

## QUESTIONING GENDER: POLICE INTERROGATION OF DELINQUENT GIRLS

*Barry C. Feld\**

Early juvenile courts emphasized a child's "best interests" and treated youths differently based on personal characteristics such as race and gender.<sup>1</sup> Progressive reformers expected judges to handle boys and girls differently because their circumstances and needs differed.<sup>2</sup> Juvenile courts processed boys primarily for criminal behavior and girls for noncriminal status offenses—e.g. runaway, incorrigibility, or sexual precocity.<sup>3</sup> In the 1970s, efforts to deinstitutionalize status offenders led to substantial declines in the numbers of girls detained and confined for noncriminal misconduct.<sup>4</sup> More recently, juvenile justice officials and the public perceived an increase in violent crimes like simple assault committed by girls.<sup>5</sup>

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\* Centennial Professor of Law, University of Minnesota Law School. B.A. University of Pennsylvania; J.D., University of Minnesota; Ph.D. Harvard University.

1. See generally BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* (1999) (tracing the juvenile court's transformation from a rehabilitative social welfare agency to a scaled-down criminal court); GEOFF K. WARD, *THE BLACK CHILD-SAVERS: RACIAL DEMOCRACY AND JUVENILE JUSTICE* (2012) (outlining a racial history of America's juvenile justice system).

2. See generally Kimberly Kempf-Leonard, *The Conundrum of Girls and Juvenile Justice Processing*, in OXFORD HANDBOOK OF JUVENILE CRIME AND JUVENILE JUSTICE 485 (Barry C. Feld & Donna M. Bishop eds., 2012) (discussing the difficulties girls face in the juvenile justice system and recommending further understanding of these problems to better help girls in the juvenile justice system); ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (2d ed. 1977) (analyzing the handling of juvenile offenders before and after the creation of a separate judicial system for juveniles); STEVEN L. SCHLOSSMAN, *LOVE AND THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF "PROGRESSIVE" JUVENILE JUSTICE 1825–1920* (1977) (discussing the juvenile justice system in its formative period).

3. See, e.g., Kempf-Leonard, *supra* note 2, at 489–95; SCHLOSSMAN, *supra* note 2, at 178–80; Steven Schlossman & Stephanie Wallach, *The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era*, 48 HARV. EDUC. REV. 65, 70–76 (1978).

4. Barry C. Feld, *Violent Girls or Relabeled Status Offenders? An Alternative Interpretation of the Data*, 55 CRIME & DELINQ. 241, 242 (2009).

5. See Lawanda Ravoira & Vanessa Patino, *Girl Matters: Unfinished Work*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 157, 165 (Nancy E. Dowd ed., 2011) (noting "a growing misperception that girls are becoming more violent"); Darrell Steffensmeier & Jennifer Schwartz,

This, in turn, led policy makers and scholars to reexamine changing patterns of offending and the role of gender in the juvenile justice system.<sup>6</sup>

An important but seldom studied aspect of justice administration is police interrogation of suspects. In the vast majority of cases, the real trial occurs during police questioning. Once a suspect confesses, the advantage tilts strongly to the State and often leads to guilty pleas. Despite its crucial role, legal scholars and criminologists have conducted remarkably little research on how police question adult criminal suspects.<sup>7</sup> They have conducted even fewer studies on how police question juvenile suspects.<sup>8</sup> Researchers have not conducted *any* studies on whether or how police question juvenile girls differently than juvenile boys.<sup>9</sup> Are there genders differences in how youths waive *Miranda* or in how police treat youths in interrogation? Do police question, and do boys and girls respond differently in the interrogation room? How do justice system personnel perceive girls in the interrogation room,

*Trends in Girls' Delinquency and the Gender Gap: Statistical Assessment of Diverse Sources*, in THE DELINQUENT GIRL 50, 50–51 (Margaret A. Zahn ed., 2009); Feld, *supra* note 4, at 241–42; Crystal A. Garcia & Jodi Lane, *What a Girl Wants, What a Girl Needs: Findings from a Gender-Specific Focus Group Study*, 59 CRIME & DELINQ. 536, 536 (2013).

6. See Meda Chesney-Lind & Nikki Jones, *Introduction to FIGHTING FOR GIRLS: NEW PERSPECTIVES ON GENDER AND VIOLENCE* 1, 1–2 (Meda Chesney-Lind & Nikki Jones eds., 2010) (“[C]hanges in the policing of girlhood and changes in girls’ structural and situational circumstances, rather than essential changes in girls’ behavior, largely explains the significant increases in girls [sic] arrests, particularly for simple assault.”); Barry C. Feld, *Girls in the Juvenile Justice System*, in THE DELINQUENT GIRL, *supra* note 5, at 225 (analyzing the perceived increase in violent offenses committed by girls and comparing treatment of boys and girls in the juvenile justice system); Kimberly Kempf-Leonard, *Race and Sex Disparity in Juvenile Justice Processing*, in HANDBOOK OF JUVENILE FORENSIC PSYCHOLOGY AND PSYCHIATRY 53 (Elena L. Grigorenko ed., 2012) (describing gender disparities in the juvenile justice system); THE DELINQUENT GIRL, *supra* note 5 (providing a compilation of research on delinquency among girls). See generally Darrell Steffensmeier et al., *An Assessment of Recent Trends in Girls’ Violence Using Diverse Longitudinal Sources: Is the Gender Gap Closing?*, 43 CRIMINOLOGY 355 (2005) (using the Uniform Crime Report, National Crime Victimization Survey, Monitoring the Future, and National Youth Risk Behavior Survey to examine trends in girls’ violence and the gender gap in juvenile justice).

7. See, e.g., RICHARD A. LEO, POLICE INTERROGATION AND AMERICAN JUSTICE 4–5 (2008) [hereinafter LEO, POLICE INTERROGATION]; Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 266 (1996) [hereinafter Leo, *Interrogation Room*].

8. See BARRY C. FELD, KIDS, COPS, AND CONFESSIONS: INSIDE THE INTERROGATION ROOM 2 (2013) [hereinafter FELD, KIDS, COPS, AND CONFESSIONS]. See generally Barry C. Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 L. & SOC’Y REV. 1 (2013) [hereinafter Feld, *Real Interrogation*] (analyzing police interrogations of older youths accused of felonies).

9. See FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8.

and do those perceptions affect police practices? This Article presents quantitative and qualitative data to answer these questions.

The Article proceeds in three parts. Part I reviews the origins of juvenile courts and their disparate treatment of girls. It then examines court decisions about interrogating juveniles, developmental psychological research on adolescents' competence to exercise legal rights, and prior research on police interrogation. Part II describes the data and methodology in this study. Since 1994, Minnesota has required police to record custodial interrogations of criminal suspects including juveniles. The study analyzes 307 interrogation case files of sixteen- and seventeen-year-old male and female delinquents charged with felony offenses. The case files include interrogation tapes and transcripts, police reports associated with the offense for which officers questioned youth, court petitions, and sentences. Of the 307 interrogations, police questioned thirty-three female suspects. I interviewed thirty-nine justice system personnel about their perceptions of girls in the interrogation room. Part III presents and analyzes quantitative and qualitative data. The quantitative data reveal remarkably few differences in how police questioned male and female delinquents. The boys and girls waived *Miranda* rights at statistically similar rates and police used similar tactics to question them. Despite their objective similarities, interviews with juvenile justice personnel report substantial differences in how they perceive boys and girls. While some described girls as more cooperative than boys, most offered much more negative characterizations of females, describing them as emotional, confrontational, or verbally aggressive. Should we be concerned that even if *Miranda* waivers and questioning appear objectively similar, juvenile justice personnel may hold inappropriate gender stereotypes? If police question boys and girls similarly, then do negative gender stereotypes matter?

#### I. JUVENILE JUSTICE ADMINISTRATION: GENDER AND POLICE INTERROGATION

Progressive reformers created juvenile courts to separate children from adult offenders and to rehabilitate and treat them rather than to punish them for their crimes.<sup>10</sup> Delinquency

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10. See generally DAVID J. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA (1980) (detailing the history of America's prison system as a means for rehabilitation and treatment of offenders); ELLEN RYERSON, THE BEST-LAID PLANS: AMERICA'S JUVENILE COURT EXPERIMENT (1978) (explaining that reformers modified the juvenile justice system in a good faith effort to create a constructive system to help juvenile offenders); DAVID S. TANENHAUS, JUVENILE JUSTICE IN THE MAKING (2004) (displaying the structural and conceptual changes in the juvenile justice system over time); Franklin E. Zimring, *The Common Thread: Diversion in Juvenile*

proceedings focused on a child's background and welfare rather than on the facts of a crime, and juvenile courts dispensed with formal procedures such as lawyers, juries, or rules of evidence.<sup>11</sup>

In 1967, the Supreme Court in *In re Gault*<sup>12</sup> began a due process revolution that transformed the juvenile court from a social welfare agency into a more formal, legal institution.<sup>13</sup> Among other procedural safeguards, *Gault* recognized that the Fifth Amendment privilege against self-incrimination extended to delinquents.<sup>14</sup> Although Progressive reformers rejected procedural safeguards, *Gault* and its progeny transformed their conception of juvenile courts as a social welfare agency and precipitated the procedural convergence with criminal courts.<sup>15</sup> By adopting some criminal procedures, the Court shifted juvenile courts' focus from a child's "real needs" to proof of criminal acts and formalized the connection between crimes and sanctions.<sup>16</sup>

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*Justice*, 88 CALIF. L. REV. 2477 (2000) (explaining the policy motivations of those who created the juvenile justice system in America).

11. See FELD, *supra* note 1, at 46–47; TANENHAUS, *supra* note 10, at 23–25 (describing Cook County, Illinois's first juvenile court).

12. 387 U.S. 1 (1967).

13. See, e.g., FELD, *supra* note 1, at 165; ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 89–96 (2008); Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 MINN. L. REV. 141, 141–42 (1984) [hereinafter Feld, *Criminalizing Juvenile Justice*]; Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 821 (1988) [hereinafter Feld, *Punishment, Treatment*]; Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 691–92 (1991) [hereinafter Feld, *Transformation—Part I*].

14. *Gault*, 387 U.S. at 55; see also Feld, *Criminalizing Juvenile Justice*, *supra* note 13, at 154–55.

15. Subsequent Court decisions emphasized the criminal nature of delinquency proceedings. See, e.g., *Breed v. Jones*, 421 U.S. 519, 541 (1975) (holding that the double jeopardy protections of the Fifth Amendment precluded criminal re-prosecution of a youth as an adult after adjudication as a delinquent for the same offense); *McKeiver v. Pennsylvania*, 403 U.S. 528, 528 (1971) (denying juveniles the right to a jury trial in state delinquency prosecutions); *In re Winship*, 397 U.S. 358, 368 (1970) (holding that states must prove delinquency by the criminal standard—beyond a reasonable doubt—rather than by the lower civil standards of proof).

16. See generally Feld, *Criminalizing Juvenile Justice*, *supra* note 13 (examining the evolution of procedural due process in juvenile courts); Barry C. Feld, *The Constitutional Tension Between Apprendi and McKeiver: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts*, 38 WAKE FOREST L. REV. 1111 (2003) (analyzing the use of delinquent convictions as sentencing enhancements); Feld, *Transformation—Part I*, *supra* note 13 (tracing the transformation of the juvenile justice system after the *Gault* decision); Barry C. Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 MINN. L. REV. 327 (1999) [hereinafter Feld, *Transformation—Part II*] (examining the changes in the juvenile justice system due to a public perception of an increase in crime among juveniles).

Macro-structural, economic, and racial demographic changes in American cities in the 1970s and 1980s increased homicide rates by black youths in the late 1980s, and the crack cocaine and gun violence epidemic of the early 1990s produced harsh “get-tough” juvenile justice policies.<sup>17</sup> The trend toward punitive action increased the numbers of youths tried as adults and led to harsher sanctions for delinquents. By the end of the twentieth century, states’ get-tough policies equated the crimes and culpability of adolescents with those of adults—for example, “adult crime, adult time.”<sup>18</sup> In the decades since *Gault* and states’ adoption of get-tough policies, police increasingly use routine arrest and booking procedures to process juvenile offenders just like adults.<sup>19</sup> Policy makers perceived an increase in violent crimes committed by girls, which exposed the girls to the same get-tough policies adopted to confront youth violence more generally.

#### A. *Gender and the Juvenile Court*

Juvenile courts’ delinquency jurisdiction initially included only youths charged with violations of criminal law, but reformers added noncriminal status offenses—for example, incorrigibility, runaway, and immorality—to the courts’ definition of delinquency within a few years.<sup>20</sup> Historically, juvenile courts processed boys mainly for

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17. See generally FELD, *supra* note 1 (discussing social and demographic changes that led to the war on crime and the legal changes that occurred because of it); FRANKLIN E. ZIMRING, *AMERICAN YOUTH VIOLENCE* (1998) (discussing the perceived increase in youth violence in the 1990s); Alfred Blumstein, *Youth Violence, Guns, and the Illicit-Drug Industry*, 86 J. CRIM. L. & CRIMINOLOGY 10 (1995) (describing role of crack cocaine markets and gun violence in escalation of homicide by black youths); Barry C. Feld, *Race, Politics, and Juvenile Justice: The Warren Court and the Conservative “Backlash,”* 87 MINN. L. REV. 1447 (2003) [hereinafter Feld, *Race, Politics, and Juvenile Justice*] (analyzing the change in juvenile justice policies in the second half of the twentieth century); Feld, *Transformation—Part II*, *supra* note 16 (examining the changes in the juvenile justice system due to a public perception of an increase in crime among juveniles); Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J.L. & FAM. STUD. 11 (2007) (analyzing the role that race has played in shaping juvenile justice policies).

18. See generally Barry C. Feld, *Adolescent Criminal Responsibility, Proportionality, and Sentencing Policy*: Roper, Graham, Miller/Jackson, and the *Youth Discount*, 31 L. & INEQUALITY 263 (2013) [hereinafter Feld, *Responsibility, Proportionality, and Sentencing*] (proposing a discount in sentencing for young offenders); Barry C. Feld, *The Youth Discount: Old Enough To Do the Crime, Too Young To Do the Time*, 11 OHIO ST. J. CRIM. L. 107 (2013) [hereinafter Feld, *Youth Discount*] (arguing that although courts recognize the diminished culpability of juveniles, courts have not done enough to take this into account in sentencing).

19. See, e.g., BARRY C. FELD, *CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION* 369–76 (4th ed. 2013) (summarizing photographing and fingerprinting practices of arrested juveniles).

20. See, e.g., *id.* at 7.

criminal conduct and girls mainly for status offenses.<sup>21</sup> The status jurisdiction reflected Progressives' idea of childhood dependency and paternalistic sexual attitudes.<sup>22</sup> From the juvenile courts' inception, controlling female sexuality was a focal concern of judicial intervention.<sup>23</sup> Judges detained and incarcerated girls for minor offenses and status offenses at higher rates than boys.<sup>24</sup>

Male juveniles commit most serious crimes, and evaluations of juvenile court sentencing practices focus primarily on racial rather than gender disparities.<sup>25</sup> Sentencing research on gender bias posits chivalry or leniency to explain why girls receive less severe sanctions than do boys.<sup>26</sup> Other analysts invoke protectionist or paternalistic explanations to account for why sexually active females and status offenders receive more intrusive interventions than do boys charged with minor offenses.<sup>27</sup> Earlier research consistently reported a gender double standard in which juvenile courts incarcerated proportionally more girls than boys charged for status offenses, but sentenced boys charged with delinquency more severely than similarly charged girls.<sup>28</sup> More recent studies report

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21. See Feld, *supra* note 4. See generally SCHLOSSMAN, *supra* note 2.

22. See Kimberly Kempf-Leonard & Pernilla Johansson, *Gender and Runaways: Risk Factors, Delinquency, and Juvenile Justice Experiences*, 5 YOUTH VIOLENCE & JUV. JUST. 308, 308-09 (2007); Schlossman & Wallach, *supra* note 3, at 65-66.

23. See TANENHAUS, *supra* note 10, at 50-53; Schlossman & Wallach, *supra* note 3, at 65-66.

24. See generally Kempf-Leonard, *supra* note 2 (discussing the difficulties girls face in the juvenile justice system and recommending further understanding of these problems to better handling of juveniles before and after the creation of a separate judicial system for juveniles); SCHLOSSMAN, *supra* note 2 (discussing the juvenile justice system in its formative period); TANENHAUS, *supra* note 10 (explaining that the revival of status offenses increased the arrest rate of girls).

