THE RIGHT TO REMAIN A CHILD: THE IMPERMISSIBILITY OF THE REID TECHNIQUE IN JUVENILE INTERROGATIONS

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Police interrogations in the United States are focused on one thing: getting a confession from the suspect. The Reid Technique, a guilt-presumptive nine-step method and the most common interrogation technique in the country, is integral to fulfilling this goal. With guidance from the Reid Technique, interrogators use coercion and deceit to extract confessions—regardless of the costs. When used with juvenile suspects, this method becomes all the more problematic. The coercion and deception inherent in the Reid Technique, coupled with the recognized vulnerabilities and susceptibilities of children as a group, has led to an unacceptably high rate of false confessions among juvenile suspects. And, when a juvenile falsely confesses as the result of coercive interrogation tactics, society ultimately suffers a net loss.

In the Eighth Amendment context, the Supreme Court has recognized that children are different from adults and must be treated differently in various areas of the criminal justice system. The Court's recent Eighth Amendment logic must now be extended to the Fifth Amendment context to require that juveniles be treated differently in the interrogation room, as well. This Note suggests that the Reid Technique be categorically banned from juvenile interrogations through a constitutional ruling from the Court. Doing so would not foreclose juvenile interrogation; rather, a more cooperative and less coercive alternative could be utilized, such as the United Kingdom's PEACE method. Nonetheless, only a categorical constitutional rule that prohibits the use of the Reid Technique in all juvenile interrogations will eliminate the heightened risk of juvenile false confessions and truly safeguard children's Fifth Amendment rights.

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INTRODUCTION

On February 6, 2013, Detective Mechelle Buchignani interrogated thirteen-year-old Elias V. for about thirty minutes in a small office at his elementary school.[1] Elias had been accused of inappropriately touching his friend's three-year-old sister, A.T., while playing at their apartment four months earlier.[2] From the start, Detective Buchignani "stated as a fact that Elias had touched A.T. in an improper, sexual manner" and urged that Elias "needed help for his problem of attraction to a young child."[3] Although Elias repeatedly denied these allegations throughout the interrogation, by the time it was over, he had admitted to the wrongful conduct.[4] Elias later recanted his confession; he claimed that his statements were made involuntarily and solely as a result of Detective Buchignani's coercive interrogation tactics.[5]

Although the lower court rejected Elias's claims and denied his motion to exclude the statements, the California Court of Appeal ruled in favor of Elias, finding that his statements were indeed coerced and involuntary.[6] The court found that the interrogation was unacceptably coercive "based on a combination of factors: (1) Elias's youth, which rendered him 'most susceptible to influence' and 'outside pressures'; (2) the absence of any evidence corroborating Elias's inculpatory statements; and (3) the likelihood that Buchignani's use of deception and overbearing tactics would induce involuntary and untrustworthy incriminating admissions."[7] As a

[1] *In re* Elias V., 188 Cal. Rptr. 3d 202, 204, 207 (Cal. Ct. App. 2015).
[2] *Id.* at 204.
[3] *Id.* at 207.
[4] *Id.*
[5] *Id.* at 204. It should also be noted that no other evidence supported or corroborated Elias's confession. *Id.* at 221.
[6] *Id.* at 204.
[7] *Id.* at 217 (citations omitted).

result, the court found that there was a "real possibility that Elias simply accepted a description of the events . . . that was deceptively suggested by Detective Buchignani."[8] The court recognized that Elias likely felt trapped by Detective Buchignani and the other adults in the room, as well as vulnerable under the inherent pressures of the situation, and falsely confessed as a means to an end.

Like many other juvenile false confession cases, at the heart of Elias's case was the Reid Technique[9]—the most prevalent training program for interrogators in the United States.[10] The Reid Technique is an accusatory method of questioning where "police are trained to interrogate only those suspects whose culpability they 'establish' on the basis of their initial investigation,"[11] and where interrogators seek to get a confession from these suspects no matter what it takes, often resorting to deceptive tactics.[12] Although implicitly sanctioned by the United States Supreme Court,[13] the Reid Technique has been increasingly criticized for its guilt-presumptive approach, its coercive nature, and its premise of isolating and psychologically manipulating the sus-

[8] *Id.* at 222. Indeed, Elias's parents reported that during the subsequent criminal proceedings, "Elias grew very frustrated" and told them that "he would admit to anything just to get this over with." *Id.* at 208.

[9] *See* Megan Crane, Laura Nirider, & Steven A. Drizin, *The Truth About Juvenile False Confessions*, INSIGHTS ON L. & SOC'Y, Winter 2016, at 10, 13 ("Today, many experts agree that the Reid Technique is psychologically coercive and can lead to false confessions, even when used on adults."). Indeed, Detective Buchignani's manipulative interrogation tactics followed almost verbatim the teachings of the Reid Technique. *See In re* Elias V., 188 Cal. Rptr. 3d at 211 ("[M]any of the techniques used to interrogate Elias derive from the Reid methodology described in *Miranda*."); *id.* at 217 ("Detective Buchignani's accusatory interrogation was dominating, unyielding, and intimidating.").

[10] *See* Brian R. Gallini, *Police "Science" in the Interrogation Room: Seventy Years of Pseudo-Psychological Interrogation Methods to Obtain Inadmissible Confessions*, 61 HASTINGS L.J. 529, 536 (2010) ("The prevalence of the nine-step Reid technique—as taught in seminars and described in the *Criminal Interrogation and Confessions* text—cannot be overstated."); Douglas Starr, *The Interview*, NEW YORKER (Dec. 9, 2013), http://www.newyorker.com/magazine/2013/12/09/the-interview-7 (explaining how the Reid Technique has "influenced nearly every aspect of modern police interrogations, from the setup of the interview room to the behavior of detectives").

[11] *In re* Elias V., 188 Cal. Rptr. 3d at 212.

[12] *See, e.g.*, Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 6 (2010) ("[T]he single-minded purpose of interrogation is to elicit incriminating statements, admissions, and perhaps a full confession in an effort to secure the conviction of offenders."); Buffie Brooke Merryman, *Arguments Against Use of the Reid Technique for Juvenile Interrogations*, 10 COMM. L. REV. 16, 20 (2010) ("The priority in every criminal investigation is to acquire a confession because of the evidentiary power inherent in a voluntary, self-incriminating statement.").

[13] *See* Merryman, *supra* note 12, at 28 (arguing that "the Reid Method is sanctioned by the Supreme Court"); *see also infra* notes 113–14 and accompanying text (explaining the *Miranda* Court's use and reliance on the Reid Technique in its opinion).

pect.[14] Such manipulative tactics have led to an alarming number of false confessions, especially in the context of juvenile interrogations.[15] Unfortunately, while the court recognized the coercive interrogation practices present in Elias's interrogation and suppressed his confession, such a ruling is not the norm. Overwhelmingly, trial courts presume that defendants who confess are guilty, and therefore rarely suppress confessions as involuntary or false.[16] Thus, the outcome in *Elias V.* should be viewed only as an exception.[17]

It is no secret that police interrogations are inherently coercive.[18] In its landmark decision, *Miranda v. Arizona*, the Supreme Court explicitly discussed certain "inherently compelling pressures"[19] and formulated specific procedures required in all custodial interrogations.[20] As part of its rationale for necessitating these safeguards, the

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[14] Reid Technique instructors admit that "[m]any of the interrogation techniques presented in [their] text involve duplicity and pretense." FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 351 (Jones & Bartlett Learning ed., 5th ed. 2013). Many lawyers, scholars, and social scientists have written extensively about the intrinsic coercion present in the interrogation room and have specifically criticized the Reid Technique. *See, e.g.*, Kassin et al., *supra* note 12, at 27 ("[T]he modern American police interrogation is, by definition, a guilt-presumptive and confrontational process—aspects of which put innocent people at risk."); Abigail Kay Kohlman, *Kids Waive the Darndest Constitutional Rights: The Impact of* J.D.B. v. North Carolina *on Juvenile Interrogation*, 49 AM. CRIM. L. REV. 1623, 1627 (2012) (explaining that more often than not, "suspects are terrified, alone, and surrounded by indicia of authority" during interrogations); Timothy E. Moore & C. Lindsay Fitzsimmons, *Justice Imperiled: False Confessions and the Reid Technique*, 57 CRIM. L.Q. 509, 522 (2011) (noting that the fact that suspects are under "state control" makes them invariably more vulnerable to coercion).

[15] *See infra* notes 75–81, 150–60 and accompanying text.

[16] *See* Richard A. Leo et al., *Promoting Accuracy in the Use of Confession Evidence: An Argument for Pretrial Reliability Assessments to Prevent Wrongful Convictions*, 85 TEMP. L. REV. 759, 772–73 (2013) (describing how police typically close an investigation as soon as a suspect confesses); *see also infra* notes 83–87 and accompanying text.

[17] Although the California Court of Appeal ruled in favor of Elias and threw out his confession, even that court continues to distinguish *Elias V.* in order to hold that new defendants are not entitled to such relief, even with regards to youthful offenders. *See, e.g.*, *In re* Shane H., No. A146596, 2017 WL 167481, at *6 (Cal. Ct. App. Jan. 17, 2017) (explaining why the confession was allowed to be used as evidence despite allegations that it was involuntary); *In re* Anna G., No. G052358, 2016 WL 7438702, at *4 (Cal. Ct. App. Dec. 23, 2016) (same); *In re* Q.H., No. AI42771, 2016 WL 5118287, at *7–8 (Cal. Ct. App. Sept. 21, 2016) (same); People v. Rigmaden, No. C071533, 2015 WL 5122916, at *9 (Cal. Ct. App. Sept. 1, 2015) (same); People v. Martinez, No. B255184, 2015 WL 5033913, at *10 (Cal. Ct. App. Aug. 26, 2015) (same).

[18] *See infra* notes 150, 160 and accompanying text.

[19] Miranda v. Arizona, 384 U.S. 436, 467 (1966); *see also* Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 411 (2013) ("*Miranda* characterized custodial interrogation as inherently compelling because police dominate the setting, control information, and create psychological pressures to comply.").

[20] *Miranda*, 384 U.S. at 467–72 (describing the statements that police must make during all custodial interrogations).

Court quoted specifically from the Reid Technique manual in order to tailor safeguards to actual methods employed around the country.[21] By articulating a precise set of warnings, the *Miranda* Court sought "to balance the state's need for information from suspects with protecting autonomy and freedom from police coercion."[22] But a key purpose of the Fifth Amendment privilege—"to prevent the state, whether by force *or by psychological domination*, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his conviction"[23]—fails when juveniles are manipulated and coerced into falsely confessing.

