the police arrived at the Tankleff’s residence, Marty was in shock as to the heinous and gruesome crime that had taken place under his nose while he slept. His conduct was labeled as “suspicious” by responding law enforcement and he was subsequently brought to the police station for questioning. There, he deeply wanted to help the police find his parents murderer. He told investigators that he believed that his father’s business partner,

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*Suzanne R. Houle, B.A., University of Maryland at College Park, J.D. University of North Carolina law school.


2 See id. at 289.


4 Tankleff, supra note 1, 848 N.Y.S.2d at 289.

5 See Marty Tankleff, supra note 3.

6 See id.

7 Id.

8 Tankleff, supra note 1, 848 N.Y.S.2d at 289.

9 See Marty Tankleff, supra note 3.
who also happened to owe his father half a million dollars, was a likely suspect. Furthermore, Marty revealed that this same business partner had violently threatened his parents in the past and had been the last person to leave the Tankleff residence the evening before. Despite this crucial information, the lead detective continued to zero in on Marty and conduct an incredibly hostile, intimidating, and psychologically brutal interrogation that spanned several hours.

During the course of this interrogation, Marty remained steadfast in his continued denial as to any involvement in his mother’s murder and father’s attack. After seeing that the interrogation was not progressing, the lead detective falsely and maliciously told Marty that his father had awoken out of his coma at the hospital to reveal to the police that Marty had committed the crime. Knowing that his father would never lie to him, Marty became distraught and began to wonder if he could have possibly blacked out and committed these heinous acts in a state of unconsciousness? Marty, like so many other children, was taught to believe that the police were inherently good and trustworthy individuals, who helped people in their times of need. After several hours of this “psychological persecution,” Marty was mentally and physically exhausted, defeated, confused, and ready for this nightmare to be

10 Tankleff, 848 N.Y.S.2d at 289.

11 Id.

12 See Marty Tankleff, supra note 3. “A week after the attacks, as Marty's father lay unconscious in the hospital, the business partner would fake his own death, disguise himself and flee to California under an alias.” Id. “The Suffolk County DA refused to recuse himself from the hearing despite extreme conflicts of interest. Five years before the Tankleff murders, he had represented the business partner’s son for selling cocaine out of the bagel store. During the SIC hearings, he represented the detective who would go on to take Marty’s “confession.” And his longtime partner had represented the business partner himself. Among the new evidence revealed at the hearing was eyewitness testimony that the business partner had been well acquainted with the lead detective since before the Tankleff murders. This contradicted the trial testimony of the detective, who had not been in line to catch the case on the morning of the Tankleff murders but arrived 19 minutes after the early morning call, and who ignored the business partner as a suspect.” Id.

13 Id.

14 Id.

15 Tankleff, 848 N.Y.S.2d at 289.

16 Marty Tankleff, supra note 3.
He was read his rights and “drafted” a confession at police insistence, which remained unsigned and was immediately and vehemently recanted. 

Marty’s life could have ended there. His father passed away from complications related to the attack several weeks later. Despite not one piece of evidence other than his “confession” presented at trial, Marty was convicted in 1990 of the murders of both of his parents and sentenced to fifty years to life in prison. But fortunately for Marty, he had the support of a strong and loving family, as well as many prominent attorneys, who worked tirelessly on his behalf and firmly believed in his innocence. Marty’s conviction was overturned in 2007, after seventeen years of appeals and hearings. Marty’s attorneys presented the state appellate court with two dozen witnesses implicating his father’s business partner in the crime and a myriad of evidence that overwhelmingly pointed to Marty’s innocence.

Despite having been wrongfully convicted of murder, slandered, and forced to spend seventeen formative years of his life in prison, Marty Tankleff remains a remarkably positive and unscathed person today. Marty is currently attending college classes at Hofstra University and looks forward to getting married and attending law school in the near future, to work for those, like him, who have been wrongly convicted of crimes that they did not commit.

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18 See Marty Tankleff, supra note 3.

19 See id.

20 Tankleff, supra note 1, 848 N.Y.S.2d at 289.

21 M. Tankleff, supra note 17.

22 See generally Tankleff, supra note 1, 848 N.Y.S.2d at 303.

23 See id. at 291-98.

Marty was one of the lucky few, as many children (and adults) are wrongly convicted and incarcerated every year for crimes that they did not commit. “The United States Department of Justice, Bureau of Justice Statistics, admits that statistically 8% to 12% of all state prisoners are either actually or factually innocent.”25 While wrongful convictions have the potential to occur at many points throughout the judicial process, beginning at arrest and ending with conviction, this paper will only focus on two means by which wrongful convictions occur in juvenile justice system. This paper will explore how Miranda warnings, and false confessions obtained during police interrogations, can cause innocent people to go to prison.

Part I of this paper will explore the history and development of the juvenile justice system, looking at how it developed from a paternalistic, to the adversarial model that it implements today. Part II will discuss the Miranda warnings given to juveniles. In doing so, part II will cover the history, seminal cases, and current state of Miranda warnings; as well as delving into why juveniles waive their Miranda rights and how this waiver of rights contributes to wrongful convictions. Part III of this paper will discuss false confessions obtained through police interrogations. It will briefly cover why juveniles falsely confess, why minors are particularly vulnerable to fictitious confessions, and the long-term legal consequences of making a false confession. Part VI of this paper discusses proposed reformations as to how Miranda warnings can better protect the Fifth Amendment right against self-incrimination afforded to juveniles, as well as ways in which minors can be better protected from making false confessions during interrogations. Lastly, Part V will conclude with a general wrap-up as to the current state of Miranda warnings and police interrogations, how their current policies have the unintended consequence of furthering wrongful convictions, and what how procedures can be improved to prevent future wrongful convictions.

