Communication Law Review
Volume 10, Issue 2

Arguments Against Use of the Reid Technique for Juvenile Interrogations

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INTRODUCTION

After three little boys were found sexually mutilated and murdered in a West Memphis, Arkansas ditch in 1993, Jesse Misskelley confessed to police that he participated in the crime along with two other teenagers.[1] He was a mentally handicapped seventeen-year-old, and he was alone.[2] Two officers interrogated him without parental consent and without an attorney present.[3] Though the facts of the case did not support many of his answers, which he gave in response to highly suggestive questions,[4] and nearly three hours of his interrogation were not videotaped, his confession was not suppressed.[5] In fact, Jesse and the two friends he implicated were convicted and have now been imprisoned for over fifteen years based solely on what most scholars and laypeople view as a compliant, false confession from a mentally-challenged juvenile.[6] One of the convicted teenagers, Damien Echols, was sentenced to death.[7] He writes:

> I've been asked many times if I am angry with Jesse for accusing me. The answer is no, because it's not Jesse's fault. It's the fault of the weak and lazy civil servants who have been abusing the authority placed in their hands by people who trust them. I'm angry with the police who would rather torture a retarded kid than look for a murderer . . . . We were nothing but poor trailer trash to them, and they thought no one would even miss us. They thought they could take our lives and the matter would end there, all swept under the rug. And it would have, if the world hadn't taken notice. No, I'm not angry at Jesse Misskelley.[8]

Although the interrogation of Jesse Misskelley is surprising to most and the consequences of his confession are horrific, the scenario is not uncommon. Most people simply cannot understand why someone would admit to a crime that he or she did not commit. But it happens. There is no way to document exactly how many false confessions lead to wrongful convictions in the United States because there is no organization collecting and assessing data on interrogations and confession reliability.[9] Yet, in a study of DNA exonerations by the Innocence

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[1] Misskelley v. State, 915 S.W.2d 702, 706-07 (Ark. 1996).
[2] *Id.* at 710, 711-12. In 1993, Misskelley's IQ was seventy-two and he read at a third-grade level. The court found this unpersuasive and held the boy's confession voluntary because Misskelley was seventeen years old.
[3] *Id.* at 710, 712-13. Misskelley's father was not asked for his consent until well into the interrogation at which point the detectives wanted to give the boy a polygraph. Misskelley's father verbally consented to the test. Interestingly, the polygraph was not the only technique the officers used in their day-long interrogation. The officers showed the teen a circle diagram, stating murderers were inside the circle and those helping to solve the crime were outside. The officers asked where Misskelley was in the circle. He did not respond to this, so the police showed him a photograph of one of the victims, and the boy still did not respond. Finally, after several hours of interrogation, one of the officers played an audio tape of a random young boy saying, "nobody knows what happened but me." It was then that Misskelley confessed.
[4] *See* Fiona Steel, *The West Memphis Three: Confessions*, TRUTV, http://www.trutv.com /library/crime/notorious_murders/famous/memphis/confess_6.html.
[5] Miskelley at 711-12; *see also id.*
[6] *See, e.g.,* Burk Sauls, *Synopsis of the Case*, FREE THE WEST MEMPHIS THREE, May 2000, http:// www.wm3.org/live/caseintroduction/synopsis (last visited April 13, 2009).
[7] Echols v. State, 936 S.W.2d 509, 545-46 (Ark. 1996).
[8] DAMIEN ECHOLS, ALMOST HOME: MY LIFE STORY VOL. 1 49 (iUniverse 2005).
[9] 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, 431 (1998).

Project, 27% of people convicted had falsely confessed.[10] Reasons cited range from duress and coercion to mental impairment and ignorance of the law.[11] Other possible reasons include the intense nature of questioning, coupled with promises of leniency.[12] Juveniles are not shielded from pressures such as these that cause false confessions. The answer to why a juvenile would admit to a crime he or she did not commit is likely in the interrogation technique police use to question the child.[13] Because most training manuals teach police to use the same technique regardless of the suspect's age, juvenile suspects are held to adult standards, but without the benefit of adult intelligence, experience, and autonomy.[14] As Jesse Misskelley and Damien Echols know all too well, the results can be ruinous.

This Article asserts the differences between juveniles and adults in the interrogation room rendering methods commonly used to question adult suspects improper for minors. Specifically, this Article criticizes the widespread use of the "Reid Technique®"[15] when interrogating juveniles, discusses the psychological consequences of that technique, and suggests alternative interrogation methods in order to safeguard juveniles before, during, and after questioning by police. Part I discusses cases and studies reflecting how courts view juvenile protection and explains why the unique characteristics of juveniles merit that protection in the interrogation room. Part II briefly outlines the nine steps of the Reid Technique of interrogation, discusses its use in police stations throughout the United States, and criticizes its application to juvenile interrogation. Finally, Part III highlights research discussing safeguards for minors in the interrogation room and then asserts that proper training is the key to overhauling the utility of the Reid Technique when questioning juveniles.

I.

"WHY PRETEND THAT A CHILD IS AN ADULT OR THAT A BLIND MAN CAN SEE?"[16]

The United States Supreme Court has had several occasions to address juveniles' rights in the criminal justice system.[17] However, observation of cases in the past fifty years reveals the Court's attitude toward juvenile suspects resembles a swinging pendulum as opposed to a linear, progressive approach.[18] When the first juvenile justice system began in 1899, courts respected the differences between children and adults and in doing so,

