ABOLISHING JUVENILE INTERROGATION*

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Rehabilitation is a paramount consideration in abolishing police interrogation of youth. Interrogation is one of the first interactions young people have with the criminal legal system. Unfortunately, the most common methods of interrogation are coercive rather than consensual. Youth are uniquely vulnerable to coercive methods, especially in conjunction with racial, socioeconomic, and ableist hierarchies. Youth vulnerability requires more protective legal standards than those applied to mature adults. Current police practices, permitted by the very structure of the law, harm youth at a critical stage of their development and legal socialization. Interrogation is a missed opportunity to consider how every legal actor can incentivize youth to respect and follow the law. Reforms and scholarly proposals focused on adjusting police behavior or changing the circumstances of youth interrogation fail to ameliorate harm to youth. This Article examines how police interrogation of a youthful suspect may undercut rehabilitation by damaging that young person's sense of belonging and desire to behave as society hopes. This Article concludes that the most appropriate and practicable solution is a categorical ban on officer-initiated interrogation of youth.

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INTRODUCTION

Rehabilitation is the heart of juvenile justice.[1] Every actor in the legal system must play a role to incentivize youth[2] to respect and follow the law. Unfortunately, the most common methods of interrogation have precisely the opposite effect because they are coercive rather than consensual. This Article examines how police interrogation of a youthful suspect may undercut rehabilitation by damaging that young person's sense of belonging and desire to behave as society expects.

Specifically, this Article examines the harm of coercive legal socialization created by interrogation and proposes that interrogations of youth must be prevented entirely, regardless of whether they produce a confession.[3] Legal socialization is the psychological development of attitudes and beliefs about the law.[4] One is socialized either coercively, developing fear to follow the law under threat of punishment; or consensually, cultivating respect for the law and law enforcement based on how oneself and others are treated.[5] Research consistently demonstrates that the best method to ensure future law-abiding behavior is consensual socialization.[6] Interrogations, however, are premised on the use of

1. *See* Kristin Henning, *What's Wrong with Victims' Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 CALIF. L. REV. 1107, 1119–20 (2009) (discussing state statutes across the United States, which announces rehabilitation as an objective of juvenile court).

2. In this piece, "youth," "children," and "juvenile" refer to those under the age of eighteen. "Adolescent" is used to refer to a developmental stage. "Juvenile" may also refer to youth who are subject to juvenile delinquency court jurisdiction. "Criminal court" refers to the adult system.

3. Much of the reform in the field of interrogation has been ignited by the shocking incidence of wrongful convictions. The harm that coercive interrogations inflict upon youth is far broader than the problem of false confessions that lead to wrongful convictions. *See generally* SCIENTIST ACTION & ADVOC. NETWORK, SCIENTIFIC SUPPORT FOR A DEVELOPMENTALLY INFORMED APPROACH TO *MIRANDA* RIGHTS 3 (2018), https://scaan.net/docs/20180607-MirandaReport.pdf [https://perma.cc/R7GU-G5XU] (noting youthful susceptibility to falsely confessing).

4. Rick Trinkner & Tom R. Tyler, *Legal Socialization: Coercion Versus Consent in an Era of Mistrust*, 12 ANN. REV. L. & SOC. SCI. 417, 418 (2016) (describing the legal socialization process).

5. *Id.* at 425–29.

6. *See, e.g.*, *id*. at 433; Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 YALE L.J. F. 525, 532–33 (2014) (summarizing numerous studies to demonstrate that "people are more willing to defer to police decisions when they feel the police are acting fairly"). *See generally* TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006) [hereinafter

isolation, threat, and intimidation.[7] These methods instill negative attitudes in youth about the rule of law.[8]

In the United States, there are well-established practices for questioning children who are witnesses to and victims of crime. Often, child specialists conduct questioning of youth to ensure that law enforcement is not psychologically harming the youth or planting ideas when probing sensitive experiences.[9] For example, interviewers must ask open-ended questions.[10] By doing so, interviewers avoid suggesting a narrative to the child and guard against their own potential bias.[11] Unfortunately, those best practices are not followed when the youth questioned is a suspect in a crime or when the line between witness, victim, and suspect is hazy.[12]

This Article will focus on the impact of the predominant method of interrogation[13] in the United States—the Reid Technique of Interviewing and Interrogation ("Reid").[14] This is a harsh method designed only for use when interrogators are certain that the suspect is guilty of the crime.[15] The Reid method presents a unique danger to youth. The creators of the Reid Technique

TYLER, WHY PEOPLE OBEY] (finding that people obey the law more when they believe in the system's legitimacy, as opposed to obeying because of fear).

7. *Cf.* Trinkner & Tyler, *supra* note 4, at 421 ("[W]hen the relationship [that people have with legal authority] is characterized by dominance and force[,] it is more situationally variable and instrumentally focused."); Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 277–79 (1996) (discussing commonly used interrogation methods).

8. *See* Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 ARIZ. ST. L.J. 883, 923 (2020) (drawing upon studies of on-the-street policing to make the same connection to police interrogation).

9. JAMES L. TRAINUM, HOW THE POLICE GENERATE FALSE CONFESSIONS: AN INSIDE LOOK AT THE INTERROGATION ROOM 47, 250 (2016).

10. OFF. OF JUV. JUST. & DELINQ. PREVENTION, U.S. DEP'T OF JUST., JUVENILE JUSTICE BULLETIN: CHILD FORENSIC INTERVIEWING 6 (2015) [hereinafter JUVENILE JUSTICE BULLETIN], https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf [https://perma.cc/5VGZ-22RN]. *See generally* ELLIE BALL, JOSEPH BALL & DAVID LA ROOY, NAT'L. INST. OF CHILD HEALTH & HUM. DEV., INTERVIEW GUIDE (2017), http://nichdprotocol.com/wp-content/uploads/2017/09/InteractiveNICHDProtocol.pdf [https://perma.cc/JZJ9-8FLX] (emphasizing the importance of "open-ended" questions).

11. JUVENILE JUSTICE BULLETIN, *supra* note 10, at 6–7.

12. *See* discussion *infra* Section IV.B.2.

13. When police interrogate a youth, they are questioning the youth about their involvement in a crime or delinquent act. That interrogation may lead to a confession, or to a less definitive statement of involvement. There are many ways such statements—even denials—are used by police and prosecution to charge and adjudicate the accused. A statement may be valuable evidence because it shows that the accused was present at the crime scene, knew an involved party, or asserted a fact that can be contradicted by other evidence. The potential use of a statement incentivizes police to persistently question.

14. *About the Reid Technique*, JOHN E. REID & ASSOCS., https://reid.com/about [https://perma.cc/C76Y-AN3M] (boasting that the Reid Technique of Interviewing and Interrogation is "the most widely used approach to question subjects in the world").

15. TRAINUM, *supra* note 9, at 85; FRED E. INBAU, JOHN E. REID, JOSEPH P. BUCKLEY & BRIAN C. JAYNE, CRIMINAL INTERROGATIONS AND CONFESSIONS 5 (5th ed. 2013).

are not experts in youth development.[16] Reid trains interrogators to induce despair in a suspect so that they will confess.[17] Officers isolate suspects physically and emotionally to increase anxiety.[18] Reid teaches officers to present false evidence, minimize the seriousness of the offense, feign sympathy, offer excuses, pretend to have the suspects' interests in mind, demonstrate confidence in the suspect's guilt, interrupt and deny any protestations of innocence, prolong questioning, and offer false choice (such as, "Did he start the fight or did you get angry first?").[19] Youth can be easily overwhelmed because they lack the sophistication and maturity to withstand this type of pressure.[20]

The Reid method undermines rehabilitation—the core purpose of the juvenile justice system. It contributes to the coercive, rather than consensual, legal socialization of youth.[21] In arriving at this conclusion, Part I of this Article examines the unique susceptibilities of youth generally and justice-involved youth specifically. Part II highlights the direct and long-term harms to youth

16. *See* INBAU ET AL., *supra* note 15, at 188–89 (making no references to "juveniles" in their explanation of the Reid interrogation process).

17. *Id.*; *see* TRAINUM, *supra* note 9, at 47, 84–86.

18. *See* INBAU ET AL., *supra* note 15, at 46–47; TRAINUM, *supra* note 9, at 86. Citing to the very first Reid training manual, the Court in *Miranda* noted,

> The officers are told by the manuals that the "principal psychological factor contributing to a successful interrogation is *privacy*—being alone with the person under interrogation." The efficacy of this tactic has been explained as follows: "If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more reluctant to tell of his indiscretions or criminal behavior within the walls of his home. Moreover his family and other friends are nearby, their presence lending moral support. In his own office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law."

Miranda v. Arizona, 384 U.S. 436, 449–50 (1966) (first quoting FRED E. INBAU & JOHN E. REID, CRIMINAL INTERROGATION AND CONFESSIONS 1 (1962); and then quoting CHARLES E. O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION 99 (1956)).

19. Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 BEHAV. SCIS. & L. 757, 760–61 (2007) (summarizing various tactics); Jessica O. Kostelnik & N. Dickon Reppucci, *Reid Training and Sensitivity to Developmental Maturity in Interrogation: Results from a National Survey of Police*, 27 BEHAV. SCIS. & L. 361, 362 (2009) [hereinafter Kostelnik & Reppucci, *Reid Training*] ("Maximization tactics are designed to intimidate suspects and include confronting suspects with accusations of guilt, which sometimes involves presenting fabricated evidence to support these accusations. Minimization tactics are designed to minimize the perceived consequences of confession and involve gaining a suspect's trust by offering sympathy, understanding, face-saving excuses, and themes to minimize the moral seriousness of the crime."); *cf.* Leo, *supra* note 7, at 277–80 (discussing police tactics).

20. *See* Leo, *supra* note 7, at 277–80 (describing the frequency of use of various police interrogation tactics and impact of length of interrogation on obtaining confessions).

21. Coercion under the Fourteenth Amendment creates an involuntary statement. *See* Colorado v. Connelly, 479 U.S. 157, 163–64 (1986); *see infra* Section III.A.2. The specific constitutional meaning of coercion is not the *only* type of coercion this Article seeks to address. This Article is concerned with coercive legal socialization.

caused by coercive legal socialization and estrangement. Part III addresses the failure of the law, scholarly proposals, and reform efforts to establish adequate protection for youth.[22] While it is a tempting solution,[23] merely requiring lawyers to consult with youth is imperfect and does not go far enough.

In Part IV, I make the case for eliminating officer-initiated interrogation of youth categorically, describe how it would work practically, and address critiques. A ban on officer-initiated interrogation requires that police have the necessary proof to arrest and that prosecutors have the necessary proof to charge a youth without completely relying on their[24] confession. Only a ban on officer-initiated interrogation of youth is designed specifically to promote rehabilitation.

I. UNIQUENESS OF YOUTH: RIPE FODDER FOR HARM

As the U.S. Supreme Court has emphasized, our justice system is "replete with laws and judicial recognition that children cannot be viewed simply as miniature adults."[25] Youth possess characteristics that make them uniquely vulnerable as a class. Harm that youth suffer has implications not just for youth and their future, but also for society at large.

The Supreme Court itself has set the stage for placing these unique concerns at the center of justice reform. Their rulings have fundamentally changed the landscape of juvenile justice by recognizing that the mitigating attributes of adolescence make youth different from adults at every stage of criminal proceedings against them.[26] Those changes began in 2005, with *Roper v. Simmons*,[27] when the Court ruled that individuals cannot receive the death penalty for crimes they committed under the age of eighteen, creating a

22. To date, reforms have been designed to address a youthful suspect's susceptibility to pressure and influence in an interrogation setting, as well as their limited comprehension of rights. *See* Thomas Grisso, *Juveniles' Capacities To Waive* Miranda *Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1166 (1980); *see, e.g.*, Naomi E.S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, *Waving Good-Bye to Waiver: A Developmental Argument Against Youths' Waiver of* Miranda *Rights*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 61–63 (2018) [hereinafter Goldstein et al., *Waving Good-Bye*] (arguing for requiring express waiver of *Miranda* rights for youth); Kevin Lapp, *Taking Back Juvenile Confessions*, 64 UCLA L. REV. 902, 906 (2017) (proposing that youth should be allowed to subsequently retract *Miranda* waivers).

23. *See* Martin Guggenheim & Randy Hertz, J.D.B. *and the Maturing of Juvenile Confession Suppression Law*, 38 WASH. U. J.L. & POL'Y 109, 174–75 (2012); Henning & Omer, *supra* note 8, at 923–24.

24. The pronouns they/them/their will be used to refer to youth in an effort to avoid heteronormative bias.

25. J.D.B. v. North Carolina, 564 U.S. 261, 274 (2011) (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).

26. Roper v. Simmons, 543 U.S. 551, 568 (2005); Graham v. Florida, 560 U.S. 48, 76, 88 (2010); *see also* Miller v. Alabama, 567 U.S. 460, 480 (2012).

27. 543 U.S. 551 (2005).

categorical ban.[28] *Roper*'s ban on the death penalty was based in the science of adolescent brain development and psychology.[29]

In 2010, the Supreme Court decided in *Graham v. Florida*[30] that juvenile nonhomicide offenders cannot be subject to sentences of life without the possibility of parole ("LWOP").[31] The following year, in *J.D.B. v. North Carolina*,[32] the Supreme Court established greater constitutional protections for children subjected to interrogations, imbedding a youthful suspect's age in the *Miranda* custody analysis.[33] Then in 2012, the Court decided *Miller v. Alabama*,[34] holding that a sentencing scheme that mandates LWOP for juvenile homicide offenders is prohibited and courts must consider "age and age-related characteristics."[35] In 2016, the Court recognized that the right to age appropriate sentencing was a watershed right[36] and established the retroactivity of *Miller* in *Montgomery v. Louisiana*.[37]

Against the backdrop of evolving precedent and science, this Article now examines the characteristics of youth that make them uniquely vulnerable, along with the negative consequences of ignoring the opportunity to shape their development during adolescence.

A. *Adolescent Development: Unique Vulnerability of Youth*

According to neuroscience and developmental psychology, youth are different from, and therefore less culpable than, adults for three main reasons.[38] These differences are relevant to interrogations.

28. *Id.* at 568.

29. *Id.* at 569–70, 578 (citing multiple psychological studies and acknowledging "the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime").

30. 560 U.S. 48 (2010).

31. *Id.* at 74–75.

32. 564 U.S. 261 (2011).

33. *See id.* at 277.

34. 567 U.S. 460 (2012).

35. *Id.* at 489; *see also* Jones v. Mississippi, 141 S. Ct. 1307, 1310 (2021) (holding that a sentencing court is not required to articulate a specific *Miller* sentencing rationale or find that the youth is "incorrigible" to sentence them to LWOP).

36. Montgomery v. Louisiana, 136 S. Ct. 718, 732 (2016).

37. *Id.* at 732–36.

38. Roper v. Simmons, 543 U.S. 551, 569 (2005).

First, youth are less mature than adults.[39] They are impulsive and have difficulty predicting the consequences of their actions.[40] Young people tend to minimize or underestimate the possibility of self-destructive and other harmful consequences while simultaneously overestimating potential rewards.[41]

Second, young people are particularly susceptible to pressure and influence.[42] Because young people cannot easily extricate themselves from their day-to-day environments, they may be vulnerable to psychological or emotional trauma.[43] For instance, a young person cannot simply leave a home where they experience domestic violence or leave a community with frequent shootings.

Third, young people possess tremendous potential to change and grow.[44] The "transient" nature of youthful offending is owed to their tremendous

39. Brief for the Am. Psych. Ass'n et al. as Amici Curiae Supporting Petitioners at 8–9, Graham v. Florida, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621), 2009 WL 2236778 [hereinafter APA Brief Supporting Petitioners in *Graham*]; *see* Emily Buss, *Rethinking the Connection Between Developmental Science and Juvenile Justice*, 76 U. CHI. L. REV. 493, 495 (2009) [hereinafter Buss, *Rethinking the Connection*] (reviewing ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE (2008) and stating that adolescents lack the ability to control their emotions and are more likely to be attracted to risky behavior); *see also* Emily Buss, *Kids Are Not So Different: The Path from Juvenile Exceptionalism to Prison Abolition*, 89 U. CHI. L. REV. 843, 869–70 (2022) [hereinafter Buss, *Kids Are Not So Different*] (discussing neuroscientific recognition of a "maturity gap" between cognitive and psychosocial development, accounting "for the impulsivity and vulnerability to peer influence identified by the Court in the *Roper* line of cases").

40. Brief for the Am. Med. Ass'n et al. as Amici Curiae Supporting Neither Party at 6–7, *Miller*, 567 U.S. 460 (Nos. 10-9646, 10-9647), 2012 WL 121237 [hereinafter AMA Brief in *Miller*]; APA Brief Supporting Petitioners in *Graham*, *supra* note 39, at 11 (discussing a study showing adolescents weigh risks and rewards differently than adults and are more likely to take risks); L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REVS. 417, 421–23 (2000) (arguing adolescents are greater risk takers and discussing studies supporting the theory); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 343–44 (1992) (stating that reckless behavior is a normative part of adolescent actions).

41. AMA Brief in *Miller*, *supra* note 40, at 6–7; APA Brief Supporting Petitioners in *Graham*, *supra* note 39, at 8–9; *see* SCOTT & STEINBERG, *supra* note 39, at 40–41 (discussing a study showing adolescents have less cognitive control and instead choose immediate rewards); *see also* Buss, *Rethinking the Connection*, *supra* note 39, at 495 (stating that adolescents are psychosocially immature, which makes them lack the ability to control their emotions and more likely to be attracted to risky behavior); Lucy C. Ferguson, *The Implications of Developmental Cognitive Research on "Evolving Standards of Decency" and the Imposition of the Death Penalty on Juveniles*, 54 AM. U. L. REV. 441, 457 (2004) (stating that adolescents "lack realistic risk-assessment abilities, and are not as future-oriented as are adults").

42. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCH. 625, 626–34 (2005) (discussing study finding that peer influence has a much greater effect on the risky behavior of adolescents and young adults than it does on mature adults).

43. *Roper*, 543 U.S. at 569–70.

44. *Id.* at 570. *See generally* FRANKLIN E. ZIMRING, THE CHANGING LEGAL WORLD OF ADOLESCENCE ch. 8 (1982) (proposing that the best response to juvenile crime is to let adolescents grow up and grow out of it).

capacity to learn from their mistakes.[45] Youthful misdeeds—even serious and illegal conduct—are not reflective of intractable character flaws.[46] Risky behavior and criminal activity peak in adolescence, and decline thereafter.[47] Indeed, very few youth with delinquency histories go on to offend into adulthood; the vast majority integrate successfully into society, even without intervention.[48]

This third difference is particularly important when it comes to considering the justice system's potential impact on prosocial development and rehabilitation. Neuroplasticity—the brain's ability to adapt and change based on various stimuli—is critical to brain development.[49] During adolescence, neuroplasticity is at its lifetime peak.[50] Young people experience a wave of plasticity that rivals brain development from ages zero to three.[51] Because the brain is capable of developing new behaviors,[52] the incredible plasticity of an adolescent's growing brain leaves youth vulnerable to negative influences and

45. *See, e.g.*, *Roper*, 543 U.S. at 570; Miller v. Alabama, 567 U.S. 460, 472 (2012); Graham v. Florida, 560 U.S 48, 68 (2010).

46. *Roper*, 543 U.S. at 570.

47. Elizabeth Cauffman, Adam Fine, Alissa Mahler & Cortney Simmons, *How Developmental Science Influences Juvenile Justice Reform*, 8 U.C. IRVINE L. REV. 21, 26 (2018); Neelum Arya, *Family-Driven Justice*, 56 ARIZ. L. REV. 623, 625–26 (2014).

48. *See* Gwen A. Kurz & Louis E. Moore, *8 Percent Problem Study Findings*, ORANGE CNTY. PROB. DEP'T, https://ocprobation.ocgov.com/resources/archives/8-percent-solution/8-percent-problem-study-findings [https://perma.cc/5BF7-W4W2] (last updated Mar. 1999) (citing MICHAEL SCHUMACHER & GWEN A. KURZ, THE 8% SOLUTION: PREVENTING SERIOUS, REPEAT JUVENILE CRIME (2000)) (noting that the Orange County Probation Department tracked 3,000 first-time juvenile offenders and found that in most cases, the children did not reoffend and that a small percentage of children—eight to ten percent—committed at least three additional offenses during the study period); Cauffman et al., *supra* note 47, at 26; Marsha Levick, Jessica Feierman, Sharon Messenheimer Kelley, Naomi E.S. Goldstein & Kacey Mordecai, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J.L. & SOC. CHANGE 285, 297–98 (2012) (citing a three-year study that followed over a thousand serious male offenders charged with felonies and found 8.7% of the participants were "persistent" offenders); Buss, *Kids Are Not So Different*, *supra* note 39, at 848, 880 (citing David P. Farrington, Rolf Loeber & James C. Howell, *Young Adult Offenders: The Need for More Effective Legislative Options and Justice Processing*, 11 CRIMINOLOGY & PUB. POL'Y 729, 734–35 (2012)) ("Because much offending occurs in adolescence and young adulthood—and most offenders offend *only* in adolescence and young adulthood—expanding juvenile exceptionalism to include young adults would belie its exceptional status."); *see also* CTR. FOR L., BRAIN & BEHAV. AT MASS. GEN. HOSP., WHITE PAPER ON THE SCIENCE OF LATE ADOLESCENCE: A GUIDE FOR JUDGES, ATTORNEYS, AND POLICY MAKERS 3 (2022) [hereinafter WHITE PAPER], https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/ [https://perma.cc/QV98-T69N (staff-uploaded archive)] (internal citation omitted). *See generally* ZIMRING, *supra* note 44 (asserting that adolescence is a transitional period and that delinquency during adolescence is generally temporary).

49. LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE 21–25 (2014).

50. *Id.* at 5, 8–11 (referring to adolescence as the period between ten to twenty-five years of age and explaining how adolescence rivals ages zero to three in peak neuroplasticity).

51. *Id.*

52. *Id.*

harmful experiences, which can negatively shape their growth.[53] Renowned adolescent psychologist Lawrence Steinberg explains that we must "be exceptionally thoughtful and careful about the experience we give people as they develop from childhood to adulthood" because of the brain's sensitivity during adolescence.[54]

B. *Specific Vulnerabilities of Justice-Involved Youth*

In addition to the immaturity experienced by all adolescents, youth in the justice system share a particular set of vulnerabilities. This section examines the additional impacts of adversity, trauma, foster care, mental health, and learning differences for young people in the justice system.

First, justice-involved youth experience traumatic stress and stress from adversity.[55] Child welfare system involvement and mental health needs commonly coexist with adversity.[56] A trauma response occurs when an adverse experience threatens life, safety, or well-being, and overwhelms one's ability to cope.[57] Some examples of traumatic adversities include abandonment,

53. *See* Danya Glaser, *Child Abuse and Neglect and the Brain—A Review*, 41 J. CHILD PSYCH. & PSYCHIATRY 97, 110 (2000).

54. STEINBERG, *supra* note 49, at 5, 22.

55. *See generally* Valery Krupnik, *Trauma or Adversity?*, 25 TRAUMATOLOGY 256 (2019) (defining trauma as a type of stress response that differs from both a normal stress response and from a response to adversity); *see also* Hayley M.D. Cleary, Lucy A. Guarnera, Jeffrey Aaron & Megan Crane, *How Trauma May Magnify Risk of Involuntary and False Confessions Among Adolescents*, 2 WRONGFUL CONVICTION L. REV. 173, 175 (2021) [hereinafter Cleary et al., *How Trauma May Magnify Risk*] (summarizing the psychological research on trauma and justice-involved youth, stating that "most research indicates that about 10% to 50% of justice-involved youth meet criteria for current or recent PTSD" as compared to a "3-6% prevalence rate of current or recent PTSD in community samples of youth").

56. OFF. OF JUV. JUST. & DELINQ. PREVENTION, U.S. DEP'T OF JUST., JUVENILE JUSTICE BULLETIN: PTSD, TRAUMA, AND COMORBID PSYCHIATRIC DISORDERS IN DETAINED YOUTH 4–5 (2013) [hereinafter DISORDERS IN DETAINED YOUTH], http://www.ojjdp.gov/pubs/239603.pdf [https://perma.cc/9XL9-2HN2] (finding that youth who experienced trauma in the last year reported "witnessing violence [as the] precipitating trauma"); ERICA J. ADAMS, JUST. POL'Y INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 2 (2010), http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf [https://perma.cc/X4F2-3ZT7]; *see* Hui Huang, Joseph P. Ryan & Denise Herz, *The Journey of Dually-Involved Youth: The Description and Prediction of Rereporting and Recidivism*, 34 CHILD. & YOUTH SERVS. REV. 254, 254 (2012) (discussing research finding that "delinquency rates were approximately 47% greater for youth associated with at least one substantiated allegation of maltreatment").

57. KRISTINE BUFFINGTON, CARLY B. DIERKHISING & SHAWN C. MARSH, TEN THINGS EVERY JUVENILE COURT JUDGE SHOULD KNOW ABOUT TRAUMA AND DELINQUENCY 3 (2010), http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf [https://perma.cc/TV7A-45Q6 (staff-uploaded archive)] [hereinafter TEN THINGS]. *Compare* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 271 (5th ed. 2013) (listing traumatic events, in the context of Posttraumatic Stress Disorder, as "[e]xposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways: 1. Directly experiencing

experiencing or witnessing violence, such as physical or sexual abuse, poverty, and familial incarceration.[58] Northwestern's Juvenile Project found that over ninety percent of detained youth studied had experienced at least one trauma in the previous six months.[59]

Youth who have experienced trauma are less mature than their age would reflect.[60] When children suffer from traumatic experiences, the brain structures that regulate their emotions, behavior, and impulsivity are less developed and function irregularly, making them even more impulsive than youth without significant trauma exposure.[61] The extent of detriment to brain development and health is more severe as the number of adverse events increases.[62]

Second, justice-involved youth disproportionately suffer from learning disabilities and communication disorders. As a group they are highly likely to have disorders linked to emotional, behavioral, and psychosocial adjustment problems.[63] Nationwide, at least one in three youth who are arrested have an already diagnosed disability, and some researchers estimate that the disability

the traumatic event(s). 2. Witnessing, in person, the event(s) as it occurred to others. 3. Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental. 4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse)"), *with* Anushka Pai, Alina M. Suris & Carol S. North, *Posttraumatic Stress Disorder in the DSM-5: Controversy, Change, and Conceptual Considerations*, 7 BEHAV. SCI. 1, 2, 5 (2017) (discussing new DSM-5 definition of Criterion A trauma "restrict[s] its inclusiveness" and "further limit[s] the types of events that qualify").

58. *See* Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641, 644, 669 (2016) (discussing how trauma is the type of psychological harm that the Supreme Court has described as mitigating the culpability of youthful offenders).

59. DISORDERS IN DETAINED YOUTH, *supra* note 56, at 5–6 n.17.

60. CHILD WELFARE INFO. GATEWAY, UNDERSTANDING THE EFFECTS OF MALTREATMENT ON BRAIN DEVELOPMENT 12 (2015), https://www.childwelfare.gov/pubPDFs/brain_development.pdf [https://perma.cc/GXN8-U2L5]. *See generally* Jack P. Shonkoff & Andrew S. Garner, *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 PEDIATRICS 232 (2012) (detailing the links of early-life adversity to later physical and mental impairments).

61. ADAMS, *supra* note 56, at 2; *see* Cleary et al., *How Trauma May Magnify Risk*, *supra* note 55, at 188.

62. Joan Luby, Deanna Barch, Diana Whalen, Rebecca Tillman & Andy Belden, *Association Between Early Life Adversity and Risk for Poor Emotional and Physical Health in Adolescence: A Putative Mechanistic Neurodevelopment Pathway*, 171 JAMA PEDIATRICS 1168, 1168–75 (2017); *see* Vincent J. Felitti, Robert F. Anda, Dale Nordenberg, David F. Williamson, Allison M. Spitz, Valerie Edwards, Mary P. Koss & James S. Marks, *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTIVE MED. 245, 245 (1998).

63. *See* Michelle LaVigne & Gregory J. Van Rybroek, *Breakdown in the Language Zone: The Prevalence of Language Impairments Among Juvenile Offenders and Why It Matters*, 15 U.C. DAVIS J. JUV. L. & POL'Y 37, 43–44 (2011) (explaining how an "extensive body of research has found that the very people overrepresented in the criminal and juvenile justice systems—individuals with ADHD and learning disabilities . . . are individuals who were labeled from early childhood as 'behavior problems,'" especially for youth who grew up in extreme poverty).

rate amongst juvenile justice-involved youth is as high as seventy percent.[64] In fact, data collected at the Center for Juvenile Law and Policy revealed that education advocacy was required in seventy-three percent of the clinic's juvenile delinquency cases.[65]

For justice-involved youth, trauma, mental health, and learning differences are often intertwined. These youth suffer from mental health issues at rates higher than the general population of children.[66] Additionally, youth who experience adversity in the form of abuse, neglect, and abandonment are more likely to acquire a language delay or communication disorder, further disadvantaging them.[67]

C. *Disproportionate Experience for Youth of Color*

Finally, justice-involved youth are more likely to be youth of color, which adds another unique set of concerns. Youth of color are disproportionately arrested, detained, transferred to adult court, and ultimately incarcerated.[68] As one example of their harsh treatment, statistics show that, while Black[69] youth were charged in only thirty-eight percent of all juvenile cases, Black youth made

64. Jackie Mader & Sarah Burymowicz, *Pipeline to Prison: Special Education Too Often Leads to Jail for Thousands of American Children*, HECHINGER REP. (Oct. 26, 2014), https://hechingerreport.org/pipeline-prison-special-education-often-leads-jail-thousands-american-children/ [https://perma.cc/EL96-D7DT]; *see also* DENISE C. HERZ, KRISTINE CHAN, SUSAN K. LEE, MELISSA NALANI ROSS, JACQUELYN MCCROSKEY, MICHELLE NEWELL & CANEEL FRASER, LOS ANGELES COUNTY PROBATION OUTCOMES STUDY (2015), https://www.advancementprojectca.org/wp-content/uploads/2015/09/imce/Probation%20Outcomes.pdf [https://perma.cc/4JLN-UTP8]; DENISE C. HERZ & KRISTINE CHAN, JUVENILE PROBATIONS OUTCOMES STUDY PART II, at 10 (2017), https://juvenilejusticeresearch.com/node/12 [https://perma.cc/L6KP-4A2F].

65. Samantha Buckingham, *A Tale of Two Systems: How Schools and the Juvenile Justice System Are Failing Kids*, 13 U. MD. L.J. RACE RELIGION GENDER & CLASS 179, 205–06 n.98 (2013) [hereinafter Buckingham, *A Tale of Two Systems*].

66. OFF. OF JUV. JUST. & DELINQ. PREVENTION, U.S. DEP'T OF JUST., LITERATURE REVIEW: A PRODUCT OF THE MODEL PROGRAMS GUIDE 1–3 (2017), https://ojjdp.ojp.gov/library/publications/model-programs-guide-literature-review-intersection-between-mental-health-and#additional-details-0 [https://perma.cc/EZ2Q-L3VJ].

67. *See* LaVigne & Van Rybroek, *supra* note 63, at 53–54 (noting that abused or neglected children have a "substantially higher rate of language delay and disorders, particularly in the areas of expression and social use of language" and when language deficit is brought about by abuse or neglect, the reduced verbal and communicative interactions by the abusive or neglecting parent have also caused the child to develop insecure attachment).

68. JUST. POL'Y INST., IMPROVING APPROACHES TO SERVING YOUNG ADULTS IN THE JUSTICE SYSTEM 1 (2016), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/jpi_young_adults_final.pdf [https://perma.cc/5Z34-3DKE] [hereinafter IMPROVING APPROACHES]; *United States of Disparities*, W. HAYWOOD BURNS INST., https://usdata.burnsinstitute.org/#comparison=2&placement=1&races=2,3,4,5,6&offenses=5,2,8,1,9,11,10&year=2017&view=map [https://perma.cc/R2CD-G6PZ].

69. This Article will capitalize the word "Black." *See* Nancy Coleman, *Why We're Capitalizing Black*, N.Y. TIMES (July 5, 2020), https://www.nytimes.com/2020/07/05/insider/capitalized-black.html?referringSource=articleShare [https://perma.cc/3QZY-YV5A (dark archive)].

up an incredible fifty-seven percent of the youth transferred to the adult system.[70]

Experiencing racism can damage physical and mental health.[71] Youth of color are bombarded with images communicating that they are prone to violence and antisocial behavior.[72] The superpredator myth is one well-known example associating Black youth with crime.[73] A criminologist coined the term "superpredator" in the 1990's to describe a "new generation of street criminals."[74] He predicted a crime wave incited by juvenile superpredators—"radically impulsive, brutally remorseless youngsters," half of whom were prophesized to be young Black males.[75] In fact, youth crime decreased in the

70. KRISTIN HENNING, THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH 246 (2021) [hereinafter HENNING, THE RAGE OF INNOCENCE] (referencing data from the Office of Juvenile Justice and Delinquency Prevention).

71. *See* THE NAT'L CHILD TRAUMATIC STRESS NETWORK, PRELIMINARY ADAPTATIONS FOR WORKING WITH TRAUMATIZED LATINO/HISPANIC CHILDREN AND THEIR FAMILIES 4 (2007), http://www.nctsn.org/nctsn_assets/pdfs/culture_and_trauma_brief_v2n3_LatinoHispanicChildren.pdf [https://perma.cc/4XHG-MKBR] (describing the need to assess youth of color for trauma suffering due to racism). *See generally* Kenjus T. Watson, Revealing and Uprooting Cellular Violence: Black Men and the Biopsychosocial Impact of Racial Microaggressions (2019) (Ph.D. dissertation, UCLA), https://escholarship.org/uc/item/7sq9t3pw#main [https://perma.cc/FP95-M44H] (click "View the live page" then "Download PDF") ("[R]acial microaggressions (a particularly mundane and insidious form of modern racism) can wreak havoc on the psychological and physiological functioning of Black males and may be complicit in their elevated levels of stress-related disease and shortened lifespans."); JOHN RICH, THEODORE CORBIN, SANDRA BLOOM, LINDA RICH, SOLOMON EVANS & ANN WILSON, DREXEL UNIV. CTR. FOR NONVIOLENCE & SOC. JUST., HEALING THE HURT: TRAUMA-INFORMED APPROACHES TO THE HEALTH OF BOYS AND YOUNG MEN OF COLOR 4–5 (2009), http://www.issuelab.org/resource/healing_the_hurt_trauma_informed_approaches_to_the_health_of_boys_and_young_men_of_color [https://perma.cc/2C9K-87AQ] (describing the "exposure to discrimination, racism, oppression, and poverty" that impacts young men of color as an "insidious" form of trauma).

72. Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 419–20 (2013) [hereinafter Henning, *Criminalizing Normal Adolescent Behavior*] ("Pervasive stereotypes suggest that youth of color are prone to violence and crime, are not in school, are unwilling to work, and are likely to be incarcerated at some point in their lives."); Tamar Birckhead, *Towards a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447, 1498 (2009) [hereinafter Birckhead, *Towards a Theory of Procedural Justice*]; Jennifer L. Eberhardt, Phillip Atiba Goff, Valerie J. Purdie & Paul G. Davies, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 887–88 (2004) (finding that "thoughts of violent crime led to a systematic distortion of the Black image").

73. *See generally* John J. Dilulio, Jr., *My Black Crime Problem, and Ours*, CITY J. (1996) (describing what the author first called the juvenile superpredator—linking the race of Black youth to a criminal threat).

74. Elizabeth Becker, *As Ex-theorist on Young 'Superpredators,' Bush Aide Has Regrets*, N.Y. TIMES (Feb. 9, 2001), https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html [https://perma.cc/4LZW-QG83 (dark archive)].

75. Dilulio, Jr., *supra* note 73; Becker, *supra* note 74.

years that followed this false prediction.[76] For Latinx[77] youth, being publicly linked to gang membership, rape, and illegitimate presence in the United States has likewise caused damaging effects.[78] Structural racism is also obvious to children who live in poor and marginalized communities of color.[79]

Legal scholar Kristin Henning describes how Black youth have not received the benefit of adolescent development research.[80] Instead, Black youth are "adultified" by police, prosecutors, probation officers, and courts.[81] Research demonstrates that Black and Brown youth are viewed as older and more guilty than their white peers.[82] Implicit racial bias permeates decision-making at every stage of the experience—from being stopped and arrested, to being charged, and beyond.[83] When law enforcement, prosecutors, and courts misjudge the age of young people—by falsely believing youth of color are older than their chronological age—it robs them of the gentler treatment white youth access simply because of their race.[84]

76. Vincent M. Southerland, *Youth Matters: The Need To Treat Children Like Children*, 27 J. CIV. RIGHTS & ECON. DEV. 765, 776–77 (2015) (describing how the juvenile and general crime rate decreased by half from 1994 to 2009).

77. This Article will use the term "Latinx" to refer to a person of Latin American origin or descent in a gender-neutral or nonbinary way. Not all people of Latin American origin prefer that terminology. *See PFLAG National Glossary of Terms*, PFLAG (June 2022), https://pflag.org/glossary [https://perma.cc/M6A3-X698]; *see also* Evan Odegard Pereira, *For Most Latinos, Latinx Does Not Mark the Spot*, N.Y. TIMES (June 15, 2021), https://www.nytimes.com/2021/06/15/learning/for-most-latinos-latinx-does-not-mark-the-spot.html [https://perma.cc/QW48-97BM (dark archive)] (positing the term "Latin American" is a preferable gender-neutral alternative to "Latinx" or "Latino/a" in an op-ed authored by a youth).

78. *See* Henning & Omer, *supra* note 8, at 912 ("Latinx people have been portrayed as criminal, anti-American, gang members, and called 'rapists' and other dehumanizing terms by political leaders including the President of the United States.").

79. *See* Paul A. Jargowsky, Scott A. Desmond & Robert D. Crutchfield, *Suburban Sprawl, Race, and Juvenile Justice*, *in* OUR CHILDREN, THEIR CHILDREN 167, 167–201 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005); DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 83–114 (1998); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1294–95, 1300 (2004).

80. *See generally* Kristin Henning, *Boys to Men: The Role of Policing in the Socialization of Black Boys*, *in* POLICING THE BLACK MAN (Angela J. Davis ed., 2018) (describing Black youth as being policed more harshly and antagonistically than any other demographic in the United States).

81. *See* Amir A. Gilmore & Pamela J. Bettis, *Antiblackness and the Adultification of Black Children in a U.S. Prison Nation*, *in* OXFORD RESEARCH ENCYCLOPEDIA OF EDUCATION 1–32 (2021), https://oxfordre.com/education/display/10.1093/acrefore/9780190264093.001.0001/acrefore-9780190264093-e-1293 [https://perma.cc/N3UN-M7U8 (dark archive)].

82. Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 530–34 (2014).

83. HENNING, THE RAGE OF INNOCENCE, *supra* note 70, at 248.

84. *Id.* at 236–50.

II. HARMS OF JUVENILE INTERROGATION

The unique vulnerability of adolescence is on display in an interrogation. Youth suffer harm in both the moment of their interrogation and in the long-term. In the interrogation room, youth are subjected to tactics that exploit their immaturity and they are likely to succumb to the pressure to confess, even falsely.[85] In the long-term, youth are coercively socialized. When youth are coercively socialized, they become disincentivized from following the law for the rest of their lives. This disincentive is the focus of long-term harm.

A. *Direct Harm to Youth in the Interrogation Room*

1. Developmental Harm to All Youth

We have looked at the unique vulnerabilities of justice-involved youth that make them sensitive to harm, generally. Now we examine how those vulnerabilities play out in the specific space of the interrogation room. In an interrogation setting, youth are particularly susceptible to pressure from adult authority figures.[86] Under stress, their susceptibility to pressure is exacerbated.[87] Youth are likely to make decisions reflexively—based on an officer's authoritative demands—rather than on logical reasoning or independent judgment.[88]

Simply put, adolescents lack life experience. This deficit further impairs their decision-making capabilities. The Supreme Court has acknowledged that youth "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."[89] They also "have limited understandings of the criminal justice system and the roles of the institutional

85. While a false confession may lead to a wrongful conviction, and that is certainly a harmful outcome, it is not the harm that is the focus of this Article. *See* Steven Drizin & Richard Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 891–92 (2004); Allison Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 952 (2010); Samuel R. Gross, Kristen Jacoby, Daniel J. Matheson, Nicolas Montgomery & Sujata Patil, *Exonerations in the United States Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 (2005); Megan Annitto, *Juvenile Justice Appeals*, 66 U. MIAMI L. REV. 671, 690 (2012) (describing how few juvenile cases are even appealed); Henning & Omer, *supra* note 8, at 884 (explaining how cases with false confessions lead to guilty pleas).

86. Kostelnik & Reppucci, *Reid Training*, *supra* note 19, at 361–62; Jessica Owen-Kostelnik, N. Dickon Reppucci & Jessica R. Meyer, *Testimony & Interrogation of Minors: Assumptions About Maturity and Morality*, 61 AM. PSYCH. 286, 295 (2006) (describing research that juvenile suspects are more vulnerable than adult suspects to interrogative pressure and that juvenile interrogative suggestibility, defined by Gudjonsson as "the tendency of an individual's account of events to be altered by misleading information and interpersonal pressure within interviews" is a factor present in known false confessions) (internal citations omitted).

87. AMA Brief in *Miller*, *supra* note 40, at 14; *see* Spear, *supra* note 40, at 423 (arguing that adolescents may perform worse in stressful situations based upon scientific studies).