Part I: History of the Juvenile Justice System

Development of the Juvenile Justice System

During the late nineteenth century, individual states began creating juvenile courts in an attempt to deal with the unique legal problems and needs of children, specifically with regard to juveniles who were neglected, delinquent, or dependent.26 Prior to this reformation, children were generally treated the same as adult perpetrators and criminals, often sharing the same courts, prisons, and facing the similar punishments.27 As part of the nineteenth century reformation of the juvenile justice system, courts began to implement a kind, benevolent, and paternalistic approach to dealing with minors, with the focus being on rehabilitation, as opposed to punishment.28 Under this approach, courts would keep the best interests of the child in mind when adjudicating cases and determining appropriate dispositional orders.29

This “paternalistic” juvenile judicial model remained largely intact until the 1960s and 1970s, when its practices stirred up fierce opposition and came under strict judicial scrutiny during the era known as the “due process” revolution.30 During this period, opponents of the “paternalistic” juvenile judicial model argued that children’s procedural due process rights were being trampled on by the courts, whose decisions regarding children often appeared to be arbitrary, with little judicial procedure being followed and no clear standard regarding adjudication and disposition.31

Around the same time as the “due process” revolution, there also emerged a societal push, calling for states to become “hard on crime,” which generally included more rigorous


27 Id.

28 Id.

29 Id.

30 Id.

31 Id. at 263.
This meant that in order for prosecutors and legislators to survive elections, in many areas, they had to run on the platform that they were “tough on crime,” even with regard to juveniles. The legislative changes that many states implemented during this era included extending adult jurisdiction to incorporate minors, for certain crimes, and widening the offenses for which a juvenile could be tried as an adult. The federal government even jumped on the bandwagon by implementing some of these same policies regarding juvenile offenders in federal courts. Through judicial precedent and common law, the emerging awareness surrounding juveniles’ due process rights, and the societal push for states to be tougher on crime, the Supreme Court began the process of rapidly creating a more adversarial juvenile judicial model.

**Part II: Miranda Warnings and Juveniles**

*History of Miranda Warnings*

The Fifth Amendment of the United States Constitution affords individuals the right to be free from self-incrimination. In order to enable individuals to better understand this seemingly elusive protection afforded by the Fifth Amendment, the Supreme Court in *Miranda v. Arizona* held that in the context of police interrogations, states must use procedural safeguards to ensure that the right against self-incrimination is protected. The Court recognized the importance of this fundamental right and held that individuals had to be made

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32 *Id.* at 265.
33 *Id.*
34 *Id.*
35 *Id.*
36 U.S. Const. amend. V.
38 *Id.* at 444.
The Court went a step further in demonstrating the magnitude of this right, by stating that it would likely *assume* a defendant’s ignorance and *not* accept statements that he made during interrogation at trial, if he was not informed of his Fifth Amendment right to remain silent.\(^{39}\)

**Seminal Cases in the Application of Miranda Rights to Juveniles**

*In re Gault*\(^ {41}\) proved to be the first case in which due process protections were officially afforded to juveniles.\(^ {42}\) In that case, the minor, Gerald Gault, was arrested and charged with making vulgar comments of an “adolescent sexual variety” over the phone to a neighbor.\(^ {43}\) It was later proven that at the time that Gault was taken into custody, neither of his parents were home, nor informed of his arrest.\(^ {44}\) Furthermore, Gault was not made aware of his right not to speak with police and that his statements made could be used against him.\(^ {45}\) Additionally, at trial, the alleged victim failed to appear in court to testify, but the judge allowed the hearing to proceed regardless, “without swearing in any of the witnesses or making a transcript or recording of the hearing.”\(^ {46}\) Furthermore, at trial, legal counsel did not represent the defendant and the judge conducted most of the questioning of Gault regarding the alleged incident.\(^ {47}\) Outraged by the extreme facts surrounding the case, and the complete lack of due process afforded to the juvenile, the Supreme Court held that Gault, and juveniles in general, were henceforth afforded the “right to counsel, notice of charges, confrontation and cross-

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\(^ {39}\) *Id.* at 444-45.

\(^ {40}\) *Id.* at 498.

\(^ {41}\) 387 U.S. 1 (1967).

\(^ {42}\) See generally *id*.

\(^ {43}\) *Id.* at 4.

\(^ {44}\) *Id.* at 5.

\(^ {45}\) *Id.* at 44.

\(^ {46}\) Drizin, *supra* note 26, at 264 (discussing *In re Gault*, 387 U.S. 1 (1967)).

\(^ {47}\) *In re Gault*, 387 U.S. at 29.
examination, and to the privilege against self-incrimination” under the United States Constitution.\footnote{Drizin, supra note 26, at 264 (discussing In re Gault, 387 U.S. 1, 32-40 (1967)).}

Several years after Miranda and In re Gault were decided, the Supreme Court addressed the applicability of Miranda to juveniles in Fare v. Michael C.\footnote{442 U.S. 707 (1979).} In that case, the Michael C. was a sixteen year old male who requested to see his probation officer before he confessed to murder during a police interrogation.\footnote{Id. at 710.} The California Supreme Court took this request as an exercise in Michael’s Fifth Amendment right to remain silent.\footnote{Id. at 713-14.} However, the United States Supreme Court did not agree.\footnote{Id. at 721-22.} It held that the request for a probation officer was not necessarily an invocation of the Fifth Amendment right to remain silent.\footnote{Id.} The Fare Court held that the same standard that is applicable to adults, should apply to minors, in determining whether or not a child has effectively waived their Miranda rights.\footnote{Id. at 725.} In so deciding, courts should inquire as to whether the minor’s admission was “knowing, intelligent, and voluntary under the totality of the circumstances.”\footnote{Id. at 718-24. “This totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so.” Id. at 725.} The Court refused to accept the argument that there were psychological and mental differences between adults and children that should afford minors greater Fifth Amendment protections.\footnote{Id. at 725. “There is no reason to assume that such courts -- especially juvenile courts, with their special expertise in this area -- will be unable to apply the totality-of-the-circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved.”} Thus, the Fare Court refused to extend
Miranda and gave lower courts the same discretionary standard, as afforded to adults, by which
to assess the admissibility of juvenile confessions stemming from police interrogations.  