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[10] BARRY SCHECK, PETER NEUFELD & JIM DWYER, ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT 120 (New American Library 2003).
[11] InnocenceProject.org, False Confessions, http://www.innocenceproject.org/understand/False-Confessions.php (last visited April 13, 2009).
[12] Patrick M. McMullen, *Questioning the Questions: The Impermissibility of Police Deception in Interrogations of Juveniles*, 99 NW. U. L. REV. 971, 973 (2005).
[13] Miranda v. Arizona, 384 U.S. 436, 448 (1966) (stating police manuals are a valuable source in learning what actually occurs in the interrogation room).
[14] Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 222 (2006).
[15] Miranda v. Arizona, 384 U.S. 436, 449-58 (1966) (the "Reid Technique" was created by Fred. E. Inbau and John E. Reid in the 1950s and revised and enlarged in 1962 to become what is currently used today by most police agencies. *See* Charles D. Weisselberg, *Mourning Miranda*, 96 CAL. L. REV. 1519, 1530 (2008); s*ee also* John Reid & Associates, Inc., http://www.reid.com/training_programs/interview_overview.html (last visited May 4, 2009). The book is now in its fourth edition. FRED E. INBAU, JOHN E. REID, JOSEPH P. BUCKLEY & BRIAN C. JAYNE, CRIMINAL INTERROGATIONS AND CONFESSIONS, (4th ed. 2001).
[16] *Yarborough v. Alvarado*, 541 U.S. 652, 674 (2004) (Breyer, J., dissenting) (stressing that police knew Alvarado was a juvenile and should have considered this objective circumstance for the in-custody inquiry).
[17] *See, e.g., id.,* Haley v. Ohio, 332 U.S. 596 (1948), Gallegos v. Colorado, 370 U.S. 49 (1962), In re Gault, 397 U.S. 1 (1967), McKeiver v. Pennsylvania, 403 U.S. 528 (1971), Thompson v. Oklahoma, 487 U.S. 815 (1988), Stanford v. Kentucky, 492 U.S. 361 (1989), Roper v. Simmons, 543 U.S. 551 (2005).
[18] Tamar R. Birckhead, *The Age of the Child: Interrogating Juveniles after Roper v. Simmons,* 65 WASH. & LEE L. REV. 385, 387 (2008); *see also* Feld, *supra* note 14, at 224.

championed protection and rehabilitation of juveniles.[19] Cases emerging before the Supreme Court in the 1950s and 1960s reflected what critics of the system were asserting at the time – that juveniles need procedural safeguards, not just rehabilitation efforts.[20]

The Court first addressed juvenile confessions in *Haley v. Ohio*,[21] holding a juvenile's statement to police inadmissible because was questioned by two police officers over the course of five hours without receiving admonishment of his right to counsel or to remain silent.[22] In its decision, the Court emphasized that the fifteen-year-old boy had no adult guidance from anyone other than police during the interrogation.[23] Several years later, the Court reiterated its *Haley* message by stressing that age, in addition to having the absence of adult counsel, are determinative factors in admissibility of confessions to police.[24] *Haley* and *Gallegos* laid the foundation for *In Re Gault*, wherein the Court held that the Fifth Amendment's right to counsel and privilege against self-incrimination apply to juveniles during custodial interrogations.[25] This groundbreaking case essentially held that, like adults, children should be properly warned prior to interrogation.[26]

Since the 1980s, the public perception of increased juvenile crime led to more severe juvenile punishment.[27] The push for more procedural rights for children in the preceding decades arguably caused minor suspects more harm than good because the provision of the rights essentially placed them on the same level as adults, including in the interrogation room. For instance, in *Fare v. Michael C.*,[28] the first post-*Miranda* decision about juvenile confessions, the Court held that a boy's request to speak to his probation officer was not equivalent to invoking his right to counsel or right to remain silent.[29] Applying a totality of the circumstances test, the Court found that the boy effectively waived his Miranda rights because he was a sixteen-and-one-half-year-old who had prior experience with police.[30] Though *Michael C.* was decided as a *Miranda* case and not a Due Process case, it remains indicative of the modern Court's tendency to treat juveniles as adults for interrogation purposes.[31] Consider also *Yarborough v. Alvarado*, handed down in 2004, in which the Court ruled that subjective factors like age and experience are not determinative of whether a child is in "custody" for interrogation purposes.[32]

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[19] Birckhead, *supra* note 18, at 387.
[20] *See, e.g.,* Haley v. Ohio, 332 U.S. 599-601 (1948) (emphasizing a boy's due process rights during interrogation); Gallegos v. Colorado, 370 U.S. 49, 54 (1962) (holding a juvenile's waiver of rights must be treated with special care); In re Gault, 397 U.S. 1 (1967) (emphasizing the need for adult guidance when waiving Fifth Amendment rights).
[21] 332 U.S. 596 (1948).
[22] *Id.* at 601.
[23] *Id.* at 598.
[24] Gallegos v. Colorado, 370 U.S. 49, 54 (1962).
[25] In re Gault, 397 U.S. 1 at 55 (1967). One year earlier in Miranda v. Arizona, 384 U.S. 436 (1966), the Court held that suspects under interrogation are entitled to procedural safeguards and required police to give a warning of the suspect's right to remain silent and to counsel before questioning him or her.
[26] *Id*;. *see also* Feld, *supra* note 14, at 223.
[27] *See* Birckhead, *supra* note 18, at 388.
[28] 442 U.S. 707 (1979).
[29] *Id*. at 722-24.
[30] *Id.* at 726.
[31] *See* Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintellegent, and Involuntary Waivers of Miranda Rights*, 2006 WISC. L. REV. 431, 449 (2006).
[32] 541 U.S. 652, 664 (2004).

