The Truth About Juvenile False Confessions

by Megan Crane, Laura Nirider, Steven A. Drizin

Let's start with a thought experiment. Picture yourself as a thirteen-year-old boy, sitting in your middle school in the midst of class. Without warning, your principal enters your classroom, tells you to come with him, and brings you to a small room in the school's front office. There, three police officers—each wearing a holstered gun—are waiting for you. One officer leaves the room and closes the door behind him, but the detective, the sergeant, and the principal remain in the room with you. They sit you down. They surround you.

The detective reads you the *Miranda* rights and immediately proceeds to accuse you of inappropriately touching your neighbor's three-year-old sister. She does not ask if you did this. Instead, she says that she knows you did this; she has no doubt of your guilt because the evidence proves it; and now you just need to *help yourself* by telling her the truth. (In reality, this detective has no evidence; she has not conducted any investigation and has no reliable reason to presume your guilt.)

Shocked, you respond by stammering out the truth: you did not inappropriately touch that little girl. In fact, you say this over ten times. The detective refuses to listen and tells you that if you take a lie detector test, it will "come back deceptive because you're lying." Her accusations become increasingly specific and more detailed, providing you with her exact theory about how the alleged crime occurred.

When you start crying, she tells you that the only way you can help yourself is to confess. She offers that you probably touched the little girl for reasons that are completely "understandable"—maybe you were just "curious"—but if not, then

you must have done it for a less understandable reason: touching her "excited" you. If you were just curious, she says, you should say so now in order to "get this over with so we can get you the help you need." She emphasizes that you "need help" and "the best thing for you right now is to be honest." She makes clear that if you don't confess, on the other hand, it will look as though you targeted the little girl out of a more sinister desire for sexual gratification.

Ultimately, you break. You agree that maybe you did touch her for three or four seconds out of curiosity—not for excitement. Your so-called confession includes only facts that the detective provided, and none that you offered yourself. You admit guilt because you are scared and just want to go home.

But you don't go home. You are handcuffed and taken to the police station. Your case goes to court. Luckily, you have an attorney who is willing to do some work for your case. He files a motion to suppress your confession, arguing that you were coerced by police. But the judge doesn't see it that way. He concludes that you confessed voluntarily because the detective's voice and manner were "gentle" and "calm," her questions were "short," and—incredibly—because the detective was a female. You lose your case and are declared a juvenile delinquent and ward of the state.

This is not a story. This is a reality. This boy is real. He lives in California. We'll call him John, age 13. John was labeled a juvenile delinquent, a ward of the state, and a sexual deviant. John lost over two years of his life to a humiliating and terrifying legal battle before the case against him was finally thrown out by the California Court of Appeals—all because a police interrogation at school forced him to falsely confess to a crime he did not commit.

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This story may shock you—and it should. The 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. But, while shocking, the sad truth is that this story is all too common.

Most readers are probably familiar with the tragic case of Brendan Dassey, featured in the Netflix series *Making a Murderer*. Brendan was sixteen years old and intellectually limited when he falsely confessed during police interrogation to helping his uncle assault and kill a young woman. The tactics used against him essentially mirrored those depicted above. Like John, Brendan was pulled out of class to be interrogated. Like John, Brendan was relentlessly accused of lying, when in fact it was the police who falsely claimed that they had evidence proving that he committed a

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The Juvenile Brain

The prefrontal cortex of the brain, *shaded in gray*, controls judgment, problem-solving, and decision-making. It also helps to regulate impulsive behavior. This area of the human brain is not fully developed until one's early twenties. Scientists link this developmental timeline to vulnerabilities of juveniles in school and police interrogations, including their propensity to confess to criminal activities they may not have actually committed. It is estimated that false confessions play a role in one-third of all wrongful convictions that have been uncovered by DNA evidence, and juveniles are two to three times more likely to confess to crimes they did not commit than their adult counterparts.

Image source: Database Center for Life Science, Japan.

Brendan Dassey was 16 when he was questioned by police in school and confessed to helping his uncle assault and kill a young woman. His case was profiled in the popular 2015 television series "Making a Murderer." Photo: AP Photo/ Dan Powers, Pool.

crime. Like John, the police fed him the facts about the crime that later made his confession look reliable and corroborated. Like John, the police indicated that confessing would help Brendan. And, like John, Brendan—who, after confessing to murder, asked if he would get back to school in time for a school project—did not understand the serious and long-term consequences of his statements.

Brendan and John are not alone. According to the Innocence Project, false confessions played a role in nearly 30% of all wrongful convictions that have been uncovered by DNA evidence. According to the National Registry of Exonerations, which compiles data on wrongful convictions, 221 exonerations since 1989 involved proven false confessions, and we know this number is under representative because it does not account for confessions not yet proven false nor confessions that did not result in a conviction. And studies of wrongful convictions show that children and adolescents, in particular, falsely confess with startling frequency; indeed, children are two to three times more likely to falsely confess during interrogation than adults. In a study of 125 proven false confessions, 63% of false confessors were under the age of twenty-five and 32% were under eighteen, a strikingly disproportionate result. Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults. And a laboratory study astonishingly found that a *majority* of youthful participants complied with a request to sign a false confession without uttering a single word of protest.