Current State of the Miranda Warnings Applicable to Juveniles

While in theory Miranda warnings appear to be a “good thing,” providing juveniles
with protection against self-incrimination; in practice, the Miranda warnings seem to be much
less of a “barrier,” and thought to be more as an annoyance by police, within the interrogation
context. Statistics show that “80-85 percent of criminal suspects waive their Miranda rights
and over 90 percent of juveniles waive their protection against self-incrimination.” Currently,
each state has the ability to decide, as dictated through judicial determination and statute,
whether or not a juvenile has made a valid waiver of their Miranda rights.  

The majority of states have adopted the “totality of the circumstances” test for
determining whether or not a juvenile gave a voluntary confession during police interrogation. These courts use multiple factors, including age, education, IQ, and prior contact with the law, in assessing whether or not a juvenile has properly waived his rights. These test give judges
broad discretion in making that determination. Every state using the totality of the
circumstances test is free to be unique in factors that it chooses to assess.

57 Id.
58 Drizin, supra note 26, at 266.
59 Id.
60 See id. at 267.
62 Id.
63 See id.
64 Drizin, supra note 26, at 267.
There are many problems associated with the “totality of the circumstances” test that could lead to a wrongful conviction. First, the test allows for far too much judicial discretion. Judges are given little guidance and direction in determining how to weigh the factors and determining which one(s) might be controlling. This wide judicial discretion could, and has, led to arbitrary application of the test and a mechanism by which wrongful convictions have occurred. Secondly, courts have notoriously been too conservative in application of the test. On the whole, courts tend find confessions to have been given voluntarily, even in the face of overt mitigating factors at play or recantation.

A minority of the states have chosen to comply with the Supreme Court’s directive by adopting per se rules that require that certain procedural safeguards to have been met before a juvenile’s confession is deemed voluntary. These rules carry the presumption that a juvenile’s confession was not freely given unless the procedural safeguard was implemented. Among the states that have adopted per se rules, twelve carry the presumption that juveniles are not competent to waive their Miranda rights unless a parent or interested adult is present during interrogation. Many have argued that having a parent or interested adult in a juvenile interrogation is extremely important, given that these adults can serve as potential witnesses to the police interrogation, possibly stopping the youth from disclosing untrustworthy statements,

\[65\text{ See id.}\]
\[66\text{ Id.}\]
\[67\text{ See id.}\]
\[69\text{ See id.}\]
\[71\text{ See id. at 227.}\]
helping the youth comprehend their options, and reducing the possibility of coercion and pressure during questioning.\textsuperscript{73}

While the per se rules appear to be a better protection of children’s Fifth Amendment rights than the totality of the circumstances test, the rules are not without their shortcomings. The argument has been made that per se rules fail to adequately provide for the legitimate interest and duty that the state has in protection of the public.\textsuperscript{74} This fear centers on the idea that police will fail to fulfill a procedural requirement during interrogation, which could result in a truly guilty person being set free.\textsuperscript{75} Furthermore, there is an additional argument that parents are not always looking out for the best interests of their child in the interrogation context, given that they may not be competent to advise their child of how to proceed and may even coerce the child to waive their rights.\textsuperscript{76} Lastly, others argue that constitutional rights are personal, and it is subsequently wrong to give discretion or assertion of those rights to another individual.\textsuperscript{77}

\textbf{Why Do Juveniles Waive Their Miranda Rights?}

There are many reasons why juveniles decide to waive their Miranda rights and the accompanying protections that are afforded to them by the Fifth Amendment. First and foremost, children possess poorer comprehension skills than adults.\textsuperscript{78} Children do not generally understand the right to be free from self-incrimination.\textsuperscript{79} “Research demonstrates that only 21 percent of children, as compared to 42.3 percent of adults, comprehend the meaning and

\textsuperscript{73} Id. at 39.

\textsuperscript{74} Schlam, supra note 68, at 919.

\textsuperscript{75} Id.

\textsuperscript{76} Id. at 922.

\textsuperscript{77} Id. at 919.

\textsuperscript{78} Id.

\textsuperscript{79} Drizin, supra note 26, at 268.
significance of the Miranda warnings. More importantly, this statistic means that 79% of children had little to no comprehension of Miranda rights. Children under fourteen years of age are at an even higher risk for not understanding Miranda rights. At fifteen years old, a child is more likely to understand the words associated with Miranda, but often cannot truly appreciate the purpose or significance of the right, or the consequences associated with waiving. Furthermore, children frequently do not understand the concept of a “right” and the accompanying “right” to remain silent as an entitlement. As one legal scholar pointed out, juveniles fail to understand that the right against self-incrimination is an entitlement that cannot be taken away from them.