The pendulum is swinging back.[33] Four years ago, in *Roper v. Simmons,* the Court relied on common sense and scientific research to hold that teenagers are categorically different and not as culpable as adults, and therefore may not receive the death penalty.[34] According to the *Simmons* Court, juveniles differ from adults in three important ways: (1) they lack maturity and have an underdeveloped sense of responsibility; (2) they are susceptible to negative external influences like peer pressure; and (3) their personality traits are more transitory.[35] Although the *Simmons* majority focused on issues particular to capital punishment, the case sheds light on the Court's view of youths in the criminal justice system. The cited differences between adults and juveniles in the Eighth Amendment context should be no less applicable in the interrogation room.[36]

The *Simmons* Court's reliance on scientific studies is not surprising. Scientists and psychosocial experts have made breakthroughs in research on adolescents' brain development and how that affects their decision-making, reasoning, and social skills.[37] Scientists have discovered that the adolescent frontal lobe is not fully developed, which means they cannot reason like adults and their cognitive functioning is inferior to that of adults.[38] Because of this, juveniles tend to rely on emotions in decision making rather than the frontal lobe, and often "respond more strongly with gut response than they do with evaluating the consequences of what they're doing."[39] The general result is that youths are less risk averse and more impulsive than adults.[40]

This recent scientific research has sparked considerable legal opinion regarding juveniles' rights in the criminal justice system. There are consequences and dangers when children are expected to act as adults, but applying that expectation to the interrogation room is especially troubling. Even the *Miranda* Court conceded that the interrogation room contains "inherently compelling pressures,"[41] and "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals."[42] Due to adolescents' cognitive underdevelopment and psychosocial immaturity, they are more susceptible to the pressures and coercion that are inherent in a custodial interrogation.[43] They are also more easily influenced,[44] and may go along with what the police suggest because children are taught to trust and respect the police.[45] In addition to susceptibility, just the fact of being a juvenile can work against a youth in the interrogation room. Because of the public and police opinion of

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[33] *See* Birckhead, *supra* note 18, at 389.
[34] 543 U.S. 551, 569-70 (2005).
[35] *Id.* at 563.
[36] *See* Donna M. Bishop, *Joining the Legal Significance of Adolescent Developmental Capacities with the Legal Rights Provided by In re Gault*, 60 RUTGERS L. REV. 125, 148 (2007).
[37] *Id.* at 149 (citing ELIZABETH CAUFFMAN & LAURENCE STEINBERG, RESEARCHING ADOLESCENTS' JUDGMENTS AND CULPABILITY, IN YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 325, 326-27 (Thomas Grisso & Robert G. Schwartz eds., 2000)).
[38] *See* AM. BAR ASS'N, ADOLESCENCE, BRAIN DEVELOPMENT AND LEGAL CULPABILITY (2004), available at http://www.abanet.org/crimjust/juvjus/Adolescence.pdf.
[39] *See* Frontline: Inside the Teenage Brain (PBS television broadcast, Jan. 31, 2002), at http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/todd.html (last visited Apr. 13. 2009).
[40] Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHOL. REV. 53, 62 (2007) (citing Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescent: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003)).
[41] *Miranda* 384 U.S. at 467.
[42] *Id.*, at 455. The Court also states in note twenty-four that "interrogation procedures may even give rise to false confessions." *Id.* at 456.
[43] McMullen, *supra* note 12, at 994.
[44] *Id.* at 997.
[45] *See, e.g.*, Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Ration Choice and Irrational Action*, 74 DENV. U.L REV. 979, 1009 (1997).

juvenile crime, officers may be biased against juvenile suspects before even entering the interrogation room.[46] Although there is ample protection and attention paid to young victims and witnesses of crime, the opposite is true for young suspects.[47] In fact, age may serve as an aggravating factor working against the adolescent suspect and not as a mitigating one.[48]

Juveniles also need more protection during interrogation because they may not have the capacity to waive their *Miranda* rights. Indeed, research suggests that juvenile suspects do not understand the nature of those rights.[49] In fact, *Miranda* is cited as "little more than a speed-bump for officers when questioning adults and even less of an obstacle when interrogating juveniles."[50] In addition, and as science has explained, adolescents have a special vulnerability that raises the risk of false confessions.[51] Even the Court in *In Re Gault* stated the importance of insuring that a juvenile's admission is voluntary and "not the product of ignorance of rights or of adolescent fantasy, fright or despair."[52] Furthermore, because juveniles are not able to reason and predict as adults do, they simply do not realize that their admissions or confessions will almost guarantee conviction.[53] When assessing the history of juvenile justice, the current protective attitude of the Court regarding adolescent suspects and defendants, and the scientific and legal research establishing the profound differences between adults and adolescents, it is clear that juveniles require interrogation safeguards unique to their susceptibilities.

II.

INTERROGATING JUVENILES: THE REID METHOD

The priority in every criminal investigation is to acquire a confession because of the evidentiary power inherent in a voluntary, self-incriminating statement.[54] Thus, it is not surprising that most police officers receive training specific to interrogation methods.[55] The most widespread technique taught to officers and implemented in police stations nationwide is the Reid Method,[56] which continues to control interrogations despite its age of nearly fifty years.[57] The technique consists of steps that, although easy for officers to apply in the interrogation room, are

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[46] *See* Birckhead, *supra* note 18, at 394.
[47] *See, e.g.*, AMERICAN PROSECUTORS RESEARCH INSTITUTE, FINDING WORDS: HALF A NATION BY 2010 (2003) (guide used in Arkansas detailing how to question children who are potential victims of crime).
[48] *See* Birckhead, *supra* note 18, at 394.
[49] Barbara Kaban & Anne Tobey, *When Police Question Children: Are Protections Adequate?* 1. J. CENTER FOR CHILD. & CTS. 151, 155 (1999); *but see* Feld, *supra* note 14, at 314-15 (finding that teenagers sixteen years and older are similar to adults in understanding their rights).
[50] Steven. A. Drizin, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?* 34 N. KY. L. REV. 257, 266 (2007).
[51] *See* McMullen, *supra* note 12, at 994-95.
[52] *In Re Gault*, 397 U.S. 1 at 55.
[53] *See* Leo & Ofshe, *supra* note 9, at 429.
[54] *See* McMullen, *supra* note 12, at 972.
[55] Weisselberg, *supra* note 15, at 1530; *see also* Appendix A (attached to this Article, displaying responses to a Freedom of Information Act request seeking juvenile interrogation training materials from fourteen law enforcement agencies in the most populous areas of Arkansas; three sheriff's offices responded, the Arkansas State Police responded, and five city police stations responded. Though only two of the offices documented in writing that their officers receive training in and use the Reid Technique, all offices verbally affirmed this); *see also* Marvin Zalman & Brad Smith, *The Attitudes of Police Executives Toward Miranda and Interrogation Policies*, 97 J. CRIM. L. & CRIMINOLOGY 873, 920 (2007).
[56] *See* Weisselberg, supra note 15, at 1530; *see also* John Reid & Associates, Inc., http://www.reid.com/ training_programs /interview_overview.html (last visited May 4, 2009).
[57] *Miranda* 384 U.S. at 449; *see also* John Reid & Associates, Inc., http://www.reid.com/training_programs /interview_overview.html (last visited May 4, 2009).