88. Levick et al., *supra* note 48, at 296.

89. J.D.B v. North Carolina, 564 U.S. 261, 272 (2011).

actors within it."[90] They have not had many opportunities to learn from their past good and bad decisions and have not yet had a chance to incorporate past learning experiences into their current decision-making process.[91]

Adolescents have difficulty anticipating and appreciating the negative future consequences of a confession. In particular, adolescents cannot predict how a statement—even a denial—could be used against them to later prove their guilt in court.[92] Youth who have never been involved in the justice system have difficulty understanding what will happen inside of a courtroom or how a lawyer can assist them.[93] A young person will overestimate the likelihood they will go home if they tell a police officer what that officer wants to hear.[94]

Further complicating adolescent decision-making, learning disabilities and communication disorders are prevalent among justice-involved youth. As such, it is important to analyze how youth with learning and communication differences behave in an interrogation setting.[95] First, many youth in the system suffer from Attention Deficit Hyperactivity Disorder ("ADHD").[96] With ADHD, the baseline impulsivity of any adolescent is magnified.[97] Thus, an adolescent with ADHD is at even greater risk than the average youth of waiving their *Miranda* rights without understanding the legal consequence of such a waiver.

Language disorders often occur with ADHD,[98] co-occurring at rates of up to ninety percent.[99] Research about the prevalence of language disorders and their impact on justice-involved youth has only recently come into the spotlight.[100] Language disorders result in the failure to acquire competency in language and language use.[101] Relevant to interrogation, youth with language disorders often have difficulty sequencing ideas, describing events, following

90. Graham v. Florida, 560 U.S. 48, 78 (2010).

91. STEINBERG, *supra* note 49, at 26.

92. Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 275 (2007).

93. THOMAS GRISSO, EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS AND INSTRUMENTS 153 (2d ed. 2003) [hereinafter GRISSO, EVALUATING COMPETENCIES].

94. *See* Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 18 (2010).

95. LaVigne & Van Rybroek, *supra* note 63, at 76.

96. *See id.* at 65.

97. *See* Rosemary Hollinger, *ADHD: What You Need To Know for Your Juvenile Client*, AM. BAR. ASS'N (Sept. 16, 2021), https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2021/fall2021-adhd-what-you-need-to-know-for-your-juvenile-client/ [https://perma.cc/AKH7-Y92E].

98. LaVigne & Van Rybroek, *supra* note 63, at 50–51.

99. *Id.*

100. *Id.* at 38.

101. *Id.* at 47–48.

directions, and understanding the speech of others.[102] Research reveals that seventy-five percent of adolescents with a language disorder do not understand *Miranda* rights.[103]

Unfortunately, a youthful suspect will not show up in the interrogation room with a sign around their neck saying, "Here are my comprehension issues, I learn best when you . . . *fill in the blank*." Even though an interrogator must acknowledge the extraordinary likelihood that youth have issues impacting their comprehension of their rights, they do not have the youth-specific training of special education teachers.[104]

Imagine a school's approach towards a young person who has trouble with making sense of what they hear. The school would likely require teachers to read instructions more than once and have the youth explain back in their own words what they understood those instructions to be.[105] By contrast, in an interrogation, there are no steps taken beyond a rote recitation of *Miranda* warnings to ensure comprehension.[106] These types of learning and expression difficulties threaten a youth's ability "to make knowing and intelligent decisions about which rights to waive and which to assert."[107]

2. Harm to Youth of Color: Collective Trauma Realized

The treatment of youth of color in the interrogation room is more harmful than it is to youth generally. Compounding their personal race-based experience of mistreatment,[108] youth of color are harmed when they observe that they are treated without respect for their status as youth. They also notice when other marginalized youth and community members are treated unjustly.

Legal scholar Angela Onwuachi-Willig calls the repeated mistreatment youth of color see and experience "cultural trauma."[109] Cultural trauma exists not just when there is an extraordinary tragedy—like the murder of George

102. *Id.* at 47–48.

103. Anne Marie Lieser, Denise Van der Voort & Tammie J. Spaulding, *You Have the Right To Remain Silent: The Ability of Adolescents with Developmental Language Disorder To Understand Their Legal Rights*, J. COMMC'N DISORDERS, Aug. 6, 2019, at 1, 8.

104. *See* Yarborough v. Alvarado, 541 U.S. 652, 667 (2004) (acknowledging how difficult it is for a rule that would require an officer to "anticipat[e] the frailties or idiosynchrocies of every person whom they question").

105. A child is entitled to special education services and an Individualized Education Plan under the Individuals with Disabilities Education Act ("IDEA"), a federal law incorporated into state law in all fifty states and the District of Columbia.

106. *See* Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policies and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 228 (2006) [hereinafter Feld, *Police Interrogation of Juveniles*].

107. LaVigne & Van Rybroek, *supra* note 63, at 66.

108. *See* discussion *supra* Section I.C.

109. Angela Onwuachi-Willig, *The Trauma of the Routine: Lessons on Cultural Trauma from the Emmitt Till Verdict*, 34 SOC. THEORY 335, 335 (2016).

Floyd[110]—but also when that tragedy is expected as part of the "routine."[111] Onwuachi-Willig identifies three preconditions for cultural trauma: (1) a history of routine harm, (2) widespread media attention, and (3) public conversation about the meaning of that harm.[112] Through cultural trauma, systematic oppression and discrimination lead to feelings of exclusion and concerns over lack of protection.[113]

Youth of color experience routine trauma.[114] The deaths of Tamir Rice[115] and Michael Brown[116] capture the all-too-familiar experience of police shootings of unarmed Black teenage boys.[117] The public spectacles are "constant reminder[s] that Black youth are always at risk of summary execution."[118] Heavily publicized tragedies like these catalyzed the Black Lives Matter movement.[119]

When youth of color are subjected to potent interrogation techniques, they will experience isolation, humiliation, and exclusion because police treatment of this kind is actually routine cultural trauma. The well-documented history of egregious mistreatment and wrongful convictions because of police interrogations is a collective trauma for people of color.[120] In one prominent example, the teenagers known as the Central Park Five were wrongfully convicted in 1989 based on coercive interrogation tactics that led to false

110. *How George Floyd Died, and What Happened Next*, N.Y. TIMES (July 29, 2022), https://www.nytimes.com/article/george-floyd.html [https://perma.cc/WVU4-97LP (dark archive)].

111. Onwuachi-Willig, *supra* note 109, at 335.

112. *Id.*

113. *Id.* at 347.

114. *See, e.g.*, JAMES FORMAN, JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 153 (2017) (describing the day-to-day reality for Black, low-income students: "Our students complained constantly about how the police treated them. They told us they were routinely subjected to verbal abuse, stopped and searched for drugs or weapons, or even punched, choked, or shoved. Most of them felt at risk whenever an officer approached").

115. *See* Emma G. Fitzsimmons, *12-Year-Old Boy Dies After Police in Cleveland Shoot Him*, N.Y. TIMES (Nov. 23, 2014), https://www.nytimes.com/2014/11/24/us/boy-12-dies-after-being-shot-by-cleveland-police-officer.html [https://perma.cc/KDD5-JV59 (dark archive)] (reporting on police shooting of Tamir Rice, an innocent Black twelve-year-old who only had a toy airsoft gun in his hand).

116. *See* Julie Bosman, Campbell Robertson, Erik Eckholm & Richard A. Oppel, Jr., *Amid Conflicting Accounts, Trusting Darren Wilson*, N.Y. TIMES (Nov. 25, 2014), https://www.nytimes.com/2014/11/26/us/ferguson-grand-jury-weighed-mass-of-evidence-much-of-it-conflicting.html [https://perma.cc/M5K7-FTX6 (dark archive)].

117. Onwuachi-Willig, *supra* note 109, at 353 (discussing the "trauma narratives currently growing out of a series of non-indictments and non-convictions for police officers and quasi-police officers who have killed African Americans—victims such as Trayvon Martin, Eric Garner, Tamir Rice, Shelly Frey, Freddie Gray, Alexia Christian, Meagan Hockaday, Alton Sterling, and Philando Castile").

118. HENNING, THE RAGE OF INNOCENCE, *supra* note 70, at 160 (internal citation omitted).

119. *About*, BLACK LIVES MATTER, https://blacklivesmatter.com/about/ [https://perma.cc/WKK4-9GHR] ("#BlackLivesMatter was founded in 2013 in response to the acquittal of Trayvon Martin's murderer.").

120. *See, e.g.*, Brown v. Mississippi, 297 U.S. 278, 279–85 (1936).

confessions.[121] The mistreatment of these Black and Brown youth and their families is memorialized within popular culture by Ava Duvernay's series, *When They See Us*.[122]

Beyond the interrogation context, there are other well-known atrocities perpetrated on people of color—youth and adults.[123] For instance, seventeen-year-old Kalief Browder was tortured and traumatized when he was held in solitary confinement for 700 days during his pretrial detention at Riker's Island.[124] Kalief's actual case was dismissed, and he was released.[125] Kalief committed suicide a few years later.[126]

Collective traumas like those illustrated above live in the bodies and minds of youth of color.[127] Tragic public spectacles resurface memories of traumatic events for an affected group and reinforce their sense of routine trauma.[128] This

121. In total six individuals have now been exonerated. Jim Dwyer, *The True Story of How a City in Fear Brutalized the Central Park Five*, N.Y. TIMES (May 30, 2019), https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us-netflix.html [https://perma.cc/LCZ7-SRPQ (dark archive)]; Jonah E. Bromwich, *Sixth Teenager Charged in Central Park Jogger Case Is Exonerated*, N.Y. TIMES (July 25, 2022), https://www.nytimes.com/2022/07/25/nyregion/steven-lopez-central-park-jogger-case.html [https://perma.cc/SHM7-RGB8 (dark archive)].

122. Salamishah Tillet, *'When They See Us' Transforms Its Victims into Heroes*, N.Y. TIMES (May 30, 2019), https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us-netflix.html [https://perma.cc/4X4K-YW2P (dark archive)]. According to the director, Ava DuVernay, Netflix told her that twenty-three million accounts had watched the show less than a month after it debuted. Ava DuVernay (@ava), TWITTER (June 25, 2019, 7:42 PM), https://twitter.com/ava/status/1143665686062886912 [https://perma.cc/9VR8-PWV8]; *see also* Tambay Obenson, *'When They See Us': Ava DuVernay Celebrates 23M+ Netflix Accounts Streaming*, INDIEWIRE (June 26, 2019, 12:22 PM), https://www.indiewire.com/2019/06/when-they-see-us-ava-duvernay-netflix-1202153257/ [https://perma.cc/G7NV-V8R7] (explaining that for two weeks, Netflix also claimed the series "was its most-watched series in the U.S. every day since it premiered").

123. *See* HENNING, THE RAGE OF INNOCENCE, *supra* note 70, at 236–38 (describing arrest, prosecution, and execution of George J. Stinney, an innocent Black fourteen-year-old child).

124. Jennifer Gonnerman, *Before the Law*, NEW YORKER (Sept. 29, 2014), https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015 [https://perma.cc/XYC2-AHBU].

125. *Id.*

126. Jennifer Gonnerman, *Kalief Browder, 1993-2015*, NEW YORKER (June 7, 2015), https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015 [https://perma.cc/7THL-9F96] (explaining that Kalief hung himself at his home when he was twenty-two years old and had learned how to commit suicide when he was at Rikers).

127. Onwuachi-Willig, *supra* note 109, at 335; *see also* C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 80 (2015) [hereinafter INVESTIGATION OF FERGUSON POLICE DEPARTMENT] ("[W]hen police and courts treat people unfairly, unlawfully, or disrespectfully, law enforcement loses legitimacy in the eyes of those who have experienced, or even observed, the unjust conduct." (citation omitted)).

128. Onwuachi-Willig, *supra* note 109, at 336; Todd J. Clark, Caleb Gregory Conrad, andré douglas pond cummings & Amy Dunn Johnson, *Trauma: Community of Color Exposure to the Criminal Justice System as an Adverse Childhood Experience*, 90 U. CIN. L. REV. 857, 869 (2022) ("[A]dmitting the statistical truth that Black children in the United States are the group more prone to trauma is only the first step in fully understanding and confronting the ugly truth—Black children experience trauma because it is traumatic to be raised as a Black person in the United States." (emphasis omitted)).

resurfacing reminds the group that "neither they nor their rights are protected and respected in society."[129]

B. *Long-Term Harm of Juvenile Interrogation*

1. Theoretical Framework To Assess Harm: Disincentive To Follow the Law

Two theories, the procedural justice theory and legal estrangement theory, demonstrate that juvenile interrogation undermines rehabilitation. These theories reveal that officers' training to use force and their lack of ability to afford youth the benefit of their adolescence result in long-term detrimental effects in the relationship between law enforcement and youth, which ultimately hinders the possibility of rehabilitation.[130]

a. Procedural Justice: Individual Rejection of Authority

Justice Sotomayor perhaps best articulated a procedural justice theory of the law when describing her view that the law's goal is "to express our shared ideals as a society—and, through doing that, to enable everyone to identify with law and with our democracy and its political and legal institutions."[131] Procedural justice demonstrates that while litigants of all kinds care about the outcomes of court cases, they care most about the fairness of their journey to an outcome.[132] When procedures feel fair, impartial, and respectful, people are more likely to accept an outcome and abide by court orders.[133]

In the criminal justice context, procedural justice has an important relationship to the promotion of long-term community safety. From investigation to sentencing and supervision, if justice-involved people believe the process was fair, they will be encouraged to cooperate with the law, leading to less crime.[134] On the other hand, if they do not believe that the system operates fairly and consistently, their faith in the law will be destroyed.[135] The justice system has an opportunity to communicate society's values and promote respect for the law.[136] Especially with youth, the perception of fairness

129. *Id.* at 337.

130. Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2081 (2017).

131. Meares & Tyler, *supra* note 6, at 526.

132. Tom R. Tyler, *What Is Procedural Justice?: Criteria Used by Citizens To Assess the Fairness of Legal Procedures*, 22 LAW & SOC'Y REV. 103, 128 (1988) [hereinafter Tyler, *What Is Procedural Justice?*].

133. *Id.* at 128–31; *see also* TYLER, WHY PEOPLE OBEY, *supra* note 6, at 6.

134. TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW xiii–xiv, 57 (2002); *see* Trinkner & Tyler, *supra* note 4, at 427–29.

135. *See* Trinkner & Tyler, *supra* note 4, at 425–26.

136. *See* Emily Buss, *What the Law Should (and Should Not) Learn from Child Development Research*, 38 HOFSTRA L. REV. 13, 63–64 (2009) [hereinafter Buss, *What the Law Should*] ("Early research

encourages prosocial development, rehabilitation, and long-term respect for the law and all of society.[137]

Psychologists and legal theorists Tom R. Tyler and Rick Trinkner have studied how to promote future law-abiding behavior. They discovered that the best way to encourage people to follow the law is to treat them fairly.[138] When police engage community members fairly and kindly, they instill "consensual" legal socialization.[139] By doing so, police develop trust and promote their own legitimacy.[140] Neutral, sincere, polite, and ethical treatment is essential to promote consensual buy-in.[141] When people see that the law is fairly applied, they also believe that the authority figures who carry out the law are honest actors.[142] This consensual route is the best way to promote law-abiding behavior.[143]

The second method of legal socialization is the disfavored "coercive" route.[144] Coercion encourages people to obey the law through force, dominance, and the threat of sanctions, such as incarceration.[145] When authority is established through dominance, people are less likely to respect the authority as legitimate; they will follow the law only if they realistically perceive that they will be caught.[146]

When the police rely on force for their legitimacy, author Ta-Nehisi Coates says police are no more legitimate than a street gang.[147] Coates goes on to explain that a "community consistently subjected to violent discrimination under the law will lose respect for it and act beyond it."[148] This problem is on display when police escalate—rather than diffuse—encounters.[149] Scholars

addressing the 'legal socialization' of children suggests that how children are treated by legal actors (such as police) and legal institutions (such as courts) affects their sense of the legal system's legitimacy and their sense of obligation to obey the law.").

137. *See In re* Gault, 387 U.S. 1, 26 (1967) (referencing the importance of adhering to principles of due process to a youth's perception of fairness and buy-in to his or her own rehabilitation); *see also* Birckhead, *Towards a Theory of Procedural Justice*, *supra* note 72, at 1458–59 (discussing the same); Buss, *What the Law Should*, *supra* note 136, at 63–64.

138. Trinkner & Tyler, *supra* note 4, at 427–29; Buss, *Kids Are Not So Different*, *supra* note 39, at 890–93.

139. Trinkner & Tyler, *supra* note 4, at 428 (citing TYLER, WHY PEOPLE OBEY, *supra* note 6).

140. TYLER, WHY PEOPLE OBEY, *supra* note 6, at 6.

141. *Id.* at 7; Trinkner & Tyler, *supra* note 4, at 429–31.

142. Trinkner & Tyler, *supra* note 4, at 430.

143. *Id.* at 433.

144. *Id.* at 417 (describing coercion in this context as a psychological term of art).

145. *Id.* at 425–26.

146. *Id.* at 421.

147. Ta-Nehisi Coates, *The Near Certainty of Anti-police Violence*, ATLANTIC (July 12, 2016), https://www.theatlantic.com/politics/archive/2016/07/the-near-certainty-of-anti-police-violence/490541/ [https://perma.cc/J5JZ-UU84 (dark archive)].

148. *Id.*

149. Eric J. Miller, *Encountering Resistance: Contesting Policing and Procedural Justice*, 2016 U. CHI. LEGAL F. 295, 300.

Tracey Meares and Jeffrey Fagan describe a phenomenon they term "stigma erosion."[150] The idea of stigma erosion explains that when harsh punishments are severely meted out amongst already disenfranchised poor minority communities, those community members experience the punishment as unfair, oppressive, and ultimately disincentivizing.[151] Stigma erosion also has a symbiotic relationship with cultural trauma.[152]

People relate to the law by comparing their personal experiences with the interactions of others.[153] When people feel that they are treated with dignity and respect, they feel accepted and included.[154] People attribute meaning to how they are treated in the context of their identity.[155] So, for instance, a Latinx American female will perceive her treatment in the context of how women are treated, how Latinx American people of all genders are treated, and how Latinx American women are treated. People also assess their own and their group's social status based on how well they believe they are treated.[156]

Individual communities have their own unique histories with police, which shape their views today. Thus, while research has steadily reflected a pervasive mistrust of the police,[157] faith in the police is even more strained amongst minority, poor, and Black communities.[158] Procedural justice on its own does not bring into focus the full contours of the problems in policing.

b. Legal Estrangement: Social Ostracization

Scholar Monica Bell's theory of legal estrangement explains that certain individuals experience isolation and ostracization from law enforcement and society when they observe the mistreatment of others—those they know

150. Jeffrey Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173, 173 (2008).

151. *Id.*; Jennifer L. Woolard, Samantha Harvell & Sandra Graham, *Anticipatory Injustice Among Adolescents: Age and Racial/Ethnic Differences in Perceived Unfairness of the Justice System*, 26 BEHAV. SCIS. & L. 207, 221–25 (2008).

152. Onwuachi-Willig, *supra* note 109, at 336–37.

153. Trinkner & Tyler, *supra* note 4, at 424–25.

154. Meares & Tyler, *supra* note 6, at 536.

155. *Id.* at 527 (citing Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, 25 ADVANCES EXPERIMENTAL SOC. PSYCH. 115 (1992)); *id.* at 538.

156. *Id.* at 535.

157. Trinkner & Tyler, *supra* note 4, at 419 (citing *Few Say Police Forces Nationally Do Well in Treating Races Equally*, PEW RSCH. CTR. (Aug. 25, 2014), https://www.pewresearch.org/politics/2014/08/25/few-say-police-forces-nationally-do-well-in-treating-races-equally/ [https://perma.cc/Y2FB-4YMH] ("[T]here continue to be striking discrepancies (often 25–30%) in police trust between whites and nonwhites.")); Amanda Graham, Murat Haner, Melissa M. Sloan, Francis T. Cullen, Teresa C. Kulig & Cheryl Lero Jonson, *Race and Worrying About Police Brutality: The Hidden Injuries of Minority Status in America*, 15 VICTIMS & OFFENDERS 549, 549 (2020).

158. Trinkner & Tyler, *supra* note 4, at 419, 432.

personally and those within their community.[159] Legal estrangement focuses on social inclusion as a goal of policing in and of itself, rather than conceptualizing policing merely as a means to achieve compliance with the law.[160] Disillusionment stems from "*other* people's negative experiences with the police, whether those people are a part of one's personal network or not, [because those experiences] feed into a more general, cultural sense of alienation from the police."[161] Estrangement prevails when the "feeling that police have behaved disrespectfully feeds into an overall disbelief in the legitimacy of the law and law enforcement."[162]

Bell describes the "twin perils of harsh policing and neglectful policing."[163] When the law is seen as something used only to regulate—and not to protect—people of color, distrust results.[164] These "twin perils" are indicators of "structural exclusion from public safety" that break down over lines of race, socioeconomic status, and geography.[165] The collective impact of the twin injustices of harsh overpolicing and extreme underpolicing is to further fuel isolation and disillusionment.[166]

The lens of legal estrangement illuminates areas where procedural justice alone does not shed light. For instance, an individual could themselves be law-abiding while at the same time distrustful of the police and fearful that they and their fellow community members will be treated unfairly.[167] Bell focuses on promoting social inclusion and centering reforms around group experiences and structural inequities as we diagnose policing problems.[168]

159. *Id.* at 2105.