Secondly, juveniles frequently waive their Miranda rights because they are psychologically incapable of fully grasping the entitlement at stake. The adolescent brain differs from the adult brain in many ways. One example of this is through counterfactual thought. It has been scientifically proven that children have a significantly more difficult time engaging in counterfactual thinking than adults. Counterfactual thought is the ability to hold various hypotheticals or ideas into working memory, while manipulating the possibilities, so that different results and consequences are produced. This is an important scientific development because when a child is asked to effectively waive his or her Miranda rights, they

81 Drizin, supra note 26, at 268.
82 See id.
83 Id. at 269.
84 Id.
85 King, supra note 80, at 440.
86 See id.
87 Id.
88 Id.
must be able to engage in counterfactual thinking.\textsuperscript{89} In order to properly waive their rights, a child must be able to understand the right at stake\textit{ and} what the resulting consequences could be for various choices.\textsuperscript{90} Furthermore, counterfactual thinking also requires an individual to have a well-developed pre-frontal cortex.\textsuperscript{91} The pre-frontal cortex in the human brain only fully develops relatively late in an individual’s life, generally during late adolescence or early adulthood.\textsuperscript{92} Consequently, these findings bolster the argument that juveniles tend to think more impulsively and make decisions more rashly than adults, infrequently giving much thought to the consequences of their actions.\textsuperscript{93}

Lastly, children often waive their Miranda rights because they fail to conceptualize the importance of legal counsel.\textsuperscript{94} Thus, it is difficult to rationally understand how children can knowingly and voluntarily waive this right, when they cannot conceptualize its importance. Some estimates hold that up to eighty or ninety percent of juveniles waive their right to counsel as afforded to them by the Fifth Amendment.\textsuperscript{95} One can only imagine the likely decline in wrongful convictions if attorneys were consistently consulted prior to interrogations.

**Part III: False Confessions**

*Overview of False Confessions*

Why on earth would a person confess to a crime that they did not commit? This question is not an uncommon one and understandably tends to be the view of most Americans, but it has been scientifically and legally document that innocent people \textit{do} falsely confess to

\textsuperscript{89} Id. at 440-41.

\textsuperscript{90} Id. at 441.

\textsuperscript{91} Id.

\textsuperscript{92} Id. at 441-42.

\textsuperscript{93} See id. at 435.

\textsuperscript{94} Drizin, supra note 26, at 284.

\textsuperscript{95} Id. at 285.
crimes that they did not commit. 96 Furthermore, false confessions are not as rare as one might think. “In about 25% of DNA exoneration cases, innocent defendants made incriminating statements, delivered outright confessions or pled guilty.” 97 Even more disturbing, studies have proven that juveniles tend to falsely confess at higher rates than their adult counterparts, begging the obvious conclusion that juveniles are more likely to wrongly confess to a crime that they did not commit. 98

As a general rule, it has been commonly accepted in our legal community, that when false confessions do occur, they tend to be the result of brutal police interrogations. 99 Although police once utilized such inhumane tactics as physical torture and violence during criminal questioning, most interrogators now exploit “sophisticated psychological tactics to manipulate, confuse, deceive, or gain confessions from a suspect.” 100 While the theoretical goal of police interrogations should be fact-finding and truth seeking, most interrogators are only taught how to elicit confessions from an unforthcoming suspects sitting before them. 101 Interrogators are not taught how to recognize a potential false confession or more importantly, how to prevent one. 102 Instead, the judicial system, as a whole, has rested on its laurels in accepting the age-old belief that the psychological methods employed during interrogations will generally not produce

97 Id.
98 Drizin, supra note 26, at 273.
99 See id. at 270.
100 Id. at 270.
102 See id.
false confessions, with interrogation statements generally being considered as reliable and admissible in court.  

**How do False Confessions Occur?**

**A. Coercive Interrogation Techniques**

As mentioned above, many people do have great difficulty understanding why an innocent person would ever confess to a crime that they did not commit. The truth is that the overwhelming majority of Americans have never been involved in a police interrogation and, as a result, remain greatly ignorant as to the coercive and psychological tactics and strategies used in the interrogation room. Furthermore, most police interrogators are sent or educated in training schools where they learn coercive interrogation tactics and “how and why they are designed to manipulate the perceptions, reasoning, and decision-making of the custodial suspect and thus lead to the decision to confess.”

One of these psychological methods used is the ever-popular “Reid Technique.” The Reid Technique is a nine-step method used to gain confessions out of terse suspects.

First, the technique begins at the time that the suspect is accused of the crime. At this time, the interrogator “plays dumb” and expresses a general reaction of disbelief as to why the interrogation is even necessary. Secondly, the officer minimizes the suspects alleged

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103 *Id.* at 401.


105 *Id.*

106 Drizin, *supra* note 26, at 270.

107 *Id.*

108 *See id.*

109 *Id.*
behavior and generates various theories as to how the crime might have occurred.\textsuperscript{110} Next, the interrogator is instructed to interrupt the suspect’s denials as to culpability, in an attempt to further a sense of hopelessness by persuading the suspect that refutations are futile.\textsuperscript{111} After that, the questioning officer counters all objections that the juvenile generates during the interrogation, these include moral, emotional, and factual objections, and continues to force the theme of the interrogation onto the suspect.\textsuperscript{112} Next, if still unsuccessful, the Reid Technique calls for the officer to act confused and withdrawn in an attempt to further incite feelings of helplessness and isolation.\textsuperscript{113} Once again, the interrogating officer is instructed to narrow down the theme of the interrogation, and zone in one theory of culpability.\textsuperscript{114} After this, the officer then poses moral questions to the suspect and asks him to answer, one of which possesses no condemnation and justifies the alleged crime and the other of which is wrought with blame and moral turpitude.\textsuperscript{115} Lastly, the interrogator begins to insist that the suspect reveal details of the crime in their own words and pressures the suspect to make both a written and oral confession.\textsuperscript{116}