potentially problematic for suspects, especially juvenile suspects.[58] Critics of the Reid Method cite to its psychological manipulation in asserting that, not only can this method lead to false confessions,[59] but it can also violate a suspect's constitutional rights.[60] Accordingly, this section discusses the widespread use of the technique, outlines the steps involved in a Reid interrogation, and explains its psychological effects.

A. The Prevalence of Reid Interrogations

John E. Reid & Associates is the largest, best-known provider of interrogation training in the United States.[61] Officers from every state and Canadian province use the Reid Method.[62] In fact, in a nationwide survey of police departments, two-thirds of respondents stated that some or most of their departments' officers received training in the Reid Method of interrogation.[63] Reid & Associates boasts that over 500,000 law enforcement and security professionals have attended its interrogation seminars since they were first offered in 1974.[64] Even United States military law enforcement utilizes the Reid technique.[65] Officers choose from a variety of course options, including a three-day course covering the basics of interrogation and a one-day advanced course, which advertises, "Excellent interrogators are not born, but are a result of hard work and proper training. The advanced seminar will increase your confession rate."[66]

Despite the company's tagline, "If it doesn't say 'The Reid Technique®' . . . it's not John Reid & Associates,"[67] most non-Reid interrogation training manuals follow principles that are generally aligned with the Reid method.[68] For instance, in a recent survey of police investigators from California, Texas, Maryland, Massachusetts, Florida and Canada, whether or not the respondent knew the Reid name, he or she cited to the same room set-up and interrogation techniques listed in the Reid method.[69] Thus, with or without the Reid branding and trademark, the majority of law enforcement in the United States subscribe to and execute the Reid Method when interrogating suspects.

B. Inside the Interrogation Room: The Steps of the Reid Method

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[58] Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHOL. REV. 53, 66-67 (2007).
[59] Welsh S. White, *False Confessions and the Constitution: Safeguards against Untrustworthy Confessions*, 32 HARV. C.R.-C.L. L. REV. 105, 119 (1997).
[60] *See, e.g.*, State v. Ritt, 599 N.W.2d 802 (Minn. 1999) (defendant claimed that her process rights were violated during a Reid interrogation, arguing the method can cause an innocent person to confess through "an elaborate web of implicit threats and promises until the suspect believes that confession is the best alternative, even though he or she is innocent." The Supreme Court of Minnesota found, under a totality of the circumstances test, her confession was voluntary and affirmed her conviction).
[61] *See* Weisselberg, *supra* note 15, at 1530; *see also* Zalman & Smith, *supra* note 55, at 919.
[62] John Reid & Associates, Inc., http://www.reid.com/training_programs /interview_overview.html (last visited May 4, 2009).
[63] Zalman & Smith, *supra* note 55, at 920.
[64] John Reid & Associates, Inc., http://www.reid.com/training_programs /interview_overview.html (last visited May 4, 2009).
[65] Peter Kageleiry, *Psychological Police Interrogation Methods: Pseudoscience in the Interrogation Room Obscures Justice in the Courtroom*, 193 MIL. L. REV. 1, 9 (2007).
[66] JOHN REID & ASSOCIATES, INC., THE REID TECHNIQUE OF INTERVIEWING AND INTERROGATION® (2009), available at http://www.reid.com/training_programs/2009seminarbrochure.pdf.
[67] John Reid & Associates, Inc., http://www.reid.com/training_programs /interview_overview.html (last visited May 4, 2009).
[68] *See* Scott-Hayward, *supra* note 58, at 66-67 (stating 85% of all interrogation manuals recommend a two-step process to determine guilt or innocence before starting the interrogation, just as Reid instructs; *see infra* note78); s*ee also* White, *supra* note 59, at 118 (saying most interrogators are trained to play on a suspect's weakness, which is the core of Reid interrogation; *see* Inbau, *supra* note 15 at 209-11).
[69] Saul M. Kassin, Richard A. Leo, Christian A. Meissner, Kimberly D. Richman, Lori H. Colwell, Amy-May Leach & Dana La Fon, *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 389 (2007).

The training seminars described in the preceding section are grounded in the Reid textbook, *Criminal Interrogation and Confessions*, by Fred E. Inbau, John E. Reid, and Joseph P. Buckley,[70] originally published in 1962. The *Miranda* Court confirmed the book's influence on police interrogation in the 1960s, criticizing the various steps of the method and stating that the training manual creates an atmosphere that "carries its own badge of intimidation."[71] The steps presented in the latest edition have not changed and are arguably more influential than ever, given their widespread use.[72]

Before unfolding the nine steps of Reid, the text lays the groundwork for interrogation.[73] First it defines the terms "interview" and "interrogation."[74] An interview is non-accusatory, the purpose of which is to gather information in a "free-flowing" and "relatively unstructured way."[75] An interrogation is accusatory, is conducted in a "controlled environment," and involves "active persuasion."[76] In an interrogation, the investigator should not take notes because he or she must wait for the truth before documenting anything.[77] Furthermore, an investigator should not interrogate a suspect unless he or she is "reasonably certain of the suspect's guilt." Thus, the Reid text suggests a two-step questioning procedure in which the investigator prejudges guilt for interrogation purposes.[78] The investigator first interviews the suspect to determine innocence or guilt; if the suspect appears innocent, the investigator simply detains him or her for an interview; if the suspect appears guilty, the investigator continues to the nine Reid steps of interrogation.[79]