Juveniles are more susceptible than are adults to the coercion inherent in custodial interrogations, and so are more likely to falsely confess.[24] As applied to children, any technique that operates under a presumption of guilt and relies on deception violates the Fifth Amendment privilege and is thus unconstitutional. Although the Reid Technique manual states that particular caution must be exercised when dealing with a juvenile suspect,[25] the same guilt-presumptive and deceptive interrogation tactics are used on both adults and children, without modification.[26] Consequently, the Court should hold the Reid Technique unconstitutional when used on children.

Over the past decade, the Supreme Court's Eighth Amendment jurisprudence has recognized that children are different from adults and must be afforded differential treatment with regards to punishment.[27] These decisions have subsequently paved the way for the Court to uphold differential treatment for children throughout all phases of adjudication.[28] In 2011, it became explicitly clear that the Court's Eighth Amendment principles applied not only to the post-trial sentencing phase, but also to the pre-trial interrogation phase.[29] *J.D.B. v. North Carolina* marked a significant turning point in the

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[21] *Id.* at 450–55.

[22] Feld, *supra* note 19, at 397; *see also* Kassin et al., *supra* note 12, at 7 (noting that *Miranda* "aimed to strike a balance against the inherently threatening power of the police in relation to the disadvantaged position of the suspect, thus reducing coercion of confessions").

[23] *In re* Gault, 387 U.S. 1, 47 (1967) (emphasis added).

[24] *See infra* Part I.C. This Note only examines the impact of police interrogations on juveniles, although much of my argument could also apply to other vulnerable groups, such as the intellectually disabled.

[25] INBAU ET AL., *supra* note 14, at 250–55.

[26] *See infra* note 178–79 and accompanying text.

[27] *See infra* Part II.B.

[28] *See infra* Part II.

[29] *See* J.D.B. v. North Carolina, 564 U.S. 261, 272–73 (2011) (applying *Roper* and *Graham* to the context of a child's *Miranda* rights under the Fifth Amendment).

Court's juvenile justice jurisprudence and "opened the door to an extensive reshaping of juvenile rights in criminal and delinquency cases" that expanded past the Eighth Amendment context.[30]

In *J.D.B.*, the Court clarified that a child's age must be considered when determining whether the individual was in "custody" for *Miranda* purposes.[31] The Court ultimately recognized that children are particularly vulnerable to the intense custodial pressures and the inherently coercive techniques of police interrogations.[32] However, the Court has yet to address *how* children should be treated differently, in light of their distinct vulnerabilities, once in a custodial interrogation. This Note seeks to fill that gap. The Court must now go further and hold the Reid Technique unconstitutional in the interrogation of juveniles because of its presumption of guilt and its reliance on coercion and deceit. Doing so would help protect children within the bounds created by the Court's precedent and prevent juveniles from falsely confessing with such regularity.

This Note proceeds in three parts. Part I first provides relevant background information on the Reid Technique. It then describes the disproportionate rate of false confessions when using the Reid Technique with juvenile suspects. Part II examines the Court's Fifth and Eighth Amendment doctrines regarding juveniles. It then argues that the Court's Eighth Amendment jurisprudence—which recognizes that children should be treated differently from adults—should be applied in the Fifth Amendment context of juvenile interrogations. Part II thus sets forth the foundation on which the Supreme Court could justify a constitutional ruling.

Part III argues that the Supreme Court should hold the Reid Technique unconstitutional in the interrogation of juveniles, and that any confessions and statements arising from juvenile interrogations where the Reid Technique is employed should be excluded as inadmissible. To do so, Part III first outlines what a constitutional ruling could look like. It then explains that categorically banning the Reid Technique in juvenile interrogations would not foreclose questioning, and offers a possible alternative technique for interrogators to use: the PEACE method from the United Kingdom.

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[30] Martin Guggenheim & Randy Hertz, J.D.B. *and the Maturing of Juvenile Confession Suppression Law*, 38 WASH. U. J.L. & POL'Y 109, 176 (2012).

[31] *J.D.B.*, 564 U.S. at 265.

[32] *Id.* at 271–72.

I
BACKGROUND: THE REID TECHNIQUE

The Reid Technique is the most commonly used interrogation method in the nation.[33] Officers in all fifty states, as well as in Canada, use the Reid Technique when interrogating suspects.[34] Even those police departments that claim to utilize other interrogation manuals nonetheless employ essentially the same tactics that are used by the Reid Technique.[35] In order to understand why this interrogation method should not be permitted in juvenile interrogations, it is first important to understand precisely what the method entails. This Part will provide relevant background information on how the Reid Technique is employed.

A. The Behavior Analysis Interview

According to the Reid Technique, two things must happen before the actual interrogation can begin: First, the interrogator must completely isolate the suspect,[36] and second, the interrogator must conduct a non-accusatory, informational interview, known as the Behavior Analysis Interview (BAI).[37] The point of the BAI is to determine whether the suspect is innocent or guilty: Only if the suspect is deemed guilty based on the BAI does the interrogator proceed

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[33] *See* Gallini, *supra* note 10, at 536 (describing John E. Reid & Associates, the company that provides training in the Reid Technique, as "the largest, best-known provider of interrogation training in the United States"); Merryman, *supra* note 12, at 21 (finding that over 500,000 law enforcement and security officers have attended Reid Technique interrogation seminars since its inception); Starr, *supra* note 10 (noting that the Reid Technique's clients include not only police officers, but also members of private security companies, the military, the FBI, the CIA, and the Secret Service).

[34] Merryman, *supra* note 12, at 21.

[35] *See, e.g.*, *id.* ("[M]ost non-Reid interrogation training manuals follow principles that are generally aligned with the Reid method. . . . Thus, with or without the Reid branding and trademark, the majority of law enforcement in the United States subscribe to and execute the Reid Method when interrogating suspects."). In fact, one survey of 631 law enforcement officers from five different states and Canada found that "[w]hether or not the surveyed officers recognized the Reid name, they employed many of the same techniques." Charles D. Weisselberg, *Mourning* Miranda, 96 CAL. L. REV. 1519, 1536–37 (2008) (citing Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 389 (2007)).

[36] The Reid Technique manual notes that "[t]he principal psychological factor contributing to a successful interview or interrogation is privacy—being alone with the person during questioning." INBAU ET AL., *supra* note 14, at 43.

[37] The Reid Technique manual explains that the interview should be non-accusatory and conversational. *Id.* at 3–5. The interrogation, on the other hand, is defined as an accusatory process, involving active persuasion and conducted "only when the investigator is reasonably certain of the suspect's guilt." *Id.* at 5–6.

with the subsequent interrogation.[38] The Reid Technique's presumption of guilt, a cornerstone of the interrogation method, is established through the BAI.

During the BAI, the interrogator interviews the suspect in a nonaccusatory way, seeking to obtain information rather than an admission of guilt.[39] Relying on the suspect's verbal responses and various nonverbal cues, the interrogator determines whether the suspect is being deceptive (i.e. guilty) or truthful (i.e. innocent).[40]

Although the BAI is an integral part of the Reid Technique,[41] it has been criticized.[42] Even when used correctly, the BAI is still problematic in juvenile interrogations for two reasons. First, the BAI is premised on the assumption that the interrogator can, based on the suspect's verbal and nonverbal cues, determine whether the suspect is innocent or guilty.[43] However, studies have consistently demonstrated that "humans, trained interrogators included, are poor lie detectors" and that "virtually no one[ ] can determine a person's guilt through the interviewing process at the heart of the Reid approach."[44] One study, for instance, found that laypeople are only fifty-four percent accurate in distinguishing truthfulness from deceit, and that police interrogators are only marginally more successful.[45]

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[38] *Id.* at 187 (noting that only those "whose guilt seems definite or reasonably certain," based on the findings in the interview, are subjected to the nine-step interrogation); *see also* Moore & Fitzsimmons, *supra* note 14, at 512 (arguing that the preliminary interview is "a defining moment" because the outcome is determinative of whether the suspect will be subjected to the accusatory Reid Technique).

[39] *See* INBAU ET AL., *supra* note 14, at 3–5 (explaining that the interview is nonaccusatory); Louis M. Natali, Jr., *Can We Handle The Truth?*, 85 TEMP. L. REV. 839, 843–48 (2013) (providing a thorough description of the BAI).

[40] *See* Natali, *supra* note 39, at 842 (criticizing the indicators used to determine truthfulness versus deception).

[41] The Reid Technique manual expounds that first, conducting the preliminary BAI "is indispensable with respect to identifying whether the suspect is, in fact, likely to be guilty," and second, that it provides a psychological advantage for the interrogator. INBAU ET AL., *supra* note 14, at 6 (explaining that a successful interrogation requires the suspect to trust the investigator as objective and sincere, and that this is best accomplished through the BAI).

[42] *See, e.g.*, Moore & Fitzsimmons, *supra* note 14, at 512 (criticizing the use of the BAI as an initial step); Starr, *supra* note 10 (describing a study finding that although "most police officers used key elements of the Reid technique, . . . many skipped the initial interview and went straight to the interrogation").

[43] INBAU ET AL., *supra* note 14, at 6.

[44] Alan Hirsch, *Going to the Source: The "New" Reid Method and False Confessions*, 11 OHIO ST. J. CRIM. L. 803, 807–08 (2014).

[45] *See* Kassin et al., *supra* note 12, at 6; *see also* Moore & Fitzsimmons, *supra* note 14, at 512 (arguing that interrogators "would be no less accurate if they simply flipped a coin"). Indeed, a retired FBI agent asserted that "Reid-style training creates a tendency to see lies where they may not exist, with an unhealthy amount of confidence in that judgment." Starr, *supra* note 10; *see also* Tamar R. Birckhead, *The Age of the Child:*

Second, many of the behavioral inferences used to detect deception[46] are common behaviors that children exhibit, especially when subjected to the high-stress, anxiety-ridden process of police questioning.[47] For instance, according to the Reid Technique, nonverbal indicators of deception include various "everyday teenage mannerisms" such as failing to make eye contact, slouching, fidgeting, and offering delayed responses to questions.[48] However, "[c]hildren and teens . . . may commonly slouch, avoid eye contact, and exhibit similar behaviors regardless of whether they are telling the truth—particularly in the presence of authority figures."[49] Police interrogators do not recognize the fact that juvenile suspects routinely (and quite naturally) exhibit behaviors that are "otherwise consistent with deception," let alone control for these behaviors when interviewing a child.[50] The inevitable result is that juveniles are more likely to be deemed guilty during the BAI phase and subjected to the full interrogation.[51]

B. The Nine-Step Process

Once a suspect is deemed guilty based on the BAI, the Reid Technique instructs police to proceed through a well-defined nine-step process to further question the suspect.[52] Step 1 consists of a "direct, positively presented confrontation."[53] The interrogator confidently asserts that he is absolutely certain of the suspect's guilt, and that "the

Interrogating Juveniles After Roper v. Simmons, 65 WASH. & LEE L. REV. 385, 410 (2008) (finding that highly confident police interrogators "often see deception where it does not exist").