Sadly, the Reid Technique is just one of many complex psychological methods used by police interrogators to coerce confessions from presumptively guilty suspects. Yet, whatever technique the interrogator chooses to use, the basic framework for eliciting a false confession is generally the same.\textsuperscript{117} The first step involves convincing the suspect that his situation is

\begin{itemize}
\item \textsuperscript{110} \textit{Id.}
\item \textsuperscript{111} \textit{Id.}
\item \textsuperscript{112} \textit{Id.} at 217.
\item \textsuperscript{113} \textit{Id.}
\item \textsuperscript{114} \textit{Id.}
\item \textsuperscript{115} \textit{Id.}
\item \textsuperscript{116} \textit{Id.}
\item \textsuperscript{117} See Drizin & Leo, \textit{supra} note 104, at 914.
\end{itemize}
hopeless, that the evidence against him is so weighty, and that he will likely not survive interrogation unless he complies with the demands of detectives.\footnote{118} Once hopelessness, doubt, isolation, and fear are instilled in the suspect, the interrogator will generally offer reasons for the suspect to take responsibility for the crime and attempt to persuade him that it is in his best interest to confess.\footnote{119} The interrogator will often convince the suspect that the evidence against him is so momentous, that he could be the only person who could have possibly committed the crime.\footnote{120} In less common situations, the officer may even further the theory that the suspect acted unconsciously in commission of the crime or may even provide rational explanations for his sudden bout of amnesia.\footnote{121} Unfortunately, most Americans, and criminal suspects, do not know that interrogators are legally allowed to fabricate the evidence, and even generate outright lies, during interrogations, all in an attempt to compel a confession.\footnote{122} The lack of knowledge surrounding police interrogations, and the psychological tactics employed can, and has, certainly caused many innocent people real prison time.

*Children are Uniquely and Particularly Susceptible to False Confessions*

While one should begin to see how police interrogation tactics could render any person defenseless to making a false confession, juveniles are unique in their vulnerability and susceptibility to erroneous confessions. Children possess immutable characteristics, by virtue of their age, that make them particularly susceptible to wrongful confession to a crime.\footnote{123}

\begin{footnotes}
\item[118] See id.
\item[119] Id. at 914.
\item[120] Id. at 918.
\item[122] See id. at 7-8.
\item[123] Byod, *supra* note 101, at 402.
\end{footnotes}
First, juveniles are particularly vulnerable to both the authority of police officers and to the interrogation techniques that they employ.\textsuperscript{124} From an early age, most children are reared to believe that the police officers are the “good guys” or people, who they can turn to in times of trouble or need.\textsuperscript{125} Furthermore, due to their mental naivety, and their belief that police are inherently good, many children have difficulty believing that police officers would lie to them.\textsuperscript{126} Children do not necessarily see the interests of police officers as being adverse from their own, even in the police interrogation context.\textsuperscript{127}

Secondly, most children have a general desire to please authority figures.\textsuperscript{128} Research has demonstrated that children will go as far as to alter their answers to police questioning in an attempt to gratify or placate the officer.\textsuperscript{129} Given this vulnerability it is easy to see how “[t]actics like aggressive questioning, presenting false evidence, and leading questions may create unique dangers when employed with youths.”\textsuperscript{130}

Minors also possess less life experiences and mental resources that allow them to resist, and handle, the interrogation process than adults.\textsuperscript{131} Furthermore, as mentioned earlier, minors are prone to misunderstanding their legal rights and the consequences of the decisions that they make during examination, which renders them more likely to make fictitious confessions.\textsuperscript{132} This dilemma is further complicated by the fact that minors are impulsive and

\textsuperscript{124} See id.

\textsuperscript{125} Id. These officer friendly attitudes are often promoted in primary schools through “Officer Friendly” programs that teach children that law enforcement officers are kind and friendly people who will help them out in times of trouble. Id. at 402-03.

\textsuperscript{126} Id. at 402.

\textsuperscript{127} See id.

\textsuperscript{128} See id. at 403.

\textsuperscript{129} Id.

\textsuperscript{130} Feld, supra note 61, at 245.

\textsuperscript{131} Id. at 244.

\textsuperscript{132} See id.
tend to place more weight on short-term, as opposed to the long-term, consequences of their

Juveniles are also incapable of thinking as strategically as adults.\footnote{134}{Feld, supra note 61, at 244.} Strategy happens to be a crucial step for the survival of police interrogations, since the consequences of decisions made within seconds, could have such life-long consequences for a child’s entire future.\footnote{135}{See id.} Additionally, juveniles are more prone to taking responsibility for the actions of others than adults, due to unique adolescent social and familial pressures, again causing them to be more prone to confess.\footnote{136}{Id.}

\textit{Problems Associated with Making a False Confession}

Most juveniles who “break” under the intense pressure of interrogations, and falsely confess, do so out of a strong desire, and survival instinct, to free themselves of the grilling interrogation.\footnote{137}{See Drizin, supra note 26, at 272.} These youth truly believe that once free of the examination, they will be able to undo the damage of their confession.\footnote{138}{Id.} Unfortunately, these minors fail to understand how damaging confessions are, as well as the credibility and weight that they are often afforded at trial.\footnote{139}{Id.} It has been proven, time and time again, that confessions are the single \textit{most} damaging piece of evidence in a person’s criminal conviction, even in the face of physical evidence to the contrary.\footnote{140}{Id.} Studies have demonstrated that when a confession of guilt is introduced into
evidence, regardless of recantation, juries tend to overwhelmingly convict the defendant.\textsuperscript{141} Furthermore, law enforcement, on the whole, vehemently dislike admitting that they may have made a mistake during the interrogation process, because to do so would undermine their authority, credibility, and job performance.\textsuperscript{142} To complicate matters, judges rarely suppress recanted confessions, generally believing in their credibility.\textsuperscript{143} Lastly, some scholars have argued that defense attorneys tend to strongly encourage defendants, who have made a confession, to enter into plea arrangements, “thus making the false confession nearly impossible to expose.”\textsuperscript{144}