The first step of interrogation involves "direct, positive confrontation"[80] in which the investigator initiates a "direct statement indicating absolute certainty of the suspect's guilt."[81] This is a maximization technique meant to intimidate and impress on the suspect the futility of denial.[82] The Reid text suggests that the investigator use the suspect's first name when initially accusing the suspect in order to gain psychological advantage.[83] Furthermore, the investigator should finger through a case file to "create the impression that it contains material of an incriminating nature about the suspect."[84] Maximization statements and actions in the initial step consequently increase the suspect's anxiety and generate a sense of hopelessness.[85]

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[70] Inbau, *supra* note 15.
[71] *Miranda,* 384 U.S. at 457.
[72] Weisselberg, *supra* note 15, at 1530.
[73] *See* Inbau, *supra* note 15, 5-9, 51-64 (distinguishing between interview and interrogation pages, stating the importance of the investigator being alone with the suspect in the interview room, and providing suggestions for setting up the room to establish privacy).
[74] *Id.* at 5-8.
[75] *Id.*
[76] *Id.* at 7-8.
[77] *Id* at 8-9.
[78] *See* Scott-Hayward, *supra* note 58 at 66 (stating the two-step process justifies the view of the interrogator the he or she will not interrogate an innocent person; citing Fadia M. Narchet, *Fla. Int'l Univ., Presentation at the American Society of Criminology 2004 Annual Meeting: A Qualitative Analysis of Classical and Modern Day Police Interrogation Manuals* (November 2004)).
[79] *Id.*
[80] Inbau, *supra* note 15, at 218.
[81] *Id.* at 219.
[82] Feld, *supra* note 14, at 261.
[83] Inbau, *supra* note 15, at 219-20.
[84] *Id.* at 219.
[85] Weisselberg, *supra* note 15, at 1532.

The second step is to develop a theme for the interrogation.[86] Essentially the investigator presents a "moral excuse" for the suspect's commission of the crime, a way of minimizing the conduct.[87] This step functions as a "face-saving alternative" to enable the suspect to confess.[88] Reid suggests statements such as, "anyone else under similar conditions or circumstances might have done the same thing."[89] Or the investigator could sympathize with the suspect while condemning the victim, accomplice, or anyone else who might be morally responsible.[90] During theme development, the investigator may cause the suspect to wrongly infer that the investigator will be lenient.[91] Thus, the suspect may confess simply as a means of escape.[92]

If steps one and two prove to be unsuccessful, step three teaches the investigator how to overcome the suspect's denial.[93] The text asserts that the investigator should anticipate a weak denial from the suspect, cut it off before the statement is completed, and interject with a reference to the suspect's guilt or the investigator's confidence in his or her position.[94] "As a general rule, this tactic will either terminate a guilty suspect's denial attempts or at least cause him to do so less frequently as the interrogation continues."[95]

Step four involves overcoming the suspect's objections or reasons for why the suspect did not commit the crime.[96] Investigators should attempt to disarm the suspect of any objections or at least use them for their own advantage by recognizing the objection,[97] rewarding the objection,[98] or turning the objection around.[99] The book further instructs that when the suspect offers multiple objections, he or she is likely guilty.[100] Steps five and six guide the investigator in recognizing the suspect's passive mood[101] and explain the process of retaining the suspect's attention by moving his or her chair closer to the suspect,[102] maintaining eye contact,[103] and asking hypothetical questions.[104]

In step seven, the investigating officer presents an alternative question to the suspect, similar to how a server encourages a customer to order dessert in order to pad his or her tip.[105] The investigator formulates a question that presents to the suspect a choice between two reasons for committing the crime.[106] For example, the officer asks, "Did you blow that money on booze . . . or did you need it to help out your family?"[107] If the suspect chooses the

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[86] Inbau, *supra* note 15, at 232.
[87] *Id.*
[88] Feld, *supra* note 14, at 261.
[89] Inbau, *supra* note 15, at 241.
[90] *Id.* at 254.
[91] Weisselberg, *supra* note 15, at 1532.
[92] *Id.*
[93] Inbau, *supra* note 15, at 305.
[94] *Id.* at 309-310.
[95] *Id.* at 312.
[96] *Id.* at 330-37.
[97] *Id.* at 333.
[98] *Id.* at 334.
[99] *Id.* at 335.
[100] *Id.* at 337.
[101] *Id.* at 345-52.
[102] *Id.* at 339.
[103] *Id.* at 341.
[104] *Id.* at 343.
[105] *Id.* at 352.
[106] *Id.* at 353.
[107] *Id.*

more morally acceptable answer, the investigator now has an incriminating admission.[108] Step eight illustrates how an investigator draws out a full confession through statements of reinforcement and general acknowledgement of guilt.[109] Finally, step nine stresses the importance of documenting the oral confession.[110]

C. The Psychological Effects of the Reid Method

As indicated by the *Miranda* Court's analysis,[111] there are serious psychological consequences to the Reid Method. As a group, the steps emphasize isolation, confrontation, and minimization,[112] creating powerful influence over a suspect's thinking.[113] As one Reid Method critic urges, "it is difficult to think of an interrogation method that begins with 'psychological domination' as *not* containing compelling pressures."[114] These pressures can affect the suspect's waiver of right to counsel and right against self-incrimination.[115] One concern is that investigators employ interrogation tactics before giving suspects Miranda warnings.[116] The *Miranda* Court assumed that the warnings would be given in an atmosphere free of the interrogation pressures,[117] but there is no requirement that waiver must occur before the investigator employs interrogation tactics.[118]

Another concern is that the pressures inherent in the interrogation room can also affect the suspect's ability to give a voluntary confession.[119] Citing to the isolation of the suspect in interrogation,[120] the "aura of confidence" in the suspect's guilt,[121] and the trickery and persuasion involved in manipulating the suspect to waive his constitutional rights,[122] the *Miranda* Court stated "interrogation procedures may even give rise to a false confession."[123] In fact, even the Reid text concedes that the techniques presented are "so psychologically sophisticated that they could induce an innocent person to confess."[124] Because the Reid steps indicate that a suspect who objects and denies commission of the crime is probably guilty,[125] an innocent suspect with any kind of weakness has a great deal to lose in the presence of a confident and persistent investigator.