[46] *See* INBAU ET AL., *supra* note 14, at 109–17.

[47] *See* Birckhead, *supra* note 45, at 411 ("[A]dolescents in particular often exhibit, quite naturally and consistent with theories of psychological and brain development, many of the traits and behaviors claimed to be signs or signals of deception."); *id.* at 417 (noting that because of juveniles' low confidence levels, as well as the "general anxiety during questioning," it is common for children to show the Reid Technique's signs of deceit such as avoiding eye contact and responding monosyllabically).

[48] INT'L ASS'N OF CHIEFS OF POLICE, REDUCING RISKS: AN EXECUTIVE'S GUIDE TO EFFECTIVE JUVENILE INTERVIEW AND INTERROGATION 7 (2012) [hereinafter REDUCING RISKS]; *see also* Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29, 33–34 (2013) ("[C]ommon sense behavior cues, like the suspect's posture or lack of eye contact, are not good indications of whether a suspect is telling the truth or a lie.").

[49] REDUCING RISKS, *supra* note 48, at 7.

[50] Birckhead, *supra* note 45, at 417–18.

[51] *See id.* at 419–20 (explaining how police "mistake" natural juvenile behavior for signs of conscious deceit).

[52] *See generally* INBAU ET AL., *supra* note 14, at 185–310, 254 (describing the process and noting that the manual should be implemented as a "set of principles" instead of a "set of fixed, inflexible rules").

[53] *Id.* at 188, 193.

only reasons for . . . talking to [the suspect] at all are to determine the circumstances of the crime and to obtain an explanation for its commission."[54] Step 2 contains the "theme development,"[55] where the interrogator's goal is to persuade the suspect to adhere to some "possible moral excuse for having committed the offense."[56] The interrogator often offers the suspect a "face-saving motive" for committing the crime to minimize any moral implications that may prevent the suspect from confessing.[57] As one Reid Technique instructor explained: "No matter how repugnant the crime, . . . you can come up with a rationalization that makes it easier for the suspect to admit it."[58] Step 2's minimization tactics are incredibly troublesome when the suspect is a child. Confronted with this tactic, the juvenile suspect may (falsely) confess merely as a way to escape the isolation and anxiety that permeates the interrogation room.[59]

Step 3 and Step 4 focus on how the interrogator should reject the suspect's denials or objections regarding his possible involvement in the crime.[60] If the suspect has not yet confessed at this point, Step 5 and Step 6 help the interrogator manage the suspect. Step 5 explains how to prevent the suspect from becoming psychologically withdrawn,[61] while Step 6 teaches the interrogator how to handle the suspect's passive mood.[62]

Step 7, known as the alternative question, fulfills a similar function as the face-saving motive.[63] The interrogator is taught to offer the suspect two possible characterizations of the crime, where one scenario is clearly more reprehensible and less acceptable than the

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[54] *Id.* at 258.

[55] *Id.* at 202.

[56] *Id.* at 188.

[57] *See* Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 270, 275 (2007) (arguing that when the suspect is a child, these face-saving motives consist of "special psychological themes [used] to induce children to confess, including blaming a youth's environment, parents, or friends"). Indeed, the Reid Technique instructions explicitly permit interrogators to mention such scapegoats when questioning a child. INBAU ET AL., *supra* note 14, at 250 (noting that the officer may use the suspect's family, background, or neighborhood to explain a juvenile suspect's criminal conduct).

[58] Starr, *supra* note 10.

[59] *See* Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 243–44 (2006).

[60] Step 3 informs the interrogator how to handle "initial denials of guilt," while Step 4 helps the interrogator defeat any attempt, on the part of the suspect, to "offer[ ] reasons as to why he would not or could not commit the crime." INBAU ET AL., *supra* note 14, at 188.

[61] *See id.* at 189.

[62] *See id.*

[63] *See id.*

other.[64] If the suspect bites, then the interrogator wins: "Whichever alternative is chosen by the suspect, the net effect of an expressed choice will be the functional equivalent of an incriminating statement."[65] Critics condemn the use of the alternative question with children because juvenile suspects are likely to perceive the "better" alternative as a means to escape the interrogation—thus, confessing just to get out of the room.[66]

The last two steps, Step 8 and Step 9, help the interrogator secure the actual confession. Step 8 explains how to turn the oral admission into a "legally acceptable and substantiated confession that discloses the circumstances and details of the act."[67] Finally, Step 9 guides the interrogator in "converting the oral confession into a written one."[68]

Unfortunately, interrogators do not account for a child's unique susceptibilities when questioning a juvenile and employing the Reid Technique.[69] Despite the developmental and psychological vulnerabilities of juveniles, interrogators do not change their methods when questioning children.[70] Consequently, the Reid Technique—particularly the presumption of guilt and the use of deceptive tactics—results in unreliable statements and false confessions when applied to children.

C. The Problem of Juvenile False Confessions

Children are at a much greater risk of falsely confessing, and thus being wrongfully convicted, due to the Reid Technique's manipulative

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[64] *See id.* at 302.

[65] *Id.* at 189.

[66] *See, e.g.*, Kassin et al., *supra* note 12, at 12 ("Today's interrogators seek to manipulate a suspect into thinking that it is in his or her best interest to confess."); LaMontagne, *supra* note 48, at 44 (discussing how a juvenile suspect will likely determine that a confession is "the most efficient means to escape the interrogation room").

[67] INBAU ET AL., *supra* note 14, at 303–04.

[68] *Id.* at 310.

[69] The two caveats to this claim are that: (1) the Reid Technique manual distinguishes between children, ages one to nine, and adolescents, ages ten to fifteen, and recommends that interrogators refrain from using "active persuasion techniques" on suspects younger than ten, and (2) the Reid Technique manual explains that the use of introducing false evidence, a common strategy, should be avoided when interrogating a juvenile. *See id.* at 254–55. Notably, however, the manual does not prohibit other forms of deception and does not categorically proscribe the use of false evidence. Thus, the danger of impermissible deception is not truly mitigated.

[70] *See infra* notes 178–79 and accompanying text. This is especially troubling because "interrogation techniques designed to manipulate adults may be even more effective and thus problematic when used against children." Feld, *supra* note 59, at 244–45; *see also* Patrick M. McMullen, *Questioning the Questions: The Impermissibility of Police Deception in Interrogations of Juveniles*, 99 NW. U. L. REV. 971, 989 (2005) ("Juveniles deserve greater judicial protection from deceptive interrogation methods because they are much more vulnerable to them.").

method of questioning.[71] Indeed, false confessions have been found to be "inextricably linked to police interrogation procedures."[72] The Supreme Court has explicitly recognized that the tactics pervading U.S. police interrogations "can induce a frighteningly high percentage" of false confessions, regardless of the age of the individual being questioned.[73] The *J.D.B.* Court further expounded that this risk is "all the more troubling . . . when the subject of custodial interrogation is a juvenile."[74] The dangerous combination that results from children's developmental deficiencies in the interrogation room, on the one hand, and the structure of the modern interrogation process, on the other hand, leads to a disproportionately high incidence of false confessions among juvenile suspects.[75] The Reid Technique is the method that causes this disproportionate rate of false confessions, and as such, should be deemed unconstitutional. Furthermore, aside from the false confessions that arise when a juvenile suspect is pressured into providing the "right" answer,[76] many of the statements that a child makes during a police interrogation—even if they are not con-

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[71] A "false confession" is defined as "an admission to a criminal act—usually accompanied by a narrative of how and why the crime occurred—that the confessor did not commit." Kassin et al., *supra* note 12, at 5. Professor Laurence Steinberg revealed that police often employ a number of questionable tactics with juvenile suspects in order to get confessions, such as "dangl[ing] some kind of immediate reward," lying to them, implying that the judge will hand down a favorable outcome if they confess, and/or attempting to convince them that they simply do not remember committing the crime. *See* Erin Schumaker, *What 'Making a Murderer' Can Teach Us About Teens and False Confessions*, HUFFINGTON POST (Jan. 15, 2016, 10:43 AM), http://www.huffingtonpost.com/entry/brendan-dassey-false-confession-psychology_us_5696acc3e4b0778f46f7da53.

[72] Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 154 (2003).

[73] Corley v. United States, 556 U.S. 303, 320–21 (2009).

[74] J.D.B. v. North Carolina, 564 U.S. 261, 269 (2011).

[75] *See, e.g.*, REDUCING RISKS, *supra* note 48, at 9 (finding that the pressures inherent in "deception-driven interrogation can actually cause a juvenile to believe that he must have committed the crime but suppressed all memories of it"); Crane et al., *supra* note 9, at 12 (explaining "studies of wrongful convictions [that] show that children and adolescents, in particular, falsely confess with startling frequency"); Feld, *supra* note 19, at 411 ("Under stress of a lengthy interrogation, [juveniles] may impulsively confess falsely rather than consider the consequences."); Daniel Harkins, *Revisiting* Colorado v. Connelly*: The Problem of False Confessions in the Twenty-First Century*, 37 S. ILL. U. L.J. 319, 324 (2013) (finding that juveniles, as well as intellectually disabled individuals, "are much more likely to succumb to the deceit and trickery of the Reid Technique and confess to crimes they did not commit"); Moore & Fitzsimmons, *supra* note 14, at 513 (arguing that coercive interrogation tactics, which can cause an innocent suspect to believe he actually did commit the crime, can then produce false confessions).

[76] *See infra* notes 153–54 and accompanying text.

fessions—are nonetheless "systematically unreliable," and should likewise be suppressed.[77]

Studies have found that juveniles are two to three times more likely to falsely confess than are adults.[78] Additionally, Professors Steven Drizin and Richard Leo found that juveniles accounted for approximately one-third of all 125 known false confessions.[79] In another study that analyzed 340 exonerations, forty-two percent of children were found to have given false confessions while only thirteen percent of adults did the same.[80] Under a variety of circumstances, results from other studies have mirrored these troubling findings.[81]

On the one hand, *Elias V.* shows that courts *can* examine confessions and suppress them as false or involuntary.[82] However, the case law and the empirical evidence both demonstrate that this outcome is quite rare.[83] According to Professor Drizin, the "only regulation" of coercive and unacceptable interrogation techniques "occurs through the courts which, on occasion, will suppress confessions in cases where judges believe police officers crossed the line into an unacceptable level of coercion," yet such a finding is generally uncommon.[84] Studies have shown that, even if the jury knows that the confession was coerced and is not corroborated by any other evidence, the jury is still unable to discount it when reaching a verdict.[85] Similarly, trial judges

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[77] Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 917 (2010).

[78] *See* Crane et al., *supra* note 9, at 12.