160. Bell, *supra* note 130, at 2067.

161. *Id.*

162. *Id.* at 2100.

163. *Id.* at 2118.

164. Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1718–19 (2006) (describing the simultaneous overpolicing and lack of protection that corresponds with race and class); *see also, e.g.*, C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 143 (2017) [hereinafter INVESTIGATION OF CPD] (illustrating community distrust in police programs typically designed to be protective where the community experienced both harsh and neglectful policing).

165. Bell, *supra* note 130, at 2115, 2118.

166. *Id.* at 2080, 2108. The effects of such distrust are not limited to discouraging law abiding behavior but can also lead to victims' reluctance to report crimes. INVESTIGATION OF FERGUSON POLICE DEPARTMENT, *supra* note 127, at 81 (explaining that harsh enforcement actions and overpolicing, even where lawful, "increase distrust and significantly decrease the likelihood that individuals will seek police assistance even when they are victims of crime, or that they will cooperate with the police to solve or prevent other crimes").

167. *Id.* at 2110 (explaining the attitudes, beliefs, and experiences of subject, "Jamila").

168. *Id.* at 2066–67, 2070–72.

2. Harm to Youth: Theoretical Framework and Developmental Justice

Children develop a relationship with the law as they grow up.[169] A young person's interactions with police and other legal actors will shape their adult views of the justice system.[170] When young people are not treated with respect by the actors in the justice system, those young people will lose faith in the system itself.[171] For instance, if a child experienced abuse and no one intervened to hold the abuser responsible, that child may experience disillusionment over the justice system's legitimacy.[172] The message conveyed through action or inaction could promote a sense of fairness in the law, or it could backfire if it holds a child accountable instead of the adult who hurt that child.[173] This type of harm is explored more fully through the legal estrangement theory:

> [D]espite the youths' negative experiences with the police, they cling to the mainstream cultural ideal that police should protect them and their communities. Along with protection, the youth[s] desire procedurally just policing. The critical point about structural exclusion is that, despite the youths' cynicism about the police, they nonetheless believe that the police are failing to provide protective services to their communities.[174]

Too few scholars have examined the intersection of developmental science and procedural justice.[175] A notable exception is scholar Emily Buss who describes the developmental justice responsibility for childrearing and the therapeutic justice duty to ensure the well-being of youth.[176] The juvenile court's focus should be on educating young people so that they grow into

169. Trinkner & Tyler, *supra* note 4, at 418, 432–33.

170. *Id.* at 421–22 (citing Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 ANNALS AM. ACAD. POL. SOC. SCI. 159 (2014)).

171. *See* Meares & Tyler, *supra* note 6, at 535–36.

172. *See* TEN THINGS, *supra* note 57, at 6.

173. *See id.*

174. Bell, *supra* note 130, at 2119.

175. *See* Alex R. Piquero, Jeffery Fagan, Edward P. Mulvey, Laurence Steinberg & Candice Odgers, *Developmental Trajectories of Legal Socialization Among Serious Adolescent Offenders*, 96 J. CRIM. L. & CRIMINOLOGY 267, 270 (2005) (noting that little research has addressed how adolescents are socialized about the law); Emily Buss, *Failing Juvenile Courts, and What Lawyers and Judges Can Do About It*, 6 NW. J.L. & SOC. POL'Y 318, 323 (2011) [hereinafter Buss, *Failing Juvenile Courts*]; Trinkner & Tyler, *supra* note 4, at 432 (calling for scholarship to fill gaps in the conversation about legal socialization and criminal justice and observing that "monumental advances in the biological and neurological sciences have already had a substantial influence on legal policy and advocacy, yet these advances have not generally been brought to bear on the legal socialization process"); Birckhead, *Towards a Theory of Procedural Justice*, *supra* note 72, at 1454, 1455 n.28 (2009) (describing only a handful of scholars who have discussed "the concept of procedural justice and its utility for juvenile delinquency court").

176. Emily Buss, *Developmental Jurisprudence*, 88 TEMP. L. REV. 741, 741–42 (2016) [hereinafter Buss, *Developmental Jurisprudence*]; *see also* Birckhead, *Towards a Theory of Procedural Justice*, *supra* note 72, at 1506–07.

successful adults.[177] Buss has looked at how developmentally sound court procedures and processes can educate and motivate young people towards a path of respect for the law.[178] The justice system owes youth a duty to afford meaningful learning opportunities with supportive and caring adults.[179] Like Buss, many of those who have examined this intersection of adolescent development and procedural justice have focused most on the court proceedings themselves.[180]

Adolescents are figuring out who they are and developing critical decision-making skills.[181] During this time, they need the help of supportive adults who respectfully allow them to make mistakes, encourage them to learn and grow from their experiences, and provide opportunities for them to make progress on their accomplishments.[182] Dr. Steinberg warns that "[r]ight now we are neither adequately protecting young people from harm nor taking advantage of the opportunity to promote enduring positive development."[183]

Interactions with police are frequently the first encounter young people will have with a legal actor.[184] It is important to analyze how this foundational interaction influences their legal socialization; it will either promote or hinder their future compliance with the law.[185] The practice of juvenile interrogations

177. Buss, *Developmental Jurisprudence*, *supra* note 176, at 760 (recommending an approach that is "more positive, forward looking, and normalizing than 'rehabilitation'").

178. *See* Buss, *Failing Juvenile Courts*, *supra* note 175, at 319–20; Buss, *What the Law Should*, *supra* note 136, at 61–63.

179. Buss, *Failing Juvenile Courts*, *supra* note 175, at 321–23.

180. *See* Birckhead, *Towards a Theory of Procedural Justice*, *supra* note 72, at 1447–51; Buss, *Failing Juvenile Courts*, *supra* note 175, at 320; Neelum Arya, *Using* Graham v. Florida *To Challenge Juvenile Transfer Laws*, 71 LA. L. REV. 99, 103 (2010) (arguing that *Graham* should be interpreted as granting a due process right to afford juveniles a right to rehabilitation); *see also* Martin Guggenheim, Graham v. Florida *and a Juvenile's Right to Age-Appropriate Sentencing*, 47 HARV. C.R.-C.L. L. REV. 457, 492, 499 (2012).

181. Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCH. 469, 473–75 (2000) [hereinafter Arnett, *Emerging Adulthood*] (describing a distinct developmental phase of "emerging adulthood," from eighteen to twenty-five, during which much identity formation occurs and certain high-risk behaviors are at their peak); APA Brief Supporting Petitioners in *Graham*, *supra* note 39, at 8–14; *see also* Elizabeth Cauffman, Elizabeth P. Shulman, Laurence Steinberg, Eric Claus, Marie T. Banich, Sandra Graham & Jennifer Woolard, *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEVELOPMENTAL PSYCH. 193, 204 (2010).

182. Buss, *Failing Juvenile Courts*, *supra* note 175, at 323–24.

183. STEINBERG, *supra* note 49, at 11.

184. STANTON WHEELER & LEONARD S. COTTRELL, JR., JUVENILE DELINQUENCY: ITS PREVENTION AND CONTROL 28 (1966) ("The police are . . . the first point of contact between the juvenile and formal legal authorities. Thus the behavior of the police is a decisive element in the processing of delinquents."); *see also* Meares & Tyler, *supra* note 6, at 532 (recognizing that police are legal actors).

185. Trinkner & Tyler, *supra* note 4, at 432, 437 (observing that "monumental advances in the biological and neurological sciences have already had a substantial influence on legal policy and advocacy, yet these advances have not generally been brought to bear on the legal socialization process").

must fully consider procedural justice, legal estrangement, and developmental jurisprudence.[186]

3. Special Harm to Marginalized Groups and Communities

Estrangement concerns are exponentially more important for youth of color because they observe their overrepresentation in the justice machine.[187] Youth of color then believe that the system is unfair as it is applied to them and others like them.[188] Bell explains that the most significant reason Black people "do not see police as legitimate is because they tend to have more personal experiences in which officers treat them in a procedurally unjust manner."[189] Black youth see police mistreatment as pervasive,[190] have less respect for police than ever before,[191] and often describe police as "hostile and rude."[192] Black youth do not have faith in accountability measures for the police, exacerbating their distrust.[193]

When one sees the law failing to protect them and others in their community, a unique harm follows. When legal actors treat marginalized individuals and groups poorly, while the law is simultaneously used as a tool to regulate them and their communities, distrust develops.[194] When this type of oppression occurs repeatedly—particularly with people who are of the same race and class—disillusionment ensues.[195] In this way, there is harm not just to the youth themselves, but also to everyone in their community who observes the harm; they are dissatisfied, disillusioned, and they lose respect for law

186. *See* WHEELER & COTTRELL, *supra* note 184, at 36 ("There is a need for clarification of the aims and objectives of the police and the court in relation to juveniles."); Emily Buss, *Kids Are Not So Different*, *supra* note 39, at 873–74.

187. Fagan & Meares, *supra* note 150, at 173.

188. Birckhead, *Towards a Theory of Procedural Justice*, *supra* note 72, at 1478 (stating that "unfair treatment triggers negative reactions, anger, and defiance of the law's norms"); David R. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL'Y REV. 13, 27 (2003); Buss, *What the Law Should*, *supra* note 136, at 62–64; Buckingham, *A Tale of Two Systems*, *supra* note 65, at 202; Kristen Bell, *A Stone of Hope: Legal and Empirical Analysis of California Juvenile Lifer Parole Decisions*, 54 HARV. C.R.-C.L. L. REV. 456, 525 (2019); *see, e.g.*, INVESTIGATION OF CPD, *supra* note 164, at 143 ("One youth told [investigators] that the nature of the police presence in his neighborhood makes him feel like he is in 'an open-air prison.'").

189. Bell, *supra* note 130, at 2076; *see* HENNING, THE RAGE OF INNOCENCE, *supra* note 70, at 157–58 (internal citation omitted) (describing how Black youth report that "officers treat them as if they are always 'criminal' and complain that police are mean and disrespectful").

190. HENNING, THE RAGE OF INNOCENCE, *supra* note 70, at 158 (noting also that white youth usually see police misconduct as an outlier).

191. *Id.*

192. *Id.* (internal citation omitted) (noting how Black youth say that officers hurl racial slurs and other "inflammatory and demeaning" names at them).

193. *See id.* at 159.

194. Bell, *supra* note 130, at 2066.

195. *Id.* at 2058.

enforcement.[196] Also, when an individual youth experiences harm, that harm is more severe because what is happening to them is also happening to those around them.[197] Harkening back to the concept of routine trauma, when youth themselves are subjected to harsh interrogation techniques after witnessing others in their community experiencing mistreatment by law enforcement, it exacerbates their feeling of exclusion.[198]

Inclusivity considerations are paramount to promoting fair treatment.[199] Fairness increases a sense of belonging and encourages law-abiding behavior.[200] Supporting and improving fair treatment of all vulnerable communities will promote feelings of respect.[201] Youth, and especially youth of color, belong in conversations about reform; centering them further enhances their sense of belonging and of value to the community.

C. *Resurrecting Judicial Integrity: A Deontological Injury to Society*

In *Mapp v. Ohio*,[202] the Supreme Court applied the exclusionary rule to the states, relying upon equally important rationales—deterrence of police misbehavior and judicial integrity.[203] Deterrence contends that officers will be less likely to obtain evidence in violation of the law if the evidence will be excluded from trial.[204] The judicial integrity rationale is based on a conception of two injuries. The first injury occurs on the street when the police violate the defendant's constitutional rights. The second injury occurs when the evidence is admitted at trial. It is this second injury in which society is complicit. When the illegally obtained evidence is relied upon in court, it undermines society's legitimacy.[205]

196. Henning, *Criminalizing Normal Adolescent Behavior*, *supra* note 72, at 453.

197. Onwuachi-Willig, *supra* note 109, at 336–37 (describing "the judicial affirmation" of Black Americans' "routine exclusion from full citizenship and legal protection").

198. *Id.* at 341; *see also* Watson, *supra* note 71, at 184.

199. *See* Meares & Tyler, *supra* note 6, at 532–34.

200. *Id.* at 541 (citing Yuen J. Huo & Ludwin E. Molina, *Is Pluralism a Viable Model of Diversity?: The Benefits and Limits of Subgroup Respect*, 9 GRP. PROCESSES & INTERGROUP RELS. 359 (2006)).

201. These are salient issues for other socially marginalized groups such as LGBTQI and Gender Non-Conforming youth and indigenous youth. *See*, *e.g.*, Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Populati*on, 24 AM. U. J. GENDER SOC. POL'Y & L. 243, 251 (2016).

202. 367 U.S 643 (1961).

203. *Id.* at 657–60.

204. *See* Utah v. Strieff, 579 U.S. 232, 241 (2016) ("The exclusionary rule exists to deter police misconduct.").

205. *Mapp*, 367 U.S. at 659–60 (explaining that excluding illegally obtained evidence is "founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice").

The judicial integrity rationale aspires to values beyond accuracy in each case. The admission of illegally obtained evidence is described by the Court as an "ignoble shortcut to conviction . . . [that] tends to destroy the entire system of constitutional restraints on which the liberties of the people rest."[206] The judicial integrity rationale operates in sync with the procedural justice theory that fairness—actual and perceived—is fundamental to instilling trust in the legal system and its actors.

Youth are our future. When society countenances the use of confessions obtained from youth subjected to the Reid method, society becomes complicit in the use of those coercive tactics. This is a deontological harm because a coercive socialization process is wrong in and of itself. First, society's integrity is compromised when youth are subjected to officer dominance and threats. The subsequent harm—to society, our values, and our system of law—occurs when the evidence obtained from a youth's interrogation is used in court. Admission of such a confession will increase the danger that a young person will see the law as unfair, undermining their potential to grow into a law-abiding adult. This injury implicates and harms us all.

III. FAILURE TO PROTECT YOUTH FROM HARM

The treatment afforded to youth during police interrogation is conscribed by constitutional criminal procedure. These procedures inform both how police are trained and how courts determine whether police adhered to the law. Police, lawyers, and judges sometimes permit tactics that test the constitutional limits. Yet, these limits are misplaced. The constitutional framework does not adequately and consistently account for the special vulnerability of youth to pressure-filled police tactics. The law, reforms to the law, and even specialized police training have failed to adequately protect youth from their unique susceptibility to police interrogation tactics. These fundamental failures have led to gaps in protection.

Almost sixty years ago, sociologists observed that "[t]here is a great gap between the rhetoric of juvenile court philosophy and the reality of juvenile court practice."[207] That gap exists in the disconnect between the rehabilitative goal of juvenile court and the reality that youth are treated in ways that undermine their rehabilitation. The current legal framework fails to protect youth from coercive legal socialization and estrangement. The harm posed by interrogation cannot be cured by merely excluding a confession at trial.[208] That remedy does not undo the harm of the interrogation experience. Interrogation

206. *Id.* at 660.

207. WHEELER & COTTRELL, *supra* note 184, at 52; *In re* Gault, 387 U.S. 1, 21 (1967).

208. *See* Bram v. United States, 168 U.S. 532, 548 (1897); Massiah v. United States, 377 U.S. 201, 206–07 (1964); Jackson v. Denno, 378 U.S. 368, 376–77 (1964).

undermines the juvenile justice system's rhetorical commitment to rehabilitation and instead leads to recidivism. Police training and other reforms that fine tune the edges of permissible interrogation simply miss the mark because they do not consider rehabilitation.

Not only is there a gap between the rhetoric of the juvenile system generally and its implementation, there is also a gap in the way the law of interrogation is written and the reality of its implementation. In 1996, Richard A. Leo explained that there is a "gap problem" with interrogations.[209] The gap Leo described is between the way the law is written and how it is applied in the real world.[210] This gap—the failure of the law in practice to live up to its ideals—is palpable today. Foundational juvenile precedent has long recognized that youth are different from adults in ways that necessitate their greater protection.[211] Reiterating this basic concept, the Supreme Court recently said, "Indeed, it is the odd legal rule that does *not* have some form of exception for children."[212] Still, the practice of interrogation does not live up to that ideal and the promise that youth deserve greater protection.

The law is not specific enough to protect youth in the unique ways they need protecting. Because juvenile protections are based on—and, in most circumstances, mirror—adult criminal procedure precedent, the framework for understanding what is out of bounds for youth is based on what is out of bounds for adults.[213] Cases we rely on have typically been decided prior to the application of adolescent development research, which creates a structural problem. Our inaccurate foundation holds youth to an adult standard.

As far back as the time of *In re Gault*,[214] scholars warned that to "close that gap" we must "increase[e] the legal protections provided to the juvenile."[215] That need persists.[216]

209. Leo, *supra* note 7, at 266.

210. *Id.*

211. *See* Haley v. Ohio, 332 U.S. 596, 599 (1897); Gallegos v. Colorado, 370 U.S. 49, 53 (1962); *In re* Gault, 387 U.S. at 14–27.

212. Miller v. Alabama, 567 U.S. 460, 481 (2012).

213. This section addresses the inadequacy of the law to protect youth from interrogation. See *infra* Section IV.B.1 for further discussion.

214. 387 U.S. 1 (1967).

215. WHEELER & COTTRELL, *supra* note 184, at 52.

216. In the same year as *Gault*, the U.S. Supreme Court decided the landmark case of *Kent v. United States*, 383 U.S. 541 (1966), holding that juveniles are entitled to an opportunity for a hearing before transfer to adult court and other associated rights based on due process and fundamental fairness. *Id.* at 553–54. In the opinion, Justice Fortas expressed concern that "the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Id.* at 556.

A. *Structural Inadequacy: Legal Framework of Constitutional Criminal Procedure*

Next, gaps in protection afforded by the Fifth, Sixth, and Fourteenth Amendments are analyzed.

1. Fifth Amendment Gaps: Internally Inconsistent Protection

The Fifth Amendment ensures the right of an accused to protect themselves against self-incrimination.[217] In *Miranda*, the Court held that a suspect is entitled to receive warnings to prophylactically protect that right when subjected to custodial interrogation.[218] *Miranda* rights must be waived voluntarily, knowingly, and intelligently.[219] The purpose of *Miranda* warnings is to put the accused in a position where they can access some power to combat the inherently compulsive setting of an interrogation in a police-dominated environment.[220] Even if validly waived, a suspect may later assert their rights to counsel and silence at any point to stop the interrogation.[221] Greater protections for youth are needed at each step in the *Miranda* rubric: custody and interrogation triggering *Miranda* protection, the bar for voluntary waiver of rights, and the ability to assert those rights.

a. While Miranda *Custody Analysis Offers Some Protection, Waiver Analysis Leaves Youth Exposed*

In *J.D.B. v. North Carolina*, the Supreme Court held that a child's age is relevant to *Miranda* custody analysis.[222] Indeed, "to ignore the very real differences between children and adults . . . would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults."[223] Juvenile law scholars Martin Guggenheim and Randy Hertz explain the importance of revisiting *Miranda*:

217. U.S. CONST. amend. V; *see In re* Gault, 387 U.S. 1, 47 (1967).

218. Miranda v. Arizona, 384 U.S. 436, 471–72 (1966).

219. *Id.* at 475.

220. *Id.* at 457 (noting that the police "interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner"); Fare v. Michael C., 442 U.S. 707, 719 (1979). In this opinion Justice Blackmun described the "unique role" an attorney plays in the context of the *Miranda* warnings and how

> the lawyer is the one person to whom society as a whole looks as the protector of the legal rights of that person in his dealings with the police and the courts. For this reason, the Court fashioned in *Miranda* the rigid rule that an accused's request for an attorney is *per se* an invocation of his Fifth Amendment rights, requiring that all interrogation cease.

Fare, 442 U.S. at 719.

221. *See Miranda*, 384 U.S. at 45–56.

222. J.D.B. v. North Carolina, 564 U.S. 261, 277 (2011).

223. *Id.* at 281; *see* Haley v. Ohio, 332 U.S. 596, 599 (1948) (emphasizing that, in the specific context of police interrogation, events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens").

> The rule adopted in *Miranda* . . . is [designed] to ensure that suspects are advised of their rights so that a suspect can make a truly knowing and voluntary decision whether to waive those rights. If, as we believe, the vast majority of juveniles are incapable of making a truly knowing and voluntary waiver, then the *Miranda* rule cannot function in juvenile cases in the way that it was intended.[224]

Justice Sotomayor wrote in *J.D.B.* that a "child's age is far 'more than a chronological fact.' It . . . 'generates commonsense conclusions about behavior and perception' [that] apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge."[225] If the law lived up to the promise that it is an "odd" legal rule where there is no exception for youth, *Miranda* protections would apply to all youth who are in custody in any sense—requiring warnings as well as a knowing and voluntary waiver whenever an officer detains and speaks to a young person.[226]

Youth have a limited ability to understand the very concept of rights—*Miranda* rights specifically—and what a waiver of rights means.[227] Courts employ a totality-of-the-circumstances test to determine whether the accused knowingly, intelligently, and voluntarily decided to forgo their rights.[228] The test for *Miranda* waivers incorporates youth. Courts must weigh "the juvenile's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given to him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights."[229] There is a threshold presumption against finding a waiver.[230]

In a case that spurred legislative reform in its wake, the California Court of Appeal found that a ten-year-old child may validly waive *Miranda* rights.[231] This case is an example of how courts often approve waivers that are grossly out of sync with developmental research.