25. Feld, *supra* note 4, at 257. See generally JOAN McCORD ET. AL, JUVENILE CRIME, JUVENILE JUSTICE (2001) (examining race in the juvenile justice system).

26. See, e.g., Stephanie Hoyt & David G. Scherer, *Female Juvenile Delinquency: Misunderstood by the Juvenile Justice System, Neglected by Social Science*, 22 LAW & HUM. BEHAV. 81, 83 (1998).

27. See generally SCHLOSSMAN, *supra* note 2; Meda Chesney-Lind, *Girls and Status Offenses: Is Juvenile Justice Still Sexist?*, 20 CRIM. JUST. ABSTRACTS 144 (1988) [hereinafter Chesney-Lind, *Girls and Status Offenses*]; Meda Chesney-Lind, *Paternalism and the Female Status Offender*, 23 CRIME & DELINQ. 121 (1977); David R. Johnson & Laurie K. Scheuble, *Gender Bias in the Disposition of Juvenile Court Referrals: The Effects of Time and Location*, 29 CRIMINOLOGY 677 (1991) (explaining the theory that courts may punish girls more harshly than boys because of social ideas about what actions are appropriate for girls compared to what is appropriate for boys); Schlossman & Wallach, *supra* note 3 (concluding that discriminatory treatment of girls in the juvenile justice system in the early twentieth century was due, in part, to social movements to purify society).

28. See, e.g., Donna M. Bishop & Charles Frazier, *Gender Bias in Juvenile Justice Processing: Implications of the JJDP Act*, 82 J. CRIM. L. & CRIMINOLOGY 1162, 1163-64 (1992).

fewer gender differences in sentencing status offenders once analysts control for present offense and prior record.<sup>29</sup> However, analyses of judges' use of contempt power to sanction male and female status offenders who violated a "valid court order" report continuing differential treatment that covertly perpetuates gender bias.<sup>30</sup>

In the early 1970s, critics of juvenile courts' status jurisdiction objected that judges confined noncriminal offenders in institutions with delinquents, stigmatized them with delinquency labels, discriminated against females, and provided few beneficial services.<sup>31</sup> Judicial intervention on behalf of parents to control their wayward girls exacerbated intra-family conflicts.<sup>32</sup> In the early 1970s, states charged about three-quarters of the girls in their juvenile courts with status offenses rather than criminal delinquency.<sup>33</sup>

The 1974 Juvenile Justice and Delinquency Prevention Act<sup>34</sup> ("JJDP Act") prohibited states from confining status offenders with delinquents in secure facilities and withheld formula grant money from states that did not develop plans to remove them.<sup>35</sup> The JJDP Act's mandate to Deinstitutionalize Status Offenders ("DSO") and

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29. U.S. GEN. ACCOUNTING OFFICE, MINIMAL GENDER BIAS OCCURRED IN PROCESSING NONCRIMINAL JUVENILES 1-2 (1995); see also Meda Chesney-Lind & Joanne Belknap, *Trends in Delinquent Girls' Aggression and Violent Behavior*, in AGGRESSION, ANTI-SOCIAL BEHAVIOR, AND VIOLENCE AMONG GIRLS: A DEVELOPMENTAL PERSPECTIVE 203, 209 (Martha Putallaz & Karen L. Bierman eds., 2004) (reporting that girls received shorter sentences than boys when convicted of similar offenses); Hoyt & Scherer, *supra* note 26, at 83-85.

30. See, e.g., AM. BAR ASS'N & NAT'L BAR ASS'N, JUSTICE BY GENDER: THE LACK OF APPROPRIATE PREVENTION, DIVERSION AND TREATMENT ALTERNATIVES FOR GIRLS IN THE JUSTICE SYSTEM 19 (2001), available at [http://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_juvjus\\_justicebygenderweb.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_justicebygenderweb.pdf) ("Girls are more likely to be cited for contempt, and because contempt offenders are more likely to be detained than non-contempt offenders, gender can be correlated to detention status through the use of contempt proceedings."); Bishop & Frazier, *supra* note 28, at 1167-68.

31. See, e.g., FELD, *supra* note 1, at 168-70; Ira M. Schwartz et al., *Federal Juvenile Justice Policy and the Incarceration of Girls*, 36 CRIME & DELINQ. 511, 511-20 (1990).

32. See, e.g., Schwartz et al., *supra* note 31; Allan Sussman, *Sex-Based Discrimination and PINS Jurisdiction*, in BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT (L.E. Teitelbaum & A.R. Gough eds., 1977).

33. Nat'l Council on Crime and Delinq., *Jurisdiction Over Status Offenders Should be Removed from the Juvenile Court: A Policy Statement*, 21 CRIME & DELINQ. 97, 99 (1975); Schwartz et al., *supra* note 31. In 2000, about one-quarter of girls arrested by police were arrested for status offenses, compared with only ten percent of boys. Chesney-Lind & Belknap, *supra* note 29, at 213 (2004).

34. 42 U.S.C. §§ 5601-5785 (2012).

35. *Id.* § 5633. See generally IRA M. SCHWARTZ, (IN) JUSTICE FOR JUVENILES: RETHINKING THE BEST INTERESTS OF THE CHILD (1989).

increase procedural formality after *Gault* led to a sharp decline in the number of females and status offenders in secure facilities.<sup>36</sup> A 1980 amendment to the JJDP Act allowed states to continue to receive federal funds *and* to confine status offenders if judges committed them to institutions for contempt of court for violating a "valid court order."<sup>37</sup> This authority allowed judges to "bootstrap" some status offenders—disproportionately female—into delinquents for violating a court-ordered condition of probation—for example, do not abscond from a nonsecure placement.<sup>38</sup> The 1992 reauthorization of the JJDP Act required states to analyze and provide "gender-specific services" to treat female delinquents, but most states only collected data about girls rather than develop new programs for them.<sup>39</sup>

As a result of the 1974 DSO initiatives, the number of status offenders in detention facilities and institutions declined dramatically by the early 1980s. Girls benefited especially because states disproportionately confined them for noncriminal misconduct.<sup>40</sup> By 1988, the number of status offenders in secure

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36. See, e.g., FELD, *supra* note 1, at 175–76; CHERYL L. MAXSON & MALCOLM W. KLEIN, *RESPONDING TO TROUBLED YOUTH* 12–13 (1997); NEITHER ANGELS NOR THIEVES: *STUDIES IN DEINSTITUTIONALIZATION OF STATUS OFFENDERS* 88–89 (Joel F. Handler & Julie Zatz eds., 1982) [hereinafter NEITHER ANGELS NOR THIEVES].

37. Feld, *supra* note 1, at 175–77.

38. See, e.g., Chesney-Lind & Belknap, *supra* note 29, at 207 (noting that relabeling of girls' conflicts with parents from status offenses like incorrigibility to assault "facilitates the incarceration of girls in detention facilities and training schools," which would not be permitted if adjudicated for noncriminal status offenses); Steffensmeier & Schwartz, *supra* note 5, at 54 (noting that one consequence of making it more difficult to confine girls for status offenses has been a trend to relabel minor offenses as assault in order to confine them); Bishop & Frazier, *supra* note 28, at 1167–68 (describing "bootstrapping" of female status offenders as delinquents and the confinement for contempt of court); Hoyt & Scherer, *supra* note 26, at 83–84.

39. COMMUNITY RESEARCH ASSOCIATES, *JUVENILE FEMALE OFFENDERS: A STATUS OF THE STATES REPORT* (1998) (evaluating states' efforts to implement gender-specific services for girls in the juvenile justice system and finding that more should be done); Kimberly Kempf-Leonard & Lisa L. Sample, *Disparity Based on Sex: Is Gender-Specific Treatment Warranted?*, 17 JUST. Q. 89, 90–92 (2000); John M. MacDonald & Meda Chesney-Lind, *Gender Bias and Juvenile Justice Revisited: A Multiyear Analysis*, 47 CRIME AND DELINQ. 173, 176–77 (2001). See generally Barbara Bloom et al., *Improving Juvenile Justice for Females: A Statewide Assessment in California*, 48 CRIME & DELINQ. 526 (2002) (examining trends in girls' delinquency in California with the goal of meeting gender specific needs in the juvenile justice system).

40. An early evaluation of the JJDP Act's DSO mandate by the National Academy of Sciences reported a substantial reduction in the detention and confinement of status offenders. NEITHER ANGELS NOR THIEVES, *supra* note 36, at 88–89; Feld, *supra* note 1, at 176. See generally, Chesney-Lind, *Girls and Status Offenses*, *supra* note 27; MAXSON & KLEIN, *supra* note 36, at 12–14; Barry Krisberg et al., *The Watershed of Juvenile Justice Reform*, 32 CRIME AND DELINQ. 5 (1986).

facilities had declined by 95% compared with those detained prior to adoption of the JJDP Act.<sup>41</sup>

Although the JJDP Act prohibits states from institutionalizing status offenders, it does not require them to appropriate funds or develop community-based programs to meet girls' needs. Three decades after the JJDP Act, states' failure to fund or offer gender-appropriate services provides a continuing impetus to circumvent DSO.<sup>42</sup> Status offenders are not a unique or discrete category of juveniles and they share many of the same characteristics and behavioral versatility as delinquent offenders. As a result, juvenile courts could simply charge a status offender with a minor crime, adjudicate her as a delinquent, and evade deinstitutionalization strictures.<sup>43</sup> Moreover, the suffering of sexual abuse at higher rates than boys, pressure to conform to traditional gender roles, and high rates of mental illness compound to create the unequal treatment of girls.<sup>44</sup>

Analysts warned that states could evade DSO requirements by charging status offenders—waywardness or incorrigibility—with simple assault and prosecuting them as delinquents.<sup>45</sup> Prophetically, girls' arrests for assault increased in tandem with the

41. U.S. GEN. ACCOUNTING OFFICE, NONCRIMINAL JUVENILES: DETENTIONS HAVE BEEN REDUCED BUT BETTER MONITORING IS NEEDED 3 (1991).

42. See CTR. FOR JUVENILE JUSTICE REFORM, IMPROVING THE EFFECTIVENESS OF JUVENILE JUSTICE PROGRAMS 9 (2010), available at <http://forumfyi.org/files/ImprovingEffectivenessofJuvenileJusticePrograms.pdf>.

43. Katherine Hunt Federle & Meda Chesney-Lind, *Special Issues in Juvenile Justice: Gender, Race, and Ethnicity*, in JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA 165 (Ira M. Schwartz ed., 1992); Jan C. Costello & Nancy L. Worthington, *Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act*, 16 HARV. C.R.-C.L. L. REV. 41, 42 (1981); Kempf-Leonard & Sample, *supra* note 39, at 98.

44. See, e.g., THOMAS GRISSO, DOUBLE JEOPARDY: ADOLESCENT OFFENDERS WITH MENTAL DISORDERS 36 (2004) (reporting that girls in detention have higher rates of almost all types of mental disorders and mental health problems than do boys); Lisa Bond-Maupin et al., *Girls' Delinquency and the Justice Implications of Intake Workers' Perspectives*, 13 WOMEN & CRIM. JUST. 51, 52 (2002) (summarizing extra burdens of girls in the juvenile justice system); Elizabeth Cauffman, *Understanding the Female Offender*, 18 FUTURE OF CHILD. 119, 124 (2008), available at <http://files.eric.ed.gov/fulltext/EJ815076.pdf> (reporting that girls entering the juvenile justice system have higher rates of mental health problems than do male offenders).

45. See Eve S. Buzawa & David Hirschel, *Criminalizing Assault: Do Age and Gender Matter?*, in FIGHTING FOR GIRLS: NEW PERSPECTIVES ON GENDER AND VIOLENCE 33, 39 (Meda Chesney-Lind & Nikki Jones eds., 2010) ("Domestic violence cases involving children as offenders and parents as victims that were previously processed as cases involving 'incorrigibles' or 'persons in need of supervision' have been reclassified as assaults."); NEITHER ANGELS NOR THIEVES, *supra* note 36, at 31; Kempf-Leonard & Sample, *supra* note 39, at 98.

deinstitutionalization of status offenders.<sup>46</sup> The perceived increase in girls' violence occurred against the backdrop of the get-tough policies of the 1980s and early 1990s in which states changed their laws to punish delinquents more severely, thereby reflecting a broader shift from rehabilitative to retributive policies.<sup>47</sup> These changes affected girls' susceptibility to arrest.<sup>48</sup> Even though they were not the intended targets, the punitive shift in responses to youth violence adversely affected girls.<sup>49</sup>

Police arrest and juvenile courts process fewer females than their proportion of the juvenile population, especially for serious crimes.<sup>50</sup> Girls comprise less than one-third of all juveniles arrested and less than one-fifth of those arrested for Violence Crime Index offenses.<sup>51</sup> However, over the past two decades, arrest patterns of boys and girls for violent crimes—aggravated and simple assault—have diverged with girls' rates either increasing more or decreasing less than their male counterparts.<sup>52</sup> Police arrest youths for simple assault at higher rates than they do for aggravated assaults, but between 1980 and 2005, arrest rates of girls quadrupled, whereas male arrest rates only doubled.<sup>53</sup> A comparison of the ratios of

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46. See Chesney-Lind & Jones, *supra* note 6, at 4 (noting a dramatic increase in girls' arrests and referrals to juvenile courts for "person" offenses with a disproportionate impact on minority females); FELD, *supra* note 1, at 176.

47. See FELD, *supra* note 1, at 14; DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 132–34 (2001); ZIMRING, *supra* note 17, at 13–15; Feld, *Race, Politics, and Juvenile Justice*, *supra* note 17, at 1451–52; Barry C. Feld, *A Slower Form of Death: Implications of Roper v. Simmons for Juveniles Sentenced to Life Without Parole*, 22 *Notre Dame J.L. Ethics & Pub. Pol'y* 9, 12–14 (2009) [hereinafter Feld, *A Slower Form of Death*].

48. See Feld, *supra* note 4.

49. See Chesney-Lind & Belknap, *supra* note 29, at 206–07.

50. See Feld, *supra* note 4, at 246; Kempf-Leonard, *supra* note 2, at 488–96; Steffensmeier et al., *supra* note 6, at 357; Darrell Steffensmeier & Emilie Allan, *Gender and Crime: Toward a Gendered Theory of Female Offending*, 22 *ANN. REV. SOC.* 459, 460 (1996) (“[M]en offend at much higher rates than women for all crime categories . . . [and] [t]his gender gap in crime is greatest for serious crime.”).

51. Barry C. Feld, *supra* note 4, at 246 (reporting that girls constituted 29% of all juveniles arrested and 18% of those arrested for Violent Crime Index offenses).

52. *Id.* at 247 (reporting that between 1996 and 2005, boys' arrests overall decreased by 28.8% whereas girls' arrests decreased by only 14.3%; boys' arrests for aggravated assaults decreased by 23.4%, whereas girls' arrests declined by only 5.4%; and boys' arrests for simple assault declined by 4.1% while girls' arrests increased by 24%); see also Cauffman, *supra* note 44, at 120–22 (summarizing trends in juvenile arrest rates by gender); Paul E. Tracy et al., *Gender Differences in Delinquency and Juvenile Justice Processing: Evidence from National Data*, 55 *CRIME & DELINQ.* 171, 183–94 (2009) (reporting and comparing arrest data for male and female juveniles between 1980 and 2006).

53. Feld, *supra* note 4, at 250; Mike Males, *Have “Girls Gone Wild?”*, in *FIGHTING FOR GIRLS: NEW PERSPECTIVES ON GENDER AND VIOLENCE* 13, 26–27

arrests for simple assault to aggravated assault reported that by 2005, police arrested girls almost six times as often for simple assault, compared with only three times as often for boys.<sup>54</sup> “[B]y all the measures—arrests, arrest rates, and ratios of simple to aggravated assaults—the increase in girls’ arrests for simple assaults and boys’ decrease in arrests for aggravated assaults constitute the most significant change in youth violence over the decades.”<sup>55</sup> Police exercise considerable discretion when they classify conduct as a status offense—incurable or unruly behavior—or as an assault.<sup>56</sup> Analysts contend that more aggressive policing of minor crimes and disorder (zero tolerance), a lower threshold to charge youths with minor offenses, and more active policing in private settings have created a misleading perception of a youth crime wave, especially among girls.<sup>57</sup>

Policies of mandatory arrests for domestic violence have increased girls’ vulnerability to arrest for intra-family altercations.<sup>58</sup>

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(Meda Chesney-Lind & Nikke Jones eds., 2010) (attributing the increase in girls’ arrests for simple assaults to increased policing of workplace, school, and domestic violence).