The effect on suspects is not the only psychological danger lurking in the Reid Method. Although not as obvious, the technique also has psychological influence over the investigator.[126] Because Reid teaches that innocent people do not confess,[127] investigators are lulled into a false sense of security in applying interrogation tactics.[128]

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[108] *Id.* at 214.
[109] *Id.* at 366-67.
[110] *Id.* at 374-97.
[111] *Miranda*, 384 U.S. at 448-56 (stressing interrogation is psychologically oriented and can involve mental coercion, emotional appeals, duress, lack of food and sleep, and trickery.)
[112] *See* Feld, *supra* note 14, at 243.
[113] *See* Weisselberg, *supra* note 15, at 1538.
[114] *Id.*
[115] *Id.* at 1591.
[116] *Id.*
[117] *Miranda*, 384 U.S. at 536 (Justice White's dissent).
[118] *See* Weisselberg, *supra* note 15, at 1591.
[119] *See, e.g.*, White, *supra* note 59 at 119.
[120] *Miranda*, 384 U.S. at 455.
[121] *Id.*
[122] *Id.*
[123] *Id.* at 456.
[124] Inbau, *supra* note 15 at 212.
[125] *Id.* at 337.
[126] *See, e.g.*, Leo & Ofshe, *supra* note 9, at 441-43 (discussing interrogators' inducement of confessions despite having no training about the danger of false confessions).
[127] Inbau, *supra* note 15 at 212.
[128] Leo & Ofshe, *supra* note 9, at 443.

Investigators learn the steps, apply the strategies, and seek confessions from suspects without receiving training on how to avoid eliciting confessions or how to detect false confessions.[129] Furthermore, investigators are not educated on the "pseudoscience" behind Reid's psychological interrogation methods.[130] Specifically, the technique misleads interrogators into believing guilt can be inferred from the suspect's demeanor and behavior without educating them about psychology, social psychology, and characteristics of a false confession.[131] Encouraging investigating officers to proceed through nine steps intended to psychologically manipulate suspects to confess is unfair for both suspect and investigator. Without proper education and training in psychology, investigators are not equipped to perform such a task.[132] In fact, research supports the notion that officers are not any better than laypeople at distinguishing a false confession from a true confession.[133] One study showed detectives could accurately detect false statements 55.8 percent of the time, whereas college students could do so 52.8 percent of the time, neither of which is better than someone flipping a coin.[134]

Given the psychological pressures on suspects in the interrogation room and investigators' false sense of security in applying the Reid Method, a perfect storm occurs when the suspect is a juvenile. Despite the documented differences between adults and juveniles and the modern Court's protective attitude toward minors, most investigators do not alter the nine Reid steps when interrogating a juvenile.[135] The Reid text makes no attempt to offer minor suspects more protection than their adult counterparts.[136] However it does emphasize certain techniques to promote juvenile confessions.[137] This is troublesome because minors are one of a few groups considered highly susceptible to giving false confessions.[138] Cognitive traits unique to a juvenile, such as desire to please authority, when combined with the Reid steps, may result in false admissions of guilt.[139] Furthermore, certain questioning methods, such as repeated, coerced, and leading questions, may cause children to give inaccurate statements and pressure them to provide the "right" answer.[140] Thus, the Reid Method of interrogation creates psychological consequences for both the interrogator and the suspect, especially a juvenile suspect.

III.

PROPOSALS FOR A PROPER JUVENILE INTERROGATION METHOD

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[129] *Id.*
[130] Kageleiry, *supra* note 65, at 25.
[131] Leo & Ofshe, *supra* note 9, at 493.
[132] Kageleiry, *supra* note 65, at 25.
[133] Saul M. Kassin, *Human Judges of Truth, Deception, and Credibility: Confident but Erroneous*, 23 CARDOZO L. REV. 809, 814 (2002).
[134] *Id.* (citing Saul M. Kassin & Christina T. Fong, "*I'm Innocent!": Effects of Training on Judgments of Truth and Deception in the Interrogation Room*, 23 LAW & HUM. BEHAV. 499 (1999)).
[135] *See* Scott-Hayward, *supra* note 58, at 66; *see also* Weisselberg, *supra* note 15, at 1576; *see also* Appendix A (attached to this Article, displaying responses to a Freedom of Information Act request seeking juvenile interrogation training materials from fourteen law enforcement agencies in the most populous areas of Arkansas; three sheriff's offices responded, the Arkansas State Police responded, and five city police stations responded. Though only two of the offices documented that their officers receive training in and use the Reid Technique, all offices verbally reported that they do not alter the Reid Technique when interrogating juveniles).
[136] Drizin, *supra* note 50, at 275.
[137] *See* Inbau, *supra* note 15, at 293 (when two or more juveniles are suspected of a joint crime, the interrogator is to play one against the other, telling one suspect that he learned about "his part" from the other suspect(s)).
[138] *See* Scott-Hayward, *supra* note 58, at 67; *see also* White, *supra* note 59, at 120-130 (also susceptible are mentally retarded and highly suggestible suspects).
[139] *See* Brickhead, *supra* note 18 at 394.
[140] Drizin, *supra* note 50, at 275.