224. Guggenheim & Hertz, *supra* note 23, at 168.

225. *J.D.B.*, 564 U.S. at 272 (citations omitted).

226. When I was teaching the case of *J.D.B.* in Criminal Procedure, a student asked—wouldn't anyone under eighteen always be in custody for the purposes of *Miranda*? Cassia Beltran, Student, Class Participation at Loyola Law School, in Los Angeles, CA (2019); *see also* Rhode Island v. Innis, 446 U.S. 291, 302 n.8 (1980) (indicating that the interrogation analysis should recognize the age of a youthful suspect by holding that the "unusual susceptibility of a defendant to a particular form of persuasion" is a relevant consideration).

227. Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 29; Lorelei Laird, *Police Routinely Read Juveniles Their* Miranda *Rights, But Do Kids Really Understand Them?*, ABA J. (June 1, 2016), https://www.abajournal.com/magazine/article/police_routinely_read_juveniles_their_miranda_rights_but_do_kids_really_und [https://perma.cc/L5VT-AU9Z (staff-uploaded, dark archive)]; Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 228–29, 228 n.36.

228. Fare v. Michael C., 442 U.S., 707, 725 (1979).

229. *Id.*

230. North Carolina v. Butler, 441 U.S. 369, 373 (1979).

231. *In re* Joseph H., 188 Cal. Rptr. 3d 171, 187 (Cal. Ct. App. 2015). This case spurred statewide legislative reforms to provide lawyers to youth. *See* discussion *infra* Section III.B.5.

A truly valid waiver of *Miranda* for youthful suspects is a tall order. A suspect must have actual and "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."[232] The prosecution must establish a valid waiver by a standard of preponderance of the evidence,[233] although some state laws require a higher standard of proof.[234] An accused youth "must 'kno[w] what he is doing' so that 'his choice is made with his eyes open.'"[235] Yet, most youth do not actually understand their *Miranda* rights, need protection from waiving rights before understanding them, and are less able than mature adults to claim those rights in the face of interrogation.[236]

Adolescents waive their *Miranda* rights at a rate over eighty percent.[237] Adults, by contrast, only waive their *Miranda* rights an estimated sixty-eight percent of the time.[238] According to juvenile justice experts:

> The greater suggestibility and deference to authority exhibited by youth relative to adults may make them more likely to waive their rights to silence and counsel, regardless of whether they fully comprehend the rights they are forfeiting. That very few children and adolescents invoke their *Miranda* rights underscores the importance of considering the extent to which youth comprehend their rights before they should be allowed to waive them.[239]

Miranda rights are not easy to understand. While some scholars argue that individuals need a sixth-grade reading level to understand the warnings, many argue that a tenth-grade level, if not higher, is necessary.[240] But even youth who have a basic understanding of the words of *Miranda* warnings have difficulty grasping their significance and comprehending how their rights apply to an interrogation.[241] Children may understand the word "right" to mean "correct"

232. Moran v. Burbine, 475 U.S. 412, 421 (1986).

233. Colorado v. Connelly, 479 U.S. 157, 168 (1986).

234. Guggenheim & Hertz, *supra* note 23, at 166 n.246.

235. Patterson v. Illinois, 487 U.S. 285, 292 (1988) (quoting Adams v. United States *ex rel.* McCann, 317 U.S. 269, 279 (1942)).

236. *See* TYLER, WHY PEOPLE OBEY, *supra* note 6, at 7 (discussing respect for rights as a criterion people use to assess fairness).

237. Barry C. Feld, *Behind Closed Doors: What Really Happens when Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 429 (2013).

238. Saul M. Kasson, Richard A. Leo, Christian A. Meissner, Kimberley D. Richman, Lori H. Colwell, Amy-May Leach & Dana La Fon, *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 389 (2007).

239. *See* Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 29; Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 229 ("Juveniles do not appreciate the function or importance of rights as well as adults.").

240. LaVigne & Van Rybroek, *supra* note 63, at 75; *see also* Richard Rogers, Hayley L. Blackwood, Chelsea E. Fiduccia, Jennifer A. Steadham, Eric Y. Drogin & Jill E. Rogstad, *Juvenile* Miranda *Warnings: Perfunctory Rituals or Procedural Safeguards?*, 39 CRIM. JUST. & BEHAV. 229, 236–37 (2012).

241. *See* Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 31; LaVigne & Van Rybroek, *supra* note 63, at 75–76.

instead of as a protection and legal entitlement having implications beyond their current situation.[242] Even when children were given the meaning of a legal right, nearly half still define a right as something one "can do."[243] Almost all youth between ages twelve to nineteen demonstrate "less than adequate appreciation of the significance and consequence of waiving their rights."[244] Youth do not understand the role of law enforcement in the interrogations.[245] With justice-involved youth ages thirteen to seventeen, "even the most sophisticated and mature youth were able to recall only fifty percent of *Miranda* content one minute after the warnings were administered."[246] Studies of *Miranda* are also conducted in less stressful circumstances than actual interrogation.[247]

The way *Miranda* rights are read tends to frustrate comprehension. When the rights are read aloud all at once even individuals with sufficient language skills cannot process and recall both the words and concepts.[248] Police also use tactics to de-emphasize the importance of *Miranda* rights. Officers commonly read *Miranda* rights as though it is a "bureaucratic ritual they had to complete before they could talk,"[249] thus de-emphasizing the importance of *Miranda* rights.[250]

Comprehension of *Miranda* rights is hardest for youth who have trauma and learning differences.[251] The cognitive, interpersonal, and communication deficits created by language disorders may drastically affect an individual's ability to engage with law enforcement in an interrogation setting.[252] Youth are vulnerable to providing an invalid *Miranda* waiver, even when a similarly situated adult is not.[253]

242. Naomi E.S. Goldstein, Sharon Messenheimer, Christina L. Riggs Romaine & Heather Zelle, *Potential Impact of Juvenile Suspects' Linguistic Abilities on* Miranda *Understanding and Appreciation*, *in* THE OXFORD HANDBOOK OF LANGUAGE AND LAW 299, 301 (Lawrence M. Solan & Peter M. Tiersma eds., 2012) [hereinafter Goldstein et al., *Potential Impact*].

243. *Id.* at 308.

244. Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 31.

245. *See* Sara Cressey, *Overawed and Overwhelmed: Juvenile* Miranda *Incomprehension*, 70 ME. L. REV. 87, 99–100 (2017) (describing a study demonstrating that youth who were questioned believed it was the role of law enforcement to help them).

246. Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 33; *see* Richard Rogers, Jennifer A. Steadham, Chelsea E. Fiduccia, Eric Y. Drogin & Emily V. Robinson, *Mired in* Miranda *Misconceptions: A Study of Legally Involved Juveniles at Different Levels of Psychosocial Maturity*, 32 BEHAV. SCI. & L. 104, 111 (2014).

247. Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 33.

248. LaVigne & Van Rybroek, *supra* note 63, at 75–76.

249. Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 228 n.36.

250. Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 27.

251. *See* LaVigne & Van Rybroek, *supra* note 63, at 74.

252. *Id.*

253. For an example of how a juvenile suspect's particular frailty could vitiate a valid *Miranda* waiver, see *In re* Peter G., 168 Cal. Rptr. 3, 7–8 (Cal. Ct. App. 1980) (holding that "due to [Peter G.'s] tender age and heavy intoxication at the time of the police interview appellant did not possess the requisite free will and rational intellect to [voluntarily] waive his *Miranda* rights").

Implied waivers are a common practice, but the Supreme Court case approving of implied waivers predated *J.D.B.* and involved an adult. In *North Carolina v. Butler*,[254] an officer gave the adult suspect a form that "fully advised [the suspect] of the rights delineated in the *Miranda* case."[255] After reading the form, Butler stated, "I will talk to you but I am not signing any form."[256] The Court held that Butler's refusal to sign the form did not invalidate his waiver.[257]

Lower courts use the *Butler* decision to allow this practice of implied waivers for youth. In practice, officers read *Miranda* rights and then immediately start questioning, without asking if a youth expressly wants to give up their *Miranda* rights and speak to the officers. Courts apply *Butler* without taking age into account. In other words, courts are endorsing the same police practices with youth based solely on the Supreme Court precedent allowing similar practices with adults.

A notable exception, almost thirty years after *Butler*, Delaware's high court required that a waiver by a youth be clear and explicit[258] by holding that "where there is any ambiguity . . . the interrogating officer has an obligation to clarify the ambiguity contemporaneously on the record before continuing with the interview."[259]

Stricter rules around waiver like the rule adopted in Delaware will bring the law into harmony with both its own ideals and the developmental research. An explicit waiver for youth is an essential safeguard.[260] Nevertheless, this change alone fails to cure legal socialization and estrangement problems.

b. Youth Look Different When They Assert Miranda *Rights*

In the adult context, police officers have an obligation to stop questioning a suspect if they clearly and unambiguously assert their right to counsel.[261] The California Court of Appeal established that *J.D.B.*'s incorporation of age applies to assertion of right to counsel.[262] A thirteen-year-old boy's statement, "Could I have an attorney?"—a statement that may have been considered equivocal were it made by an adult—was deemed an invocation of his right to counsel.[263] To ensure youth are protected more vigorously than

254. 441 U.S. 369 (1979).
255. *Id.* at 370–71.
256. *Id.* at 371.
257. *Id.* at 373.
258. Rambo v. State, 939 A.2d 1275, 1280 (Del. 2007).
259. *Id.*
260. *See* J.D.B. v. North Carolina, 564 U.S. 261, 270 n.4 (2011); *see also* Graham v. Florida, 560 U.S. 48, 78 (2010).
261. Davis v. United States, 512 U.S. 452, 461–62 (1994).
262. *In re* Art T., 183 Cal. Rptr. 3d 784, 797–98 (2015).
263. *Id.* at 798–800.

adults, courts should apply *J.D.B.* to the assertion of the right to both counsel and silence. Currently, one's right to silence must also be asserted clearly and unambiguously.[264] An officer must scrupulously honor the right, invoking a test weighing a number of factors.[265] For youth, this test should be more protective and at least embrace the plain intention of the original *Miranda* decision—once a suspect asserts the right to silence, the police must stop questioning immediately and are not able to reinitiate interrogation about any offense.[266]

2. Sixth Amendment Gaps: Special Relationship with Counsel

The Sixth Amendment ensures accused individuals the right to a fair trial, including the right to an attorney.[267] From a procedural justice perspective, individuals assess the fairness with which they are treated in part by the legal authority figure's respect for their right to counsel, and such respect for rights has been found to promote consensual legal socialization.[268] The Sixth Amendment right to counsel is considered a trial right.[269] The right attaches at the initiation of formal adversarial proceedings and all future critical stages.[270] The Sixth Amendment right to counsel is also limited in nature because it is offense-specific.[271] Yet that general, adult rule does not serve to best meet the special needs of youth.[272]

A young person needs the assistance of a lawyer. Justice Fortas explained in *Gault*:

> The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare to

264. *See* Berghuis v. Thompkins, 560 U.S. 370, 381–82 (2010).

265. Michigan v. Mosley, 423 U.S. 96, 102–04 (1975).

266. Miranda v. Arizona, 384 U.S. 436, 473–74 (1966).

267. U.S. CONST. amend. VI; Gideon v. Wainright, 372 U.S. 335, 344 (1963); *In re* Gault, 387 U.S. 1, 61 (1967).

268. TYLER, WHY PEOPLE OBEY, *supra* note 6, at 7; Tyler, *What Is Procedural Justice?*, *supra* note 132, at 128.

269. U.S. CONST. amend. VI; *see* McNeil v. Wisconsin, 501 U.S. 171, 177–78 (1991) ("The purpose of the Sixth Amendment counsel guarantee—and hence the purpose of invoking it—is to 'protect the unaided layman at critical confrontations' with his 'expert adversary,' the government . . . ." (quoting United States v. Gouveia, 467 U.S. 180, 189 (1984))).

270. *McNeil*, 501 U.S. at 175.

271. *Id.* (using the language "offense-specific").

272. Some scholars advocate for a more robust application of the Sixth Amendment right to counsel in certain situations where an attorney's advice may be perceived as even more critical to one's decision-making. *See* Nathaniel Mensah, *"Can You Hear Me Now?": The Right to Counsel Prior to Execution of a Cell Phone Search Warrant*, 107 MINN. L.J. 1129, 1129–30 (2023) (proposing "that a 'post-indictment' search of a seized cell phone is a 'critical stage' in a prosecution, entitling a criminal defendant to the assistance of counsel prior to the execution of the search").

> submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."[273]

The Supreme Court has highlighted how critical a lawyer's support is when a child is interrogated, saying that children are in need of "adult advice" so that they may be on "less unequal footing with [their] interrogators.[274] Further underscoring the need for legal counsel, Dr. Thomas Grisso, a psychologist who pioneered foundational research into a young person's competency to understand *Miranda* warnings, has cautioned that children do not even know what a lawyer might do to help them.[275] In fact, when children are told that they have a right to a lawyer, that is not in and of itself enough for a child to fully "grasp the significance of being able to speak with an attorney (for example, [the child] might not know what an attorney is or does)."[276] In addition, the American Academy of Child and Adolescent Psychiatry recommends that a "juvenile should have an attorney present during questioning by police or other law enforcement agencies."[277]

One scholar has argued that juvenile intake proceedings with probation officers should be considered a critical stage of a juvenile prosecution and thus should entitle children to the guarantee of counsel.[278] Given the particular frailties of youth in an interrogation setting, the likelihood that a confession will lead to a conviction, and a young person's special need for the assistance of counsel, their pretrial interrogation should be considered the initiation of formal adversarial proceedings. Interrogation is a critical stage if proceedings have begun. For youth, the Sixth Amendment right to counsel should attach at any officer-initiated interrogation, even when interrogation occurs before a formal arraignment.[279] To avoid interfering with the attorney-client relationship, the rule protecting the Sixth Amendment right to counsel should prevent police from ever initiating interrogation for youth already represented

273. *In re* Gault, 387 U.S. 1, 36 (1967) (quoting Powell v. Alabama, 287 U.S. 45, 69 (1932)).

274. Gallegos v. Colorado, 370 U.S. 49, 54 (1962).

275. GRISSO, EVALUATING COMPETENCIES, *supra* note 93, at 152.

276. *Id.* (also noting that the child who does not understand what a lawyer might do for her will "therefore be unable to 'intelligently' decide about whether to claim or waive the right").

277. *Interviewing and Interrogating Juvenile Suspects*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (Mar. 7 2013), https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx [https://perma.cc/QJK5-VFD2].

278. Tamar R. Birckhead, *Closing the Widening Net: The Rights of Juveniles at Intake*, 46 TEX. TECH L. REV. 157, 171–74 (2013) [hereinafter Birckhead, *Closing the Widening Net*].

279. Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 221 (explaining that a juvenile's confession leads almost inevitably to a plea or conviction regardless of whether the confession was true or false).

by a lawyer in any capacity.[280] Allowing police officers to approach a young person after their counsel has been appointed to initiate an interrogation confuses the youth about the role of adults and of attorneys and fails to adequately protect the attorney-client relationship.[281]

If the right to counsel attached earlier for youth and if that right to counsel was more robustly protected, the law would better protect a young person's special need for representation by counsel. Yet, such changes would not prevent interrogation entirely and thus would not prevent the harm of being interrogated.

3. Fourteenth Amendment Gaps: Coercion in the Context of Adolescence

Even though the Fourteenth Amendment takes age into account and offers a strong remedy, it is neither a clear nor sharp enough tool to protect youth. An involuntary statement is the product of police coercion that has overborne the will of the accused.[282] A coerced statement is barred from both the prosecution's case-in-chief and use in impeachment of the defendant.[283]

Youth are at significant risk of coercion.[284] Age and vulnerability are a part of the totality-of-the-circumstances analysis.[285] Relevant to how easily a young person may have their will overborne in an interrogation setting, chronic traumatic stress leads youth to genuinely feel threatened in situations where they have misperceived or overestimated threats.[286] If a youthful suspect perceives an officer to be threatening, even if that officer is not intending to be threatening, the suspect is even more vulnerable than an adult would be.[287]

280. The rule for counsel was set by *Michigan v. Jackson*, 475 U.S. 625 (1986), before the Supreme Court scaled back protection in *Montejo v. Louisiana*, 556 U.S. 778 (2009). *See Jackson*, 475 U.S. at 636 (allowing police officers to initiate interrogation after the attachment of the right to counsel if the officers obtained a valid *Miranda* waiver); *see* MODEL RULES OF PRO. CONDUCT r. 4.2 (AM. BAR ASS'N 2020) (explaining that no attorney may approach a represented person and speak with him about the subject matter of his representation). This rule would also address the dissent's concern in *Montejo* that there was a lack of synchronicity with the ABA's rule for lawyers—and the new rule under *Montejo* for police. *See id.*

281. *See* Andrew Guthrie Ferguson, Miranda *As Dialogue: Minimizing Disputed* Miranda *Waivers in the Interrogation Room*, 49 AM. CRIM. L. REV. 1437, 1489 (2012) (discussing the concern of the dissent by Justice Stevens in *Montejo* that defendants might be confused by a warning that they have a right to a lawyer after having been appointed a lawyer already).

282. *See* Colorado v. Connelly, 479 U.S. 157, 169–70 (1986).

283. *See* Chavez v. Martinez, 538 U.S. 760, 769 (2003).

284. *See* Cleary et al., *How Trauma May Magnify Risk*, *supra* note 55, at 183 (discussing how "trauma can magnify adolescent suspects' vulnerability to coercion").

285. Schneckloth v. Bustamonte, 412 U.S. 218, 226–27 (1973).

286. Megan Glynn Crane, *Childhood Trauma's Lurking Presence in the Juvenile Interrogation Room and the Need for a Trauma-Informed Voluntariness Test for Juvenile Confessions*, 62 S.D. L. REV. 626, 627 (2017).

287. *See* Cleary et al., *How Trauma May Magnify Risk*, *supra* note 55, at 185 ("[A] judge or jury viewing a videotaped confession may perceive interrogating officers as relatively benign, while the trauma-exposed adolescent may have perceived those officers as intensely angry and threatening.").

Judges have only an amorphous test to guide them in assessing voluntariness claims.[288] The analysis of potential violations is complicated because there are no specific factors in the analysis that must be afforded greater weight.[289] The test looks at both external circumstances of the interrogation as well as internal attributes of the suspect that may make them vulnerable to police pressure.[290] "[P]olice overreaching" has constituted coercion in cases involving a vulnerable suspect when the police knew of the suspect's vulnerabilities, and their questioning "exploited this weakness."[291]

Tactics which may not be coercive when applied to adults might be considered coercive when used on youthful suspects.[292] For instance, in *Dassey v. Dittmann*,[293] officers emphasized "that in order to be 'okay' to 'get things over with' to be 'set free' [sixteen-year-old Brendan] Dassey had to be 'honest.' Yet throughout the interrogation it became clear that 'honesty' meant those things that the investigators wanted Dassey to say."[294] Only once Dassey confessed did officers tell Dassey they believed him.[295] "By doing this—by linking promises to the words that the investigators wanted to hear, or allowing Dassey to avoid confrontation by telling the investigators what they wanted to hear—the confession became a story crafted by the investigators instead of by Dassey."[296]

While using deceptive tactics was not deemed to render a confession involuntary during the interrogation of an adult, recent California cases found that such tactics were inappropriate to use with youth. The seminal 1969 case dealing with a police ruse, *Frazier v. Cupp*,[297] involved an adult defendant and remains insufficient to protect youth.[298] Frazier's confession was deemed voluntary despite misinformation fed to him by police.[299] The California Court of Appeal recently held that the *Frazier* analysis does not apply in the same way

288. Fare v. Michael C., 442 U.S. 707, 724–25 (1979); Leo, *supra* note 7, at 281–82; Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 225 n.23.

289. Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 234 n.61.

290. Colorado v. Connelly, 479 U.S. 157, 164–65 (1986) (discussing Blackburn v. Alabama, 361 U.S. 199 (1960)).

291. *Id.*

292. *See* Haley v. Ohio, 332 U.S. 596, 599 (1948); Dassey v. Dittmann, 860 F.3d 933, 950 (7th Cir. 2017) (holding that Dassey's will was clearly overborne because he "was trying to please the interrogators and avoid conflict"); State v. Jerrell C.J. (*In re* Jerrell C.J.), 2005 WI 105, ¶ 21, 699 N.W.2d 110. *See generally Making a Murderer* (Netflix 2015), https://www.netflix.com/title/80000770 [https://perma.cc/BY57-N5HY] (following the legal proceedings of Steven Avery and his then sixteen-year-old nephew Brendan Dassey).