54. Feld, *supra* note 4, at 250; Tracy et al., *supra* note 52, at 193 tbl.4 (reporting that police arrested a larger proportion of girls for simple assault than there were total arrests of boys).

55. Feld, *supra* note 4, at 250.

56. *Id.* at 252.

57. *Id.* at 250–53; see also HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 131–33 (2006); Steffensmeier & Schwartz, *supra* note 5, at 52–54 (arguing that girls commit less serious crimes, but a net-widening criminalization of less serious “violence,” coupled with more intrusive policing in private settings and less tolerance toward juvenile girls increases their arrest-proneness); ZIMRING, *supra* note 17, at 37–40; Steffensmeier et al., *supra* note 6, at 387–90 (attributing the perceived increase in girls’ arrests for violence to changes in police responses to domestic violence); Buzawa & Hirschel, *supra* note 45, at 36 (arguing that statutes mandating more aggressive arrests and decreased police discretion have increased juvenile girls’ likelihood of arrest for domestic assault); Chesney-Lind & Belknap, *supra* note 29, at 206 (“[M]easures of girls’ violent crime that are less susceptible to change in policing practices fail to reflect the trends shown in the arrest data.”); Males, *supra* note 53, at 26–27 (attributing the increase in girls’ arrests to “new law enforcement initiatives authorized by stronger laws beginning in the 1980s to make arrests for street, school, workplace, and (especially) domestic violence in cases that once brought warnings or informal discipline”).

58. See SUSAN L. MILLER, VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN’S VIOLENCE IN RELATIONSHIPS 2 (2005); Bond-Maupin et al., *supra* note 44, at 67–68 (attributing girls’ arrests to power struggles and fights with parents at home); Buzawa & Hirschel, *supra* note 45, at 33 (noting expansion of domestic violence statutes to encompass other relationships in addition to female victims of spousal partner violence); Meda Chesney-Lind, *Criminalizing Victimization: The Unintended Consequences of Pro-Arrest Policies for Girls and Women*, 2 CRIMINOLOGY & PUB. POL’Y 81, 81–90 (2002); Chesney-Lind & Belknap, *supra* note 29, at 207 (attributing perceived increase in girls’ arrests for violence to “changes in police practices”); Ravoira & Patino, *supra* note 5 (attributing

Girls' violence is much more likely to involve fights with parents or siblings than is boys' violence, and girls' share of arrests for domestic assaults has increased substantially.<sup>59</sup> The confluence of heightened attention to family violence and limited authority to incarcerate status offenders encouraged police to respond to the same underlying behavior as delinquency and arrest girls for assault rather than incorrigibility.<sup>60</sup> Probation officers describe most girls' assault cases as either a fight with a parent at home or between girls at school.<sup>61</sup> Regardless of who starts a domestic clash, police find it easier and more efficient to arrest the youth as the offender, especially if a parent cares for other children in the home.<sup>62</sup> Although girls comprise only about one-seventh of all delinquents in institutions, between 1997 and 2003 the simple assault category constituted the largest proportion of any offense for

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disparate treatment of girls to "policies and practices includ[ing] labeling family disputes as domestic violence [and] subjecting girls to police practices specific to the enforcement of domestic violence laws"); Steffensmeier et al., *supra* note 6, at 357 (arguing that an increase in arrests of girls for violence is largely a by-product of net-widening enforcement policies, like broader definitions of youth violence and greater surveillance of girls that have escalated the arrest-proneness of adolescent girls today relative to girls in prior decades and relative to boys).

59. See AM. BAR ASS'N & NAT'L BAR ASS'N, *supra* note 30, at 3 (attributing the growth in girls' arrests for assault to "re-labeling of girls' family conflicts as violent offenses, the changes in police practices regarding domestic violence and aggressive behavior, [and] the gender bias in the processing of misdemeanor cases"); BUREAU OF CRIMINAL INFO. & ANALYSIS, REPORT ON ARRESTS FOR DOMESTIC VIOLENCE IN CALIFORNIA, 1998, at 17 (1999); Chesney-Lind & Belknap, *supra* note 29, at 206 (noting that girls' arrests for violent offenses tended to be "family centered" and involved an altercation between a girl and her mother); Feld, *supra* note 4, at 254.

60. See, e.g., Chesney-Lind, *Girls and Status Offenses*, *supra* note 27, at 144-65; Chesney-Lind & Belknap, *supra* note 29, at 206; Feld, *supra* note 4, at 254.

61. See, e.g., Emily Gaarder et al., *Criers, Liars, and Manipulators: Probation Officers' Views of Girls*, 21 JUST. Q. 547, 564-66 (2004).

62. See Buzawa & Hirschel, *supra* note 45, at 38 (noting that parents' "right" to use "reasonable" corporal punishment to discipline children skews police likelihood to "use domestic violence statutes as a powerful tool to uphold and support parental authority"); Gaarder et al., *supra* note 61, at 565 (noting that police remove children for fights started by parents because "[i]f you arrest the parents, than [sic] you have to shelter the kids . . . . So the police just make the kids go away and the numbers of kids being referred to the juvenile court for assaulting their parents . . . have just been increasing tremendously because of that political change"); Ravoira & Patino, *supra* note 5, at 166 ("If the adult is arrested, there is no place to take other children, and thus it is more expedient to arrest the adolescent female."). See generally MEDA CHESNEY-LIND & LISA PASKO, *THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME* (2d ed. 2004) (examining women and girl offenders in an attempt to understand the increase in their incarceration rates).

which states confined girls, and that share has increased steadily.<sup>63</sup> Ironically, girls became the unintended victims of mandatory arrest policies enacted to prevent abusive males from attacking their female partners.<sup>64</sup>

### B. Police Interrogation of Juveniles

For decades prior to *Miranda*, the Court admonished trial judges to closely examine how youthfulness affected the voluntariness of confessions. The Court in *Haley v. Ohio*<sup>65</sup> found a fifteen-year-old boy's confession involuntary because of his youth and inexperience.<sup>66</sup> The Court in *Gallegos v. Colorado*<sup>67</sup> found age and immaturity rendered a fourteen-year-old boy's confession involuntary.<sup>68</sup> The Court in *In re Gault*<sup>69</sup> reiterated that youthfulness could adversely affect the voluntariness of juveniles' statements.<sup>70</sup> *Gault* based most delinquents' procedural rights on the Fourteenth Amendment due process clause—notice, hearing, counsel, and cross-examination.<sup>71</sup> It relied explicitly on the Fifth Amendment to protect youths' right against self-incrimination in delinquency proceedings.<sup>72</sup> *Gault* recognized that the Fifth Amendment promotes accurate fact-finding and maintains the

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63. Meda Chesney-Lind, *Jailing "Bad" Girls: Girls' Violence and Trends in Female Incarceration*, in *FIGHTING FOR GIRLS: NEW PERSPECTIVES ON GENDER AND VIOLENCE* 57, 61 (Meda Chesney-Lind & Nikki Jones eds., 2010) (noting that juvenile courts held over half of girls (51.8%) but less than one-third of boys (21.2%) in pretrial detention for simple assaults); Feld, *supra* note 4, at 259 tbl.4.

64. MILLER, *supra* note 58, at 7–9; see Buzawa & Hirschel, *supra* note 45, at 41–49 (analyzing arrest patterns in domestic assaults and reporting that female juveniles have the greatest likelihood of arrest compared with juvenile or adult males or adult females).

65. 332 U.S. 596 (1948).

66. *Id.* at 599–600 (“That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. . . . [W]e cannot believe that a lad of tender years is a match for the police in such a contest.”).

67. 370 U.S. 49 (1962).

68. *Id.* at 54 (“[A] 14-year-old boy, no matter how sophisticated . . . is not equal to the police in knowledge and understanding.”).

69. 387 U.S. 1 (1967).

70. *Id.* at 52; see also Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1137 (1980) (arguing that *Gault* granted juveniles greater required protection because “their immaturity and greater vulnerability place them at a greater disadvantage in their dealings with the police”).

71. *Gault*, 387 U.S. at 30; Feld, *Criminalizing Juvenile Justice*, *supra* note 13, at 154–57 (analyzing constitutional bases for the Court's juvenile due process decisions).

72. *Gault*, 387 U.S. at 49–50 (extending the Fifth Amendment privilege to delinquency proceedings and holding that “[i]t would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to ‘criminal’ involvement”).

adversarial balance between the individual and the State.<sup>73</sup> *Gault* and subsequent due process decisions fostered a procedural and substantive convergence between juvenile and criminal courts.<sup>74</sup>

Despite the Court's recognition of the vulnerability of youth, *Fare v. Michael C.*<sup>75</sup> held that the "totality of the circumstances" test used to evaluate adults' waivers of *Miranda* rights governed juveniles' waivers as well.<sup>76</sup> The Court reasoned that *Miranda* provided an objective basis to evaluate waivers.<sup>77</sup> It denied that youths' developmental differences dictated special procedural protections and required children to assert their rights clearly.<sup>78</sup>

*Miranda* provided that if police question a suspect who is in custody—arrested or "deprived of his freedom of action in any significant way"—they must administer a warning.<sup>79</sup> The Court in *J.D.B. v. North Carolina*<sup>80</sup> concluded that a suspect's age was an

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73. *Id.* at 47. The Court recognized that one function of the Fifth Amendment was "to assure that admissions or confessions are reasonably trustworthy . . . [and] reliable expressions of the truth." *Id.* The Court emphasized that another purpose of the privilege was "to prevent the State, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the [S]tate in securing his conviction." *Id.*

74. Subsequent decisions further criminalized delinquency proceedings. See *Breed v. Jones*, 421 U.S. 519, 534–35 (1975) (positing a functional equivalence of criminal and delinquency trials); *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (denying delinquents the right to a jury trial); *In re Winship*, 397 U.S. 358, 367 (1970) (requiring states to prove delinquents' guilt by the criminal law's standard of proof beyond a reasonable doubt). However, *Gault* and *Winship* provided the impetus to transform the juvenile court from a social welfare agency into a scaled-down criminal court. Feld, *Criminalizing Juvenile Justice*, *supra* note 13, at 161–62; see FELD, *supra* note 1, at 106–07; see also Feld, *Punishment, Treatment*, *supra* note 13, at 829–31.

75. 442 U.S. 707 (1979).

76. *Id.* at 725 (holding that a request for a probation officer did not invoke *Miranda's* privilege against self-incrimination or right to counsel); see also Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 WIS. L. REV. 431, 449 (2006) (explaining that the Court decided *Michael C.* as a *Miranda* case rather than as a juvenile interrogation case).

77. *Michael C.*, 442 U.S. at 724–25.

78. See *id.* at 723–24 (deciding that a juvenile's request to see a trusted adult is not an invocation of Fifth Amendment rights); see also Francis Barry McCarthy, *Pre-Adjudicatory Rights in Juvenile Court: An Historical and Constitutional Analysis*, 42 U. PITT. L. REV. 457, 461 (1981); Irene Merker Rosenberg, *The Constitutional Rights of Children Charged with Crime: Proposal for a Return to the Not So Distant Past*, 27 UCLA L. REV. 656, 686–91 (1980).

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

80. 131 S. Ct. 2394 (2011).

objective fact that would affect whether a young person would feel restrained in *Miranda's* custody analysis.<sup>81</sup>

Most state courts use *Michael C.'s* totality framework for juveniles.<sup>82</sup> When judges evaluate *Miranda* waivers, they consider offender features—age, education, I.Q., or prior police contacts—and the interrogation context: location, methods, and length of questioning.<sup>83</sup> No one factor controls outcomes and appellate courts defer to trial judges' discretion.<sup>84</sup> Although some states require a parent to be present when police question his or her child,<sup>85</sup> most commentators question the value of a parent's participation.<sup>86</sup>

81. *Id.* at 2403 (“[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality.”).

82. King, *supra* note 76, at 456; Kimberly Larson, *Improving the “Kangaroo Courts”*: A Proposal for Reform in Evaluating Juveniles’ Waiver of *Miranda*, 48 VILL. L. REV. 629, 645 & n.91, 646 (2003) (summarizing the majority of states’ use of the “totality of circumstances” test and the factors they consider).

83. *See, e.g., Michael C.*, 442 U.S. at 727; *West v. United States*, 399 F.2d 467, 469 (5th Cir. 1968).

84. *See* Saul M. Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 11 (2010). Trial judges failed to recognize juveniles’ claims that waivers were involuntary or confessions coerced even when DNA evidence subsequently exonerated them. Brandon L. Garrett, *Judging Innocence*, 108 COLUM. L. REV. 55, 88–91 (2008). In practice, judges invalidate waivers or exclude confessions only under the most egregious circumstances. FELD, *supra* note 1, at 118; Barry C. Feld, *Juveniles’ Competence to Exercise Miranda Rights: An Empirical Study of Police and Practice*, 91 MINN. L. REV. 26, 32 n.18 (2006) [hereinafter Feld, *Juveniles’ Competence to Exercise Miranda Rights*] (describing appellate decisions); Barry C. Feld, *Juveniles’ Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 105, 113 (Thomas Grisso & Robert G. Schwartz eds., 2000) [hereinafter Feld, *Juveniles’ Waiver of Legal Rights*] (summarizing factors); Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 224 n.19 (2006) [hereinafter Feld, *Police Interrogation of Juveniles*] (describing appellate courts’ deference to trial judges).

85. King, *supra* note 76, at 451–52; *see* Feld, *Juveniles’ Waiver of Legal Rights*, *supra* note 84, at 116–18; Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1287 n.65 (2004) (listing the states with parental presence requirements); *see, e.g., In re B.M.B.*, 955 P.2d 1302, 1312–13 (Kan. 1998) (protecting youths younger than fourteen); *Commonwealth v. A Juvenile*, 449 N.E.2d 654, 657 (Mass. 1983) (requiring a parent or an appropriate adult); *State v. Presha*, 748 A.2d 1108, 1114, 1117 (N.J. 2000) (requiring a parent, especially for younger juveniles, whenever possible); *In re E.T.C.*, 449 A.2d 937, 940 (Vt. 1982) (holding as a matter of state constitutional law that a youth “must be given the opportunity to consult with an adult”).

86. *See, e.g., Feld, Juveniles’ Waiver of Legal Rights*, *supra* note 84, at 117–18 (questioning whether parents will understand rights, provide legal advice, or mitigate coercive influences); Lisa M. Krzewinski, *But I Didn’t Do It: Protecting the Rights of Juveniles During Interrogation*, 22 B.C. THIRD WORLD L.J. 355, 374–77 (2002). *See generally* THOMAS GRISSO, JUVENILES’ WAIVER OF RIGHTS:

Minnesota rejects a parental presence requirement and gauges juveniles' *Miranda* waivers under the totality of the circumstances.<sup>87</sup>

The Court's "children-are-different" jurisprudence bears on youths' vulnerability during questioning.<sup>88</sup> *Roper v. Simmons*<sup>89</sup> barred states from executing offenders for a murder committed before the age of eighteen.<sup>90</sup> *Graham v. Florida*<sup>91</sup> banned life without parole sentences for nonhomicide crimes committed by juveniles.<sup>92</sup> *Miller v. Alabama*<sup>93</sup> and *Jackson v. Hobbs*<sup>94</sup> banned mandatory life sentences without parole for youths who commit murder.<sup>95</sup> In all three decisions, the Court emphasized that juveniles' immature judgment and limited self-control caused them to act impulsively and without full appreciation of consequences and

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LEGAL AND PSYCHOLOGICAL COMPETENCE 180–81 (1981) (reporting that parents may pressure children to tell the truth and confess); Steven A. Drizin & Beth A. Colgan, *Tales from the Juvenile Confession Front: A Guide to How Standard Police Interrogation Tactics Can Produce Coerced and False Confessions from Juvenile Suspects*, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 127, 153–55 (G. Daniel Lassiter ed., 2004) (endorsing a parental presence requirement even though interrogators reduce parents' role to passive observer).

87. See, e.g., *State v. Burrell*, 697 N.W.2d 579, 597 (Minn. 2005) (noting that repeated request for a parent before and after a *Miranda* warning may render a waiver involuntary); *State v. Nunn*, 297 N.W.2d 752, 755 (Minn. 1980); *State v. Loyd*, 212 N.W.2d 671, 677 (Minn. 1973).