[79] Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 944–45, 963 (2004). Sixty-three percent of these 125 false confessions came from those under age twenty-five, and thirty-two percent from those under age eighteen. *See* Crane et al., *supra* note 9, at 12.

[80] *See* Crane et al., *supra* note 9, at 12.

[81] For instance, one study found that individuals ages twelve and thirteen, as well as those ages fifteen and sixteen, were "more likely to confess" than were "young adults," ages eighteen to twenty-six. Kassin et al., *supra* note 12, at 20 (discussing this study). In another study, researchers found that the "*majority* of youthful participants complied with a request to sign a false confession without uttering a single word of protest." Crane et al., *supra* note 9, at 12.

[82] *See supra* notes 6–8 and accompanying text.

[83] *See* Deborah Davis & Richard A. Leo, *To Walk in Their Shoes: The Problem of Missing, Misunderstood, and Misrepresented Context in Judging Criminal Confessions*, 46 NEW ENG. L. REV. 737, 749 (2012) (discussing Brandon Garrett's analysis on false confessions and his finding that "judges rarely suppress confessions as involuntary"); Leo et al., *supra* note 16, at 803 (describing how the Federal Rules of Evidence's low bar serves as a poor safeguard to keeping false confessions out); *supra* note 17 (citing cases where courts have distinguished *Elias V.* and upheld confessions).

[84] Ed Finkel, *Are We Making Murderers? False Confessions and Coercive Interrogation*, ILL. B.J., Apr. 2016, at 26 (quoting Professor Drizin).

[85] *See* Arizona v. Fulminante, 499 U.S. 279, 296 (1991) (noting the "profound impact that the confession has upon the jury"); *see also* Leo et al., *supra* note 16, at 773 ("[J]urors

rarely exclude confessions from evidence at trial, and, on the contrary, "routinely find confessions voluntary that are the product of extreme pressure, threats, and promises."[86] It is thus clear that, even though there are occasional success stories like *Elias V.*, "criminal trials overwhelmingly fail as a safeguard for protecting innocent false confessors from the fate of wrongful conviction and incarceration."[87]

As a further example, the national attention surrounding the story of Brendan Dassey illuminates the current and persistent problem of juvenile false confessions. Dassey, who was featured on the Netflix documentary series *Making a Murderer*, had been found guilty of helping his uncle commit first-degree murder after he confessed during a videotaped interrogation. On August 12, 2016, a Wisconsin district court overturned Dassey's conviction on the grounds that his confession was involuntary in large part because of *how* the interrogation was conducted and the confession obtained.[88] But the tragic occurrence of false confessions has not been sufficiently mitigated through the various modifications purportedly employed, or through the courts' sporadic recognition that a confession was coerced. In fact, commentators have described the "hundreds of proven false confessions that have been documented in the last two decades" as merely "the tip of a much larger iceberg."[89]

The guilt-presumptive Reid Technique is "founded on the premise that a suspect will not confess unless he is led to believe that doing so is in his own best interest," and so interrogators seek to frame confessing as the suspect's best option.[90] Children are particularly vulnerable to this framing, because they are often led to believe

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tend to uncritically accept confessions as reliable even when they are told that the confessor suffered from psychological illness or interrogation-induced stress, or when the confessions are retracted and perceived to be involuntary."); Moore & Fitzsimmons, *supra* note 14, at 509 ("There is now widespread consensus that false confessions are one of the leading causes of wrongful convictions, due partly to the fact that the courts typically attach tremendous importance to them.").

[86] Leo et al., *supra* note 16, at 784.

[87] *Id.* at 777.

[88] Dassey v. Dittmann, 201 F. Supp. 3d 963, 999–1006 (E.D. Wis. 2016) (explaining the conditions of Dassey's interrogation, many of which mirror the Reid Technique); *see also* Matt McCall, *'Making a Murderer' Raises Questions About Interrogation Technique from Chicago*, CHI. TRIB. (Jan. 7, 2016, 10:23 PM), http://www.chicagotribune.com/news/local/breaking/ct-reid-confession-technique-met-20160106-story.html (discussing how the Reid Technique was used in Dassey's interrogation); Jesse Singal, *The Science Behind Brendan Dassey's Agonizing Confession in* Making a Murderer, N.Y. MAG. (Jan. 11, 2016, 8:13 AM), http://nymag.com/scienceofus/2016/01/science-behind-brendan-dasseys-confession.html (same).

[89] Leo et al., *supra* note 16, at 820.

[90] Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 FORDHAM URB. L.J. 791, 809 (2006).

that adult figures have their best interests in mind and, independently, that it is in their best interest to confess.[91]

Compounding this problem is the fact that false confessions often go undetected. Just as people (interrogators included) are unable to distinguish truthfulness from deceit during the BAI,[92] research has shown that neither laypeople nor police are able to reliably recognize a false confession from a truthful one.[93]

The Supreme Court has recognized that confessions are crucial in the criminal justice system.[94] Yet research has continuously demonstrated that "when a false confession gets entered into the stream of evidence at trial, it is highly likely to result in the conviction of the innocent person."[95] False confessions almost inevitably lead to wrongful convictions,[96] and juveniles often do not realize that such lasting consequences may follow.[97] When the Reid Technique is used to extract a false confession from a juvenile, society suffers a net loss: A guilty person roams free, while an innocent person is wrongfully prosecuted and, often, convicted.[98] All the parties involved in the interrogation may suffer when a juvenile is interrogated in such a way.[99] The juvenile is surely harmed by the experience,[100] and the

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91 *See infra* notes 151–59 and accompanying text.

92 *See supra* notes 44–45 and accompanying text.

93 *See* LaMontagne, *supra* note 48, at 33.

94 *See* Arizona v. Fulminante, 499 U.S. 279, 296 (1991) ("A confession is like no other evidence."); Miranda v. Arizona, 384 U.S. 436, 478 (1966) ("Confessions remain a proper element in law enforcement.").

95 Leo et al., *supra* note 16, at 777; *see also* Davis & Leo, *supra* note 81, at 749 (2012) ("[I]t is no surprise that judges rarely suppress confessions as involuntary and juries rarely acquit those who have confessed.").

96 *See* REDUCING RISKS, *supra* note 48, at 1 ("False confessions are a leading cause of wrongful convictions of youth.").

97 *See* Merryman, *supra* note 12, at 20 ("[B]ecause juveniles are not able to reason and predict as adults do, they simply do not realize that their admissions or confessions will almost guarantee conviction.").

98 *See* REDUCING RISKS, *supra* note 48, at 1 ("When the real perpetrator walks free, law enforcement fails to provide its core function—public safety. When a juvenile is prosecuted on the basis of a false confession, the true perpetrator remains a hazard to the community . . . ."). And, even if no crime actually occurred such that there is no unknown perpetrator on the loose, the outcome is still unacceptable since an innocent person is punished.

99 *See* McMullen, *supra* note 70, at 999–1000 (arguing that it is "not clear that police deception of juveniles really serves society's interest in crime control" even under a "strictly utilitarian analysis").

100 *See* REDUCING RISKS, *supra* note 48, at 1 ("Law enforcement, using inappropriate interrogation techniques, have the potential of deeply affecting youth, including emotional and psychological impact, development of a negative perception and/or mistrust of law enforcement and the justice system, and even traumatization.").

interrogator too may face substantial adverse consequences.[101] Additionally, the deleterious consequences can also be quite costly. For instance, "[t]axpayers foot the bill when an individual falsely confesses or is wrongfully convicted," and sometimes, the individual interrogator is found personally liable.[102]

Overall, the Reid Technique leads to an unacceptably high rate of juvenile false confessions and subsequent convictions. Based on the aforementioned evidence and the proceeding analysis in Part II, it is now necessary for the Reid Technique to be categorically banned in juvenile interrogations across the nation, and for any confessions or statements that arise from these interrogations to be excluded as inadmissible.

II
The Legal Recognition That Children Are Different

In the Eighth Amendment context, the Supreme Court has explicitly recognized that children are inherently different from adults, and thus should be treated differently. As evidenced by its recent rationale in *J.D.B. v. North Carolina*, the Court now seems willing to expand its Eighth Amendment reasoning to other situations, especially within the Fifth Amendment context. Thus, the Court now has a solid foundation to extend its Eighth Amendment doctrine even further to require that children be treated differently from adults once actually in the interrogation room.

A. Juveniles and the Court's Fifth Amendment Jurisprudence

Much of the Court's interrogation-related jurisprudence, including that involving juvenile interrogations, centers on *Miranda v. Arizona*.[103] However, *Miranda* was not the first instance in which the Court decided the permissibility of certain interrogation practices and consequently, whether the statements produced from such questioning were admissible. In *Haley v. Ohio*,[104] the Court invalidated a juvenile's confession as involuntary and inadmissible for the first time, finding that children are more susceptible to police pressures and thus

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101 *See id.* at 2 (explaining that situations where "an officer takes a false confession from a child—or takes a true confession that later must be thrown out . . . harm the individual, the agency, the local government, as well as erode public confidence in the justice system").

102 *See id.* (listing examples of police pay-outs in the millions-of-dollars range).

103 384 U.S. 436 (1966).

104 332 U.S. 596 (1948).

need more protection in the interrogation room than do adults.[105] The Court reiterated this notion when it again invalidated a juvenile's confession and reversed his conviction in *Gallegos v. Colorado*.[106] The *Gallegos* Court noted that due to the defendant's young age, he could not "be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions" when being questioned by the police.[107]

Four years later, in *Miranda v. Arizona*, the Court "established prophylactic measures to protect the constitutional guarantee against self-incrimination in all custodial interrogation settings"[108] in light of the "inherently compelling pressures" and the "heavy toll" that characterized U.S. police interrogations.[109] The Court held that when a suspect is in a custodial interrogation, the police must warn the suspect that he has the right to remain silent, that anything he says may be used against him, that he has the right to an attorney, and that if he cannot afford an attorney, one will be appointed for him.[110] The Court also made it clear that any suspect has the option to waive these rights.[111]

The *Miranda* Court justified its new procedural safeguards by describing the inherent coercion and psychological manipulation that plagued U.S. interrogations.[112] In coming to its conclusion, the Court relied on widely used police manuals to identify the types of tactics that were actually taught to and employed by U.S. interrogators.[113]

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[105] *See id.* at 599 ("[W]hen, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. . . . That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.").

[106] *See* 370 U.S. 49, 55 (1962) (noting "[t]he youth of the petitioner" when holding that the confession "was obtained in violation of due process").

[107] *Id.* at 54. In fact, the Court noted that "[a]dult advice would have put [the child] on a less unequal footing with his interrogators." *Id.*

[108] Kohlman, *supra* note 14, at 1626.

[109] Miranda v. Arizona, 384 U.S. 436, 455, 467 (1966).

[110] *Id.* at 444.