Though no one has explicitly recommended the invalidation of the Reid Method for interrogating juveniles, there are numerous scholarly suggestions for how to protect minors under interrogation, ranging from limiting the length of questioning to refashioning a line of Supreme Court cases to guard against coerced waivers of rights.[141] Furthermore, no article yet compiles a list of these policy recommendations from juvenile interrogation scholars. Therefore, this section discusses the current recommendations and asserts that if the Reid Method remains a legal procedure for questioning juveniles, proper training is the key to fair implementation.

A. Inside the Interrogation Room

One of the most common proposals for protection of juvenile suspects is to require videotaping of all interrogations.[142] This requirement would deter police from egregious interrogation tactics[143] and also allow for the courts, policymakers, and police to directly regulate questioning of juveniles.[144] In fact, some argue that without videotaping, no other safeguard would succeed because documenting the interrogation ensures a complete record of any other mandatory safeguard in place to protect juveniles in the interrogation room.[145]

Another common recommendation is to require the presence of a parent during a juvenile interrogation.[146] However, because a parent or guardian provides more comfort than legal counsel, an even more popular recommendation is to require the presence of an attorney during the interrogation of juvenile suspects.[147] Some would specifically require the juvenile to consult with an attorney before waiving his or her *Miranda* rights.[148] Ideally, this would ensure a knowing and intelligent waiver and shield against any inappropriate questioning by the police, without the conflict inherent in having a parent fulfill this role.[149] Yet another argument is to provide simpler warnings to the juvenile suspect, something more elementary than *Miranda* warnings.[150] This proposal would require police to break down and explain each right in an expansive manner and require juveniles to respond with more than a simple "yes."[151]

Other proposals focus on interrogation procedures. For instance, one proposal is to limit the length of juvenile interrogation in order to guard against coerced confessions.[152] This is because an interrogation's length seems directly related to its likelihood of producing false statements.[153] In fact, one study showed that police elicited 85% of false confessions from juveniles after interrogations conducted for six hours or more.[154] Due to the

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[141] Weisselberg, *supra* note 15, at 1593.
[142] *See, e.g.,* Scott-Hayward, *supra* note 58 at 73-74; Feld, *supra* note 14 at 304-07; White, *supra* note 59, at 153-55 (arguing for a videotaping requirement of both juvenile and adult suspects under interrogation).
[143] *See* Brickhead, *supra* note 18 at 444.
[144] Feld, *supra* note 14 at 304.
[145] *See* Scott-Hayward, *supra* note 58 at 73; *see also* Tracy Lamar Wright, *Let's Take another Look at that: False Confession, Interrogation, and the Case for Electronic Recording*, 44 IDAHO L. REV. 251, 273 (2007).
[146] *See* Cara A. Gardner, *Failing to Serve and Protect: A Proposal for an Amendment to a Juvenile's Right to a Parent, Guardian, or Custodian During a Police Interrogation after State v. Oglesby*, 86 N.C. L. REV. 1685, 1701-09 (2008) (arguing that a parent, guardian, or even caretaker should be allowed in the interrogation room to guarantee protection of a juvenile's rights).
[147] S*ee* Drizin, *supra* note 50, at 313; *see also* Ellen Marrus, *Can I Talk Now?: Why Miranda Does Not Offer Adolescents Adequate Protections*, 79 TEMP. L. REV. 515, 532 (2006) (stating a parent might even add to the coercive nature of the interrogation).
[148] Drizin, *supra* note 50, at 313.
[149] Marrus, *supra* note 147 at 532-33.
[150] Scott-Hayward, *supra* note 58 at 71.
[151] *Id.*
[152] *See e.g.,* White, *supra* note 59, at 142.
[153] *Id.* at 143.
[154] Feld, *supra* note 14, at 316.

relationship between length of interrogation and the propensity of suspects to provide false information, some even argue that interrogators should be required at the beginning of the questioning to inform the suspect of the maximum possible length of interrogation.[155]

Another proposal is to ban the use of deception during juvenile interrogations.[156] Supporters of this proposal suggest a per se bar on admission of juvenile confessions in which interrogators misrepresent the evidence or give promises of leniency.[157] Yet, others argue that only certain types of deception, such as assertions of false evidence incriminating the juvenile suspect, should render a confession involuntary and inadmissible.[158]

B. Outside the Interrogation Room

Some scholars seek solutions outside the interrogation room for protection of juvenile suspects. For instance, one argument is to create a juvenile Innocence Project.[159] A survey reveals that few, if any, projects in the Innocence Network take cases from juvenile courts.[160] Another recommendation is to leave juvenile interrogation concerns to the Supreme Court and legislature to draw bright-line rules via decisions and statutes.[161] For example, because the Court has tolerated interrogation practices that diminish the effectiveness of *Miranda*, the Court should refashion cases specific to a juvenile's waiver of rights.[162] The Court should also provide guidance to trial judges by explaining the role of juvenile vulnerabilities and how they can impact a confession's reliability.[163] Additionally, legislators should pass statutes outlawing police deception or to require investigators to alert prosecutors to their use of trickery in a given case.[164]

Some arguments support the states' use of per se rules concerning juvenile confessions.[165] States including Colorado, Kansas, Massachusetts, North Carolina, and Oklahoma established the "interested adult test" to determine the admissibility of a juvenile's confession.[166] This test requires courts to consider whether the child had the opportunity to consult with a parent, guardian, or interested adult before or during the interrogation in assessing the voluntariness of the confession.[167]

Further recommendations also focus on confession reliability for trial purposes. Some argue that expert testimony is needed to aid judges and juries in deciding whether a juvenile confession is admissible.[168] Psychologists could offer insight into adolescent brain development and how that affects a juvenile's perception of waiving rights and making statements.[169] Experts could also testify as to the counterintuitive nature of false confessions. One