88. See, e.g., *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012).

89. 543 U.S. 551 (2005).

90. *Id.* at 569. *Roper* attributed juveniles' reduced culpability to three factors. First, "a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults . . . . These qualities often result in impetuous and ill-considered actions and decisions." *Id.* Second, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Id.* Third, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *Id.* at 570. See generally Feld, *Responsibility, Proportionality, and Sentencing*, *supra* note 18 (analyzing the juvenile death penalty cases leading up to the *Roper* decision); Feld, *A Slower Form of Death*, *supra* note 47 (analyzing the Court's three diminished responsibility rationales); Feld, *Youth Discount*, *supra* note 18 (examining the Court's reasoning in *Roper*).

91. 560 U.S. 48 (2010).

92. *Id.* at 68 ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.").

93. 132 S. Ct. 2455.

94. *Id.* (case decided in the same Supreme Court decision as *Miller v. Alabama*).

95. *Id.* at 2464. See generally Feld, *Responsibility, Proportionality, and Sentencing*, *supra* note 18 (analyzing sentencing policy implications of the Court's children are different jurisprudence).

reduced their culpability.<sup>96</sup> Greater susceptibility to peer influences also diminished juveniles' criminal responsibility.<sup>97</sup> These developmental traits—immaturity, impulsivity, and susceptibility to social influences—heighten youths' vulnerability in the interrogation room.

Developmental psychologists distinguish between cognitive ability and maturity of judgment. Most youths sixteen years of age or older exhibit cognitive abilities comparable to adults, but mature judgment and adult-like, decision-making competence does not fully emerge until their twenties.<sup>98</sup> By mid-adolescence, they can distinguish right from wrong and reason similarly to adults.<sup>99</sup> But the ability to make good choices in a laboratory differs from the ability to make adult-like decisions under stressful conditions with incomplete information.<sup>100</sup> The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice<sup>101</sup> distinguishes between cognitive ability and maturity of judgment—risk assessment, temporal orientation, capacity for self-regulation,

96. *Graham*, 560 U.S. at 89; *Roper*, 543 U.S. at 569.

97. *Graham*, 560 U.S. at 92; *Roper*, 543 U.S. at 569.

98. See Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 811–17 (2003) [hereinafter Scott & Steinberg, *Blaming Youth*] (“Psycho-social development proceeds more slowly than cognitive development.”); Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1011–14, 1016–17 (2003) [hereinafter Steinberg & Scott, *Less Guilty by Reason*].

99. See Laurence Steinberg & Elizabeth Cauffman, *The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders*, 6 VA. J. SOC. POL'Y & L. 389, 407–09 (1999); see also SCOTT & STEINBERG, *supra* note 13, at 164 (comparing cognitive competence of adolescents and adults); Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop,”* 64 AM. PSYCHOLOGIST 583, 584 (2009) (noting that the American Psychological Association affirmed the maturity of adolescent girls to make abortion decisions without parental assistance).

100. See L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REV. 417, 423 (2000) (noting that adolescents “exhibit considerably poorer cognitive performance under circumstances involving everyday stress and time-limited situations than under optimal test conditions”); Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychological Factors in Adolescent Decision-Making*, 20 LAW & HUM. BEHAV. 249, 251 (1996); see also Steinberg et al., *supra* note 99, at 586 (reporting that “adolescents and adults are not of equal maturity with respect to the psychosocial capacities . . . such as impulse control and resistance to peer influence”).

101. MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. & JUVENILE JUSTICE, ISSUE BRIEF 3: LESS GUILTY BY REASON OF ADOLESCENCE 2, available at [http://www.adj.org/downloads/6093issue\\_brief\\_3.pdf](http://www.adj.org/downloads/6093issue_brief_3.pdf); see also SCOTT & STEINBERG, *supra* note 13, at 160–65; Feld, *A Slower Form of Death*, *supra* note 47, at 31–32 (summarizing the Adolescent Development and Juvenile Justice research network).

and susceptibility to social influences—which affects youths' vulnerability during interrogation.<sup>102</sup>

### 1. *Immature Judgment and Risk Perception*

Youths differ from adults in time perspective, risk perception, and appreciation of future consequences.<sup>103</sup> Adolescents' poorer decisions reflect differences in knowledge, experience, and impulse control.<sup>104</sup> Adolescents underestimate risks, use shorter time frames, and focus on gains rather than losses.<sup>105</sup> Sixteen- and seventeen-year-old youths are more present oriented and perceive fewer risks than either younger or older subjects.<sup>106</sup> Youths' appetite for risk peaks at those ages, and they regard *not* engaging in risky behaviors differently than do adults.<sup>107</sup>

102. MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. AND JUVENILE JUSTICE, *supra* note 101.

103. See Scott & Steinberg, *Blaming Youth*, *supra* note 98, at 813 (“The psycho-social factors most relevant to differences in judgment include: (a) peer orientation, (b) attitudes toward and perception of risk, (c) temporal perspective, and (d) capacity for self-management . . . [T]hese developmental factors influence adolescent values and preferences that drive the cost-benefit calculus in the making of choices.”).

104. See *id.* at 814 (“Future orientation, the capacity and inclination to project events into the future, may also influence judgment, since it will affect the extent to which individuals consider the long-term consequences of their actions in making choices.”); Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 227 (1995); Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 160–61 (1997).

105. See Lita Furby & Ruth Beyth-Marom, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 DEVELOPMENTAL REV. 1, 19 (1992); William Gardner, *A Life-Span Rational-Choice Theory of Risk Taking*, in ADOLESCENT RISK TAKING 66, 67 (Nancy J. Bell & Robert W. Bell eds., 1993); Thomas Grisso, *What We Know About Youths' Capacities as Trial Defendants*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE, *supra* note 84, at 139, 160–62.

106. See Steinberg & Scott, *Less Guilty by Reason*, *supra* note 98, at 1012.

107. Emotions affect decision making and researchers distinguish between choices made under conditions of *cold* and *hot* cognition or states of arousal. See Jay D. Aronson, *Brain Imaging, Culpability and the Juvenile Death Penalty*, 13 PSYCHOL. PUB. POL'Y & L. 115, 119 (2007) (“[A]dolescents are much less capable of making sound decisions when under stressful conditions or when peer pressure is strong.”); Ronald E. Dahl, *Affect Regulation, Brain Development, and Behavioral/Emotional Health in Adolescence*, 6 CNS SPECTRUMS 60, 61 (2001) (“*Cold cognition* refers to thinking under conditions of low emotion and/or arousal, whereas *hot cognition* refers to thinking under conditions of strong feelings or high arousal.”); Steinberg et al., *supra* note 99, at 592; see also Elizabeth S. Scott, *Judgment and Reasoning in Adolescent Decisionmaking*, 37 VILL. L. REV. 1607, 1643–50 (1992); Spear, *supra* note 100, at 421–23, 428–29.

## 2. Neuroscience: Adolescents' Judgment and Impulse Control

Neuroscientists attribute differences in adolescent and adult thought and behavior to brain maturation.<sup>108</sup> The prefrontal cortex ("PFC") of the frontal lobe regulates executive functions such as abstract thinking, strategic planning, and impulse control—skills necessary to exercise legal rights.<sup>109</sup> The amygdala (the limbic system) controls emotional and instinctual behavior—the fight-or-flight response—and in stressful situations, adolescents rely more heavily on the amygdala and less heavily on the PFC than do adults.<sup>110</sup> Novel circumstances and emotional arousal challenge youths' ability to exercise self-control.<sup>111</sup> *Graham* noted that youths' diminished judgment, compromised risk-calculus, and short-term

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108. See Dahl, *supra* note 107, at 69 ("Regions in the PFC [prefrontal cortex] that underpin higher cognitive-executive functions mature slowly, showing functional changes that continue well into late adolescence/adulthood."); Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation*, 21 J. NEUROSCIENCE 8819, 8826–29 (2001) (discussing significant changes in brain structure prior to adulthood); Spear, *supra* note 100, at 438 ("[T]he adolescent brain is a brain in flux, undergoing numerous regressive and progressive changes in mesocorticolimbic regions."). See generally Barry C. Feld et al., *Adolescent Competence and Culpability: Implications of Neuroscience for Juvenile Justice Administration*, in A PRIMER ON CRIMINAL LAW AND NEUROSCIENCE 179 (Stephen J. Morse & Adina L. Roskies, eds. 2013).

109. See Staci A. Gruber & Deborah A. Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?*, 3 OHIO ST. J. CRIM. L. 321, 323 (2006) ("The frontal cortex has been shown to play a major role in the performance of executive functions including short term or working memory, motor set and planning, attention, inhibitory control and decision making."); Tomás Paus et al., *Structural Maturation of Neural Pathways in Children and Adolescents: In Vivo Study*, 283 SCI. 1908, 1908–10 (1999).

110. See David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL'Y REV. 13, 15 (2003) ("Adolescents tend to process emotionally charged decisions in the limbic system, the part of the brain charged with instinctive (and often impulsive) reactions. Most adults use more of their frontal cortex, the part of the brain responsible for reasoned and thoughtful responses."); Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 195, 198 (1999).

111. See Scott & Steinberg, *Blaming Youth*, *supra* note 98, at 816, (summarizing the interaction between the PFC—the executive functions—and the limbic system—impulsive behavior: "At puberty, changes in the limbic system—a part of the brain that is central in the processing and regulation of emotion—may stimulate adolescents to seek higher levels of novelty and to take more risks; these changes may also contribute to increased emotionality and vulnerability to stress. At the same time, patterns of development in the prefrontal cortex, which is active during the performance of complicated tasks involving planning and decisionmaking, suggest that these higher-order cognitive capacities may be immature well into middle adolescence.").

perspective impaired defense representation and ability to exercise rights.<sup>112</sup>

### 3. *Adolescents' Competence to Exercise Rights*

Despite the Court's repeated references to developmental differences, most states use adult legal standards to gauge juveniles' *Miranda* waivers. If youths differ from adults in their ability to understand *Miranda*, to exercise rights, or to respond to social influences, then the law may hold them to a standard that few can meet. Some juveniles simply do not understand the words of *Miranda* warnings.<sup>113</sup> The vocabulary, concepts, and reading levels required to understand *Miranda* may exceed the ability of many adolescents.<sup>114</sup> The concept of a *right* and the meaning of *appointed* require a high school education and may render *Miranda* unintelligible to many juveniles.<sup>115</sup> Juveniles do not fully appreciate the function or importance of rights or view them as an entitlement,<sup>116</sup> but instead regard them as a privilege that authorities may withdraw.<sup>117</sup>

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112. *Graham v. Florida*, 560 U.S. 48, 78 (2010) ("Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense.").

113. See, e.g., Grisso, *supra* note 70, at 1143–44; Richard Rogers et al., *An Analysis of Miranda Warnings and Waivers: Comprehension and Coverage*, 31 LAW & HUM. BEHAV. 177, 181 (2007).

114. See Richard Rogers et al., *The Comprehensibility and Content of Juvenile Miranda Warnings*, 14 PSYCHOL. PUB. POL'Y & L. 63, 72–85 (2008) [hereinafter Rogers, *Comprehensibility and Context*]; see also Richard Rogers et al., *The Language of Miranda Warnings in American Jurisdictions: A Replication and Vocabulary Analysis*, 32 LAW & HUM. BEHAV. 124, 135 (2008) (noting that key words and concepts of a warning require at least a tenth-grade level of education); Richard Rogers, *A Little Knowledge Is a Dangerous Thing . . . Emerging Miranda Research and Professional Roles for Psychologists*, 63 AM. PSYCHOLOGIST 776, 779 (2008).

115. See Rogers, *Comprehensibility and Context*, *supra* note 114, at 74 tbl.3, 76 tbl.4. Many juveniles cannot define critical words used in *Miranda* warnings. See Rona Abramovitch et al., *Young People's Understanding and Assertion of Their Rights to Silence and Legal Counsel*, 37 CANADIAN J. CRIMINOLOGY 1, 10–11 (1995); Rona Abramovitch et al., *Young Persons' Comprehension of Waivers in Criminal Proceedings*, 35 CANADIAN J. CRIMINOLOGY 309, 320 (1993) (arguing that most juveniles do not have sufficient understanding to competently waive *Miranda*); Rogers, *Comprehensibility and Context*, *supra* note 114, at 72–75; Jodi Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals*, 29 LAW & HUM. BEHAV. 253, 261–64 (2005) (finding that youths fifteen years of age and younger had poorer understanding and were more likely to waive rights and confess than older youths). See generally ALAN GOLDSTEIN & NAOMI E. SEVIN GOLDSTEIN, *EVALUATING CAPACITY TO WAIVE MIRANDA RIGHTS* (2010).

116. See GRISSO, *supra* note 86, at 130; Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 PSYCHOL. PUB. POL'Y & L. 3, 11 (1997)

Thomas Grisso has studied juveniles' ability to exercise *Miranda* rights for more than three decades and reports that many youths simply do not understand the warning.<sup>118</sup> Half of juveniles (55.3%), as contrasted with less than one-quarter of adults (23.1%), misunderstood at least one of the warnings and only one-fifth (20.9%) of juveniles, as compared with almost half (42.3%) of adults, understood the entire warning.<sup>119</sup> Although sixteen- and seventeen-year-olds understood *Miranda* comparably with adults, substantial numbers of both groups misunderstood some elements.<sup>120</sup> Younger teens consistently misunderstood *Miranda* more than youths in their mid-teens.<sup>121</sup>

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[hereinafter Grisso, *Adolescents as Trial Defendants*] (distinguishing between understanding words of warning and appreciating the functions of the rights that a warning conveys); Larson, *supra* note 82, at 649–53 (reviewing social psychological research concerning juveniles' limited understanding of the concept of "rights" as entitlements to be exercised).

117. See GRISSEO, *supra* note 86, at 130; Grisso, *Adolescents as Trial Defendants*, *supra* note 116, at 10–11 (“[A] larger proportion of delinquent youths bring to the defendant role an incomplete comprehension of the concept and meaning of a right as it applies to adversarial legal proceedings.”); Thomas Grisso, *Juveniles' Competence to Stand Trial: New Questions for an Era of Punitive Juvenile Justice Reform*, in MORE THAN MEETS THE EYE: RETHINKING, ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARsher ERA OF JUVENILE JUSTICE 23, 29–30 (Patricia Puritz et al. eds., 2002).

118. See GRISSEO, *supra* note 86, at 106–07; Grisso, *Adolescents as Trial Defendants*, *supra* note 116, at 11 (noting adolescents' difficulty in grasping the concept of a right as an entitlement); Grisso, *supra* note 70, at 1152–54; Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 335 (2003) [hereinafter Grisso et al., *Juveniles' Competence to Stand Trial*]. See Generally THOMAS GRISSEO, INSTRUMENTS FOR ASSESSING UNDERSTANDING & APPRECIATION OF *MIRANDA* RIGHTS (1998) (providing tests to assess an examinee's comprehension of *Miranda* warnings).

119. Grisso, *supra* note 70, at 1152–54.

120. Grisso, *Adolescents as Trial Defendants*, *supra* note 116, at 10–14. Age-related improvements in comprehension appear in other studies. See Kassin et al., *supra* note 84, at 8 (“[T]he understanding of adolescents ages 15–17 with near-average levels of verbal intelligence tends not to have been inferior to that of adults.”); Jodi Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 LAW & HUM. BEHAV. 723, 736 (2005) (noting that intellectual and verbal abilities increased with age, which indicates that “young adolescents may not yet have acquired the cognitive abilities necessary to adequately understand and participate in legal proceedings”).

121. See Grisso, *supra* note 70, at 1160 (reporting that the majority of juveniles younger than fifteen years of age “failed to meet both the absolute and relative (adult norm) standards for comprehension . . . [and] misunderstood at least one of the four standard *Miranda* statements, and compared with adults, demonstrated significantly poorer comprehension of the nature and significance of the *Miranda* rights”); Jodi Viljoen et al., *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of*

Even youths who understand *Miranda's* words may not be competent to exercise rights. Competence to stand trial requires a person to understand proceedings, make rational decisions, and assist counsel.<sup>122</sup> Developmental limitations impair youths' understanding, rationality, and ability to assist counsel in the same ways that mental illness or retardation renders adults incompetent.<sup>123</sup> Many younger juveniles are as severely impaired as adults found incompetent to stand trial.<sup>124</sup>

*Roper* and *Graham* concluded that youths' greater susceptibility to social influences diminished their responsibility.<sup>125</sup> *Miranda* characterized custodial interrogation as inherently compelling because police dominate the setting, control information, and create psychological pressures to comply.<sup>126</sup> Adults expect youths to answer questions posed by authorities—parents, teachers, and police—and youths may acquiesce more readily to suggestions.<sup>127</sup> Youths seek interviewers' approval and respond more readily to

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*Legal Standards*, 25 BEHAV. SCI. & L. 1, 9 (2007) (reporting substantially impaired understanding by youths younger than sixteen).