[111] *Id.* However, some criticize *Miranda* for not going far enough in guarding the rights of vulnerable suspects from aggressive and manipulative police interrogators, and claim that *Miranda*'s "protection" has left much to be desired in the ensuing decades. *See, e.g.*, Feld, *supra* note 19, at 398 (finding that as long as the police get a *Miranda* waiver, courts will admit almost any statement "regardless of the tactics used to obtain it"); McMullen, *supra* note 70, at 979 (noting that the "*Miranda* requirement has actually given police more freedom to deceive and otherwise manipulate suspects" because once suspects are read their rights, courts mistakenly assume that suspects understand those rights and understand the consequences of waiver).

[112] *See Miranda*, 384 U.S. at 448, 534 (stressing "that the modern practice of in-custody interrogation is psychologically rather than physically oriented").

[113] *See id.* at 448 (explaining that these manuals provided "[a] valuable source of information").

The Reid Technique was the most cited among these texts.[114] The Court's review of the Reid Technique has led many scholars and social scientists to deduce that the Court implicitly sanctioned the Reid Technique's coercive practices.[115]

One year after *Miranda*, the Court clarified that *Miranda*'s rule, all of its procedural protections, and the Fifth Amendment privilege against self-incrimination applied to juveniles as well as adults.[116] In *Gault*, the Court expressly connected the privilege against self-incrimination to both the inherent coercion of police interrogations and the increased vulnerability of children.[117] However, aside from *Gault*'s optimistic ruling for juvenile suspects, the decades immediately following *Miranda* were otherwise unfavorable: Two major Supreme Court decisions weakened the previously recognized notion that children must be given heightened protection in this area.[118]

First, in *Fare v. Michael C.*, the Court held that there were "no persuasive reasons" for treating a juvenile suspect differently from an adult, that there were "no special factors" to suggest that this particular teenage defendant failed to understand the consequences of waiving his rights, and that the same test should be used for children and adults when analyzing a *Miranda* waiver.[119] The upshot of *Fare* was that the difference between juveniles and adults no longer seemed to matter to the Court. Second, in *Yarborough v. Alvarado*, the Court refused to require that age be considered as a factor in the determina-

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[114] *See id.* at 449 n.10, 450 nn.12–13, 452 nn.15–17, 454–55 nn.20–23 (citing the Reid Technique's work ten times). The Court even acknowledged (and did not condemn) that these routine interrogation methods emphasized isolating the suspect and often included various deceptive ploys to achieve the interrogator's goal. *See id.* at 455.

[115] *See, e.g.*, Barry C. Feld, *Juveniles' Competence to Exercise* Miranda *Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26, 52 (2006) ("The *Miranda* Court recognized, and social psychologists argue, that many of the 'Reid Method' techniques are inherently coercive . . . and thus suspects require procedural safeguards to protect against such techniques."); Hirsch, *supra* note 44, at 804 ("[T]he [*Miranda*] Court crafted its famous warning to criminal suspects in large part to protect against the psychological coercion at the heart of the Reid Technique.").

[116] *In re* Gault, 387 U.S. 1, 55 (1967) ("We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults."). For a discussion on why this extension was important (and not self-evident) at the time, see Guggenheim & Hertz, *supra* note 30, at 121–22.

[117] *In re* Gault, 387 U.S. at 47, 55 (noting that "the greatest care must be taken" to guarantee that a juvenile's statements, including any confessions, in an interrogation are neither "the mere fruits of fear or coercion" nor "the product of ignorance of rights or of adolescent fantasy, fright or despair").

[118] *See infra* notes 119–23 and accompanying text (discussing the Court's holdings in *Fare* and *Alvarado*); *see also* Guggenheim & Hertz, *supra* note 30, at 134–35, 141–45 (describing how the protections afforded in *Haley* and *Gallegos* were significantly scaled back by these later cases).

[119] 442 U.S. 707, 725–26 (1979).

tion of whether a suspect was in "custody" for the purposes of *Miranda*.[120] Despite the *Alvarado* Court's holding, five Justices left open the possibility that age *could* matter in the context of custody,[121] and the four dissenters made this point explicit.[122] As will be more fully explored in Part II.C, the Court essentially came to the opposite result when deciding a strikingly similar question just seven years later.[123]

B. The Court's Eighth Amendment Jurisprudence

The Supreme Court's Eighth Amendment jurisprudence throughout the past decade informs any analysis of how children should be treated in the criminal justice system. In the Eighth Amendment context, the Court has concluded that, due to the fundamental differences between juveniles and adults, children convicted of crimes cannot be sentenced in the same way (or held to the same penological standards) as adults.[124]

The Supreme Court first embarked on this path in 2005 when it held in *Roper v. Simmons* that an individual under the age of eighteen could not be subjected to the death penalty.[125] The Court based the bulk of its reasoning on "[t]hree general differences between juveniles under 18 and adults [which] demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders."[126] Writing for the majority, Justice Kennedy cited specifically to: (1) "[a] lack of maturity and an undeveloped sense of responsibility[,]" which tends to lead to more "impetuous and ill-considered actions and decisions[;]"[127] (2) the fact that "juveniles are more vulnerable or suscep-

120 541 U.S. 652, 666 (2004) ("Our opinions applying the *Miranda* custody test have not mentioned the suspect's age, much less mandated its consideration.").

121 Though no other Justice joined Justice O'Connor's concurrence, her suggestion that "[t]here may be cases in which a suspect's age will be relevant to the 'custody' inquiry under *Miranda v. Arizona*," *id.* at 669 (O'Connor, J., concurring), aligned with Justice Breyer's dissent, *see infra* note 122 and accompanying text.

122 *Id.* at 674 (Breyer, J., dissenting).

123 *See* J.D.B. v. North Carolina, 564 U.S. 261, 265 (2011) ("[W]e hold that a child's age properly informs the *Miranda* custody analysis."); *infra* note 137 (explaining the Court's shift in position).

124 *See infra* notes 125–32 and accompanying text. It should also be noted that the Eighth Amendment is not the only context in which the law provides differential treatment for juveniles and adults. For instance, in the law of torts, children are not held to the same standards as are adults. *See* RESTATEMENT (SECOND) OF TORTS § 283A (AM. LAW INST. 1965) (providing an exception to the reasonable person standard for children); *see also J.D.B.*, 564 U.S. at 274 ("[E]ven where a 'reasonable person' standard otherwise applies, the common law has reflected the reality that children are not adults.").

125 543 U.S. 551, 578 (2005).

126 *Id.* at 569.

127 *Id.* (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).

tible to negative influences and outside pressures, including peer pressure[,]" which is explained in part by juveniles' lack of both life experiences and control over their own environments;[128] and (3) the "more transitory, less fixed" nature of a child's personality traits, meaning that "the character of a juvenile is not as well formed as that of an adult."[129]

Due to the categorical nature of the decision, *Roper* served as a significant jumping-off point for the Court to apply differential treatment to children in certain areas of the law.[130] The Court subsequently extended its analysis in two other Eighth Amendment cases, first in 2010 in *Graham v. Florida*[131] and then again in 2012 in *Miller v. Alabama*.[132] Taken together, these three cases (the *Roper* trilogy)[133] held that children are intrinsically and developmentally different from adults.

C. Application of Eighth Amendment Principles to the Fifth Amendment Context

Even in its Eighth Amendment cases, the Court indicated that differential treatment for juveniles in the criminal justice system should not be limited to post-adjudication phases.[134] It has since

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[128] *Id.*

[129] *Id.* at 570. Additionally, Justice Kennedy acknowledged that virtually every state denied individuals under eighteen the opportunity to do a variety of things that adults are free to do, "[i]n recognition of the comparative immaturity and irresponsibility of juveniles," such as vote, serve on juries, and get married without parental consent. *Id.* at 569.

[130] *See, e.g.*, Birckhead, *supra* note 45, at 450 (arguing that *Roper*'s "significance arises from its explicit recognition that adolescents are fundamentally different than adults and that courts must draw bright lines to protect vulnerable populations from the biases that predominate within American culture and law"); Kohlman, *supra* note 14, at 1629–30 (explaining how the *Roper* Court recognized "not only that death is different but also that children are different" (footnote omitted)); Tepfer et al., *supra* note 77, at 893 (explaining that the *Roper* Court "acknowledged that juveniles are categorically less mature, less able to weigh risks and long-term consequences, more vulnerable to external pressures, and more compliant with authority figures than are adults").

[131] *See* Graham v. Florida, 560 U.S. 48, 74–75 (2010) (citing *Roper* and holding that life without parole (LWOP) for juveniles convicted of non-homicide crimes was unconstitutional).

[132] *See* Miller v. Alabama, 567 U.S. 460, 489 (2012) (citing *Roper*, *Graham*, and the recent Fifth Amendment case, *J.D.B. v. North Carolina*, and holding that mandatory LWOP for juveniles was unconstitutional, even for those convicted of homicide).

[133] Even though *Miller* was decided after *J.D.B.*, it stands for the same principles as *Roper* and *Graham* for the purposes of this Note and will be treated as such.

[134] *See, e.g.*, *Graham*, 560 U.S. at 78 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings. . . . Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel . . . all can lead to poor decisions by one charged with a juvenile offense."); Birckhead, *supra* note 45, at 394 (interpreting *Roper*'s "recognition that age matters not

become clear that the "cited differences between adults and juveniles in the Eighth Amendment context should be no less applicable in the interrogation room."[135]

In 2011, the Court explicitly used its analysis from *Roper* and *Graham* when it handed down its decision in *J.D.B.*, a case that invoked Fifth Amendment issues rather than Eighth Amendment ones.[136] In *J.D.B.*, the Court held that a juvenile's age must be considered when determining whether the child was in "custody" for *Miranda* purposes.[137] By citing directly to its Eighth Amendment precedent, in addition to Fifth Amendment cases such as *Haley* and *Gallegos*, the Court extended the notion that juveniles should be treated differently *as a class*,[138] and held that such differential treatment applies in the context of pre-adjudication processes.[139]

Justice Sotomayor, writing for the majority in *J.D.B.*, focused more on the common sense notion that children are fundamentally different from adults, and less on the scientific studies that had been

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only for juveniles already in the system but for juveniles not yet charged—for those under suspicion, identified as suspects, and questioned by law enforcement").

135 Merryman, *supra* note 12, at 19; *see also* Barry C. Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 LAW & SOC'Y REV. 1, 3 (2013) ("Differences in knowledge, experience, time-perspective, attitude toward risk, impulsivity, and appreciation of consequences contribute to youths' poorer decisions. Compared with adults, adolescents underestimate the amount and likelihood of risks, use a shorter frame, and focus on gains rather than losses." (citation omitted)).