293. 860 F.3d 933 (7th Cir. 2017).

294. *Id.* at 950.

295. *Id.*

296. *Id.*; *see* Drizin & Luloff, *supra* note 92, at 274–75; Birckhead, *Closing the Widening Net*, *supra* note 278, at 172.

297. 394 U.S. 731 (1969).

298. *Id.*

299. *Id.* at 739.

to interrogations of youth.[300] In 2017, the Court invalidated the voluntariness of a fifteen-year-old juvenile's statement in the case *In re T.F.*,[301] and detectives used tactics that exploited T.F.'s youth.[302] Notably, the detectives rapidly read *Miranda* rights to T.F., a special education student with no previous experience with police.[303] In *In re Elias V.*,[304] the court held that the use of deceptive techniques rendered thirteen-year-old Elias V.'s confession involuntary.[305] In both of the California cases involving teenage juveniles, the court recognized that deception should not be used with youth.[306] In fact, the court found that a ruse that appeared to be "calm," "gentle," and "not convoluted" is too coercive for a youth.[307]

Even methods that are protective of youth under certain circumstances can also be coercive. For example, a child's waiver of counsel may be invalid when it is the result of parental coercion.[308] The mere threat of getting a young person's parent may provoke a confession, perhaps particularly with offenses where children fear most a parent's punishment and shame, such as cases involving sexual offense. If there is any animosity between a parent and child, the parent is functioning neither as a protector nor in the traditional role of caretaker.

The rationale for excluding coerced confessions is compelling:

> The abhorrence of society to the use of involuntary confessions . . . turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.[309]

There is a "strongly felt attitude of our society that important human values are sacrificed where an agency of government, in the course of securing a conviction, wrings a confession out of an accused against his will."[310]

300. *See In re* T.F., 223 Cal. Rptr. 3d 830, 836 (Cal. Ct. App. 2017).

301. 223 Cal. Rptr. 3d 830 (Cal. Ct. App. 2017).

302. *Id.* at 837–38.

303. *Id.* at 836–37.

304. 188 Cal. Rptr. 3d 202 (Cal. Ct. App. 2015).

305. *Id*. at 217.

306. *In re* T.F., 223 Cal. Rptr. 3d 830, 840 (Cal. Ct. App. 2017); *Elias V.*, 188 Cal. Rptr. 3d at 225.

307. *Elias V.*, 188 Cal. Rptr. 3d at 225.

308. *In re* Ricky H., 468 P.2d 204, 211 (Cal. 1970).

309. Spano v. New York, 360 U.S. 315, 320–21 (1959) (involving a twenty-five-year-old immigrant who had one year of high school education and no prior experience with the criminal justice system).

310. Jackson v. Denno, 378 U.S. 368, 385–86 (1964) (quoting Blackburn v. Alabama, 361 U.S. 199, 206–07 (1960)).

The totality-of-the-circumstances test is hard for lower courts to apply, and even harder for police officers to grasp.[311] The test should more explicitly weigh age and incorporate specific attendant factors of youth, such as trauma, learning disability, and language disorders.[312] If those risk factors are present, there should be a strong presumption of involuntariness. While some states have placed a higher burden of proof on the prosecution,[313] still, no legal improvement could cure the harm of enduring interrogation in the first place.

B. *Legislative Reforms and Scholarly Proposals Inadequate*

1. Recording Interrogations Is a Necessary but Insufficient Safeguard

Video and audio recordings are best practices for interviewing child witnesses because recordings help courts consider factors about which officers may or may not perceive.[314] Recordings help courts evaluate (1) custody, (2) tactics, (3) context and reliability of admissions, and (4) credibility of the person asking questions.

However, recordings are not a cure-all perfect solution to the problems with police interrogation of youth. The videotaped, "notorious" false confessions were admitted in evidence in the trials of the Central Park Five.[315] Videotaped confessions are generally accepted by courts as voluntary.[316] Even in states where there are recording requirements, the protocols for recording may not cover all circumstances where a child is interrogated or in custody. In some cases where recordings would be useful—for instance, to assist with determining whether a youth is in custody—there will be no recording. For instance, there was no recording in *J.D.B.*[317] In *J.D.B.*, the thirteen-year-old youth was pulled out of class and interrogated.[318] Despite many children being

311. *See* Maryland v. Shatzer, 559 U.S. 98, 110–11 (2010).

312. *See* Crane, *supra* note 286, at 628 (calling explicitly for trauma to be weighed as a factor in any voluntariness analysis); LaVigne & Van Rybroek, *supra* note 63, at 66.

313. Guggenheim & Hertz, *supra* note 23, at 166 n.246 (describing New York's heightened standard).

314. For example,

> Electronic recordings are the most complete and accurate way to document forensic interviews capturing the exchange between the child and the interviewer and the exact wording of questions. Video recordings, used in 90 percent of Children's Advocacy Centers (CACs) nationally, allow the trier of fact in legal proceedings to witness all forms of the child's communication. Recordings make the interview process transparent, documenting that the interviewer and the multidisciplinary team avoided inappropriate interactions with the child.

JUVENILE JUSTICE BULLETIN, *supra* note 10, at 6 (citations omitted).

315. Lapp, *supra* note 22, at 933.

316. *Id.* (summarizing research by Professors Steve Drizin and Beth Colgan showing that judges admitted four out of five videotaped false confessions that they examined).

317. J.D.B. v. North Carolina, 564 U.S. 261, 274 (2011).

318. *Id.* at 265–67.

arrested and interrogated in school,[319] schools are not as well-equipped as many police station interrogation rooms to record statements.

A statutory requirement to record is an imperfect solution because it would still be subject to an officer's own judgment on when the requirement is triggered. These statutes typically require recording if the child is in custody.[320] Custody is a legal determination by a judge after the fact to assess whether the child was entitled to receive *Miranda* warnings. If an officer does not believe there is custody, then he may not take steps to record the conversation, robbing the court of objective information and stymieing the age-aware approach established in *J.D.B.*[321] In murky scenarios, such as when officers have detained someone on the street, a conscientious law enforcement officer would activate body-worn or patrol cameras. Yet, those technologies are not universally available or mandated. If courts are depending on the officer's assessment, questionable situations on the cusp of custody may never be captured at all.

While recordings may illuminate some of the external circumstances surrounding a custodial interrogation, they do not accurately capture what is going on with the young person who is being questioned. Audio and video recordings only allow for a review of harm already done.

2. Juvenile-Specific Guidance on Voluntariness Will Not Cure the Harm

With voluntariness challenges, judges have only an amorphous totality-of-the-circumstances test to guide them. Courts need more juvenile-specific factors to weigh and greater guidance on how to weigh those factors.

Scholar Megan Crane proposes that courts explicitly and presumptively weigh childhood trauma as a factor favoring exclusion of a statement on voluntariness grounds.[322] This Article highlights the reasons why the same should be true for learning disabilities and communication disorders. Others propose that courts explicitly consider race when weighing the voluntariness of confessions.[323] The state of Illinois recently became the first state to bar the police from presenting youthful suspects with false evidence of guilt in order to

319. *See* Henning, *Criminalizing Normal Adolescent Behavior*, *supra* note 72, at 403.

320. *See* Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 400, 416–17, 416 nn.96–97 (2015) (listing the various states with juvenile interrogation recording statutes).

321. *See J.D.B.*, 564 U.S. at 277.

322. Crane, *supra* note 286, at 628.

323. Henning & Omer, *supra* note 8, at 885 (recommending that both "age and race are lenses through which to view all other factors in the totality of the circumstances test" as it applies to *Miranda* waivers and voluntariness challenges alike); *see also* Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 AM. U. L. REV. 1513, 1514 (2018); Christy E. Lopez, *The Reasonable Latinx: A Response to Professor Henning's* The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment, 68 AM. U. L. REV. F. 55, 56 (2019) (both proposing race as a factor for Fourth Amendment stops).

obtain a confession.[324] Courts should universally bar the admission of any youthful confession on voluntariness grounds when it is the product of police deception.[325] We should heed the suggestion of scholars to raise the burden of proof on the prosecution in cases with youthful confessions, making it harder to establish voluntariness for a youth.[326] However, even with stricter rules around voluntariness, the socialization and estrangement harm of interrogation will not be removed.

3. The Problems with *Miranda* Comprehension Cannot Be Overcome

Simplified *Miranda* warnings and clearer explanations of those warnings are inadequate to address the significant comprehension issues youth encounter during interrogation. The ability to understand rights is tied to a young person's developmental immaturity and capacity to comprehend grand, abstract concepts, so "simplified versions [of the *Miranda* warnings are] not necessarily easier to comprehend."[327]

Scholar Andrew Ferguson proposes a "dialogue approach" to the *Miranda* rights waiver process, arguing that it should be a conversation, rather than a mere admonishment of rights.[328] While ambitious in exactly the right way, this proposal for a dialogue is far from administrable and efficient, particularly when it comes to the sheer volume of juvenile cases. Officers would need the training of special education teachers to engage in a constructive dialogue to educate youth appropriately about their rights.

Along with requiring explicit *Miranda* waivers, scholars Naomi Goldstein and Marsha Levick propose a dividing line based on the known developmental

324. 725 ILL. COMP. STAT. ANN. 5/103-2.2 (Westlaw through P.A. 103-1 of the 2023 Reg. Sess.); Derrick Bryson Taylor, *Illinois Bars Police from Lying to Minors During Questioning*, N.Y. TIMES (July 16, 2021), https://www.nytimes.com/2021/07/16/us/illinois-police-deception-interrogation.html [https://perma.cc/8G9P-A89U (staff-uploaded, dark archive)]; *see also* CAL. WELF. & INST. CODE § 625.7 (Westlaw through Ch. 1 of 2023–24 1st Extra. Sess., and urgency legislation through Ch. 2 of 2023 Reg. Sess.) (barring police from using "threats, physical harm, deception, or psychologically manipulative interrogation tactics," including "maximization and minimization" techniques "that rely on a presumption of guilt or deceit" and deception involving misrepresentations of evidence). *But see* David Ress, *Juvenile False Confessions Bill Dies in House Panel*, RICHMOND TIMES-DISPATCH (Jan. 20, 2023), https://richmond.com/news/state-and-regional/juvenile-false-confessions-bill-dies-in-house-panel/article_fd7dd3d6-98ed-11ed-af9c-739c0e1b16eb.html [https://perma.cc/W29S-MHVW] (discussing a similar bill in Virginia being "killed" in committee).

325. INBAU ET AL., *supra* note 15, at 5 (instructing officers that they should proceed to interrogation after the behavioral analysis only if they are "reasonably certain of the suspect's guilt"); *see also In re* Elias V., 188 Cal. Rptr. 3d 202, 218 (Cal. Ct. App. 2015); Kassin et al., *supra* note 94, at 17.

326. Guggenheim & Hertz, *supra* note 23, at 166 n.246.

327. *See* Goldstein et al., *Potential Impact*, *supra* note 242, at 305–06; *see, e.g.*, *In re* T.F., 223 Cal. Rptr. 3d 830, 844 (Cal. Ct. App. 2017).

328. Andrew Guthrie Ferguson, *The Dialogue Approach to* Miranda *Warnings and Waiver*, 49 AM. CRIM. L. REV. 1437, 1439 (2012).

capacity of youth in differing age groups to understand their *Miranda* rights.[329] They recommend that youth who are fourteen and younger should be prohibited from ever waiving *Miranda*, and youth who are fifteen and sixteen should enjoy a rebuttable presumption of an invalid waiver.[330] While youth who are seventeen would require specific research related to their ability to comprehend *Miranda*,[331] Goldstein and Levick hypothesize that seventeen-year-olds will require special safeguards.[332]

Motivated to preserve the dignity of youth, scholar Kevin Lapp proposes a clever retracted waiver solution borrowed from the infancy doctrine in contracts law.[333] Lapp argues that "reliability is the wrong benchmark for constitutionality and admissibility" when it comes to protecting a youth's privilege against self-incrimination and that "reliability cannot trump the dignity concerns associated with coercive interrogation tactics that take advantage of the immaturity and vulnerability of juvenile suspects."[334] Lapp's solution would allow a youth to retrospectively withdraw a waiver of *Miranda*, thereby preventing the admission of the statement in the prosecution's case-in-chief.[335] This solution is targeted to address the poor and compromised decision-making used by youth in the pressure-filled interrogation room by giving youth an opportunity later to withdraw their waiver.[336] Lapp's solution does not preclude the coercive interrogation of youth in the first place. Further, Lapp proposes a compromise where the fruits of the statement for which a child has later retracted their waiver would nonetheless be admissible.[337] This compromise would cause an injury when a youth experiences the fruit of their pressured confession admitted in court against them.[338] Lapp's proposal would not change the current allowance afforded the prosecution to use a statement taken in violation of *Miranda* to nonetheless be used to impeach a defendant

329. Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 61–66.

330. *Id.*

331. *Id.*

332. *Id.* at 65–66.

333. Lapp, *supra* note 22, at 902.

334. *Id.* at 963–64.

335. *Id.* at 944–45.

336. *Id.* at 944 (describing how "retractable waivers would protect juveniles from ill-advised agreements by moving the moment of decisionmaking regarding the waiver of constitutional rights to a time and place where a decision can be more informed and most deliberately made").

337. *Id.* at 964–66.

338. *Id.* (analyzing the fruit of the poisonous tree doctrine if Lapp's proposal was adopted and describing how physical evidence that was the fruit of the problematic waiver would nonetheless be admissible applying *United States v. Patane*, 542 U.S. 630 (2004)). Lapp does not discuss the thornier problems that would arise when there are subsequent interrogations of a young person who retroactively withdrew his waiver. Those issues would involve an application of *Missouri v. Seibert*, 542 U.S. 600 (2004), and *Oregon v. Elstad*, 470 U.S. 298 (1985). *See also In re* T.F., 223 Cal. Rptr. 3d 830, 837 (Cal. Ct. App. 2017) (applying the particular implication of sequential or subsequent interrogations in the juvenile context).

should he take the stand in his own defense.[339] From a procedural justice standpoint, this could be seen by young people as infringing upon their right to take the stand in their own defense.[340]

4. Parental Presence Is Complicated and Inadequate To Protect Youth

Today, some states require the presence of an interested adult during juvenile interrogations as a prerequisite to valid *Miranda* waiver.[341] The International Association of Chiefs of Police recommend involving a friendly, disinterested adult before permitting the child to waive his or her *Miranda* rights, both to ensure the child understands his rights and to aid the child's decision-making on whether to confess.[342] The purpose of having a parent has been described thusly:

> It is easier to overbear the will of a juvenile than of a parent or attorney, . . . so in marginal cases—when it appears the officer . . . has attempted to take advantage of the suspect's youth or mental shortcomings—lack of parental or legal advice could tip the balance against admission.[343]

Yet, parents are complicated figures. Their interests may not always be in line with the interests of their accused child.[344] Justices Marshall and Brennan recognized that a conflicted parent cannot protect the child from his or her own immaturity, and suggested that—prior to a waiver of rights—a youth "is entitled to competent advice from an adult who does not have significant

339. *See* Harris v. New York, 401 U.S. 222, 225–26 (1971) (affirming that a defendant has a right to choose whether or not to testify and explaining that statement taken in violation of the Fifth Amendment may be used to impeach the defendant should he testify in a manner that is inconsistent with his previous excluded statement as it is a significant enough deterrent to exclude the statement in the prosecution's case-in-chief).

340. *See* TYLER, WHY PEOPLE OBEY, *supra* note 6, at 7 (discussing respect for rights as a criterion people use to assess fairness).

341. *See, e.g.*, *In re* B.M.B., 955 P.2d 1302, 1312–13 (Kan. 1998) (holding that a confession cannot be used against a juvenile "[a]bsent . . . consultation [with a parent]"); State v. Presha, 748 A.2d 1108, 1113 (N.J. 2000); *In re* K.W.B., 500 S.W.2d 275, 281–82 (Mo. Ct. App. 1973); *In re* Aaron D., 290 N.Y.S.2d 935, 938 (N.Y. App. Div. 1968); Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 226 (observing that "[a]bout a dozen states require the presence of a parent or other 'interested adult' when police interrogate juveniles").

342. *See* INT'L ASS'N OF CHIEFS OF POLICE, REDUCING RISKS: AN EXECUTIVE'S GUIDE TO EFFECTIVE JUVENILE INTERVIEW AND INTERROGATION 7–8 (2012) [hereinafter REDUCING RISKS], https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf [https://perma.cc/FRN9-GEH4].

343. United States v. Bruce, 550 F.3d 668, 673 (7th Cir. 2008) (quoting United States v. Wilderness, 160 F.3d 1173, 1176 (7th Cir. 1998)).

344. *See generally* Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277 (2004) (discussing the complex role of parents and the many situations when their interests are not aligned with those of their children).

conflicts of interest."[345] In situations where the only adult available to a youth has a conflict of interest, they have a coercive impact.[346] Parents simply have a different job to do than the police; thus, they may encourage truthfulness at any cost and might not advocate for their child's best or stated interest the way an attorney would.[347] In fact, research shows that when parents are present, they encourage their children to waive important rights to silence and counsel.[348]

Parents of justice-system-involved youth are often themselves naïve and do not know what impacts their child's constitutional rights.[349] Justice-involved youth and their families are more likely to have impoverished backgrounds and are more likely to be marginalized due to race and other minority group affiliations.[350] The atrocity of the Central Park Five is a salient example of how a parent—even a loving and caring one—might be unaware of the criminal process and unsure how to best protect their child.[351] Exoneree Antron McCray said, "I had no protection. My father didn't do anything. I was scared."[352] Kevin Richardson recalled, "They knew that my mother was a weak person—was

345. Little v. Arkansas, 435 U.S. 957, 957 (1978) (Marshall, J., dissenting from denial of certiorari).

346. When parents are conflicted, the youth should be given an attorney and afforded the opportunity to consult with that attorney prior to waiving her rights. The absence of a conflict-free adult to advise the youth about a *Miranda* waiver should be given great weight in the totality-of-the-circumstances test.

347. *See* Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 53 (describing surveys of parents with high school age children where parents agreed they would tell their child to waive his or her rights and disagreed with the idea that their children should withhold information from the police in order to avoid incriminating themselves).

348. Tamar R. Birckhead, *The Age of the Child: Interrogating Juveniles After* Roper v. Simmons, 65 WASH. & LEE L. REV. 385, 419 (2008); *see also* THOMAS GRISSO, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 202–03 (1981) (discussing possibility of blanket exclusions or mandatory counsel for juvenile confessions, which would have potential combat drawbacks of parental advice).

349. *See In re* Gault, 387 U.S. 1, 55 (1967) (noting that the court must account for both the "presence and competence of parents").

350. *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 58 (2010) (noting that of the over two million prisoners now behind bars, the overwhelming majority are men of color, nearly half are Black men and nineteen percent Latino men); ANNIE E. CASEY FOUND., RACE MATTERS: UNEQUAL OPPORTUNITIES FOR JUVENILE JUSTICE (2006), https://assets.aecf.org/m/resourcedoc/aecf-RACEMATTERSjuvenilejustice-2006.pdf [https://perma.cc/B8T5-RZZ5] ("Although youth of color represent only 1/3 of the U.S. adolescent population, they are 2/3 of the youth confined in local detention and state correctional systems."); EILEEN POE YAMAGATA & MICHAEL A. JONES, NAT'L COUNCIL ON CRIME & DELINQ., AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF MINORITY YOUTH IN THE JUSTICE SYSTEM 37 (2007) (finding that minority youth were overrepresented in secure juvenile detention facilities due to overrepresentation at various stages of the process, such as detention at the time of arrest, transfer to adult court, and removal from their home and community at the time of disposition); NELL BERNSTEIN, BURNING DOWN THE HOUSE 59 (2014) (noting the disproportionate incarceration of youth of color who, while they are thirty-eight percent of the youthful population in the United States, are seventy-two percent of the children who are incarcerated).

351. *See* Goldstein et al., *Waving Good-Bye*, *supra* note 22, at 54.

352. THE CENTRAL PARK FIVE, at 1:29 (Florentine Films & WETA Television 2012).

disabled—and they used that."[353] Parents themselves may also feel threatened in situations where police are accusing the child of wrongdoing, and the parent may legitimately fear that other children will be removed from their care if they do not urge the suspected child to confess.[354] Youth in the juvenile justice system are commonly cross-over youth who have deep histories in the child welfare system.

Clearly, a parent does not provide sufficient protection from police questioning and is not an adequate stand-in for an attorney.