122. See, e.g., *Drope v. Missouri*, 420 U.S. 162, 171 (1975); *Dusky v. United States*, 362 U.S. 402, 402 (1960). Analysts question whether juveniles possess these competencies. See Richard J. Bonnie & Thomas Grisso, *Adjudicative Competence and Youthful Offenders*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE, *supra* note 84, at 73, 86–89; Grisso et al., *Juveniles' Competence to Stand Trial*, *supra* note 118, at 335.

123. See Grisso, *Adolescents as Trial Defendants*, *supra* note 116, at 20–21; Richard E. Redding & Lynda E. Frost, *Adjudicative Competence in the Modern Juvenile Court*, 9 VA. J. SOC. POL'Y & L. 353, 374–78 (2001); Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. REV. 793, 795–98 (2005).

124. See Bonnie & Grisso, *supra* note 122, at 87–88; Grisso et al., *Juveniles' Competence to Stand Trial*, *supra* note 118, at 356; Redding & Frost, *supra* note 123, at 374–78.

125. See *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

126. See *Miranda v. Arizona*, 384 U.S. 436, 455–58 (1966). See generally GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* (2003) (examining advances in psychological research relevant to interrogations and confessions).

127. See Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 1005 (2004) (finding that juveniles' "eagerness to comply with adult authority figures, impulsivity, immature judgment, and inability to recognize and weigh risks in decision-making," puts them at greater risk to falsely confess); Kassin et al., *supra* note 84, at 8 ("[Y]outh under age 15 . . . are more likely to believe that they should waive their rights and tell what they have done, partly because they are still young enough to believe that they should never disobey authority."); Krishna K. Singh & Gisli H. Gudjonsson, *Interrogative Suggestibility Among Adolescent Boys and Its Relationship with Intelligence, Memory, and Cognitive Set*, 15 J. ADOLESCENCE 155, 160 (1992).

negative pressure.<sup>128</sup> Youths may impulsively provide false confessions to escape the stress of a lengthy interrogation.<sup>129</sup>

Although the Court requires suspects to invoke *Miranda* clearly and unambiguously,<sup>130</sup> some groups—juveniles, females, or racial minorities—may assert rights more tentatively to avoid conflict with those in power.<sup>131</sup> The Court in *Davis v. United States*<sup>132</sup> recognized that requiring a clear invocation of rights could prove problematic for some suspects.<sup>133</sup> Even older youths who understand *Miranda* may feel more constrained by power differentials and less able to assert rights effectively.<sup>134</sup>

### C. Police Interrogation Practices

The *Miranda* Court did not have direct evidence or empirical studies of how police questioned suspects.<sup>135</sup> It could not assess how psychological tactics like isolation, confrontation, or minimization affected suspects' willingness to talk.<sup>136</sup> The Court used training manuals as a proxy,<sup>137</sup> and quoted extensively from Fred E. Inbau

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128. See F. James Billings et al., *Can Reinforcement Induce Children to Falsely Incriminate Themselves?*, 31 LAW & HUM. BEHAV. 125, 126 (2007); Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 BEHAV. SCI. & L. 757, 764 (2007) ("Psychologically coercive strategies that contribute to interrogative suggestibility play on young suspects' eagerness to please, firm trust of people in authority, lack of self-confidence, increased desire to protect friends/relatives and to impress peers, and increased desire to leave the interrogation sooner." (citations omitted)); G. Richardson et al., *Interrogative Suggestibility in an Adolescent Forensic Population*, 18 J. ADOLESCENCE 211, 215 (1995).

129. See Drizin & Leo, *supra* note 127; Jessica Owen-Kostelnik et al., *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 AM. PSYCHOLOGIST 286, 292 (2006).

130. See, e.g., *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010); *Davis v. United States*, 512 U.S. 452, 459 (1994).

131. See Janet E. Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259, 318 (1993).

132. 512 U.S. 452.

133. *Id.* at 460 ("[R]equiring a clear assertion of the right to counsel might disadvantage some suspects who—because of fear, intimidation, lack of linguistic skills, or a variety of other reasons—will not clearly articulate their right to counsel although they actually want to have a lawyer present.").

134. FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 58.

135. See *Miranda v. Arizona*, 384 U.S. 436, 448 (1966) ("Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms.").

136. See *id.* ("[T]he modern practice of in-custody interrogation is psychologically rather than physically oriented."). See generally Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 PSYCHOL. SCI. PUB. INT. 33, 53–56 (2004).

137. *Miranda*, 384 U.S. at 448–55; see also Richard A. Leo & Welsh S. White, *Adapting to Miranda: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by Miranda*, 84 MINN. L. REV. 397, 407 (1999); Charles D. Weisselberg, *Mourning Miranda*, 96 CALIF. L. REV. 1519, 1526 (2008)

and John E. Reid's *Criminal Interrogation and Confessions* as a surrogate for interrogation practices.<sup>138</sup> The Reid Method remains the foremost training program and underlies most contemporary interrogation practice and research.<sup>139</sup>

Isolating a suspect under the Reid Method eliminates social supports and psychological tactics to overcome resistance and create the compulsive pressures of custodial interrogation.<sup>140</sup> Psychologists describe the Reid Method's manipulations as maximization and minimization techniques.<sup>141</sup> Maximization techniques "convey the interrogator's rock-solid belief that the suspect is guilty and that all denials will fail. Such tactics include making an accusation, overriding objections, and citing evidence, real or manufactured, to shift the suspect's mental state from confident to hopeless."<sup>142</sup> Minimization techniques "provide the suspect with moral justification and face-saving excuses for having committed the crime in question. Using this approach, the interrogator offers sympathy

[hereinafter Weisselberg, *Mourning Miranda*]. See generally Charles D. Weisselberg, *Saving Miranda*, 84 CORNELL L. REV. 109, 119 n.48 (1998) [hereinafter Weisselberg, *Saving Miranda*] (describing the research conducted by the Supreme Court librarian to determine the representativeness of interrogation manuals).

138. *Miranda*, 384 U.S. at 449–55; see also *id.* at 449 n.9 ("The methods described in Inbau & Reid, *Criminal Interrogation and Confessions* . . . have had rather extensive use among law enforcement agencies.").

139. See LEO, POLICE INTERROGATION, *supra* note 7, at 111–12 (2008). Reid instructors have trained more than 500,000 investigators. *Interviewing & Interrogation*, JOHN E. REID & ASSOCIATES, INC., [http://www.reid.com/training\\_programs/interview\\_overview.html](http://www.reid.com/training_programs/interview_overview.html) (last visited Aug. 22, 2014). And the Reid Method is the most widely taught interrogation technique in North America. Lesley King & Brent Snook, *Peering Inside a Canadian Interrogation Room: An Examination of the Reid Model of Interrogation, Influence Tactics, and Coercive Strategies*, 36 CRIM. JUST. & BEHAV. 674, 674 (2009). The Reid Method's ubiquity provides a framework for most contemporary research. See, e.g., GUDJONSSON, *supra* note 126, at 10–21; Feld, *Juveniles' Competence to Exercise Miranda Rights*, *supra* note 84, at 50–51; King & Snook, *supra* at 675–80.

140. *Miranda*, 384 U.S. at 449–55; see also GUDJONSSON, *supra* note 126, at 10 ("[Inbau and Reid] introduced a nine-step method aimed at breaking down the resistance of reluctant suspects and making them confess, referred to as the 'Reid Technique.'"); *Id.* at 30–31 ("Social isolation . . . can powerfully influence the decision-making of suspects and the reliability of their statements."); Kassin et al., *supra* note 84, at 15 ("[T]he goal of interrogation is to alter a suspect's decision making by increasing the anxiety associated with denial and reducing the anxiety associated with confession."); Saul M. Kassin, *The Psychology of Confession Evidence*, 52 AM. PSYCHOLOGIST 221, 222 (1997) [hereinafter Kassin, *The Psychology of Confession Evidence*] ("Against the backdrop of a physical environment that promotes feelings of social isolation, sensory deprivation, and a lack of control, Inbau et al. (1986) described in vivid detail a nine-step procedure designed to overcome the resistance of reluctant suspects.").

141. See Kassin et al., *supra* note 84, at 12 (discussing maximization and minimization techniques used in police interrogations).

142. *Id.*

and understanding . . . [and] normalizes and minimizes the crime."<sup>143</sup>

The Reid Method claims that verbal and nonverbal cues—behavioral symptom analysis—enable interrogators to distinguish between guilty and innocent suspects and to question them accordingly.<sup>144</sup> It prescribes a nine-step sequence to increase stress, weaken resistance, provide face-saving rationales, and encourage confessions.<sup>145</sup> The Reid Method does not modify interrogation tactics to accommodate developmental differences;<sup>146</sup> instead, it teaches police that the “principles . . . discussed with respect to adult suspects are just as applicable the younger ones.”<sup>147</sup> Its training does not distinguish between male and female suspects and employs the same tactics with both.

Interrogation training in England and Wales prescribed investigative interviews that are designed to elicit information

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143. *Id.* at 14.

144. See Meyer & Reppucci, *supra* note 128, at 760. Beginning with a “Behavioral Analysis Interview,” police decide if an interviewee is a “prime suspect” by observing whether the interviewee exhibits verbal and nonverbal deceptive behaviors such as “gaze aversion, unnatural body postures,” “touching and scratching,” “lack of confidence, and delays in response.” *Id.* Psychologists question the theoretical underpinnings and scientific validity of the Reid Method. See *id.* at 671–72; see also GUDJONSSON, *supra* note 126, at 12 (“Inbau and [Reid] have not published any data or studies on their observations. In other words, they have not collected any empirical data to scientifically validate their theory and techniques.”).

145. See GUDJONSSON, *supra* note 126, at 10–21; *id.* at 11 (presenting the bases of the Reid Method: “[b]reaking down denials and resistance” and “[i]ncreasing the suspect’s desire to confess”); FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 212–16 (4th ed. 2004); LEO, POLICE INTERROGATION, *supra* note 7, at 119 (“[P]sychological interrogation . . . is a strategic, multistage, goal-directed, stress-driven exercise in persuasion and deception, one designed to produce a very specific set of psychological effects and reactions in order to move the suspect from denial to admission.”); Stephen J. Schulhofer, *Reconsidering Miranda*, 54 U. CHI. L. REV. 435, 452 (1987) (arguing that the tensions police create in the custodial environment are designed to overcome a suspect’s reluctance to talk).

146. See Meyer & Reppucci, *supra* note 128, at 761; Owen-Kostelnik et al., *supra* note 129, at 290; N. Dickon Reppucci et al., *Custodial Interrogation of Juveniles: Results of a National Survey of Police*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS 67, 69 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

147. INBAU ET AL., *supra* note 145, at 298. Reid-trained police view adolescents to be as competent as adults and use similar tactics with both. See Meyer & Reppucci, *supra* note 128, at 761; see also Jessica O. Kostelnik & N. Dickon Reppucci, *Reid Training and Sensitivity to Developmental Maturity in Interrogation: Results from a National Survey of Police*, 27 BEHAV. SCI. & L. 361, 370–74 (2009) (reporting that Reid-trained police use the same techniques with juvenile offenders and adults).

rather than to secure a confession.<sup>148</sup> The Police and Criminal Evidence Act of 1984 (the “PACE Act”) required police to record interrogations.<sup>149</sup> Police, psychologists, and lawyers collaborated to develop the PEACE approach to investigative interviewing.<sup>150</sup> The PEACE acronym stands for “Planning and Preparation,” “Engage and Explain,” “Account,” “Closure,” and “Evaluate.” The PEACE method is an information-gathering method of questioning that is less confrontational or accusatory than the Reid Method.<sup>151</sup> Whereas the Reid Method equates juveniles and adults, PEACE

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148. See Ray Bull & Becky Milne, *Attempts to Improve the Police Interviewing of Suspects*, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 181, 185–86 (G. Daniel Lassiter ed., 2004) [hereinafter Bull & Milne, *Attempts to Improve*]; Kassin et al., *supra* note 84, at 28. See generally Ray Bull & Stavroula Soukara, *Four Studies of What Really Happens in Police Interviews*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 146, at 81, 82–83; REBECCA MILNE & RAY BULL, INVESTIGATIVE INTERVIEWING: PSYCHOLOGY AND PRACTICE 158 (1999) [hereinafter MILNE & BULL, INVESTIGATIVE INTERVIEWING].

149. Police and Criminal Evidence Act, 1984, c. 60, § 60 (Eng.); see GUDJONSSON, *supra* note 126, at 22 (“Since 1991 there has been mandatory tape-recording [in England and Wales] of any person suspected of an indictable offence who is interviewed under caution.” (citation omitted)); Milne & Bull, *Investigative Interviewing*, *supra* note 148, at 73–76; Bull & Soukara, *supra* note 148, at 81–82.

150. MILNE & BULL, INVESTIGATIVE INTERVIEWING, *supra* note 148, at 159; Ray Bull, *Preface to INVESTIGATIVE INTERVIEWING*, at vii–viii (Ray Bull, ed., 2014) (summarizing elements of PEACE approach). The PEACE approach encourages officers to establish rapport, to obtain a free narrative, to use open rather than leading questions, and then to provide meaningful closure by summarizing information and answering any questions. See MILNE & BULL, INVESTIGATIVE INTERVIEWING, *supra* note 148, at 108; Kassin et al., *supra* note 84, at 28. The acronym PEACE—“Planning and Preparation,” “Engage and Explain,” “Account,” “Closure,” and “Evaluate”—describes the five components of the British interview approach. Investigators conduct interviews as a search for truth rather than as a quest for a confession, and the approach prohibits the use of trickery. See Bull & Soukara, *supra* note 148, at 81–83; S. Soukara et al., *What Really Happens in Police Interviews of Suspects? Tactics and Confessions*, 15 *Psychol. Crime & L.* 493, 500 (2009).

151. See GUDJONSSON, *supra* note 126, at 53; see also MILNE & BULL, INVESTIGATIVE INTERVIEWING, *supra* note 148, at 157–67 (describing the goal of the interview as to gather as much information as possible to create an accurate factual picture, rather than simply to elicit a confession). Advocates of the PEACE approach criticize the Reid Method as “contrary to the principles of good investigative interviewing.” Bull & Milne, *Attempts to Improve*, *supra* note 148, at 182. Reid tactics seek to control and manipulate the suspect to extract a confession. See *id.* The accusatorial approach is guilt-presumptive and confrontational and attempts to elicit statements that confirm police hypotheses about the suspect’s guilt. See *id.* By contrast, the information-gathering method emphasizes rapport between the questioner and suspect and seeks the suspect’s version of events. See MILNE & BULL, INVESTIGATIVE INTERVIEWING, *supra* note 148, at 157–58; Bull & Soukara, *supra* note 148, at 84–87.

recognizes youths' vulnerabilities and requires an appropriate adult to attend a juvenile's interview.<sup>152</sup>

Interrogation training in Minnesota reflects both the Reid Method and the PEACE elements. The Minnesota Supreme Court in *State v. Scales*<sup>153</sup> required police to record all custodial interrogations.<sup>154</sup> Because questioning took place "on the record," police trainers developed less confrontational strategies to interview suspects.<sup>155</sup> Training protocols advocate the use of open-ended questions to obtain a free narrative and to elicit information rather than to conduct a "recorded interview with the goal of getting a confession."<sup>156</sup>

#### D. Police Interrogation: Empirical Research

Despite the critical role of interrogation in justice administration, criminologists and legal scholars have conducted remarkably few empirical studies of how police question suspects.<sup>157</sup> Post-*Miranda* research examined whether police warned suspects

152. See COLIN CLARKE & REBECCA MILNE, NATIONAL EVALUATION OF THE PEACE INVESTIGATIVE INTERVIEWING COURSE 32 (2001); see also MILNE & BULL, INVESTIGATIVE INTERVIEWING, *supra* note 148, at 77 (discussing youths' vulnerabilities during police questioning). See generally Ray Bull, *The Investigative Interviewing of Children and Other Vulnerable Witnesses: Psychological Research and Working/Professional Practice*, 15 LEGAL & CRIMINOLOGICAL PSYCHOL. 5, 9 (2010) (explaining how the PEACE method uses different strategies for children than for adults).