\textbf{Part VI: Proposed Reformations to the Existing Juvenile Judicial Model}

\textit{Proposed Reformation of Miranda Warnings}

Before discussing proposed reformations, it is important to note that I do not believe that the current juvenile judicial model should be abolished. As many academics in this area have argued, the current juvenile model is surprisingly effective.\textsuperscript{145} Supporting this argument is that fact that most minors who go through the juvenile justice system never re-offend.\textsuperscript{146} Furthermore, regardless of the criticism surrounding the current model, juvenile sanctions remain true to their goal of being rehabilitative in nature, as opposed to punitive, with juvenile courts often prioritizing public safety.\textsuperscript{147}

With that said, it has been proven time and time again, by legal and scientific scholars, that minors, on the whole, do not properly and fully comprehend Miranda warnings,\textsuperscript{141} \textsuperscript{142} \textsuperscript{143} \textsuperscript{144} \textsuperscript{145} \textsuperscript{146} \textsuperscript{147}
nor do they understand the significance and consequences associated with waiving these important rights. In order to alleviate this comprehension problem, I would propose that state legislatures address these problems by drafting a set of “juvenile friendly” Miranda warnings. Under the laws of the United States Constitution, no individual is ever forced to comply with a police interrogation against his will; rather, it is a decision to be made by the individual. In keeping with this protection, interrogators should be encouraged to stress to children that they have a choice as to whether or not to continue with interrogation, and emphasize to them that they are wholly free to choose having an attorney present. These suggested procedural changes could easily be implemented by incorporating these reformations into rudimentary police officer interrogation training programs.

Secondly, I would recommend that states do away with the totality of the circumstances test for determining whether or not a child has effectively waived his Miranda rights. The current totality of the circumstances test results in arbitrary judicial determinations, which do not serve as an adequate check on juvenile’s Fifth Amendment rights, due to the large amount of discretion afforded judges and the lack of guidance in implementation. Thus, I would advocate for states to adopt per se rules that would require that certain procedural steps to have been met before a court can even begin to decide whether or not a minor knowingly and voluntarily waived his Miranda rights.

Overall, per se rules have the effect of eliminate a significant amount of arbitrary judicial determinations and serve as a better guard to the protection of juveniles’ Fifth Amendment rights. Of the many per se rules that a state could implement, the most important, in my opinion, would be to require an attorney be consulted before the child waives

148 See id. at 268.
149 See generally U.S. Const. amend. V.
151 See id. at 368-69.
his Miranda rights. To make this feasible, I would advocate for states to create a position for an “on call” consultation attorney (or two) whose job it would be to meet with minors to discuss their Miranda rights prior to police interrogations. This attorney would not be the juvenile’s attorney throughout the entire course of the investigation and any judicial proceedings, but would simply be there to explain to the child their Miranda rights, while ensuring that the child understands their Fifth Amendment entitlements and their options. After consultation with the attorney, if the child wishes to have counsel appointed for them, interrogation would then cease until an attorney can be appointed to represent the minor.152

While I do understand the reality that requiring consultation with an attorney prior to interrogations is likely improbable, given limited state financial resources and the hindrance that this requirement poses to law enforcement, I do believe that this safeguard is absolutely necessary. After all, the Fifth Amendment right against self-incrimination is a non-negotiable entitlement afforded to all United States citizens, regardless of the annoyance that these added procedures would impose on law enforcement agencies. Furthermore, if truly innocent suspects are encouraged to comply with police investigations, through the help and guidance of attorneys, investigators will still be able to perform their role of fact-finding and crime solving, while better ensuring that innocent people remain innocent.

If states remain unwilling to create a position for a consultation attorney prior to juvenile interrogations, I would advocate that states at least mandate that a parent or interested adult be present before a child waives their rights. As of 2006, roughly twelve states had implemented this proposed recommendation prior to a child’s waiver being considered

152 “[I]n April 2000, Illinois lawmakers passed a measure requiring anyone younger than age thirteen to have a lawyer before facing police questioning in homicide and sexual assault cases. The statute requires that the police, at the very least, allow the juvenile to speak with an attorney over the phone before the police can begin their interrogation…. The original proposal for the legislation took this into consideration and mandated that statements taken without a lawyer present would be strictly inadmissible. It also required a lawyer for any criminal suspect younger than eighteen. However, law enforcement groups decried these strict proposals, maintaining that such restrictions would make it difficult for them to perform their jobs.” Id. at 375-76.
knowledgeable and voluntary. An interested adult or parent protects a child’s right against self-incrimination, in that his or her presence may serve to reduce police coercion. Furthermore, a parent can serve as a potential witness, preventing the child from disclosing incriminating statements, and helping the youth in knowing and understanding their options, among other benefits.

Not all scholars agree, however, as to the beneficial effects of requiring a parent or interested adult’s presence before and during interrogation, and their role as a safeguard of the child’s Fifth Amendment rights. As Professor Steven Drizin argues, the presence of a parent during interrogation of a child can actually be detrimental to the child’s Miranda rights and their accompanying decisions. Professor Drizin points out that parents of the juvenile suspects themselves may fail to understand the Miranda warnings, as well as the consequences and implications of waiving. Furthermore, the parent’s desires might be adverse to that of the child’s, in that the parent does not wish to hire legal counsel or get an attorney involved. Lastly, Professor Drizin notes that the parent’s interests might actually conflict with that of the child. He argues that the interested adult or parent might turn out to be the true culprit of the crime or could potentially be the alleged victim, thus running counter to the “best interests” of the child.