136 *See* Guggenheim & Hertz, *supra* note 30, at 153 (discussing the *J.D.B.* Court's use of *Roper* and *Graham*).

137 *See* 564 U.S. 261, 277 (2011) (concluding that "its inclusion in the custody analysis is consistent with the objective nature of th[e] test"). The Court issued this ruling even though it had found the exact opposite result merely seven years earlier. *See* Yarborough v. Alvarado, 541 U.S. 652, 666 (2004) (holding that age was *not* a mandatory consideration in the *Miranda* custody inquiry); *see also supra* notes 120–22 and accompanying text (explaining the Court's decision in *Alvarado*). For a more detailed discussion on why the Court espoused such a shift in its jurisprudence in such a relatively short period of time, see Guggenheim & Hertz, *supra* note 30, at 147–54, explaining that a major factor in these divergent holdings was the new composition of the Court and, in particular, Justice Kennedy's changed position following *Roper* and *Graham*.

138 *See* J.D.B. v. North Carolina, 564 U.S. 261, 273 (2011) ("[T]he legal disqualifications placed on children as a class . . . exhibit the settled understanding that the differentiating characteristics of youth are universal."); *see also* Feld, *supra* note 59, at 233 (citing that research has shown that "as a group, adolescents understand legal proceedings and make decisions less well than do adults").

139 *See, e.g.*, Guggenheim & Hertz, *supra* note 30, at 109 (explaining that "*J.D.B.* reflects the Court's willingness to extend, into new areas of criminal law, a recent line of cases that treats age eighteen as a central dividing line in how the Eighth Amendment regulates" juveniles' sentences); *see also* REDUCING RISKS, *supra* note 48, at 6 ("*J.D.B.* has reinvigorated a long-understood truth: juveniles experience interrogation differently than adults.").

cited in *Roper*.[140] Justice Sotomayor stated: "It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. . . . [There is] no reason for police officers or courts to blind themselves to that commonsense reality . . . ."[141]

Just as the *Roper* trilogy set the stage for the Court's ruling in *J.D.B.*, *J.D.B.* has now opened the door to challenging a host of issues faced by children in the interrogation context.[142] *J.D.B.* addressed the "custodial" aspect of a custodial interrogation, but the Court should likewise apply the *Roper* trilogy and the *J.D.B.* rationale to the "interrogation" aspect—that is, what actually happens once an officer gets a juvenile suspect alone in an interrogation room.[143] Specifically, the Court should now extend its Eighth Amendment jurisprudence and hold the Reid Technique unconstitutional in the interrogation of juveniles due to its use of deceptive tactics and presumption of guilt. Part II.D explains the additional basis for such a ruling within the context of this specific group of offenders.

D. Expanding J.D.B. v. North Carolina *to the Reid Technique*

Juveniles' most ordinary characteristics—immaturity,[144] impulsivity,[145] and susceptibility to external influences (like police pressure)[146]—increase their vulnerability in the interrogation room. And,

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[140] *See* Guggenheim & Hertz, *supra* note 30, at 154 (discussing this shift in the Court's analysis).

[141] *J.D.B.*, 564 U.S. at 264–65.

[142] *See, e.g.*, Kohlman, *supra* note 14, at 1643 ("The *J.D.B.* decision was a step forward in recognizing that children are 'different,' in pre-trial procedures."); Joshua A. Tepfer, *Defending Juvenile Confessions after* J.D.B. v. North Carolina, CHAMPION, Mar. 2014, at 20, 20 (arguing that advocates have an "open door . . . [to] walk through to make a variety of challenges when a seasoned law enforcement officer questions an immature child").

[143] While the Court's holding in *J.D.B.* has received praise for protecting juveniles during interrogations by necessitating that age inform the "custody" analysis, the Court has nonetheless failed to provide safeguards that adequately eliminate the danger of juvenile false confessions or ensure that children are given warnings that they genuinely understand. Thus, in a sense, *J.D.B.* remains unsatisfying in the juvenile justice world. *See, e.g.*, Kohlman, *supra* note 14, at 1632–33 ("[A]lthough laudable for acknowledging the impact of age in the *Miranda* custody analysis, the Court's ruling does not adequately protect juveniles' rights during interrogations.").

[144] *See* Drizin & Luloff, *supra* note 57, at 274 (noting that since children are more immature and have fewer life experiences, they are "more readily influenced by police power, persuasion, or coercion").

[145] Since juveniles are more impulsive, they face a greater risk of blurting out whatever comes to mind, often "making admissions that improve the investigator's leverage against them, leading to more admissions and, many times, confessions." McMullen, *supra* note 70, at 996.

[146] *See, e.g.*, Kohlman, *supra* note 14, at 1634 ("Children are particularly susceptible to the coerciveness of interrogations . . . ."); Merryman, *supra* note 12, at 19 ("Due to

this increased vulnerability, as compared to adults, is "categorically shared by every juvenile, no matter how intelligent or mature."[147] Another aspect of this heightened vulnerability is juveniles' increased suggestibility.[148] This means that they are more willing to change their stories based on the information provided by the interrogator, more likely to accept responsibility for things they did not do, and less likely to challenge what the interrogator presents as fact, even if the officer misrepresents the situation or plainly lies to the child.[149]

In addition to the vulnerabilities recognized by the *Roper* trilogy, three other aspects of juvenile interrogations make youthful suspects particularly susceptible to the "inherently distressing" conditions of police interrogations,[150] and thus more likely to make false confessions. First, children are taught to trust adults from a young age,[151] and to regard law enforcement officers with both respect and deference.[152] Such an ingrained respect for authority causes juveniles to seek the interrogator's approval and to respond with the "right" answers, even if they do not know what those are.[153] Studies, for example, have found that "juveniles are *extremely willing* to comply with authority figures," and thus, can be more readily "manipulated into confessing falsely."[154]

Second, due to their inferior decision-making abilities, juvenile suspects are incredibly shortsighted: More often than not, juveniles

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adolescents' cognitive underdevelopment and psychosocial immaturity, they are more susceptible to the pressure and coercion that are inherent in a custodial interrogation."). Even the four dissenting Justices in *J.D.B.* agreed that children are "more susceptible to police pressure" than are adults. Tepfer, *supra* note 142, at 23 (quoting *J.D.B.*, 564 U.S. at 289 (Alito, J., dissenting)).

147 REDUCING RISKS, *supra* note 48, at 3.

148 "Suggestibility refers to a predisposition to accept information communicated by others and to incorporate that information into one's beliefs and memories." Kassin et al., *supra* note 12, at 9.

149 *See* McMullen, *supra* note 70, at 997–98 (discussing these consequences).

150 Harkins, *supra* note 75, at 322 (quoting Richard A. Leo et al., *Psychological and Cultural Aspects of Interrogations and False Confessions: Using Research to Inform Legal Decision-Making*, *in* PSYCHOLOGICAL EXPERTISE IN COURT 25, 34 (Daniel A. Krauss & Joel B. Lieberman eds., 2009)).

151 *See* Kohlman, *supra* note 14, at 1634 ("Adults routinely reassure children they have their best interests in mind . . . . Interrogators manipulate this trust to encourage children to believe confessions are in their best interest.").

152 LaMontagne, *supra* note 48, at 43. Even if the interrogator is not in uniform, juveniles nonetheless learn to "answer questions directed to them by adults." Drizin & Luloff, *supra* note 57, at 269.

153 *See* Feld, *supra* note 19, at 455 (arguing that juveniles "are more likely than adults to tell police what they think the police want to hear"); Harkins, *supra* note 75, at 324 (finding that juveniles "have a tendency to be highly acquiescent" to authority); LaMontagne, *supra* note 48, at 43 (explaining how juvenile suspects comply with their interrogators "in an effort to appease an adult").

154 LaMontagne, *supra* note 48, at 38–39 (emphasis added).

focus solely on any semblance of short-term relief, and fail to comprehend the long-term consequences of their actions.[155] Studies have shown that it is unfortunately common "for juvenile suspects to waive their right to an attorney and to falsely confess in order to be released from custody and allowed to go home."[156] Juveniles' inability to perceive the long-term consequences of their statements and actions is further exacerbated by their inabilities to adequately assess risk, weigh alternatives, and consider hypotheticals.[157] Since the interrogation context is imbued with alternative scenarios (both explicit and implicit), and the "alternative question" plays a crucial role in the Reid Technique,[158] juveniles are left at a significant disadvantage.[159]

Third, the very nature of a custodial interrogation, dominated by law enforcement and plagued by manipulative strategies, takes a heavier toll on children than it does on adults. Professor Steven Drizin succinctly explains: "With limited defenses to police tactics, children have a reduced ability to cope with a stressful interrogation and are less likely to possess the psychological and emotional abilities to withstand the rigors of police questioning."[160]

Overall, because of these youthful characteristics, juvenile suspects should be afforded heightened protection in the interrogation room.[161] This protection can be provided by prohibiting interrogation

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155 *See* Feld, *supra* note 19, at 455 (noting that the stress and anxiety of police questioning can increase juveniles' desire to remove themselves from the interrogation room through any means, even "by waiving and confessing without considering long-term consequences").

156 Birckhead, *supra* note 45, at 416–17; *see also* Starr, *supra* note 10 ("Confession opens something of an escape hatch, so it is only natural that some people choose it."). Indeed, many juvenile false confessors have subsequently revealed that they confessed "under the mistaken belief that they would be able to end the interrogation and immediately go home." REDUCING RISKS, *supra* note 48, at 9.

157 For example, "[a] juvenile suspect is . . . less likely to imagine a world in which he confessed as compared to a world in which he did not, and to accurately predict the results in each instance." McMullen, *supra* note 70, at 995.

158 *See supra* notes 64–66 and accompanying text.

159 *See* McMullen, *supra* note 70, at 994 ("Whatever the cause, the inability to perceive and weigh long-term consequences can make juveniles much more susceptible to deceptive interrogation techniques than adults.").

160 Drizin & Luloff, *supra* note 57, at 274.

161 *See In re* Elias V., 188 Cal. Rptr. 3d 202, 317 (Ct. App. 2015) ("There appears to be a growing consensus—among the supporters of those techniques, not just the critics—about the need for extreme caution in applying them to juveniles."); Crane et al., *supra* note 9, at 13 (noting the "widespread recognition that the Reid Technique is psychologically coercive," as well as the "general consensus that special care must be used on kids and teenagers in the interrogation room"). As a note, enhanced protection in the interrogation room is already afforded to juvenile *witnesses* and *victims* questioned by the police, *see* Birckhead, *supra* note 45, at 420–27, as opposed to the juvenile *suspects* at issue in this Note. According to Professor Birckhead, however, there is not sufficient justification for this differential treatment among different types of young actors. *See id.* at 427–32.

techniques that are based primarily on a presumption of guilt and that rely heavily on coercive and deceptive tactics.