153. 518 N.W.2d 587 (Minn. 1994).

154. *Id.* at 592.

155. See Neil Nelson, Strategies for the Recorded Interview (2006) (unpublished training manual) (on file with author) (describing, as part of a police interrogation training program, various aspects of interrogation and questioning). The purpose of the interview is "[t]o gather information (not to get a confession) as part of a thorough and exhaustive investigation." *Id.* at 4.

156. *Id.* at 10. Neutral, open-ended questions give the suspect an opportunity to provide information without putting her on the defensive. The officer attempts to develop good rapport with the suspect. "Set yourself up as the simple and impartial carrier of facts. You are the vehicle that takes the story to the higher power—the people who decide the suspect's fate (e.g., charging attorney, judge, jury) . . . Continually reinforce your role as partner and messenger, rather than decision-maker." *Id.* at 18–19.

157. See LEO, POLICE INTERROGATION, *supra* note 7, at 4–5; Leo, *Interrogation Room*, *supra* note 7, at 267–68 ("[W]e know scant more about actual police interrogation practices today than we did in 1966 when Justice Earl Warren lamented the gap problem in *Miranda v. Arizona*."). See generally Paul G. Cassell & Bret S. Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda*, 43 UCLA L. REV. 839, 840 (1996) (decrying the dearth of knowledge about police interrogations); Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 631 (1996) ("[E]verything we know to date about the impact of *Miranda* comes from research that was undertaken when *Miranda* was still in its infancy.").

and the impact of warnings on rates of confessions.<sup>158</sup> Only the 1967 Yale–New Haven study actually observed police questioning suspects.<sup>159</sup> In the mid-1990s, Richard Leo conducted the only field study of interrogation in the United States.<sup>160</sup> I have studied tapes and transcripts of interrogations,<sup>161</sup> and researchers have used other indirect methods.<sup>162</sup> Researchers in England have analyzed the

158. After *Miranda*, studies measured police compliance and the impact of warnings on confession rates. See, e.g., Lawrence S. Leiken, *Police Interrogation in Colorado: The Implementation of Miranda*, 47 DENV. L.J. 1, 11 (1970) (interviewing jailed suspects about *Miranda* warnings); Richard J. Medalie et al., *Custodial Police Interrogation in Our Nation's Capital: The Attempt to Implement Miranda*, 66 MICH. L. REV. 1347, 1348–50 (1968); Richard H. Seeburger & R. Stanton Wettick, Jr., *Miranda in Pittsburgh—A Statistical Study*, 29 U. PITT. L. REV. 1, 26 (1967) (“*Miranda* has not impaired significantly the ability of the law enforcement agencies to apprehend and convict the criminal.”); James W. Witt, *Non-Coercive Interrogation and the Administration of Criminal Justice: The Impact of Miranda on Police Effectuality*, 64 J. CRIM. L. & CRIMINOLOGY 320, 326–27 (1973). Most researchers concluded that *Miranda* had a minimal effect on rates of confession and conviction or on interrogation tactics. See, e.g., Stephen Schulhofer, *Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs*, 90 NW. U. L. REV. 500, 547 (1996) (“*Miranda's* empirically detectable net damage to law enforcement is zero.”); George C. Thomas III, *Is Miranda a Real-World Failure? A Plea for More (and Better) Empirical Evidence*, 43 UCLA L. REV. 821, 837 (1996) (“[T]here is no proof of a *Miranda* effect on the confession rate.”). But see Paul G. Cassell, *Miranda's Social Costs: An Empirical Reassessment*, 90 NW. U. L. REV. 387, 394, 417 (1996) (arguing *Miranda's* costs include “lost confessions,” i.e., statements not obtained because warnings dissuade suspects from talking).

159. See Michael Wald et al., *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519, 1533–58, 1613 (1967) (observing police interrogation of suspects and concluding “[n]ot much has changed after *Miranda*”).

160. In 1992–93, Richard Leo observed 122 interrogations at a major urban police department and reviewed sixty videotaped interrogations performed by two other police departments. Leo, *Interrogation Room*, *supra* note 7, at 268; see also Richard A. Leo, *Miranda's Revenge: Police Interrogation as a Confidence Game*, 30 LAW AND SOC'Y REV. 259, 263 (1996).

161. See, e.g., Barry C. Feld, *Cops and Kids in the Interrogation Room*, in INVESTIGATIVE INTERVIEWING 35, 38 (Ray Bull ed., 2014); FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 275 (analyzing 307 interrogation tapes and transcripts); Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 419–21 (2013); Feld, *Juveniles' Competence to Exercise Miranda Rights*, *supra* note 84, at 62–63 (analyzing sixty-six tapes and transcripts of interrogation of sixteen- and seventeen-year-old felony delinquents in one county in Minnesota); Feld, *Police Interrogation of Juveniles*, *supra* note 84, at 248–49; Feld, *Real Interrogation*, *supra* note 8, at 1.

162. See, e.g., Cassell & Hayman, *supra* note 157, at 851–52 (describing how researchers attended screening sessions about interrogations that were conducted by the prosecutor of the police officer); King & Snook, *supra* note 139 (analyzing forty-four recorded criminal interrogations in Canada to assess the prevalence of Reid Method tactics); Weisselberg, *Mourning Miranda*, *supra* note 137, at 1521 (analyzing police training materials); Weisselberg, *Saving Miranda*, *supra* note 137, at 134–40 (analyzing police training materials).

PACE Act recordings and transcripts and generated a substantial body of empirical research.<sup>163</sup> Psychologists have conducted extensive laboratory research for decades on the dynamics of questioning and the vulnerability of certain populations, but these studies lack the external validity of custodial interrogation.<sup>164</sup> False confessions provide another look at how police question suspects and highlight the heightened vulnerability of youths.<sup>165</sup>

In light of the general paucity of interrogation research, it should come as no surprise that we know very little about whether police question male and female suspects differently. Limited laboratory research reports few differences between how boys and girls respond to police interrogation. “Nearly all of the studies that have examined gender differences in *Miranda* comprehension have found no differences between males’ and females’ understanding and/or appreciation of rights.”<sup>166</sup> One analyst reported minor differences, but attributed female delinquents’ poorer understanding of *Miranda* to less justice system experience and contact with lawyers, rather than to gender per se.<sup>167</sup>

This Article examines what happens when police interrogate female delinquents charged with serious offenses. It assesses

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163. See, e.g., ROGER EVANS, ROYAL COMM’N ON CRIMINAL JUSTICE, THE CONDUCT OF POLICE INTERVIEWS WITH JUVENILES (1993) (analyzing The PACE Act transcripts of police interviews of juveniles); GUDJONSSON, *supra* note 126, at 59–60, 79–80 (employing sophisticated quantitative and qualitative methods to code and analyze tapes and transcripts of interrogations); MILNE & BULL, INVESTIGATIVE INTERVIEWING, *supra* note 148, at 75–76; Bull & Soukara, *supra* note 148, at 84–93 (analyzing audio tapes of interrogations); Roger Evans, *Police Interrogations and the Royal Commission on Criminal Justice*, 4 POLICING & SOC’Y 73, 79–80 (1994); J. Pearse et al., *Police Interviewing and Psychological Vulnerabilities: Predicting the Likelihood of a Confession*, 8 J. CMTY. & APPLIED SOC. PSYCHOL. 1, 1–2 (1998).

164. See, e.g., Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 AM. PSYCHOLOGIST 215, 218–21 (2005) [hereinafter Kassin, *On the Psychology of Confessions*] (summarizing laboratory studies and simulations of police interrogation); Kassin et al., *supra* note 84, at 16–17; Kassin, *The Psychology of Confession Evidence*, *supra* note 140, at 223 (describing “maximization” and “minimization” techniques); Kassin & Gudjonsson, *supra* note 136, at 37.

165. See, e.g., BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG 279 (2011) [hereinafter GARRETT, CONVICTING THE INNOCENT] (reporting false confessions in 16% of wrongful convictions); BARRY SCHECK ET AL., ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT 119–21 (2003); Drizin & Leo, *supra* note 127, at 902 (noting that false confessions occur in about 14–25% or more of cases of wrongful convictions and DNA exonerations); Garrett, *supra* note 84, at 66, 89 (reporting that of 200 DNA exonerees, 11% were juveniles and many wrongful convictions contained false confessions); Samuel R. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 (2005) (reporting that 42% of juveniles gave false confessions).

166. GOLDSTEIN & SEVIN GOLDSTEIN, *supra* note 115, at 68.

167. Viljoen & Roesch, *supra* note 120, at 738.

whether girls waive *Miranda* rights significantly more often than boys. It compares and contrasts how police question girls and boys. It reports how police and justice system personnel perceive girls in the interrogation room.

## II. DATA AND METHODOLOGY

In 1994, the Minnesota Supreme Court in *State v. Scales* required police to record custodial interrogations.<sup>168</sup> *Scales* held that “all custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention.”<sup>169</sup> Currently, about a dozen states require police to record some or all interrogations.<sup>170</sup>

This study analyzes *Scales* interrogation tapes and transcripts, and the police reports, juvenile court petitions, and sentences of youths charged with felony offenses. Delinquency trials of sixteen- and seventeen-year-old youths charged with felony offenses are public proceedings.<sup>171</sup> County Attorneys in Minnesota’s four largest counties allowed me to search the files of sixteen- and seventeen-year-old youths charged with a felony<sup>172</sup> and to copy those files in

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168. *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994).

169. *Id.* The Minnesota court in *Scales* (adopting the reasoning of the Alaska Supreme Court in *State v. Stephan*, 711 P.2d 1156, 1159–60 (Alaska 1985)) became the first state to require recording of custodial interrogations. *Scales*, 518 N.W.2d at 592.

170. See Thomas P. Sullivan, *The Wisdom of Custodial Recordings, in POLICE INTERROGATIONS AND FALSE CONFESSIONS, CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS*, *supra* note 146, at 127, 127–28; see, e.g., *In re Jerrell C.J.*, 699 N.W.2d 110, 123 (Wis. 2005); see also GARRETT, *CONVICTING THE INNOCENT*, *supra* note 165, at 341 n.23 (listing statutes and regulations that require recording of interrogations); THOMAS P. SULLIVAN, NW. UNIV. SCH. OF LAW, CTR. ON WRONGFUL CONVICTIONS, *POLICE EXPERIENCES WITH RECORDING CUSTODIAL INTERROGATIONS*, app. A1–A10 (2004) (listing police departments that record custodial interrogations); Allison D. Redlich & Steven Drizin, *Police Interrogation of Youth, in THE MENTAL HEALTH NEEDS OF YOUNG OFFENDERS* 61, 73 (Carol L. Kessler & Louis James Kraus eds., 2007); Thomas P. Sullivan, *The Time Has Come for Law Enforcement Recordings of Custodial Interviews, Start to Finish*, 37 GOLDEN GATE U. L. REV. 175, 176–77 (2006).

171. MINN. STAT. § 260B.163(1)(c)(2) (2005). At the request of the County Attorneys, this study focused on older felony delinquents to obviate some privacy concerns.

172. The files involved cases in which all court proceedings had been concluded, but which had not yet been transferred to storage in archives. Police conducted most of the interrogations in this study between about 2003 and 2006. Anoka, Dakota, Hennepin, and Ramsey Counties are the four most populous of Minnesota’s eighty-seven counties and account for almost half (47.6%) of the state’s population and nearly half (45.6%) of the delinquency petitions filed. See FELD, *KIDS, COPS, AND CONFESSIONS*, *supra* note 8, at 272 for a more complete description of the methodology and data summarized here.

which police interrogated or juveniles invoked *Miranda*.<sup>173</sup> I obtained 307 files in which juveniles invoked or waived *Miranda*. Thirty-three cases involved female delinquents, which I compare and contrast with those of male delinquents.

I reviewed police reports and other documents to learn about the crime, the context of interrogation, and what evidence police possessed when they questioned a suspect. I coded each file to analyze where and when interrogations took place, who was present, how police gave the *Miranda* warning, whether juveniles invoked or waived, how officers questioned juveniles, how they responded, and how invoking *Miranda* affected case processing.<sup>174</sup> The 307 files reflect some sample selection bias because they are charged cases, serious delinquents, more likely to go to trial, and perhaps include more juveniles who waived *Miranda*.<sup>175</sup> Despite these caveats, the study includes a range of serious crimes, analyzes one of the largest number of routine felony interrogations ever aggregated in the United States, and reports on how police question serious female suspects. More than 150 officers from more than fifty agencies

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173. Court orders authorized access to juvenile courts' files and included confidentiality restrictions to protect juveniles' identities. I personally transcribed interrogation tapes and coded all of the files to address confidentiality concerns. The courts' confidentiality restrictions precluded use of multiple coders and inter-rater reliability scores.

174. I obtained, modified, and expanded codebooks used in prior interrogation research. See generally Leo, *Interrogation Room*, *supra* note 7; John Pearse & Gisli H. Gudjonsson, *The Identification and Measurement of "Oppressive" Police Interviewing Tactics in Britain*, in *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 75 (2003); Wald et al., *supra* note 159.

175. The sample includes only juveniles whom prosecutors charged with a felony and for whom an interrogation or invocation record exists. Other evidence being equal, prosecutors are more likely to charge suspects who waive *Miranda* than those who invoke *Miranda* because they have plea bargain advantage. Police made these *Scales* recordings during custodial interrogation, and the files do not include unrecorded, noncustodial interviews. The felony cases in which prosecutors charged that contained transcripts may differ in some ways from those in which juveniles invoked *Miranda* or from those that police did not move forward on charging. They may also differ from those cases that prosecutors did not charge, or from those that they charged but which did not contain transcripts. Minnesota excludes cases of sixteen- or seventeen-year-old youths charged with Murder 1 from juvenile court jurisdiction. MINN. STAT. § 260B.007(6)(B) (2011); see also Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 1051-57 (1995). Also, prosecutors filed transfer motions against some other youths charged with the most serious offenses. See generally Marcy Rasmussen Podkopacz & Barry C. Feld, *The End of the Line: An Empirical Study of Judicial Waiver*, 86 J. CRIM. L. & CRIMINOLOGY 449, 462-68 (1996). As a result, the sample under-represents some of the most serious crimes: murder, criminal sexual conduct, and armed offenses.

interviewed these suspects.<sup>176</sup> In addition to the quantitative data, I interviewed police, prosecutors, defense lawyers, and juvenile court judges to elicit their views, learn from their experiences, and test my findings.<sup>177</sup> I also asked whether they perceived differences between boys and girls in the interrogation room and, if so, what were the differences.

### III. QUESTIONING GIRLS

After describing characteristics of the youths in this study, I examine quantitative data on boys' and girls' invocation or waiver of *Miranda* rights. I then analyze how police questioned the vast majority of boys and girls who waived their *Miranda* rights and the outcomes of interrogations. In the next Part, I present qualitative data of how police and justice system personnel perceived girls in the interrogation room.

#### A. *Quantitative Findings: Police Question Boys and Girls Similarly*

Table 1 describes the boys and girls in this study. Girls comprised one-tenth (10.7%) of the youths whom prosecutors charged with felony offenses—the same ratio at which police arrest girls and boys for felony-level crimes.<sup>178</sup> Although girls constitute a small portion of the felons whom police questioned, the girl results are strikingly similar to the boy results. A significantly larger

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176. We do not know how community contexts, police department cultures, or interrogation practices vary or how those variations affect suspects' waivers or invocations. See generally EVANS, *supra* note 163, at 21–22; Richard A. Leo, *The Third Degree and the Origins of Psychological Interrogation in the United States*, in INTERROGATIONS, CONFESSIONS AND ENTRAPMENT 37 (G. Daniel Lassiter ed., 2004); Allison D. Redlich & Christian A. Meissner, *Techniques and Controversies in the Interrogation of Suspects: The Artful Practice Versus the Scientific Study*, in PSYCHOLOGICAL SCIENCE IN THE COURTROOM: CONSENSUS AND CONTROVERSY 124 (Jennifer L. Skeem et al. eds., 2009) (examining research on interrogation and interrogation techniques and controversies while distinguishing between empirical research and actual practice). Minnesota police likely adjusted their interrogation tactics to accommodate *Scales'* recording requirement. See, e.g., Nelson, *supra* note 155, at 11–12.