5. While Lawyers Afford the Best Protection, They Are a Costly, Imperfect Solution

Scholars contend that by providing a child with a lawyer prior to interrogation, society can guard against constitutional violations.[355] Guggenheim and Hertz recommend "a bright-line rule that a child under the age of eighteen must be afforded an opportunity to confer with counsel before police interrogation."[356] California has adopted that rule.[357]

Appointing lawyers for youth at the point of their custodial interrogation is by far the most promising solution from procedural justice and legal estrangement standpoints.[358] Doing so shows children that they have someone on their side to help them navigate the justice system, enhancing perceptions of fairness. Providing a lawyer shows youth that their rights are respected.[359] Yet, the solution of providing lawyers presents administrative problems, may be prohibitively costly, and will be hard to implement fairly across the board.[360]

From the vantage point of legal realism and efficiency, appointing a lawyer will prevent a young person from making a statement.[361] Innocent individuals are at risk when they speak to the police.[362] Indeed, the failure to advise a client

353. *Id.* at 1:31.

354. *See* Michael S. Wald, *Beyond CPS: Developing Effective Systems for Helping Children in "Neglectful" Families*, 41 CHILD ABUSE & NEGLECT 49, 60 (2015) (noting that, under the same set of conditions, parents of color are more likely than white parents to have a child removed from their care).

355. *See* Guggenheim & Hertz, *supra* note 23, at 174.

356. *Id.*

357. CAL. WELF. & INST. CODE § 625.6 (Westlaw through Ch. 1 of 2023–24 1st Extra. Sess., and urgency legislation through Ch. 2 of 2023 Reg. Sess.).

358. *See* Guggenheim & Hertz, *supra* note 23, at 117–19; Cressey, *supra* note 245, at 108–10 (discussing the benefit of mandatory consultation with counsel when a juvenile is facing criminal interrogation).

359. *See* TYLER, WHY PEOPLE OBEY, *supra* note 6, at 7 (discussing respect for rights as a criteria people use to assess fairness).

360. *See* Jessica Bennett, Reyes v. Lewis*: A Missed Opportunity for Minors and* Miranda, 48 GOLDEN GATE U. L. REV. 5, 29 (2018).

361. *See* Albert W. Alschuler, Miranda*'s Fourfold Failure*, 97 B.U. L. REV. 849, 874 (2017) (describing how the right to counsel will "shut down questioning").

362. *See* Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 AM. PSYCH. 215, 222–24 (2005).

to assert their right to counsel at a police interrogation may be deemed ineffective assistance of counsel.[363] Justice Harlan, in his dissenting opinion in *Miranda*, prophesized disaster would ensue by endowing suspects with a right to a lawyer; he wrote that "any lawyer worth his salt" would advise a client not to speak to the police.[364]

California recently implemented reforms to provide a lawyer for youth at the time of custodial interrogation.[365] While promising, this reform can create unnecessary and harmful variance in the counseling youth receive. Some lawyers will communicate in person, others remotely. An already-represented youth may be confused by having another, different lawyer offer legal advice. This would frustrate the rare instances where youth may be encouraged to speak up and undermines their relationship with their attorney. This could also contravene legal rules preferring consistency of representation for youth.[366] A new lawyer without a preexisting relationship will not know the young person, their specific vulnerabilities, or their case well enough to truly be helpful. A young person's access to a lawyer may also vary because of geography. A youth in an urban city may receive an in-person consultation, while a youth in a rural area may only receive a phone call.

Research is necessary to see if and how lawyers in California are advising youth. For example, a fifteen-year-old boy with significant vulnerabilities was detained pretrial on a matter that was pending a competency determination.[367] The boy's full-scale IQ was below fifty. The police went to the juvenile hall where the boy was held, and the probation staff released the boy to the officers. The officers took him to the police station for interrogation on another matter. At the station, officers asked the boy if he wanted to talk to anyone before they questioned him. The boy said no. At no point was his attorney or the public defender (who was on duty to manage the preinterrogation lawyer consultations required by the new law) contacted by an officer. Police claimed to have no information regarding his pending competency hearing in court. This case showcases the need for further research into how officers implement changes in the law and whether officers respect the right to a lawyer in how they treat young people awaiting their consultation with an attorney.[368]

363. *See* Com. v. Celester, 45 N.E.3d 539, 554 (Mass. 2016); State v. Joseph, 128 P.3d 795, 804 (Haw. 2006); *cf.* Commonwealth v. Smiley, 727 N.E.2d 1182, 1187 (Mass. 2000).

364. Miranda v. Arizona, 384 U.S. 436, 516 n.12 (1966) (Harlan, J., dissenting) (quoting Watts v. Indiana, 338 U.S. 49, 59 (1949) (Jackson, J., concurring)).

365. CAL. WELF. & INST. CODE § 625.6 (Westlaw through Ch. 1 of 2023–24 1st Extra. Sess., and urgency legislation through Ch. 2 of 2023 Reg. Sess.).

366. *See, e.g.*, CAL. R. CT., 5.663.

367. Notes are on file with the author.

368. *See* TYLER, WHY PEOPLE OBEY, *supra* note 6, at 7; *see also* Celeste Fremon, *Does a Memo from LA District Attorney's Office Tell Cops How To Get Around New Law Protecting Kids' Constitutional Rights?*,

Even though the requirement for an attorney is somewhat promising, it is also problematic. Requiring an attorney is costly and requires a lot of time from both the police and lawyers. Providing a lawyer is also, in a sense, intellectually dishonest; it is nothing more than an extremely expensive way of ensuring that the police do not interrogate youth.[369] The attorneys will surely advise clients not to speak and not cooperate with the police. The advisement teaches youth a procedural justice lesson—an attorney can help to protect youth from an overbearing police officer and unfair and overreaching criminal legal system. It does not encourage a sense of belonging or respect for the law. More broadly though, it misses the opportunity for our society to take a step back and ask what we want to do about the problems posed by interrogating youth.

By a measure of procedural justice and legal estrangement, these reforms fail; these failings support the need to prevent interrogation before it starts.

IV. ELIMINATING HARM: PROPOSAL AND CRITIQUES

A. *Proposal to Categorically Ban Youth Interrogation*

A ban on officer-initiated pretrial interrogation of unrepresented youth prior to the appointment of defense counsel is necessary to protect youth from harm.[370] This harm requires a categorical ban much like the categorical ban on the death penalty required by *Roper*.[371] With a ban, officers would have to develop probable cause to support an arrest without the benefit of a confession from the arrestee. Probable cause is quantified as just less than fifty percent certainty that a crime has been committed and that this specific individual has

WITNESSLA (Feb. 5, 2018), https://witnessla.com/juvenile-attorneys-worry-that-memo-from-la-district-attorneys-office-is-telling-cops-how-to-get-around-new-law-protecting-kids-constitutional-rights/ [https://perma.cc/W4PW-GGR4].

369. *See* WILLIAM J. STUNZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE 223 (2011) ("Introducing defense lawyers into police interrogations seemed more a means of banning police interrogation than a means of regulating it.").

370. This proposal is for a complete ban. Others may feel that a temporary ban—a moratorium—is a better approach. A moratorium would create a pause on police interrogations of youth—to stop the harm and use the pause to gather more information about what we should be doing to pass legislation to address the gaps in the law. I feel that the information we have is more than sufficient to justify halting interrogations entirely. *See, e.g.*, Callie Heller, *California Governor Announces Execution Moratorium; Orders Closure of Execution Chamber*, AM. BAR ASS'N (May 10, 2019), https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2019/spring/california-governor-announces-execution-moratorium/?login [https://perma.cc/V8Y7-YMUK] (describing how California Governor Gavin Newsom signed an executive order declaring a moratorium on the death penalty in 2019, and said, "The death penalty has been – by any measure – a failure"). The potential for harm is too great, as created by the harsh punishment structure of the United States' unyielding criminal justice system. *See generally* Alec Karakatsanis, *The Punishment Bureaucracy: How To Think About "Criminal Justice Reform*," 128 YALE L.J. F. 848 (2019) (discussing the substantial harms created by a criminal justice system built on distorting the truth).

371. *See supra* text accompanying notes 26–29.

committed the crime.[372] The prosecution would similarly have to bring charges against a young person without an admission to the offense. Prosecutors must bring only those charges they believe "adequately encompass the accused's criminal activity and which . . . can be substantiated by admissible evidence at trial."[373] At an arraignment on those charges, a lawyer will be appointed to represent the youth.[374] When a young person has a chance to consult with a lawyer and the lawyer has a chance to get to know the young person's history and goals, as well as the evidence in a case, the lawyer can counsel the young person on whether they should cooperate with the police.

A ban will still allow for young people to offer evidence when they are capable of making a supported, informed, and well-reasoned decision. There are still occasions when it may be in the interest of a youth to share their version of events. Youth should be allowed, after consultation with a lawyer, and accompanied by their lawyer, to initiate conversation with the police.[375] A lawyer may initiate a conversation on the client's behalf with the prosecuting attorney after a case is filed. Often there simply will not be enough information at the time of arrest to determine if this is a beneficial or completely disastrous option for the client. It is unlikely that the lawyer will have even had access to—let alone sufficient time to review—police reports or to meaningfully consult with the client.[376]

The ban will only prevent investigative and officer-initiated interrogation of youthful suspects. Young people must have an opportunity to meaningfully consult with a lawyer who knows them and the accusations against them. Only a well-informed and prepared lawyer is competent to help their young clients imagine how cooperation with the police could help or hurt them and their case.

Just as a ban on interrogations will not prevent young people who consult with their lawyer from approaching law enforcement to provide cooperation, a ban will not prevent young people from engaging in the justice process in ways that support their rehabilitation. Nothing about a ban will prevent the justice system from embracing a developmentally sound framework of procedural justice to harness the potential of youth, engaging them about mistakes they have made in a manner that links to their incredible potential to both learn and grow during adolescence.[377] Furthermore, a ban provides youth the opportunity

372. *See* Brinegar v. United States, 338 U.S. 160, 176 (1948) (parsing various definitions of probable cause—"a practical, nontechnical conception affording the best compromise for" police and citizens).

373. NAT'L DIST. ATT'Y ASS'N, NATIONAL PROSECUTION STANDARDS 52 (3d ed. 2009).

374. *In re* Gault, 387 U.S. 1, 26 (1967).

375. *See* Minnick v. Mississippi, 498 U.S. 146, 153 (1990).

376. Charles D. Weisselberg, *Exporting and Importing* Miranda, 97 B.U. L. REV. 1235, 1270 (2017).

377. STEINBERG, *supra* note 49, at 5, 8–11.

to reflect and take ownership of mistakes in meaningful conversations with supportive adults at stages of the process other than police interrogations.[378]

A ban has implications for how the justice system uses information gleaned from youth already in its possession. No evidence gathered from previously conducted interrogations should be admitted as evidence in yet-to-be adjudicated cases. While prior findings of involvement would not necessarily be overturned, a ban could lead to collaborative efforts between defenders and prosecutors to identify prior cases where interrogation was a significant factor in a wrongful adjudication.[379]

A ban is essential to protect youth and promote their prosocial development. Research on coercive legal socialization and on police interrogation practices with youth indicates that officers are socializing justice-involved youth in ways that will detrimentally affect their respect for the law and law enforcement, voluntary buy-in to the social order, and sense of belonging to society.[380] As such, current interrogation practices with youth will lead to greater offending as youth mature, undermining the rehabilitative purpose of juvenile court.

A ban is the only way to protect youth commensurate with our societal mandate to help them. Without empirical evidence to debunk what theoretically are harmful interrogation practices,[381] without procedures to monitor police practices, and without research on the legal socialization of youth subjected to interrogation, the risk of continuing to interrogate youth is too great. Unless there is compelling research to demonstrate, from the perspective of youth, that we can avoid instilling negative values and attitudes about law enforcement, the justice system, and society through any kind of pretrial interrogation, there must be a ban on officer-initiated interrogation of anyone under eighteen. A ban is a straightforward, intellectually honest, less costly, more efficient alternative to requiring that a lawyer be provided to each youth at the time of interrogation.

378. Buss, *Failing Juvenile Courts*, *supra* note 175, at 321–23.

379. *See, e.g.*, Special Directive 20-14 from George Gascón, L.A. Cnty. Dist. Att'y, to All Deputy Dist. Att'ys (Dec. 7, 2020), https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf [https://perma.cc/7TU4-HCGJ] (outlining policy changes in resentencing and length of sentence laws in California).

380. *See also* Henning & Omer, *supra* note 8, at 923 (drawing upon studies of on-the-street policing to make the same connection to police interrogation).

381. While some scholars have connected the research around youth's disillusionment over harsh policing tactics to the interrogation field, studies to date focus on issues around youth perceptions in stopping and searching youth. *See, e.g.*, Henning & Omer, *supra* note 8, at 920–21.

B. *Critiques*

1. Where Do We Draw the Line?

Drawing a line at the age of eighteen is a compromise of practical necessity.[382] We have to draw the line somewhere, and eighteen is where courts and society have historically drawn the line between youth and adults.[383] Yet, the science of adolescence that harkened in the era of developmental reform is not limited to those under the age of eighteen.[384] This proposal to protect youth should prompt an examination of the same harm of coercive legal socialization for those emerging adults who are over eighteen.[385]

Late adolescents have the same key qualities as youth under eighteen. These scientific conclusions are significant when considering a young person's vulnerability in the context of an interrogation.[386] In particular, they are just as susceptible to impaired decision-making during the stress of interrogation,[387] they are deferential to authority figures,[388] they are likely to prioritize perceived short-term gains,[389] and they suffer from the belief that if they do what the interrogator asks, they will get to go home.[390] In addition, they fail to anticipate long-term consequences,[391] such as the impact of an admission on the future of

382. Roper v. Simmons, 543 U.S. 551, 574 (2005) ("The qualities that distinguish juveniles from adults do not disappear when an individual turns eighteen. By the same token, some under eighteen have already attained a level of maturity some adults will never reach . . . . [H]owever, a line must be drawn. . . . The age of eighteen is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest."), *construed in* Buss, *What the Law Should*, *supra* note 136, at 40.

383. *See* Guggenheim & Hertz, *supra* note 23, at 151 (discussing Justice Kennedy's opinion in *Roper* explaining that "'a line must be drawn' and that it is appropriate to draw it at age eighteen, 'the point where society draws the line for many purposes between childhood and adulthood'" (quoting *Roper*, 543 U.S. at 574)).

384. *See generally* WHITE PAPER, *supra* note 48 (performing a scientific literature review and concluding late adolescents possess the same qualities of youth as adolescents under eighteen); Buss, *Kids Are Not So Different*, *supra* note 39, at 875–76 (describing how qualities used to justify children's lesser culpability "continue to be present, to varying degrees, into our midtwenties").

385. There are several terms used to refer to the group of adolescents between eighteen to twenty-five. *See* WHITE PAPER, *supra* note 48, at 5 (defining those between eighteen to twenty-one as late adolescents and those between twenty-two to twenty-five as young adults). Emerging adults is a term coined by Arnett, *Emerging Adulthood*, *supra* note 181, at 474–75.

386. *See* WHITE PAPER, *supra* note 48, at 7; Buss, *Kids Are Not So Different*, *supra* note 39, at 875–76.

387. Hayley Cleary, *Applying the Lessons of Developmental Psychology to the Study of Interrogations: New Directions for Research, Policy, and Practice*, 23 PSYCH. PUB. POL'Y & L., 118, 118–30 (2017).

388. WHITE PAPER, *supra* note 48, at 28.

389. Laurence Steinberg, Sandra Graham, Jennifer Woolard, Elizabeth Cauffman & Marie Banich, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 36–37 (2009).

390. WHITE PAPER, *supra* note 48, at 28.

391. Daniel Read & Nicoleta Read, *Time Discounting Over the Lifespan*, 94 ORG. BEHAV. & HUM. DECISION PROC., 22, 22–32 (2004).

their case. They feel pressure to confess,[392] and therefore falsely confess at high rates.[393] Thus, late adolescents also need protection in interrogation settings.[394]

Late adolescents in the criminal justice system are an important group to protect and support. Late adolescents are disproportionately people of color.[395] Nearly forty percent of all incarcerated people began serving time before age twenty-five.[396] Late adolescents are likely to grow out of their poor behavior choices and criminal activity[397] because, like those under eighteen, late adolescents have brains that are malleable and they are at a moment of opportunity to promote growth.[398]

This ban is about treating youth as youth. It is about the harm that impacts young people, their communities, and all of society when we fail to harness all opportunities to promote their unique moment of growth. Late adolescents appear to be vulnerable and malleable in the ways their younger peers are.[399] Concerns about the inability of the law to adequately protect late adolescents and about their inappropriate treatment during interrogations may be more compelling than it is for the younger group that is the focus of this Article because this group's adolescence is not perceived accurately. When their vulnerability is exploited, they, too, experience coercive legal socialization and estrangement. Thus, the proposal to ban interrogations before the appointment of counsel would protect and support them as well.

2. Why Not Just Train the Police?

Efforts to train the police to treat youth differently due to their adolescence cannot succeed while Reid remains the predominant training for officer-led interrogation. The Reid method is harsh, coercive by any measure, and not designed for youth. Even when officers receive specialized training on working with youth, officers do not deviate from their dominant training in the

392. Lindsay C. Malloy, Elizabeth P. Shulman & Elizabeth Cauffman, *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 LAW & HUM. BEHAV. 181, 187 (2014).

393. WHITE PAPER, *supra* note 48, at 32 (noting that the false confession rates for all those in adolescence is three times the rate for adults).

394. *See* SCIENTIST ACTION & ADVOC. NETWORK, *supra* note 3, at 4.

395. IMPROVING APPROACHES, *supra* note 68, at 1–2 (noting that half of those incarcerated between eighteen to twenty-four are people of color).

396. *Id.* at 1; *see also* LEIGH COURTNEY, SARAH EPPLER-EPSTEIN, ELIZABETH PELLETIER, RYAN KING & SERENA LEI, URBAN INST., A MATTER OF TIME: THE CAUSES AND CONSEQUENCES OF RISING TIME SERVED IN AMERICA'S PRISONS 11 (2017), https://apps.urban.org/features/long-prison-terms/a_matter_of_time_print_version.pdf [https://perma.cc/4RTV-AA4N].

397. WHITE PAPER, *supra* note 48, at 43; Buss, *Kids Are Not So Different*, *supra* note 39, at 848, 880 (citing David P. Farrington, Rolf Loeber & James C. Howell, *Young Adult Offenders: The Need for More Effective Legislative Options and Justice Processing*, 11 CRIMINOLOGY & PUB. POL'Y 729, 734–35 (2012)).

398. WHITE PAPER, *supra* note 48, at 36–38.

399. *Id.* at 7, 36–38; Buss, *Kids Are Not So Different*, *supra* note 39, at 869–70.

Reid method. Research with officers who have received training on adolescence shows that officers are unable to incorporate that specialized training into the ways they question youthful subjects.[400]

From start to finish, the techniques Reid teaches are incompatible with the vulnerability of youth.[401] The Reid method's fundamental purpose is to overbear a suspect's will to obtain a confession. Prior to beginning the interrogation, the Reid method trains officers to determine if the suspect is telling the truth and warns officers against using the technique if the interrogator is not absolutely certain that the suspect is guilty of the crime.[402] Unfortunately, officers are not very good at determining whether or not someone is telling the truth. Research shows officers are correct *only about half the time, making them only as effective as persons without special training*.[403] It is hard to determine if a young person is telling the truth using an adult truth-telling barometer. Many youth commonly engage in behaviors—such as slouching and avoiding eye contact—which, in adults, may be viewed as indicative of deception, but in fact are typical behaviors for youth in the presence of authority figures.[404] Despite the difficulty in ascertaining the candor of a youthful suspect, officers relate that they feel equally confident in their abilities to ascertain the truth-telling of a youthful suspect as they are in their abilities to do the same with an adult.[405]

Modern police leadership offers training materials to reflect that Reid tactics are inappropriate for use with youth.[406] As discussed in the introduction, Reid trains officers to keep suspects physically and emotionally isolated to intensify their anxiety and despair.[407] The authors of the manual even acknowledge that some of their methods are too coercive when used with youth.[408] Significantly, the Reid method offers very little information about the specific differences of youth; the information it does offer belies a misunderstanding of the science of adolescence.[409] Reid trains officers to

400. Meyer & Reppucci, *supra* note 19, at 776.

401. INBAU ET AL., *supra* note 15, at 188–89.

402. TRAINUM, *supra* note 9, at 85.

403. Kassin et al., *supra* note 94, at 6; Meyer & Reppucci, *supra* note 19, at 762.

404. REDUCING RISKS, *supra* note 342, at 13.

405. Meyer & Reppucci, *supra* note 19, at 763; *see* REDUCING RISKS, *supra* note 342, at 20, 20 n.30; *see also* TRAINUM, *supra* note 9, at 47, 84–85.

406. *See* REDUCING RISKS, *supra* note 342, at 13.

407. INBAU ET AL., *supra* note 15, at 188–89; Miranda v. Arizona, 384 U.S. 436, 449–50 (1966) ("[T]he atmosphere suggests the invincibility of the forces of the law." (citing CHARLES O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION 99 (1956))).