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155 *Id.*
156 *Id.*
157 McMullen, *supra* note 12, at 999.
158 White, *supra* note 59, at 145-46.
159 Drizin, *supra* note 50, at 321.
160 *Id.*
161 *See* Birckhead, *supra* note 18, at 443 (stating such rules should be based on characteristics of the juvenile, such as age and IQ, as well as the type of offense).
162 Weisselberg, *supra* note 15, at 1592-93.
163 Dale E. Ives, *Preventing False Confessions: Is Oickle up to the Task?*, 44 SAN DIEGO L. REV. 477, 498 (2007).
164 Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 FORDHAM URB. L.J. 791, 835 (2006).
165 *See e.g.*, Nashiba F. Boyd, *I Didn't Do it, I was Forced to Say that I Did": The Problem of Coerced Juvenile Confessions, and Proposed Federal Legislation to Prevent them*, 47 HOW. L.J. 395, 416 (2004).
166 *Id.* 416-417
167 *Id.*
168 Birckhead, *supra* note 18, at 446-47.
169 *Id.*

scholar states "because the phenomenon of false confessions is so misunderstood, expert testimony is paramount to explaining the million dollar question that every juror wants answered: Why would a person confess to a crime that he did not commit?"[170] In addition to providing expert testimony, defense counsel should move for full suppression hearings when there is an indication of police deception.[171] Another suggestion for the defense is to move for jury instructions that allow the jury to consider the circumstances of the confession.[172] Such circumstances could be whether the juvenile was misled about the evidence or whether the police gave false information or promises.[173]

C. Training

The recommendations in the preceding sections could spark the reform needed to adequately protect juvenile suspects under interrogation. However, many of these arguments have flaws. For instance, because the Reid Method is sanctioned by the Supreme Court,[174] videotaping the use of the technique does not decrease or eliminate the psychologically coercive effects on juveniles. It just documents them. Additionally, the presence of a parent or attorney during the interrogation seems protective on the surface, but there is no guarantee that a juvenile suspect will feel any less threatened by a parent or a strange authority figure than he or she would by a police officer.[175] Furthermore, the Supreme Court is divided in how it views *Miranda* and how to measure its safeguards, so a refashioning of cases to protect juvenile suspects from being coerced into waiving their rights and falsely confessing is highly unlikely.[176]

Therefore, this section asserts that the Reid Method should not be applied as is to juveniles under interrogation. The psychological nature of the nine steps is problematic when coupled with the unique vulnerabilities of juveniles.[177] The risk of false confessions is too high.[178] However, such a per se ban of the Reid technique is not practical considering its widespread use[179] and the hesitancy of the Court to involve itself in the matter.[180] Accordingly, this section proposes that training is the key to a fairer Reid Method for interrogating juvenile suspects.

Training is the natural starting position from which to cure the defects of the Reid technique. After all, "training is the link between the Supreme Court's pronouncements and the way in which interrogations are conducted in every day police stations."[181] First, police need training and education on the phenomenon of false confessions[182] because the Reid Method asserts that innocent people do not confess to crimes.[183] Investigators should also receive training on the unique characteristics of juveniles that could cause them to falsely confess.[184] Experts should direct courses in which officers learn about the biological and psychosocial differences between

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[170] Julie E. Bear & Scott A. Bresler, *Overshadowing Innocence*, 31DEC CHAMPION 16, 19 (2007).
[171] Gohara, *supra* note 164, at 837.
[172] *Id.*
[173] *Id.* at 838 (arguing this in addition to the suppression hearing).
[174] *See Miranda*, 384 U.S. 436 (1966).
[175] Marrus, *supra* note 147, at 532.
[176] Weisselberg, *supra* note 15, at 1593.
[177] Scott-Hayward, *supra* note 58, at 67.
[178] White, *supra* note 59, at 145-146 (also mentally retarded and highly suggestible suspects).
[179] Weisselberg, *supra* note 15, at 1530.
[180] Weisselberg, *supra* note 15, at 1593.
[181] Weisselberg, *supra* note 15, at 1521.
[182] Kageleiry, *supra* note 65, at 3-4.
[183] Inbau, *supra* note 15, at 212.
[184] Joanna S. Markman, *In Re Gault: A Retrospective in 2007: Is it Working? Can it Work?*, 9 BARRY L. REV. 123, 140 (2007); *see also* Birckhead, *supra* note 18, at 447.

juveniles and adults.[185] Equipping police officers with the hard science of adolescent brain development should assist them in applying the pseudoscientific steps of the Reid Method. With the appropriate training, officers would be more cognizant in applying the steps of the Reid Method and more sensitive to tactics that might cause a minor suspect to give false information.[186]

Police officers are not alone in their lack of proper training. Defense lawyers also need to be educated in areas of juvenile justice, juvenile competency, and adolescents' sociological and biological development.[187] Additionally, juvenile defense lawyers should embrace their role as zealous advocates and spend more time investigating before taking pleas.[188] Judges and prosecutors also require specialized training to stay current in both law and scientific research of adolescent development.[189] Training efforts will keep them informed and better equipped to make decisions on the issues that emerge from juvenile interrogations: reliability of confessions, susceptibility to coercion, and understanding of Miranda warnings.[190]

CONCLUSION

Due to the unique psychosocial vulnerabilities of adolescents, interrogators should treat juvenile suspects differently than adult suspects. Although sanctioned by the Supreme Court, the Reid Technique of interrogation is not suitable for questioning juveniles. Because of their unique vulnerabilities and cognitive differences, juveniles are more susceptible to the coercion and suggestibility inherent in the nine steps of the Reid Technique. Despite a recent Supreme Court decision establishing that juveniles are categorically different than adults and should not be held to an adult standard, it seems unlikely that the Court will soon outlaw the use of the Reid Technique of interrogation. Thus, the best practical solution at this time is to properly train police, attorneys, and judges to respect the differences between adults and juveniles and to be more sensitive to juvenile interrogation issues such as understanding of warnings, reliability of confessions, and susceptibility to pressure.

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[185] Drizin, *supra* note 50, at 316.
[186] Scott-Hayward, *supra* note 58, at 72.
[187] Drizin, *supra* note 50, at 315.
[188] *Id.*
[189] *Id.* at 316.
[190] *Id.*