177. I interviewed nineteen police officers, six juvenile prosecutors, nine juvenile defense lawyers, and five juvenile court judges from both urban and suburban counties. The police officers averaged 18.4 years of professional experience; the prosecutors averaged 14.5 years; the public defenders averaged 13.3 years; and the juvenile court judges averaged 16 years. I interviewed sergeants, detectives or investigators, and school resource officers of the ranks and specialties that conduct the most custodial interrogations of juveniles. The recorded interviews lasted between thirty and eighty minutes, averaged about forty-five minutes, and provided thick descriptions of the process. I conducted saturation interviews until no new data, themes, or conceptual relationships emerged. See FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 280–81, for a more complete description of the methodology.

178. See *supra* notes 25–28 and accompanying text.

proportion of girls were seventeen years old compared with boys (66.7% vs. 40.1%). There were *no other statistically significant differences* between girls and boys questioned by police. Nearly two-thirds (63.6%) of the girls questioned by police lived in urban counties, whereas the boys were more evenly distributed between urban (52.2%) and suburban (47.8%) locales. The types of crimes that delinquents committed in urban and suburban counties were not significantly different. Prosecutors charged a somewhat larger proportion of girls with property and drug crimes and a smaller proportion with violent crimes than they did boys, but these differences were not statistically significant. Girls had somewhat fewer prior arrests, but again the differences were not statistically significant. Because the boys and girls are so similar, I attribute differences in how police questioned them and their responses to gender.

TABLE 1: CHARACTERISTICS OF JUVENILES INTERROGATED BY GENDER\*

	Male		Female	
	N	%	N	%
<b>Age**</b>				
16	161	58.8	10	30.3
17	110	40.1	22	66.7
18	3	1.1	1	3.0
<b>Race</b>				
White	144	53.1	16	48.5
Black	95	35.1	12	36.4
Other	32	11.8	5	15.2
<b>County Type</b>				
Urban	143	52.2	21	63.6
Suburban	131	47.8	12	36.4
<b>Offense</b>				
Property <sup>1</sup>	148	54.0	21	63.6
Person <sup>2</sup>	91	33.2	6	18.2
Drugs <sup>3</sup>	15	5.5	4	12.1
Firearms <sup>4</sup>	16	5.8	1	3.0
Other <sup>5</sup>	4	1.5	1	3.0
<b>Prior Arrests</b>				
None	84	31.3	13	40.6
Status	40	14.9	7	21.9
Misdemeanor	63	23.5	9	28.1
One Felony	42	15.7	3	9.4
Two or More Felonies	39	14.6	0	0.0
<b>Prior Juvenile Court Referrals</b>				
None	111	42.2	15	50.0
One or More	152	57.8	15	50.0
<b>Court Status at Time of Interrogation</b>				
None	125	47.3	17	54.8
Prior Supervision	56	21.2	5	16.1
Current Probation/Parole	67	25.4	8	25.8
Current Placement	16	6.1	1	3.2
<b>Study Total</b>	<b>274</b>	<b>89.3</b>	<b>33</b>	<b>10.7</b>

\*This Table was previously published in substantially the same form in FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 284. Totals for separate variables may not equal 100% of N due to unavailable data.

\*\*Statistically significant at:  $\chi^2(2, N = 307) = 9.946, p < .05$

<sup>1</sup> Crimes against property include burglary, theft of a motor vehicle, arson, receiving stolen property, possession of stolen property, possession of burglary tools, criminal damage to property, theft, forgery, theft by swindle, and credit card fraud.

<sup>2</sup> Crimes against the person include aggravated and simple robbery, aggravated assault, murder and attempted murder, criminal vehicular homicide, criminal sexual conduct, and terroristic threats.

<sup>3</sup> Drug crimes include sale or possession of a controlled substance (crack, methamphetamine, marijuana, codeine, ecstasy, heroin), possession of a forged prescription, and tampering with anhydrous ammonia equipment (methamphetamine).

<sup>4</sup> Firearm crimes include possession of a firearm, discharge of a firearm, theft of a firearm, possession of an explosive device, and drive-by shooting.

<sup>5</sup> Other offenses are fleeing a police officer.

Very few differences distinguish the context in which police questioned boys and girls.<sup>179</sup> Police arrested, detained, and questioned equal proportions of girls and boys in custodial locations, such as police stations or detention centers (78.8% girls; 78.9% boys).<sup>180</sup> They questioned a somewhat larger proportion of girls than they did boys within twenty-four hours of the offense (78.8% vs. 68.6%, respectively), suggesting that more girls were caught in the act. As a result, police had somewhat stronger evidence at the time they questioned girls than boys (78.8% vs. 61.8%, respectively).<sup>181</sup> This, in turn, would somewhat reduce their need to use more confrontational tactics to elicit information.

The Court in *Miranda* required police to warn a suspect to dispel the inherent coercion of custodial interrogation.<sup>182</sup> Justice White's *Miranda* dissent asked why those same compulsive pressures do not coerce a waiver as readily as an unwarned statement.<sup>183</sup> Research confirms Justice White's intuition that after police isolate suspects in a police-dominated environment, a warning cannot adequately empower them.<sup>184</sup> Post-*Miranda* studies reported

179. See generally FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8 (providing a more complete account of the data gathered in this study).

180. *Id.* at 283. Overall, 78.8% of interrogations occurred in custodial settings and police detained nearly two-thirds (61.7%) of those whom they questioned. *Id.* at 63.

181. *Id.* at 283.

182. *Miranda v. Arizona*, 384 U.S. 436, 458, 476–77 (1966).

183. *Id.* at 536 (White, J., dissenting) (“The Court apparently realizes its dilemma of foreclosing questioning without the necessary warnings but at the same time permitting the accused, sitting in the same chair in front of the same policemen, to waive his right to consult an attorney.”).

184. See, e.g., Mark A. Godsey, *Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self-Incrimination*, 93 CALIF. L. REV. 465, 528–29 (2005) (observing how questioning can lead a suspect to “feel harassed”); Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.-C.L. L. REV. 105, 119–20 (1997) (“[E]ven when a suspect has nothing to conceal, he may experience anxiety because of the dynamics of the interrogation process.”); see

that about 80% of adult suspects waived their rights.<sup>185</sup> The Yale–New Haven study concluded, “[W]arnings had little impact on suspects’ behavior.”<sup>186</sup> Richard A. Leo reported that more than three-quarters (78%) of suspects waived their rights after receiving the warnings.<sup>187</sup> Observers of police-prosecutor charging conferences reported that 83.7% of adult suspects waived.<sup>188</sup> A survey of police estimated that 81% of adult suspects waived.<sup>189</sup>

Juveniles waive *Miranda* at somewhat higher rates than adults do—about 90% of the time.<sup>190</sup> Juveniles’ higher waiver rates may reflect lack of understanding, inability to invoke rights effectively, or less prior involvement with the justice system.<sup>191</sup> Table 2 reports that boys and girls waived their *Miranda* rights at statistically similar rates (92.3% boys; 97% girls; and an overall waiver rate of 92.8%). Interviews with police and justice system personnel confirmed the validity of this finding: nearly all delinquents—male and female—waived *Miranda*.<sup>192</sup> The marginal difference in rates of *Miranda* waivers by gender is consistent with the police officers’ experiences. One officer observed, “[Girls] may be a little less likely to refuse to talk to you. I don’t think I’ve ever had a female refuse to

also Weisselberg, *Mourning Miranda*, *supra* note 137, at 1537–38 (“[I]nterrogation . . . works by increasing suspects’ anxiety, instilling a feeling of hopelessness, and . . . leading them to believe that they will benefit by making a statement.”).

185. FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 93–94.

186. Wald et al., *supra* note 159, at 1563.

187. Leo, *Interrogation Room*, *supra* note 7, at 276.

188. Cassell & Hayman, *supra* note 157, at 859.

189. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 389 (2007).

190. See GOLDSTEIN & SEVIN GOLDSTEIN, *supra* note 115, at 50 (stating that studies conducted in the 1970s found rates of waiver by juveniles to be over 90% and a study in 2005 found the rate of waiver to be 87%); GRISSO, *supra* note 86, at 36 (reporting that juveniles refused to talk during interrogations at a “considerably smaller” rate than adults); J. Thomas Grisso & Carolyn Pomicter, *Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver*, 1 LAW & HUM. BEHAV. 321, 333–34 (1977) (finding 90.6% of juvenile felony suspects chose to talk when interrogated); Viljoen et al., *supra* note 115, at 261 (reporting that, in a retrospective study of delinquents interviewed in detention, 13.15% reported they had asserted their right to silence).

191. See Viljoen & Roesch, *supra* note 120, at 736–37.

192. See, e.g., FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 95 (noting that “[w]hen asked how many juveniles waive *Miranda*, one officer said, ‘Almost all of them. I couldn’t even tell you the last time a kid told me he didn’t want to talk.’ Another estimated 90%: ‘[N]ot very many kids that don’t talk to you.’ Other police officer[s] said, ‘I haven’t had very many not speak to me. I would have to say 95% of them or more talk.’ A second confirmed, ‘I’d say better than 95%,’ and a third said, ‘Vast majority. I’d say high 90s.’ A suburban prosecutor observed, ‘We don’t have very sophisticated criminals. Maybe 10% refuse to talk.’ Almost all personnel thought that 90% or more of youths waive *Miranda*, and none estimated that fewer than 80% waive”).

talk to me. They always want to say something, even if it's a denial."<sup>193</sup>

TABLE 2: JUVENILES WHO WAIVED OR INVOKED *MIRANDA* BY GENDER AND PRIOR ARRESTS

<i>Miranda</i>		Male	Female	Total
Waive	N =	253	32	285
	% =	92.3	97.0	92.8
Invoke	N =	21	1	22
	% =	7.7	3.0	7.2
<b>Prior Arrests *</b>				
<b>Non-Felony</b>				
Waive	N =	176	29	205
	% =	94.1	100.0	94.9
Invoke	N =	11	0	11
	% =	5.9	.0	5.1
<b>One or More Felony</b>				
Waive	N =	71	2	73
	% =	87.7	66.7	86.9
Invoke	N =	10	1	11
	% =	12.3	33.3	13.1

\* Statistically significant at  $\chi^2(1, N = 300) = 5.7, p < .05$ . Totals for separate variables may not equal 100% of N due to missing data.

The Court in *Fare v. Michael C.* cited Michael C.'s prior experience with police when it found a valid waiver.<sup>194</sup> Criminologists report a relationship between prior arrests and *Miranda* invocations.<sup>195</sup> Suspects with prior arrests waived their rights and confessed at lower rates than did those with less experience.<sup>196</sup> More than one-quarter (27.4%) of the juveniles in this

193. *Id.* at 284.

194. *Fare v. Michael C.*, 442 U.S. 707, 726 (1979); see also GRISSO, *supra* note 86, at 64 (reporting that judges cite a juvenile's prior experience to find she understood *Miranda* warning).

195. See Leo, *Interrogation Room*, *supra* note 7, at 286 ("[A] suspect with a felony record . . . was almost four times as likely to invoke his *Miranda* rights as a suspect with no prior record and almost three times as likely to invoke as a suspect with a misdemeanor record.").

196. See, e.g., GRISSO, *supra* note 86, at 37 (reporting that juveniles with prior felony referrals were less likely to talk); Kassin, *On the Psychology of*

study had one or more prior felony arrests at the time of questioning.<sup>197</sup> As Table 2 reports, both male and female delinquents with one or more prior felony arrests were significantly more likely to invoke *Miranda* than those with less experience.

Several factors likely contribute to boys and girls with more serious prior records having a greater likelihood to invoke *Miranda*. Prior arrests give youths opportunities to spend time with lawyers, learn about rights, and understand legal proceedings.<sup>198</sup> Prior felony arrests provide a reasonable proxy for understanding how to navigate the justice system.<sup>199</sup> Prior arrests provide opportunities to hear *Miranda* warnings, experience interrogation, consult with counsel, and learn the adverse consequences of waiving.<sup>200</sup> Justice system personnel described youths who invoked *Miranda* as "sophisticated," "savvy," "streetwise," "gang-involved," or similarly experienced.<sup>201</sup>

Interrogation enables police to obtain incriminating admissions or leads to other evidence—physical evidence, witnesses, or stolen property—which strengthens prosecutors' cases and facilitates guilty pleas.<sup>202</sup> Police seek suspects' statements—true or false—to contradict changes they later make in their stories and impeach their credibility.<sup>203</sup> Police tell suspects that the interview is their opportunity to "tell their story."<sup>204</sup> They described themselves as

*Confessions*, *supra* note 164, at 218 (reporting that individuals with criminal justice experience are less likely to waive rights than those with no prior felony record); Leiken, *supra* note 158, at 21 tbl.4 (reporting that defendants with prior arrests and felony convictions gave fewer confessions than did those with fewer arrests or convictions).

197. *Supra* Table 1.

198. See Viljoen & Roesch, *supra* note 120, at 737 (finding that juveniles with prior arrests had spent time with lawyers and gained a greater understanding of rights and legal proceedings).

199. FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 99.

200. *Id.*

201. *Id.* A police officer described youths who invoke *Miranda* as "more streetwise. They've been in the system. They know that talking to us isn't going to help them; it's just going to help us get them convicted. They're more streetwise, they're tougher kids. They know the game." *Id.* at 100. A public defender described them similarly. "[They're] the ones who have been through the system before and are more savvy, are a little more streetwise . . . . The kids who have experience tend not to give up their rights as easily as first-timers." *Id.* at 99-100. A prosecutor attributed youths' invocations "largely [to] prior exposure to the system . . . [as] [c]ertain juveniles develop street smarts, savvy about the system. Those are the juveniles—repeated customers—who develop resistance to talking to the police because they've learned." *Id.* at 100.

202. *Id.* at 104.

203. *Id.* at 104-05.

204. *Id.* at 108. Several officers gave similar descriptions of their standard opening to an interrogation. "You just go in and tell them that this is your opportunity to tell me your side of the story. I've already got the other side of the story. I just want to hear what you say happened, and then I'm going to write it up and send it on. And they'll decide." *Id.*

neutral report-writers who want to forward the suspect's statement to prosecutors and judges for evaluation.<sup>205</sup>

Police use maximization and minimization tactics to overcome resistance and make it easier to confess.<sup>206</sup> Maximization strategies emphasize the seriousness of a crime, the strength of the evidence, and the futility of denials.<sup>207</sup> Minimization techniques provide moral justifications and face-saving alternatives, or shift blame to others.<sup>208</sup> Police use maximization tactics to scare or intimidate suspects by confronting them with evidence and similar strategies.<sup>209</sup> Officers may challenge inconsistencies or contradictions, explain that the suspect's claims are implausible, and describe the negative impact false statements have on prosecutors and judges. Police initially encouraged a suspect to commit to a story and then used confrontational tactics to challenge that version.<sup>210</sup> Police confronted suspects with evidence (54.4%); accused them of lying (32.6%); exhorted them to tell the truth (29.5%); asked Behavioral Analysis Interview questions (28.8%); challenged inconsistencies (20.0%); emphasized the seriousness of the crime (14.4%); and accused them of other crimes (8.4%).<sup>211</sup> In nearly one-third (30.9%) of interrogations, police did not use any maximization tactics; in another quarter (23.1%), they used only one.<sup>212</sup> Most youths apparently did not require a lot of persuasion or intimidation to induce them to talk.

This study found that police used maximization tactics significantly more often to interrogate boys than they did to question girls. Table 3 reports that police confronted a larger

205. *Id.* at 105. See *supra* notes 139–43 and accompanying text.

206. See FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 110; Kassir et al., *supra* note 84, at 12; Leo, *Interrogation Room*, *supra* note 7, at 278–79 (explaining that interrogators use “negative incentives (tactics that suggest the suspect should confess because of no other plausible course of action) and positive incentives (tactics that suggest the suspect will in some way feel better or benefit if he confesses).”). See generally Kassir & Gudjonsson, *supra* note 136, at 42–44 (describing the interrogation process, including the use of minimization).

207. See Kassir et al., *supra* note 84, at 12 (“Maximization [is] designed to convey . . . that the suspect is guilty and that all denials will fail.”); Kassir, *The Psychology of Confession Evidence*, *supra* note 140, at 223 (“[M]aximization . . . uses ‘scare tactics’ designed to intimidate a suspect believed to be guilty.”).