154 Byod, supra note 101, at 417.

155 Barry Feld, supra note 72, at 39.

156 Drizin, supra note 26, at 313.

157 Id.

158 Id.

159 Id.

160 Id.
While I certainly see the pros and cons of having a parent or interested adult present before a child waives his Miranda rights, and its accompanying effects on the minor, I believe that in this case, the benefits outweigh the costs of implementation. Situations will certainly arise in which it will not be in the child’s best interest to have a parent or interested adult at hand. I do believe, however, that on the whole, from the arguments outlined above, parents can actively and significantly help juveniles resist coercive police tactics that might wrongfully induce a confession.

**Proposed Reformation of Police Interrogation**

As is currently standard practice, police reports are the primary method implemented to capture what occurred during interrogation.\(^\text{161}\) Unfortunately these reports are biased and generally not an accurate indicator of what occurred during questioning.\(^\text{162}\) Thus, the single most important procedural reformation for interrogations of juveniles is for states to begin requiring police to videotape (including audio) the interrogation.\(^\text{163}\) Recording an interrogation has many known benefits. First, and probably most obvious, videotaping the interrogation allows the court, prosecutor, defense attorney, and jurors to hear what actually occurred during the questioning.\(^\text{164}\) Secondly, videotaping interrogations bolsters the reliability of statements purported to have been made during interrogation, which can have momentous consequential

\(^{161}\) Barry Feld, *supra* note 72, at 97.

\(^{162}\) *See id.*

\(^{163}\) *See generally Lisa Lewis, Rethinking Miranda: Truth, Lies, and Videotape, 43 Gonz. L. Rev. 199 (2007) [hereinafter Lewis]. “Recently, nineteen states have enacted or introduced laws that mandate the electronic recording of custodial confessions. However, the statutes provide no formidable sanctions for what has been shown to be the inevitable Miranda violation. For example, the District of Columbia limits electronic recording to ‘custodial interrogations of persons suspected of committing a crime of violence.’ The recording requirement is further limited in that, while police are required to capture the Miranda warnings and the suspect’s response, no sanction is imposed for failing to do so. Indeed, the statute permits police officers to “cure” the absence of the warnings by having the suspect state on tape that the warnings were previously given and waived.” *Id.* at 222-23. “To date, no state or federal court has found that the Due Process Clause of the Fourteenth Amendment requires police officers to electronically record interrogations. Alaska is the only state that has found that the recording requirement is necessary to protect the due process rights of suspects under its state constitution.” *Id.* at 223.

\(^{164}\) Barry Feld, *supra* note 72, at 93.
effects on the outcome of any particular case.\textsuperscript{165} Thirdly, videotaping moreover ensures the accuracy of other evidence regarding the interrogation presented to the court.\textsuperscript{166} Lastly, videotaping confessions have the added protection of determining whether a waiver of Miranda rights was voluntary and may help alleviate some of the problems associated with waivers.\textsuperscript{167}

Aside from providing additional safeguards for the defendant, videotaping interrogations also protects police, the district attorney, and interrogators from accusations of misconduct, coercion, and abuse.\textsuperscript{168} “A 1992 survey by the National Institute of Justice found that about one-third of all police departments in communities of 50,000 or more were already videotaping at least some interrogations, and that of the ones that did, 97 percent reported they found it useful.”\textsuperscript{169} Of course, in order for all of these benefits to be fully realized, it is necessary that states require that the entire interrogation process be taped, beginning prior to the administration of Miranda warnings.

Opponents of videotaping interrogations have argued that taping hinders a suspect’s ability to speak freely, fearing that the tape could be played in court or for others to see.\textsuperscript{170} The National Institute of Justice (NIJ) however, conducted a study of 2,400 law enforcement agencies and found that sixty percent of these agencies did not find a noteworthy difference in a suspect’s reluctant to confess when being taped versus not being taped.\textsuperscript{171} Other opponents, usually detectives within the police department, argue that taping confessions could lead to

\begin{thebibliography}
\bibitem{165}See id.
\bibitem{166}Id.
\bibitem{167}See id. at 92.
\bibitem{168}Id. at 94.
\bibitem{171}Id.
\end{thebibliography}
more suppression of non-videotaped statements or that videotapes could have the effect of making written confessions less believable.\textsuperscript{172} Another argument is simply that taping confessions is a “wasted” expense.\textsuperscript{173} Many law enforcement agencies argue that taping is expensive and time consuming, and that since the vast majority of cases never go to trial, the tapes simply constitute a waste of resources.\textsuperscript{174} Regardless of what opponents of videotaping have argued, the practice has been shown to be rather cost-effective and simple, given the advancement of recording technologies and relative ease with which it can be done.\textsuperscript{175} Despite the pros and cons of videotaping interrogations, the truth is that videotaping interrogations \textit{does} prevent false confessions.\textsuperscript{176}

Secondly, police departments need to reevaluate the effectiveness of current interrogation tactics. While detectives may be skilled, and successful, at securing confessions, the current tactics employed do not seem to make any distinction between guilty and innocent suspects. Present police interrogations appear to be confrontational and guilt-presumptive, as opposed to fact-finding and investigative, which naturally puts innocent children at risk for making false confessions.\textsuperscript{177} As part of a comprehensive investigational study of the Police and Criminal Evidence (PACE) Act of 1984 in the United Kingdom, which moved away from confrontational interrogation tactics to investigational tactics in police questioning, researchers

\textsuperscript{172} See \textit{id.}.