Why do false confessions happen so often to children? The answer lies in an all-too-toxic combination: the common use of psychological interrogation techniques like those illustrated above—designed for seasoned adult criminals—that exploit the developmental vulnerabilities of kids. As any teacher will recognize, youths' brains are not yet fully developed in areas relating to judgment and decision-making, giving rise to classic "teenager" traits like impulsivity, vulnerability to pressure and suggestibility, as well as a tendency to be motivated by short-term rewards. Inside the interrogation room, these traits can make kids respond to the pressures of interrogation by deciding that a confession is the only way out of a difficult situation—regardless of its truth.

The Pressure Cooker of Psychological Interrogation

Most police officers have been trained to conduct interrogations using the Reid Technique, a set of psychological tactics similar to those used on John. The Reid Technique was developed and marketed by John E. Reid & Associates for one purpose—to extract confessions—and for that reason, Reid itself cautions that its technique should only be used when the police are confident the suspect is responsible for the crime being investigated. At its core, the technique is a guilt-presumptive, accusatory, manipulative process—and it packs a powerful psychological punch.

Here's how the Reid Technique trains officers to obtain confessions.

Phase 1: Behavioral Analysis, A.K.A. the "Human Lie Detector"

- Engage in nonconfrontational open-ended period of questioning in which the officer is trained to believe he or she can operate as a "human lie detector" by observing and interpreting verbal and behavioral cues.
- Observe a suspect's behaviors as he or she answers questions.

According to Reid, certain behaviors—slouching, lack of eye contact, crossing one's arms, even scratching one's nose—may indicate that the person being questioned is lying. Similarly, the method teaches that certain verbal responses can indicate deception, including "I don't know" and "I can't recall."

If you find these claims unconvincing, you are not alone. Time and again, studies have debunked these claims: there is no unique behavior that can reveal deception. In fact, many of the behaviors identified by Reid as "deceptive" are normal adolescent behaviors, especially when a teen is being questioned by adults or other authority figures—like slouching and looking down at the floor. Officers' mistaken belief that a suspect is lying and thus must be guilty is the first step down the road to wrongful conviction.

Phase 2: Interrogation

- Isolate: Isolate suspect in a small room to increase anxiety. (Although this is often done even before the behavioral analysis interview described above.)
- Confrontation: Reenter the room and immediately accuse the suspect of the crime. Exude unwavering confidence in guilt. Be persistent. Repeatedly and relentlessly accuse.
- Denials: Reject all denials and cut off all claims of innocence.
- Make suspect feel as though he has been "caught": The officer may use props like a thick file of papers that he claims includes the evidence proving the suspect's guilt. He may even lie to a suspect, telling the suspect he has evidence—e.g., a fingerprint, a video, or an eyewitness—connecting the suspect to a crime when no such evidence exists.
- Minimizations or rationalization: The officer offers a moral or legal justification which will make it more tolerable for the suspect to admit guilt, like the detective's suggestion that John was just "curious."
- False choice between lesser of two evils: Officers ask the suspect a question that forces the suspect to choose between two bad choices, one that makes the suspect look like a monster and one that portrays the crime and the offender in a less heinous light. In John's case, his interrogator essentially gave him a choice between being treated like a curious teenager versus a sexual predator, and implied that he would be treated more leniently if he said he touched the girl out of mere curiosity.
- Promises of help: Officers suggest that the only way the suspect can help himself is to confess. For John, the detective told him she would get the help he needs. In Brendan's case, his interrogators told him that confessing will "set him free" and that everything would be "okay" if he confessed.
- Promises of leniency: Interrogators often suggest that the suspect will get help as opposed to punishment, and imply that he or she will be allowed to go home or back to class—so long as the suspect confesses to the more "justified" version of the crime.

By deploying these tactics at the right psychological pressure points, experienced interrogators can be extraordinarily effective in causing a suspect to produce self-incriminating information. Sadly, far too often, that information can be false.

Phase 3: Confession

- Elicit detailed narrative of the criminal act
- Record confession in writing or on video

A guilty suspect should be able to provide details of the crime that have not been revealed to the public and should also be able to lead police to information or evidence that was previously unknown to the police. The innocent suspect, however, does not possess this "inside knowledge" of the crime. Recorded interrogations prove that interrogators regularly provide suspects this information during the interrogation, intentionally or not. Such "contamination" usually occurs when interrogators ask leading questions that include information about the crime, such as "you committed this offense with Joe, right?" or "you paid $20 for the marijuana, didn't you?" For the innocent suspect, this kind of information disclosure allows him or her to incorporate accurate details about the crime into his or her confession. The result is a false confession which sounds disturbingly—and convincingly—true.