408. INBAU ET AL., *supra* note 15, at 255.

409. In 2012, out of concerns regarding juvenile false confessions, the International Association of Police Chiefs, working with the Center on Wrongful Convictions of Youth, published a guide to youth interrogations. *See* REDUCING RISKS, *supra* note 342, at 2 (acknowledging the partnership with the Center on Wrongful Convictions of Youth).

deliberately take advantage of youthful suspects who have experienced adversity and are "vulnerable."[410] Reid warns only that those under ten are unable to understand *Miranda* warnings, defines adolescents incorrectly as only those age ten to fifteen, and recommends "confrontational interrogation . . . involving some active persuasion" within that cohort.[411] Further, the paucity of information about youth contained in the manual may leave officers with an impression that youth are more adult-like than they truly are.

Even when officers know that the Reid technique is inappropriate,[412] they overwhelmingly rely on it with youthful suspects.[413] A 2007 study of over 300 juvenile interrogations found that officers generally believed that youth could be dealt with identically to adults.[414] The study found that officers used coercive techniques more often with children than adults, including presenting false evidence, deliberately elevating anxiety level, and using deceit.[415] Another study of Reid-trained police officers revealed that these officers were likely to use coercive techniques and likely to think that youth were not suggestible and that adolescents understood their *Miranda* rights.[416] Specific information is not available on why officers who do receive training on the frailties of youth fail to implement it and continue to utilize potent adult-style tactics to interrogate youth.

The International Association of Police Chiefs ("IAPC") created a guide to highlight the specific vulnerabilities of youth to traditional Reid interrogation techniques. Very few officers have been trained, and of those few who have been trained to date,[417] there is no statistical information about

410. INBAU ET AL., *supra* note 15, at 250–52.

411. *See* Lapp, *supra* note 22, at 911–12.

412. REDUCING RISKS, *supra* note 342, at 7–8.

413. Meyer & Reppucci, *supra* note 19, at 772–73, 775–76; *see* Lauren Kirchner, *How Can We Prevent False Confessions from Kids and Teenagers?*, PAC. STANDARD, https://psmag.com/news/preventing-false-confessions-kids-83590 [https://perma.cc/C2NP-FNWX] (last updated May 3, 2017); Leo, *supra* note 7, at 294; N. Dickon Reppucci, Jessica Meyer & Jessica Kostelnik, *Custodial Interrogation of Juveniles: Results of a National Survey of Police*, *in* POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS 67, 76–78 (G. Daniel Lassiter & Christian A. Meissner eds., 2010); Meyer & Reppucci, *supra* note 19, at 757–80; *see also* Feld, *Police Interrogation of Juveniles*, *supra* note 106, at 222.

414. Meyer & Reppucci, *supra* note 19, at 771.

415. *Id.* at 766.

416. Kostelnik & Reppucci, *Reid Training*, *supra* note 19, at 377.

417. *See Juvenile Interview and Interrogation*, INT'L ASS'N CHIEFS POLICE, https://www.theiacp.org/resources/document/juvenile-interview-and-interrogation [https://perma.cc/F58X-2WPY]. The IACP partnered with the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice ("OJJDP") to deliver a new training "39 times to over 2,100 law enforcement professionals," until the OJJDP stopped funding the program. *See id.*; *see also* Wyatt Kozinski, *The Reid Interrogation Technique and False Confessions: A Time for Change*, 16 SEATTLE J. SOC. JUST. 301–02 (2018) ("The Reid Method (otherwise known as the Reid Technique) has been the predominant interrogation method in the United States, with hundreds of thousands of

whether they are new or existing police officers, nor is there any empirical research on whether, if at all, their training guide has affected the Reid technique's dominance and law enforcement's reliance on it. The only psychological studies that exist on the frequency with which law enforcement utilizes Reid technique tactics even despite training on adolescent frailties predates the IAPC 2012 guide. Despite the IAPC's new recommendations accounting for the developmental frailties of youth and explaining that those vulnerabilities render young suspects susceptible to specific forms of coercion and at greater risk of false confession, officers have not changed their ways.

There are many reasons why police have not adopted youth friendly interrogation techniques. Previous efforts at training the police in other contexts have proven incapable of changing their behavior.[418] Whatever training officers may receive on youthful vulnerability may simply not be enough to fundamentally change who the police are and how they see their role as police officers. Police are attracted to a job in law enforcement not because they want to work with youth and contribute to their prosocial development. Rather, research shows that individuals seek careers as officers because they want to solve crimes, get the bad guys, and, oftentimes, use physical force to do so.[419] Moreover, one cannot divorce the history of policing in America from its racist and anti-Black origins.[420] People of color are disproportionately arrested and thus interrogated.[421] There is much to indicate that the very culture of policing attracts recruits who are likely to wholeheartedly adopt the Reid method of interrogation and who are hostile to training on youth vulnerability and the nuance and care required to question them.

law enforcement agents trained to use the method since the 1960s."). In fact, "John Reid & Associates and Wicklander-Zulawski each claim to have trained hundreds of thousands of law enforcement agents, largely in the Reid Method." *Id.* at 301–02.

418. *See* Bell, *supra* note 130, at 2126, 2126 n.254 (quoting Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 476 (1997)). "Most analysts regard racism as a matter of individuals . . . . The alternative theorization here implies that because the phenomenon has structural consequences for the races, the only way to 'cure' society of racism is by eliminating its systemic roots." *Id.* at 2126 n.254. In comparing Bonilla-Silva's theory to policing, the "legitimacy theory ultimately implies that an education-based approach, focusing on changing the behavior of a few bad actors, is sufficient" and thus simple approaches like "police training[] are ultimately an impoverished response." *Id.* at 2126.

419. *See* Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229, 247, 267, 278–79 (1987).

420. *See* Olivia B. Waxman, *How the U.S. Got Its Police Force*, TIME, https://time.com/4779112/police-history-origins/ [https://perma.cc/H2YY-V23L] (last updated May 18, 2017, 9:45 AM) (describing how the first public-funded and professionally organized police force in the North was in Boston, focusing on protecting business property and goods); SALLY E. HADDEN, SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS 4 (2001) (describing how in the South, "[m]ost law enforcement was, by definition, white patrolmen watching, catching or beating Black slaves").

421. *See, e.g.*, Henning, *Criminalizing Normal Adolescent Behavior*, *supra* note 72, at 386–87.

In summary, research indicates that officers rely on their Reid training even when they have other training that contradicts the teachings of Reid. Indeed, training may be an inadequate vehicle for addressing the problems endemic to the nature and culture of policing in America today.[422] While empirical data would benefit the theoretical impact of officer tactics on the legal socialization of youth, the research that does exist reflects practices that are in line with adult interrogation and out of sync with what is developmentally appropriate. Nothing to date has been effective at undoing or adding any nuance to law enforcement's reliance on Reid method techniques in practice.

3. Why Not Just Ask Open-Ended Questions?

There are other methods of questioning besides the Reid technique. Best practices for questioning child victims and witnesses to crime were presented in the Introduction as a contrast to the Reid method. The use of open-ended questions is critical to those best practices.[423] Internationally, there are several schools of thought on how to question individuals who are victims, witnesses, and suspects of crime. In England and Australia, whether or not a questioned individual is a suspect in a crime, officers must question all people in a manner designed to get at the truth—by asking open-ended questions.[424] Officers may confront subjects with information and evidence law enforcement has gathered but are prohibited from presenting "false" evidence.[425]

It may seem appealing to ask law enforcement to treat all youth consistently by only asking them open-ended questions. If investigators treated all youth as if they were all child victims and witnesses instead of suspects, they would universally pursue open-ended questions of youth instead of turning to interrogation techniques. Yet, it is difficult for officers to ask anyone, even crime victims, questions that are open-ended. The distinction between victim and suspect, and witness and perpetrator, is more difficult for the police to grasp in practice than it should be.[426] An investigation may start with someone who is perceived to be a witness, but in fact turns out to be a suspect midway through questioning.[427] As the research about police imperviousness to training on

422. Bell, *supra* note 130, at 2061–62 n.17.

423. *See supra* text accompanying notes 11–12.

424. Douglass Starr, *This Psychologist Explains Why People Confess to Crimes They Didn't Commit*, SCI. (June 13, 2019), https://www.science.org/content/article/psychologist-explains-why-people-confess-crimes-they-didn-t-commit [https://perma.cc/4E6W-8EAR]; *see also* Kassin et al., *supra* note 94, at 18.

425. Dale E. Ives, *Preventing False Confessions: Is* Pickle *Up to the Task?*, 44 SAN DIEGO L. REV. 477, 490 n.86 (2007).

426. *See* Elwood Earl Sanders, Jr., *Breaching the Citadel: Willful Violations of* Miranda *After* Missouri v. Seibert, 10 APPALACHIAN J.L. 91, 107, 107 n.124 (discussing three cases where the suspect was initially considered a witness).

427. *See* Yarborough v. Alvarado, 541 U.S. 652, 664 (2004) (detailing how a seventeen-year-old suspect was ultimately charged with murder after being initially questioned as a witness instead of a suspect and released after questioning).

adolescence instructs, asking officers to abandon their Reid training and employ open-ended questions only when interviewing youth is a tall order. It is hard for the police to question youth less skeptically and cynically than they do everyone else.[428]

Furthermore, from the perspective of youth, there may not be a distinction between when police question them as suspects or witnesses. The many justice-involved youth who have experienced trauma also may perceive police as threatening whenever they are questioned.[429] Many youth who face questions from law enforcement have been a part of the child welfare system.[430] For those youth, any questions from law enforcement may interfere with the established relationship they already have with a lawyer representing them in the family regulation system.[431] They would benefit from the same protection as youth who are clearly considered suspects—the ability to hold off questioning until they can be supported by their own lawyer. Consultation may help youth to assert their safety concerns about being a witness or specific issues with intrafamily abuse, which their own lawyer may be best equipped to address.

Ultimately, suggestive questioning is only one interrogation method Reid-trained officers use to pressure suspects into a confession. Requiring officers to use only open-ended, nonsuggestive questions in their interrogation is an insufficient reform to remedy coercion. Minimization, maximization, isolation, officer denunciation and interruption of any statement of innocence by a suspect, and the presentation of false evidence of guilt are all potent Reid techniques that are designed as a whole to overcome the will of the suspect. Youth may perceive law enforcement officers as intimidating and untrustworthy, even if the officers are only asking open-ended questions. Failing to adequately support youth harms them, whether they are suspects, victims, or witnesses.[432]

428. *See, e.g.*, T. Christian Miller & Ken Armstrong, *An Unbelievable Story of Rape*, PROPUBLICA & MARSHALL PROJECT (Dec. 16, 2015), https://www.propublica.org/article/false-rape-accusations-an-unbelievable-story [https://perma.cc/CY7Q-SDNE] (describing how officers convinced an eighteen-year-old survivor of sexual assault that she had fabricated the story of her assault).

429. Cleary et al., *How Trauma May Magnify Risk*, *supra* note 55, at 185 (discussing how someone not exposed to trauma may perceive officer conduct as "relatively benign" whereas "the trauma-exposed adolescent may have perceived the officers as intensely angry and threatening").

430. David Forster, *Questioning of a Foster Child in Athens County Rape Investigation Raises Issue of Juveniles' Legal Rights*, WOUB PUB. MEDIA (Apr. 5, 2022), https://woub.org/2022/04/05/questioning-of-foster-child-in-athens-county-rape-investigation-raises-issue-of-juveniles-legal-rights/ [https://perma.cc/Q2TV-6CDP] (describing how a twelve-year-old foster youth was accused of sexual assault, questioned without access to a supportive adult, and whose child welfare system advocates were prevented from monitoring the questioning).

431. *See, e.g.*, YOUTH LAW CENT., OVERVIEW OF THE YOUTH FOSTER SYSTEM IN CALIFORNIA 3–4 (2016), https://ylc.org/wp-content/uploads/2018/11/Foster-Care-Overview-FACT-SHEET-040116.pdf [https://perma.cc/L95F-MRWQ] (describing entitlement to counsel for youth in the foster system).

432. Buss, *Failing Juvenile Courts*, *supra* note 175, at 321–23.

4. What's the Antiracist Critique of Procedural Justice?

Antiracism offers an important critique of procedural justice as a goal, and it is one that Bell has addressed with her theory of legal estrangement. Antiracism embodies an active and continuing effort to fight racism by identifying it, describing it, and dismantling it.[433] The racist design of American society tolerates the law's oppression of youth of color. As this Article details, the most exploited youth are the least empowered, and most likely to experience adversity, mental health challenges, and learning differences.

An antiracist critique must be grounded in the deep and troubling history of oppression and violence communities of color have faced at the hands of the police in America. History informs both current police practices and community perceptions. Black youth have experienced a racial control through slavery, Jim Crow, and mass incarceration.[434] In fact, policing in the United States is rooted in slave patrols.[435] Latinx youth have endured their own set of dehumanizing attempts to control them, their families, and their communities, especially through the threat of deportation.[436] Other minority groups, particularly Native populations, and LGBTQI and gender nonconforming people, have histories rife with societal exclusion and police abuse.[437]

The antiracist critique of procedural justice embraces the view that the law is a power structure and asks under what circumstances is police authority "necessary and appropriate."[438] Concerns abound when procedural justice principles of fairness are used as tools to exact compliance with the law without reforming the way police treat those who they are policing.[439] Bell warns us that procedural justice is not a "silver-bullet" solution to the policing crisis,[440] and

433. IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 9 (2019).

434. HENNING, THE RAGE OF INNOCENCE, *supra* note 70, at 241 (internal citation omitted) (tracing American history to retell early stories of persecuted Black youth who were "born Black in a country that did not see them as children").

435. *See* Waxman, *supra* note 420; HADDEN, *supra* note 420, at 4.

436. *See, e.g.*, Lopez, *supra* note 323, at 86–87 (describing how a top Arizona law enforcement officer, Sheriff Arpaio, "said it was an honor for his Sheriff's Department to be compared to the Ku Klux Klan and for his detention center holding Latinx immigrants to be called a concentration camp" when he came under fire for his persecution of the Latinx community).

437. *See generally* NAT'L CONG. OF AM. INDIANS, TRIBAL NATIONS AND THE UNITED STATES: AN INTRODUCTION (2020), https://www.ncai.org/about-tribes [https://perma.cc/AXV8-FCRG] (describing how Indigenous people had their Native tribal lands taken from them, were forced onto reservations, were subjected to torturous residential schools, and faced mass genocide and cultural erasure for centuries); Leonore F. Carpenter & R. Barrett Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof*, 25 WM. & MARY J. RACE GENDER & SOC. JUST. 5 (2018) (discussing how law enforcement often unfairly stop, harass, demand identification from, and arrest transgender women).

438. David Thacher, *The Limits of Procedural Justice*, *in* POLICE INNOVATION CONTRASTING PERSPECTIVES 95, 95–96 (David Weisburd & Anthony A. Braga eds., 2d. ed. 2018).

439. *See* Bell, *supra* note 130, at 2066.

440. *Id.* at 2081.

that the most historically exploited groups are also disenfranchised and feel disrespected and unwelcome.[441] Appealing to procedural justice is only good when it addresses all individuals, especially the most vulnerable. Otherwise, we would cede the law to its worst practitioners.

Scholar David Thacher warns that procedural justice reforms must question whether policing as applied should even exist in the first place.[442] Thacher reminds us of scholar Eric Miller's critique of the procedural justice research agenda[443]—that beyond empirical research, we must examine police tactics "to distinguish illicit manipulation from appropriate deference to authority."[444] The deontological argument to resurrect a theory of judicial integrity heeds Thacher's call for "moral and legal scrutiny" of reform efforts. It is wrong to allow the police to extract a statement from a youth in a manner consistent with coercive socialization. Further, police fundamentally cannot question youth properly, even if questioning is limited to open-ended questions.[445] This proposal promotes rehabilitation of youth by categorically eliminating their interrogation and resists the urge to pretend as if training police to behave consensually can be effective.[446]

5. What About the Value of a Confession?

Confessions are viewed as powerful evidence of guilt. Yet, with youth, who falsely confess at higher rates than adults and are uniquely susceptible to interrogation pressures and tactics, confession evidence is not as valuable as it currently is perceived to be. Justice Scalia provided law enforcement's perspective on confession evidence when he said, "The 'ready ability to obtain uncoerced confessions is not an evil but an unmitigated good.' Without these confessions, crimes go unsolved and criminals unpunished."[447] This perspective subscribes to a view of interrogation as simply a categorical good.

Justice Scalia's view misses nuance relied on by Justice Sotomayor in *J.D.B.*—that we need to take special care with juvenile confessions. Sotomayor emphasized that "[t]he law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them."[448]

441. *Id.* at 2054.

442. Thacher, *supra* note 438, at 95–96.

443. *Id.* at 96.

444. *Id.* at 96 (summarizing Miller, *supra* note 149).

445. While the police cannot question youth appropriately, other child professionals—like social workers, teachers, and psychologists—might be able to be trained and trusted to question youth, which may address Thacher's concern.

446. Thacher, *supra* note 438, at 96.

447. Montejo v. Louisiana, 556 U.S. 778, 796 (2009) (quoting McNeil v. Wisconsin, 501 U.S. 171, 181 (1991)).

448. J.D.B. v. North Carolina, 564 U.S. 261, 273 (2011).

Moreover, the Supreme Court has historically espoused a philosophy of treating children fairly, respecting their vulnerability, and affording them greater protections than adults. As far back as sixty years ago, the Court affirmed that special protections are needed for youth during an interrogation because "no matter how sophisticated" a young subject may seem, they "cannot be compared" to an adult suspect.[449]

The way police conduct interrogations perpetrates harm and contravenes critical values. Youth experience the direct and long-term harm of coercive socialization and legal estrangement. For society and youth alike, the harm is a disincentive to follow the law. Some costs are deeply offensive to our core values as Americans.[450] The very idea that we could genuinely compare the value of "good" evidence of guilt with the cost of causing countless youth many coercive experiences leading them to lose respect for the law is distasteful. As the Supreme Court said in *Spano v. New York*,[451] "life and liberty can be as much endangered from . . . methods used to convict those thought to be criminals as from the actual criminals themselves."[452]

CONCLUSION

Adolescence is a difference as important to interrogations as it is to any other aspect of juvenile and criminal procedure. Research about procedural justice and legal estrangement showcases the success various modes of legal socialization have in promoting law-abiding behavior and inclusivity. Developmental research informs us that adolescents are in a moment of peak ability to grow and learn from their experience in both positive and negative ways. Adolescence presents a huge moment of untapped potential to be harnessed by looking at one of an accused youth's very first interactions with the police—an interrogation.

This Article illuminates specific harms to young people during police interrogation and connects those harms to our rehabilitative goal with youth. The tactics used by police to interrogate youthful suspects exploit the vulnerabilities of young people, take advantage of their susceptibility to pressure from authority figures, and are more likely to lead to a false confession. The law is structurally inadequate to protect youth from the harmful tactics employed by the police; the realities of adolescent development and youth's vulnerability necessitate that the interrogation of youthful suspects be the exception, rather than the rule. While the legislature could synchronize

449. Haley v. Ohio, 332 U.S. 596, 599 (1948); Gallegos v. Colorado, 370 U.S. 49, 54 (1962).

450. Some costs are less fundamentally offensive, such as the inefficiency of litigating motions to suppress on a case-by-case basis when the law of constitutional criminal procedure is so direly out of sync with the principles of adolescent development.

451. 360 U.S. 315 (1959).

452. *Id.* at 320.

constitutional criminal procedure with adolescent development, only abolition of juvenile interrogation can fully shift the scales. Legislation can help reviewing courts properly suppress statements made by youth, but such after-the-fact remedies cannot redress the developmental harms wrought by interrogation. The perceived unfairness of the criminal legal system, the disincentive to follow the law, and the feelings of social isolation created by the harmful tactics of juvenile interrogation would still remain.

Even legislation mandating police adjust their interrogation practices to avoid causing lasting harm to youth would prove ineffective. Such legislation would merely shift the intensely fact-specific analyses required from the courts to the police. That is just too onerous a task. Law enforcement simply will not know or have the resources to learn about the vulnerability of each individual youthful suspect. Without a ban on juvenile interrogation, we both permit the harm of coercive legal socialization and place unachievable expectations upon police. Abolishing the practice of interrogating youth will provide the bright-line and administrable rule necessary for police to prevent harm to youth.[453]

We must seize every opportunity during this peak adolescent moment of neuroplasticity to educate youth purposefully and meaningfully in a prosocial direction. When youth are socialized to follow the law, we reduce our need for future law enforcement. The harm done to youth by subjecting them to adult-style interrogation is greater than the evidentiary value of a young person's confession and its potential benefit to society. Our values of justice, fairness, and protection for youth eclipse the limited value of any confession evidence obtained from youth.

A categorical ban on interrogations of youth is required. A ban is the most efficient way to protect youth, especially when the formidable constitutional challenges and reforms are accurately considered. It is fair from a procedural justice and legal estrangement perspective. Society's interest in rehabilitation justifies protecting youth from the harm of interrogation. We owe a duty to the youngest members of our society to support their growth into thoughtful, mature, and prosocial adults who feel like they belong as valued members of the American citizenry.

453. *See generally*, Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989) (arguing in favor of bright-line rules in law).