\textsuperscript{174} See \textit{id.}


\textsuperscript{176} See \textit{id.}

\textsuperscript{177} See \textit{id.} at 22.
found that the frequency in confessions did not drop when detectives used less psychologically manipulative approaches.\textsuperscript{178}

Lastly, one of the most bothersome aspects of the police interrogation process is the amount of tolerable deception that police are able to use in interrogation. While some state courts have held that outright fabrication of evidence is not permitted, while false assertions are; the Supreme Court has yet to define the parameters of acceptable deception in the interrogation room.\textsuperscript{179} The fabrication of evidence during interrogation is dangerous, and research has proven that when fictitious evidence is presented, the likelihood that an innocent suspect will falsely confess will inevitably increase.\textsuperscript{180} To combat this problem, state legislatures should consider adopting a per se rule that invalidates all juvenile confessions if police introduce false evidence during the interrogation.\textsuperscript{181} While the results of this suggested reform could seem harsh in some circumstances, it would certainly send the message to law enforcement agencies to be careful with how they conduct interrogations. Deception is not a necessary evil tolerated in other aspects of life and should not be afforded an exception in the interrogation room.

**Part V: Conclusion**

In concluding, one should begin to see the myriad of ways in which wrongful convictions can occur in the juvenile justice system. This paper mentioned just two points at which, in the juvenile judicial process, a wrongful conviction can occur, during the Miranda warnings and within the police interrogation context. It is important to note, however, that wrongful convictions can occur at almost any stage in the legal process. It can occur through mistaken witness identifications, access and quality of counsel, waiver of counsel, judicial

\begin{itemize}
  \item \textsuperscript{178} Id. at 24-25.
  \item \textsuperscript{179} See id. 25.
  \item \textsuperscript{180} Id. \textquote{[T]here is a strong support for the proposition that outright lies can put innocents at risk to confess by leading them to feel trapped by the inevitability of evidence against them.” Id.}
  \item \textsuperscript{181} See id. at 26.
\end{itemize}
advocacy, false guilty pleas, and limited avenues for post-conviction relief, just to name a few.  

As noted above, the current state of Miranda warnings fosters a particularly susceptible environment in which wrongful convictions are likely to occur. As has been proven scientifically and legally, children, by virtue of their psychological immaturity and limitations, are particularly vulnerable to not understanding the meaning and significance of Miranda warnings and the consequences associated with waiving. Furthermore, children, as well as many adults, fail to understand Miranda rights as an entitlement guaranteed to them by the United States Constitution that cannot be taken away from them by law enforcement officers and criminal interrogators.

Secondly, wrongful convictions are also further perpetuated during police interrogations. Many Americans, by virtue of the fact that they have never been exposed to a police interrogation, remain unaware as to the extent that powerful psychologically manipulative tactics are employed during criminal investigations of suspects. Many people remain ignorant to the fact that law enforcement officers, in most jurisdictions, are not taught how to conduct investigative examinations, but rather how to elicit confessions from unforthcoming suspects, regardless of actual guilt or innocence. As was noted above, juveniles are particularly susceptible to providing a false confession for a numerous of reasons. Juveniles tend to have a desire to please authority figures, possess less mental resources to deal with the coercive pressures of interrogation, are unable to strategize less effective than adults, and often fail to often see the long-term implications of making a false confession.

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182 See generally Drizin, supra note 26.

183 See King, supra note 80, at 440; see also Drizin, supra note 26, at 268.

184 See Drizin, supra note 26, at 269.

185 Id. at 270.

186 See Feld, supra note 61, at 244; see also Byod, supra note 101, at 402-03.
Furthermore, juveniles fail to comprehend how difficult it is to recant a confession, as well as the weight and credibility that it is often afforded at trial.\textsuperscript{187}

Among the many proposed reformations that attempt to limit the occurrence of wrongful convictions, perhaps the most important improvement to Miranda warnings would be for states to create a position for an attorney (or two) whose job it would be to consult with the child suspect prior to police interrogation to ensure that the child understands their Miranda warnings and is less susceptible to making decisions based on police coercion. In the alternative, states should consider adopting a “child-friendly” version of the Miranda warnings that would better ensure that children will understand their Fifth Amendment entitlements.

Suggested reformations during police interrogation of juveniles include mandating states to videotape police interrogations of juveniles. Research indicates that this practice not only reduces the chances that false confessions will enter into evidence at trial, but also safeguards law enforcements agencies and police from accusations of misconduct.\textsuperscript{188} Secondly, police should consider changing interrogation strategies to models implement by other countries, and some limited United States jurisdictions, that focus on fact-finding and investigation, as opposed to guilt-presumptive confrontation.

Despite what one might think of the current juvenile judicial model, it is no longer possible for us to turn a blind eye to wrongful convictions. It had been scientifically and legally documented that innocent people are found guilty, and that individuals do confess to crimes that they did not commit. While almost no proposed legal reformation is absolutely certain to do away with the possibility of an innocent juvenile going to prison, we can do a lot better than the status quo. There are many simple steps that states can take that will greatly decrease the number of innocent people in our prisons and those with wrongful criminal records, both of

\textsuperscript{187} See Drizin, \textit{supra} note 26, at 272-73.

\textsuperscript{188} See Kassin, \textit{supra} note 175.
which decrease societal productivity. "I didn't like to think about what that could do to the soul of a human being, to have to sit in a prison cell day after day for a crime you had not committed. And nothing to look forward to at the end of a day but the knowledge of hundreds more days like the one you just endured."\(^{189}\)