208. Kassir, *The Psychology of Confession Evidence*, *supra* note 140, at 223 (“[M]inimization . . . is a ‘soft sell’ technique in which the detective tries to lull the suspect into a false sense of security by offering sympathy, tolerance, face-saving excuses, and moral justification; by blaming the victim or an accomplice; and by underplaying the seriousness or magnitude of the charges.”).

209. See FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 110; Feld, *Real Interrogation*, *supra* note 8, at 5; Leo, *Interrogation Room*, *supra* note 7, at 278.

210. Leo, *Interrogation Room*, *supra* note 7, at 278.

211. FELD, KIDS, COPS, AND CONFESSIONS, *supra* note 8, at 110.

212. *Id.* at 112.

proportion of boys than girls with evidence (56.1% vs. 40.6%). They accused boys of lying twice as often as they did girls (34.4% vs. 18.8%). They urged boys to tell the truth almost three times as often as they did girls (31.6% vs. 12.5%). Recall that police questioned a larger proportion of girls than boys within twenty-four hours of the offense (78.8% vs. 68.6%), and had stronger evidence when they questioned girls than boys (78.8% vs. 61.8%). Because more girls were "caught in the act," police had less need to use maximization tactics.

No statistically significant differences emerged for police use of minimization tactics to question boys and girls. Boys and girls responded to police questioning very similarly. Girls were somewhat more likely than boys to give extended answers and somewhat less likely to deny their involvement, but the differences were not significant. One public defender reported, "Girls talk more. The girls will volunteer information."<sup>213</sup> Girls' propensity to talk made the task of a defense lawyer "a giant nightmare."<sup>214</sup>

TABLE 3: MAXIMIZATION QUESTIONS: TYPES AND FREQUENCY BY GENDER\*

Interrogation Strategy	Male		Female	
	N	% of Cases	N	% of Cases
Confront with Evidence**	142	56.1	13	40.6
Accuse of Lying***	87	34.4	6	18.8
Tell the Truth****	80	31.6	4	12.5
BAI Questions	75	29.6	7	21.9
Confront	52	20.6	5	15.6
Trouble	36	14.2	5	15.6
Accuse Other Crimes	23	9.1	1	3.1

\*This Table was previously published in substantially the same form in *FELD, KIDS, COPS, AND CONFESSIONS*, *supra* note 8, at 284. Based on juveniles (N=285) who waived *Miranda* rights and whom police questioned.

\*\*Statistically significant at:  $\chi^2(1, N = 285) = 2.752, p < .1$

\*\*\*Statistically significant at:  $\chi^2(1, N = 285) = 3.160, p < .1$

\*\*\*\*Statistically significant at:  $\chi^2(1, N = 285) = 4.996, p < .05$

213. *Id.* at 285.

214. *Id.*

Girls were somewhat more likely than boys to confess (68.8% vs. 57.3%), and less likely to completely deny their involvement (3.1% vs. 12.6%), differences that were not statistically significant.<sup>215</sup> Boys were significantly more likely than girls to provide police with leads to other corroborating evidence (19.8% vs. 6.3%).<sup>216</sup> Most boys and girls exhibited similarly cooperative attitudes when police questioned them (79.1% boys; 84.4% girls).<sup>217</sup> Police questioned boys and girls for similar, brief lengths of time and concluded 90% of interviews in less than thirty minutes.<sup>218</sup>

There were no significant differences between the level of offense for which the State convicted boys and girls, “whether the State reduced charges, or the type of disposition they received.”<sup>219</sup> Apart from officers’ somewhat greater use of maximization techniques with boys, police questioned boys and girls very similarly, youths responded in the same ways, and youths confessed at the same rates. Police are trained to question suspects in one way and they use the same techniques whether they question adults or juveniles, and boys or girls.

*B. Qualitative Findings: Justice Personnel Perceive Girls Differently than Boys—Emotional or Confrontational*

Few criminologists have interviewed juvenile justice personnel to elicit their perceptions of girls. Emily Gaarder interviewed juvenile probation officers to obtain their views of girls and how those assessments might affect their treatment.<sup>220</sup> Despite girls’ histories of abuse and neglect, probation officers consistently described them as “manipulative, liars, and criers.”<sup>221</sup> The study described a disconnect between the trauma in girls’ case files—histories of sexual abuse and teenage parenthood—and probation officers’ negative descriptions of girls as manipulative and complaining,<sup>222</sup> and “troubled and troublesome.”<sup>223</sup> Another study of juvenile intake workers reported that they found girls more difficult to work with than boys because they were more emotional and manipulative.<sup>224</sup> They negatively described girls as “manipulative

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215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* at 156. Most interrogations, of adults and juveniles, are surprisingly brief. *Id.* Police concluded over 75% of these interviews in less than fifteen minutes and 90% in less than half an hour. *Id.* Juveniles questioned about guns elicited longer interrogations. *Id.* at 165.

219. *Id.*

220. Gaarder et al., *supra* note 61, at 547.

221. *Id.* at 556.

222. *Id.* at 555.

223. *Id.* at 558.

224. See Bond-Maupin et al., *supra* note 44, at 57–58.

and uncooperative.”<sup>225</sup> Youth workers in Australian juvenile courts perceived girls as more difficult to work with than boys.<sup>226</sup> The limited research on justice personnel’s perceptions of girls reports consistent negative attributions.

I asked police and justice system personnel to describe differences between boys and girls in the interrogation room. Several noted that it was a difficult question to answer because “we have very few girls.”<sup>227</sup> One public defender commented, “We don’t see many girls come through. I could probably count on my hand the number of serious felonies I’ve had where the respondent was female, one hand.”<sup>228</sup>

With that caveat, justice system personnel described differences between boys and girls in the interrogation room. Consistent with the quantitative data, police described girls as “more likely to talk, less likely to invoke their rights.”<sup>229</sup> Because of their greater propensity to talk, police were less likely to use maximization tactics to elicit statements. One prosecutor attributed girls’ greater likelihood to talk to the presence of powerful adults. “[It’s] an authority figure. Girls tend to be more cooperative and talk more.”<sup>230</sup> Even when charged with felony offenses, several police suggested that girls talked more freely because they played a secondary role in the crime. “Usually the girls are kind of just along for the ride and usually tell it as best they can, minimizing their activities.”<sup>231</sup> One officer explained as follows:

Usually in felony-level offenses, [girls] play more of a peripheral role. In the ag[gravated] robbery cases, they’re the get-away driver. But they’re usually not the one going in brandishing the gun, jumping over the counter, grabbing the money out of the till. That’s usually the boys. So my sense is they talk more because they’re [thinking] “I’m not going down. He’s the one that did all that.” My sense is they would talk more.<sup>232</sup>

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225. *Id.* at 65–66.

226. See generally Margaret Baines & Christine Adler, *Are Girls More Difficult to Work With? Youth Workers’ Perspective in Juvenile Justice and Related Areas*, 42 CRIME & DELINQ. 467, 481 (1996) (reporting that youth workers described young women as “devious, ‘full of bullshit,’ and ‘dramatic’ contrasted with their understanding of young men as ‘open’ and ‘honest’ and therefore easier to engage.”).

227. *Id.* at 286.

228. FELD, KIDS, COPS, CONFESSIONS, *supra* note 8, at 286.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

Justice system actors attributed girls' cooperation to their desire to explain and justify their behavior. One officer observed as follows:

They feel like they had some justification in doing what they did because the person who they directed their violence toward had mistreated them somehow. So their explanation always had the tone of 'if you just hear what I have to say, you'll understand that I was the one that was in the right.'<sup>233</sup>

A prosecutor agreed that girls tended to be more self-justifying. For example, he explained that in fights between girls, "My sense is that they would also try to assert self-defense more. When girls fight, they're much more likely to say, 'I was just defending myself.'<sup>234</sup> A public defender offered a similar contrast between how male and female delinquents respond. "Girls are more likely to spin a story of self-justification. Boys are more likely to deny or to admit their involvement and try to minimize that way. Girls are more likely to tell why what they did wasn't wrong."<sup>235</sup>

Other research describes boys as straightforward and girls as manipulative or conniving.<sup>236</sup> Some officers described girls' use of gender roles to try to manipulate them: "I think attractive young females think they are going to get more of a break with the system and not be treated as harshly, because they've learned that some where socially. They think they can talk their way through it because they've done it in other circumstances."<sup>237</sup> Similarly, another officer opined that "girls are little bit more adept at being charming when they're lying."<sup>238</sup>

In addition to describing girls as cooperative or self-justifying, justice system actors proffered two contradictory views of girls as either emotional or confrontational—themes reflected in other studies. On the one hand, police described girls as more emotional than boys when questioned about their crimes. One officer said, "Girls are usually more emotional. They cry more often."<sup>239</sup> A

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233. *Id.* at 287.

234. Interview with Assistant County Attorney, Juvenile Division, in St. Paul, Minn. (Jan. 25, 2011) (on file with the author).

235. *Id.*

236. See Gaarder et al., *supra* note 61, at 556–58. This type of characterization appears in other studies. See, e.g., Bond-Maupin et al., *supra* note 44, at 65–66.

237. Interview with Juvenile Division Police Officer, in St. Paul, Minn. (Dec. 20, 2010) (on file with the author); see also Bond-Maupin et al., *supra* note 44, at 66 (attributing girls' manipulation to their sexuality: "If you aren't careful with girls, they pull the wool over your eyes. They come in here, put some perfume on, cosmetics, lipstick, and you know").

238. Interview with Juvenile Division Police Officer, in St. Paul, Minn. (Dec. 16, 2010) (on file with the author).

239. FELD, KIDS, COPS, CONFESSIONS, *supra* note 8, at 286.

suburban officer noted, “You get a lot more crying, a lot more emotion from juvenile females than you do from juvenile males—emotions and attitude.”<sup>240</sup> A public defender opined, “Girls in general tend to be much more emotional at the scene and disclose information right then and there . . . . They kind of like just tell it like it is. And usually they’re quite emotional about it.”<sup>241</sup> A police officer contrasted his experience questioning adolescent and adult women: “[A]dult women are different from adolescent girls. It’s really striking: [girls are] so quick to start screaming at you—much more emotional.”<sup>242</sup>

On the other hand, police officers described girls as much more confrontational than boys. Officers described questioning girls as an unpleasant experience: “The toughest to interview, by the way, is a 16-year-old female. They don’t care. They’ll lie [to you] like their [sic] talking to you.”<sup>243</sup> Police felt that boys were more straightforward, whereas girls used verbal aggression as a defense. Officers felt that girls had a sense of being impervious. “They have an attitude of arrogance, a naïve belief that they’re untouchable. They tend to be more noncompliant.”<sup>244</sup> One female police officer observed that “dealing with young female offenders is much more miserable than dealing with young males. They just tend to be great big attitudes and playing the victim card and just all kinds of difficult things to wade through before you can get to the situation you’re trying to deal with.”<sup>245</sup> Several more police officers expressed negative opinions about questioning girls:

When we’re dealing with a lot of girls, they have a tendency to be more loud—bitchy, for lack of a better word. Boys are boys. They’re tough guys to begin with. Girls that want to be the tough guys, they’re kind of a pain in the ass to deal with. They’re not afraid to yap at you. They’re less apt to be afraid of you than guys are.<sup>246</sup>

Several officers described the girls they interrogated as more verbally aggressive and confrontational than the boys:

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240. *Id.* at 287.

241. *Id.*

242. *Id.*

243. *Id.* at 288.

244. *Id.*

245. Interview with Police Detective, in St. Paul, Minn. (Dec. 6, 2010) (on file with the author).

246. *Id.*

Especially the hard-core girls, they come off real harsh with a real attitude. It's kind of interesting sometimes, when you see—they're not meek or timid. The girls I talk to have always been very abrasive. A lot of them do not like to admit they did anything wrong. I get boys saying "Hey, I screwed up. I did it," and the girls deny until they turn blue in the face.

Girls are a lot more hostile in their interviewing. They are more apt to raise the level of the interview in the interrogation into a more aggressive type of environment. They're a lot more hostile, a lot more quick to get into your face. They just don't seem to appear to feel—they're not afraid of you. I don't know why. They're sometimes not afraid of you.<sup>247</sup>

Justice system personnel speculated that differences in boys' and girls' attitudes reflected differences in their delinquent careers.<sup>248</sup> For example, a suburban prosecutor suggested that girls evinced more problems—sexual abuse, mental illness, drug involvement—than did their male counterparts.<sup>249</sup> The prosecutor attributed girls' more emotional responses than those of boys to the greater personal difficulties girls faced: "Girls in court are probably struggling more with sex abuse perpetrated on them [and] mental illness. Girls are more likely to be seriously into drugs. They're such a different delinquent than boys."<sup>250</sup>

A police officer hypothesized that the justice system did not respond to girls' delinquency until they were further along in their delinquent careers: "They probably get away with a lot more. They probably get further into a life of crime before they get caught."<sup>251</sup>

A public defender suggested that police may sometimes evoke the negative responses by the way in which they questioned girls. A lawyer observed as follows:

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247. *Id.*

248. See generally Steffensmeier & Allan, *supra* note 50, at 475 (articulating theoretical variables that account for females' lesser involvement in crime, especially violent crime: "gender norms, moral development and affiliative concerns, social control, physical strength and aggression, and sexuality. Gender differences in these areas condition gender differences in patterns of motivation and access to criminal opportunities as well as gender differences in the type, frequency, and context of offending").

249. FELD, KIDS, COPS, CONFESSIONS, *supra* note 8, at 287.

250. *Id.*

251. *Id.* at 287–88.

[Police interrogators] tend to approach girls as [if] they must either be terrible criminals or in abusive relationships with their boyfriends, or being prostituted. The girls are immediately defensive and pissed off at that kind of suggestion and go off at the police officers or anyone else who tries to talk to them about those issues.<sup>252</sup>

Although the quantitative data indicate that police do not interrogate girls differently than boys, the gender stereotypes held by the officers may still harm the girls they question. How should police question girls about potential abuse without offending, alienating, or stereotyping them? How can officers elicit information without treating the girls as “terrible criminals” or “pissing them off” while questioning them? We do not know whether officers’ attitudes precipitate the hostile reactions of which they complain or whether these attitudes cause officers to fail at serving girls in need of help and protection.

#### CONCLUSION

The quantitative data revealed very few differences between how police interrogated boys and girls for felony level offenses. Most police are trained to use the Reid Method to interrogate suspects and they use the same techniques with all offenders—younger or older, male or female. Although serious delinquent girls comprise only a small subset of juvenile courts’ caseloads, the boys and girls in this sample are remarkably similar in terms of their present offenses, prior records, and previous juvenile court involvement. In addition, police questioned boys and girls in similar venues and youths waived *Miranda* at statistically similar rates. While police used maximization techniques more when they interrogated boys, they otherwise questioned boys and girls in the same ways. Boys and girls exhibited similar attitudes—cooperative or resistant—and confessed at comparable rates. Gender disparities have long plagued juvenile justice administration. Against the historical backdrop of gender inequalities, police interrogation practices with boys and girls were remarkably even handed.

A substantial disconnect appears, however, between seemingly even-handed interrogation practices, and police and justice system personnel’s characterizations of girls. Consistent with other qualitative research on girls and juvenile justice,<sup>253</sup> justice system actors ascribed to girls primarily negative attributes—emotional, manipulative, verbally aggressive, and confrontational. Should juvenile justice personnel be more aware of these differences in

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252. Interview with Juvenile Public Defender, in St. Paul, Minn. (Dec. 17, 2010) (On file with the author).

253. See, e.g., Baines & Adler, *supra* note 226; Bond-Maupin et al., *supra* note 44; Gaarder et al., *supra* note 61, 556–58.

perceptions? Even if girls and boys waive *Miranda* and police question them similarly, do gender stereotypes and implicit attributions elicit the negative behaviors for which justice system personnel criticize girls? Do these negative perceptions affect the quality of services justice personnel provide to young women within the system?

We need more empirical research on interrogations practices in general, in different settings, and with different types of suspects. If police do not need gender-specific interrogation techniques, then do officers require gender-sensitivity training? As more jurisdictions adopt recording requirements, criminologists, lawyers, police, and others can systematically study what happens in the interrogation room. This will increase our fund of knowledge, enable us to develop more effective techniques to elicit true confessions from guilty defendants, reduce the likelihood of extracting false confessions from innocent suspects, and provide a stronger basis for systemic policy prescriptions.

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