III
The Reid Technique Should Be Held Unconstitutional

Based on the *Roper* trilogy, *J.D.B.*, and the evidence of various youthful characteristics that make children likely to falsely confess in the context of interrogations,[162] the Supreme Court has sufficient justification to hold the Reid Technique unconstitutional in juvenile interrogations. Specifically, the Court should hold that an interrogation method which presumes guilt and utilizes deceptive tactics—namely, the Reid Technique—is unconstitutional as applied to children because such a method produces a disproportionate rate of false confessions and violates juvenile defendants' Fifth Amendment privilege against self-incrimination. However, since police interrogators still need *some* way to question young suspects, the Reid Technique should be replaced with a more cooperative and less coercive method. The United Kingdom's PEACE method is an example of such a workable alternative.

A. What a Supreme Court Holding Would Look Like

The Supreme Court should use its unequivocal and categorical reasoning from both the *Roper* trilogy and *J.D.B.* to hold that the Reid Technique is unconstitutional when used with children. In the context of juvenile interrogations, any technique that operates under a presumption of guilt and relies on deception should be held unconstitutional. These two aspects of the Reid Technique will always amount to coercion in violation of the Fifth Amendment when used in the context of juvenile interrogations.

A holding that the Reid Technique is unconstitutional as applied to children is not an unprecedented extension of the Court's current child-related doctrine. Over the past decade, the Court has consistently built on its juvenile justice doctrine to carve out new categorical exceptions for children in the criminal justice system.[163] While the reasoning started in the Eighth Amendment context, the *J.D.B.* Court

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[162] *See supra* Part II.D (discussing how the Reid Technique is more likely to result in false confessions from children).

[163] *See* Miller v. Alabama, 567 U.S. 460, 470 (2012) (categorically banning mandatory LWOP sentences, even when the child was convicted of homicide); Graham v. Florida, 560 U.S. 48, 82 (2010) (categorically banning sentences of LWOP when the child was convicted of a non-homicide crime); Roper v. Simmons, 543 U.S. 551, 578 (2005) (categorically banning the use of the death penalty as applied to children).

explicitly expanded it to the Fifth Amendment context.[164] If it were to hold the Reid Technique unconstitutional as applied to children, the Court would simply be extending this doctrine and carving out a categorical exception for juveniles that is consistent with its prior approach.

While the Court has upheld the use of deception in police interrogations,[165] it has also found certain questioning techniques to be unconstitutional when they cause defendants to involuntarily (and perhaps falsely) confess and make other unreliable statements.[166] In such cases, where a defendant was compelled to confess and thereby incriminate himself in violation of the Fifth Amendment privilege, the Court has routinely thrown out the involuntary, coerced confession, and reversed the conviction.[167] This result is logical since "[a]ccording to constitutional law, the government may not coerce confessions, as provided by the Fifth Amendment privilege against self-incrimination

164 *See* J.D.B. v. North Carolina, 564 U.S. 261, 277 (2011) (holding that a child's age must be considered when determining whether the child is in custody for the purposes of police questioning and *Miranda* warnings).

165 *See, e.g.*, Oregon v. Mathiason, 429 U.S. 492, 495–96 (1977) (upholding the defendant's conviction even though his confession was obtained, without prior *Miranda* warnings, after the police falsely told him that they had found his fingerprints at the scene); Frazier v. Cupp, 394 U.S. 731, 739 (1969) (finding that the defendant's confession was voluntary and admissible even though it was made after police falsely told him that his co-defendant had already confessed and implicated him in the crime); *see also* Laurie Magid, *The* Miranda *Debate: Questions Past, Present, and Future*, 36 HOUS. L. REV. 1251, 1294 (1999) ("None of the Court's decisions after *Miranda* prohibits the use of deception. At most, the Court has 'expressed a judicial distaste for certain deceptive practices.'").

166 *See, e.g.*, Watts v. Indiana, 338 U.S. 49, 53–55 (1949) (finding that the defendant's confession was "the product of sustained pressure by the police," and thus involuntary, inadmissible, and in violation of the Due Process Clause of the Fourteenth Amendment, when the defendant confessed after continuous questioning that lasted many hours and occurred in complete isolation); Ashcraft v. Tennessee, 322 U.S. 143, 153–54 (1944) (finding that the defendant's confession was "not voluntary but compelled," and the context in which it was obtained, where the defendant was interrogated for thirty-six hours without sleep, was "so inherently coercive" that it violated the Due Process Clause of the Fourteenth Amendment); Brown v. Mississippi, 297 U.S. 278, 285 (1936) (finding that "[c]ompulsion by torture to extort a confession," involving physical tactics such as forcing the defendant to strip and hitting him with leather straps, violated the defendant's due process rights); Bram v. United States, 168 U.S. 532, 562 (1897) (finding that the defendant's confession was "the result of either hope or fear, or both," and was thus involuntary and inadmissible, since the defendant had been stripped of all his clothing and falsely told that an eyewitness saw him commit the crime). *See generally* Bolling v. Sharpe, 347 U.S. 497 (1954) (holding that the Fourteenth Amendment is incorporated through the Fifth Amendment and thus applies against the federal government too).

167 *See supra* note 166.

and the due-process prohibition against admitting involuntary confessions into court."[168]

Additionally, the Court has previously invalidated certain *aspects* of the interrogation process. For instance, in *Missouri v. Seibert*, the Court struck down the "question-first tactic," a method where police questioned the suspect first and provided *Miranda* rights later, only after the suspect had made various incriminating statements.[169] The Court found that this interrogation tactic "effectively threatens to thwart *Miranda*'s purpose of reducing the risk that a coerced confession would be admitted," and that the statements obtained must be suppressed.[170]

Use of the Reid Technique in juvenile interrogations violates the Fifth Amendment rights of these children because it renders the procedural safeguards of *Miranda* virtually meaningless. Despite the groundbreaking protection afforded to all suspects in *Miranda*, and extended to juveniles specifically in *Gault*,[171] studies since the 1980s have shown that children's susceptibilities translate into an acute inability to understand their *Miranda* rights or the consequences of a waiver.[172] Research has revealed that even those juveniles who understand the actual *words* of *Miranda* might still waive these rights without fully realizing the consequences.[173]

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168 Cynthia J. Najdowski & Catherine L. Bonventre, *Deception in the Interrogation Room*, 45 MONITOR ON PSYCHOL. no. 5, 26 (2014), http://www.apa.org/monitor/2014/05/jn.aspx.

169 542 U.S. 600, 617 (2004).

170 *Id.* at 617.

171 *In re* Gault, 387 U.S. 1, 55 (1967) (finding that "the greatest care must be taken" to ensure that a child's Fifth Amendment privilege against self-incrimination is respected and his statements are not coerced).

172 Since the late 1970s and early 1980s, Thomas Grisso has studied juveniles' abilities to exercise their *Miranda* rights, and has found that the majority of children do not fully understand what these rights entail, and thus, cannot truly waive their *Miranda* rights. Thomas Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1160, 1166 (1980); *see also* Feld, *supra* note 19, at 408 n.67 (citing Grisso's studies); Guggenheim & Hertz, *supra* note 30, at 138–40 (discussing Grisso's major findings, as well as the impact that Grisso's research has had on some state courts).

173 *See, e.g.*, Feld, *supra* note 19, at 409–10 ("Even youths who understand Miranda's words may be unable to exercise the rights as well as adults. Juveniles do not fully appreciate the function or importance of rights . . . ."). Indeed, Professor Feld has found that ninety-two percent of juvenile suspects waive their *Miranda* rights. *See* Molly Knefel, *'Making a Murderer,' and the Huge Problem of False Youth Confessions*, ROLLING STONE (Jan. 8, 2016), http://www.rollingstone.com/politics/news/making-a-murderer-and-the-huge-problem-of-false-youth-confessions-20160108. And, even though the words of *Miranda* are now commonly known to many, "[n]either juveniles' increased interaction with police nor the fact that *Miranda* has become a part of our culture translates into an increased understanding by adolescents." Drizin & Luloff, *supra* note 57, at 269.

Two factors place juveniles at even higher risks of involuntarily, unknowingly, and unintelligently waiving their *Miranda* rights during police questioning. For one, juveniles' focus on short-term relief leads many to incorrectly assume that if they comply with the officer and waive their rights, then they will be quickly released from the entire process and able to go home.[174] Additionally, similar to the goal-oriented ploys used during the actual interrogation, interrogators coerce juvenile suspects to obtain waivers so that they can proceed to the Reid Technique's nine steps.[175] If juveniles do not have the full capacity to waive their *Miranda* rights in the interrogation room, then they have no meaningful right to remain silent under the Fifth Amendment. In accordance with *Miranda*'s promise, these vulnerable suspects need more protection during the interrogation process that inevitably follows any waiver, and such heightened protection should be constitutionally required.

In sum, although the Supreme Court has never explicitly struck down the practice of allowing deception in police interrogations, it would be prudent for the Court to reconsider these principles in the context of juvenile interrogations. The Court could justify holding the Reid Technique unconstitutional as applied to children based on its precedent involving children throughout the past decade, as well as the heightened risk of Fifth Amendment violations in this distinct context.

B. An Example of Constitutional Interrogation: The PEACE Method

It is not feasible to ban *all* types of interrogations for juvenile suspects. Children, just like adults, sometimes do commit crimes that need to be investigated, solved, and prosecuted.[176] This Note does not argue that all juvenile questioning must be held unconstitutional. Instead, it is certain techniques that, when used with juvenile suspects, must be held unconstitutional. The guilt-presumption on which the Reid Technique is founded and the specific coercive and deceptive steps employed—such as the minimization tactics and the alternative question—are unconstitutional when used with a juvenile suspect. As

174 *See supra* notes 155–59 and accompanying text.

175 *See* LaMontagne, *supra* note 48, at 41–42.

176 Indeed, proponents of the Reid Technique generally point to one key argument to maintain their position: Police interrogations—or more importantly, the confessions that result—are crucial to solve crimes, maintain a functioning police force, and keep our communities safe. *See* Harkins, *supra* note 75, at 322 (discussing the "practical need for confession evidence" because many criminal cases must be solved without the benefit of eyewitnesses or physical evidence).

discussed in this Part, however, a Supreme Court holding that the Reid Technique is unconstitutional as applied to children does not foreclose the possibility of using other types of interrogation methods with these young suspects.

Not all types of interrogation methods are unconstitutional when a child is involved. At the same time, however, merely modifying the current Reid Technique would be insufficient to cure its constitutional infirmities. Regardless of the age of the suspect, when the accusatory and guilt-presumptive Reid Technique is used, the primary goal is to obtain a confession.[177] And since interrogators do not actually modify their techniques when questioning a juvenile,[178] the developmental differences between children and adults are not actually taken into account.[179]

Scholars have suggested a variety of reforms to better safeguard juveniles in the interrogation room. Some of the more common proposals include: electronically recording all interrogations;[180] issuing simpler child-friendly *Miranda* warnings at the outset;[181] mandating that an attorney, parent, and/or guardian be present during questioning or before waiver;[182] banning the use of any false evidence;[183] imposing time limits on the actual interrogation;[184] providing better juvenile-specific education and training for law enforcement per-

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177 *See supra* note 12 and accompanying text.

178 *See, e.g.*, Feld, *supra* note 19, at 455–56 ("[T]he tactics employed against youths are those designed to manipulate adults: aggressive questioning, presenting false evidence, and leading questions—tactics that may create unique dangers in the juvenile interrogation context."). A 2014 survey found that "almost all officers reported frequently using the same interrogation techniques on minors as on adults." Crane et al., *supra* note 9, at 14. This is true even though the "law enforcement community generally agrees that children are developmentally different from adults in terms of their comprehension abilities, willingness to yield to authority, and psychosocial immaturity." Tepfer et al., *supra* note 77, at 917. However, another national survey "found a general lack of awareness among [police] agencies of the possibility that juveniles be interrogated differently." Brandon L. Garrett, *Interrogation Policies*, 49 U. RICH. L. REV. 895, 915 (2015) (citing Jessica O. Kostelnik & N. Dickon Reppucci, *Reid Training and Sensitivity to Developmental Maturity in Interrogation: Results from a National Survey of Police*, 27 BEHAV. SCI. & L. 361, 364 (2009)).

179 Feld, *supra* note 19, at 414 (criticizing the fact that the Reid Technique "does not modify interrogation tactics to accommodate developmental differences between adolescents and adults"); *supra* notes 69–70 and accompanying text (arguing that the Reid Technique employs the same tactics on juveniles and adults).

180 *See, e.g.*, Kassin et al., *supra* note 12, at 25–27; Merryman, *supra* note 12, at 26. As a note, recordings are already required in the United Kingdom. Feld, *supra* note 19, at 415.

181 *See, e.g.*, Birckhead, *supra* note 45, at 445; LaMontagne, *supra* note 48, at 53–54.

182 *See, e.g.*, Drizin & Luloff, *supra* note 57, at 312–13; Guggenheim & Hertz, *supra* note 30, at 170.

183 *See, e.g.*, Birckhead, *supra* note 45, at 446; LaMontagne, *supra* note 48, 54–55.

184 *See, e.g.*, Birckhead, *supra* note 45, at 446; LaMontagne, *supra* note 48, at 54.

sonnel;[185] and allowing defense counsel to present expert testimony on false confessions at trial.[186] The International Association of Chiefs of Police (IACP), in an Executive Guide published in 2012, also proffered extensive suggestions for how to improve the juvenile interrogation process, many of which reiterate the aforementioned reforms.[187] Yet juvenile false confession rates remain disproportionately high,[188] and thus these proposals still fall short.

A categorical ban of the Reid Technique, and a completely revised approach in its place, is essential to truly protect juvenile suspects because the Reid Technique operates on the presumption of guilt and *necessarily involves* various types of deception in order to secure a confession.[189] U.S. interrogators should replace the Reid Technique with another method that achieves the goals of custodial interrogations, while still remaining within the constitutional bounds of the Fifth and Eighth Amendments. As an example, U.S. interrogators could utilize the PEACE method from the United Kingdom—a method that instructs police to resolve cases through careful planning and investigative interviewing, and that shifts the focus from obtaining the suspect's confession to developing fact-finding in the overall investigation.[190]

The PEACE method[191] is an interrogation style that is less confrontational, less accusatory, less deceptive, more conversational, and more focused on gathering information (as opposed to getting a confession).[192] During the PEACE process, the interrogator is instructed to create a clear interview plan with specific goals, engage the suspect in conversation and establish rapport, and elicit the suspect's side of the story.[193] The interrogator is also taught to use active listening and

185 *See, e.g.*, Birckhead, *supra* note 45, at 447; Drizin & Luloff, *supra* note 57, at 316–17.

186 *See, e.g.*, Birckhead, *supra* note 45, at 446–47; LaMontagne, *supra* note 48, at 55.

187 *See* REDUCING RISKS, *supra* note 48, at 7–14.

188 *See* Steven Drizin, *2015: A Year to Remember in False Confessions*, HUFFINGTON POST (Dec. 22, 2016, 4:10 PM), http://www.huffingtonpost.com/steve-drizin/post_10736_b_8857360.html.

189 *See* Crane et al., *supra* note 9, at 13; *supra* Part I.A and I.B (describing the Reid Technique).

190 *See* Kassin et al., *supra* note 12, at 28 (describing how this shift in focus was one of PEACE's major reforms); Moore & Fitzsimmons, *supra* note 14, at 540–41 (explaining the new form of "investigative interviewing").

191 The mnemonic stands for its five steps: (1) Preparation and Planning, (2) Engage and Explain, (3) Account, (4) Closure, (5) Evaluate. *Peace Article*, JOHN E. REID & ASSOCIATES, INC., www.reid.com/pdfs/peacearticle.pdf (last visited Sept. 20, 2017) [hereinafter *Peace Article*].

192 *See id.*

193 JAMES ORLANDO, CONN. GEN. ASSEMBLY OFFICE OF LEGISLATIVE RESEARCH, INTERROGATION TECHNIQUES 6 (2014) [hereinafter OLR REPORT]; *Peace Article*, *supra* note 191.

to explain the objectives of the interview to the suspect right from the start.[194] At the end of the interview, the interrogator is trained to summarize the interview, allow the suspect to "explain any discrepancies in their narrative,"[195] evaluate the suspect's narrative, and compare the suspect's account to the other evidence in the case, as well as to the investigation as a whole.[196] British officers are taught to "focus on content rather than on nonverbal behavior" and discount the suspect's anxiety "since it does not correlate with lying."[197] Throughout the entire process, the suspect is "encouraged to give a free flowing narrative,"[198] narrow questions are avoided in order to "elicit the whole story" from the suspect,[199] deceptive tactics are greatly limited,[200] and false evidence is prohibited.[201]

In contrast to the Reid Technique, the PEACE method is described as "a non-accusatory interview designed to develop sufficient investigative information to determine the suspect's possible involvement in the criminal behavior under investigation."[202] Under the PEACE method, the primary goal of interrogators is no longer to seek a confession, but rather to fulfill an investigative role, "almost as a journalist would."[203]

Although Reid Technique instructors criticize the PEACE method,[204] studies have found that PEACE is actually "*more effective* in eliciting true confessions than an adversarial model that relies on

194 OLR REPORT, *supra* note 193, at 6–7.

195 LaMontagne, *supra* note 48, at 54. The suspect is also entitled to correct or add information. *Peace Article*, *supra* note 191.

196 *Peace Article*, *supra* note 191. In doing so, the interrogator is also instructed to check for any inconsistencies in the suspect's story. *See* Starr, *supra* note 10.

197 Starr, *supra* note 10.

198 LaMontagne, *supra* note 48, at 54. Interrogators are taught to let the suspect tell his or her side of the story "without interruption, before presenting the suspect with any inconsistencies or contradictions between the story and other evidence." OLR REPORT, *supra* note 193, at 6; *cf.* Starr, *supra* note 10 (explaining how the U.S. interrogator's refusal to hear the suspect's own account fosters "feelings of hopelessness" that can lead the suspect to confess as a way out).

199 Starr, *supra* note 10.

200 Unlike in the U.S., PEACE interrogators are not allowed to lie, coerce the suspect, or minimize the offense. *See* Starr, *supra* note 10. It has been found that the "confrontation-based tactics of maximization and minimization are in fact seldom used." Kassin et al., *supra* note 12, at 14.

201 *Cf.* INBAU ET AL., *supra* note 14, at 352 (sanctioning the use of false evidence in the juvenile context).

202 *See Peace Article*, *supra* note 191; *see also* Moore & Fitzsimmons, *supra* note 14, at 541 (contrasting the PEACE method with the common U.S. practice of "determining guilt based on little more than a 'gut' feeling (Reid's preinterrogation step) and [then] extracting confessions through psychological intimidation").

203 Starr, *supra* note 10.

204 *See Peace Article*, *supra* note 191 (claiming that the PEACE method "severely limits the investigator's ability to solve cases," among other things).

police coercion."[205] Research has also suggested that the non-accusatory PEACE approach reduces the incidence of *false* confessions, though it does not necessarily lead to fewer *true* confessions.[206] In fact, one study reported that after implementing these practices, the United Kingdom benefited from a higher overall confession rate than did the United States.[207] Thus, in actuality, the Reid Technique instructors' criticisms seem to have little merit. Overall, a more cooperative method that is not presumed on guilt, that is focused on more objectively gathering information, and that rejects deceptive tactics—such as the PEACE method—can and must be used when the suspect is a juvenile.

Conclusion

The Reid Technique's guilt-presumptive and coercive approach runs counter to many key tenets of the U.S. criminal justice system. For one, "[t]he tactics used by police to steamroll a child into confessing to a crime can offend our most basic notions of fairness and justice, not to mention the presumption of innocence that our criminal justice system is supposed to provide."[208] Juveniles are particularly susceptible to the inherent pressures that permeate U.S. interrogations. The Supreme Court's Eighth Amendment jurisprudence, the academic literature, and social science research confirm the proposition that children must be treated differently in various criminal contexts. Given children's unique susceptibilities, the Reid Technique is an unconstitutional form of questioning a juvenile suspect, and the Supreme Court should now hold an interrogation technique founded on presumptive guilt and based on deception to be unconstitutional. Only a categorical constitutional rule that prohibits the use of the Reid Technique in all juvenile interrogations will eliminate the heightened risk of juvenile false confessions and truly safeguard children's Fifth Amendment rights.

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205 LaMontagne, *supra* note 48, at 48 & n.189 (emphasis added) (citing such studies).

206 *See* LaMontagne, *supra* note 48, at 54 ("Since implementing these non-adversarial practices, England has not seen a significant drop in the frequency of confessions. Research has also supported the claim that less confrontational interviewing techniques can lower the rate of false confessions without affecting the rate of true confessions."); *see also* Kassin et al., *supra* note 12, at 27 (emphasis added) (noting that research has "found that the use of psychologically manipulative tactics had significantly declined—*without a corresponding drop in the frequency of confessions*"); Moore & Fitzsimmons, *supra* note 14, at 541 (reporting that PEACE is "as effective as current coercive interrogation practices in eliciting confessions from criminals, but reduced the incidence of false confessions since it does not subject innocent suspects to psychological coercion").

207 *See* Kassin et al., *supra* note 12, at 27–28.

208 Crane et al., *supra* note 9, at 11.