Today, many experts agree that the Reid Technique is psychologically coercive and can lead to false confessions, even when used on adults. Even the U.S. Supreme Court understands this—indeed, they recognized this reality back in 1966. In the landmark 1966 decision *Miranda v. Arizona*, the Court cited the Reid Technique to conclude that the "heavy toll" of custodial interrogation may result in false confessions. More recently, the Court went even further in 2009, in *Corley v. United States*, stating that "there is mounting empirical evidence that these pressures [of psychological interrogation generally, not specific to Reid Technique] can induce a *frighteningly high percentage of people* to confess to crimes they never committed."

Kids: Interrogate with Special Care

Given the widespread recognition that the Reid Technique is psychologically coercive, there is now a general consensus that special care must be used on kids and teenagers in the interrogation room. Indeed, in 2011's *J.D.B. v. North Carolina*, the Supreme Court held that

Juveniles, *Miranda* Rights, and Confessions Before the Supreme Court

Haley v. Ohio (1948)

Following the midnight arrest and five-hour interrogation of a 15-year-old boy by a team of detectives, the U.S. Supreme Court threw out the boy's confession and reversed his conviction, concluding that teens like Haley are no match for adult interrogators: "Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest." The Court noted the importance of ensuring that a young person has access to adult counsel: "[A teenager] needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him."

Gallegos v. Colorado (1962)

The U.S. Supreme Court threw out the confession of a 14-year-old boy when it was obtained through an on-and-off interrogation lasting five days, even though the interrogation itself was not particularly heavy-handed. In so concluding, the Court found that a teen "is unlikely to have any conception of what will confront him [during an interrogation] . . . or how to get the benefits of his constitutional rights." The Court again suggested that only "adult advice" could give the boy "the protection which his own immaturity could not."

In re Gault (1967)

This landmark case provided juveniles with many of the same due process protections already afforded to adults. In concluding that the Fifth Amendment right against self-incrimination must apply to juveniles, the U.S. Supreme Court explained that "authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children."

J.D.B. v. North Carolina (2011)

Recognizing that a young person may feel bound to submit to questioning when an adult would not, the U.S. Supreme Court held that officers must consider an individual's age when determining whether he or she is in custody and, in turn, whether *Miranda* rights must be read.

the "*risk [of false confessions] is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.*" Advances in neuroscience support this statement by explaining what "every parent knows" that teenagers are fundamentally different from adults in ways that are critically important to their treatment in the criminal justice system.

The brain's prefrontal cortex is responsible for judgment, problem-solving, and decision-making, and it regulates impulsive behavior by applying brakes to other parts of the brain that are activated by fear and stress. The prefrontal cortex, however, does not develop fully until one's early twenties, making children and teenagers uniquely vulnerable in the interrogation room for many reasons. Caught at this awkward middle stage of neurological development, children and teenagers are particularly vulnerable to external influence, such as that exerted by the interrogator; they experience a heightened reaction to stress, which is inherent to any interrogation for all suspects; they tend to focus on immediate rewards rather than long-term consequences, such as the idea that a kid can go home if he confesses; and they struggle to assess risks, a skill required to weigh the potential consequences of confessing to a serious crime. Add to all this kids' "limited understanding of the criminal justice system and the roles of the institutional actors within it," *J.D.B.*, and it is no longer puzzling why kids falsely confess at an alarming rate.

Even John E. Reid & Associates and other law enforcement organizations now recognize that kids need special protections in the interrogation room. In partnership with the Center on Wrongful Convictions of Youth, the International Association of Chiefs of Police (IACP) published a groundbreaking guide in 2012 concerning how to interrogate juvenile suspects. In *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, the IACP emphasizes that "[o]ver the past decade, numerous studies have demonstrated that juveniles are particularly likely to give false information—and even falsely confess—when questioned by law enforcement." Similarly, Reid explains on its website that "[i]t is well accepted that juvenile suspects are more susceptible to falsely confess than adults," and warns that "every interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile."

The Reality of False Confessions Today

There has been progress: We now know how easily these psychologically coercive techniques can overbear the will of a child. Yet current cases and research indicate that most officers still employ these tactics when questioning juvenile suspects. In a 2014 survey of law enforcement, almost all officers reported frequently using the same interrogation techniques on minors as on adults.

Even worse, in spite of its recognition that "extreme caution and care" are required with juvenile suspects, Reid & Associates appears to be expanding the

use of its technique on kids. In addition to training police interrogators, the company is now marketing its technique to school administrators across the country for use on children at school. (So far, this training has occurred in at least twelve states.) The tactics taught to school administrators are virtually identical to those taught to police and fail to account for kids' vulnerabilities. This is particularly troubling because kids questioned at school have fewer rights than kids questioned by police; principals are usually not required to read a student their *Miranda* rights, for instance, and kids may have more difficulty walking out of a schoolhouse interrogation than a stationhouse interrogation because, as the *J.D.B.* Court recognized, "presence at school is compulsory" and "disobedience at school is cause for disciplinary action." Bottom line: using sophisticated and psychologically potent techniques like the Reid Technique on students is, "throwing caution to the wind." Plainly speaking, it is a recipe for disaster.

Aftermath of a False Confession

In the wake of *Making a Murderer*, we've heard many people wonder why Brendan is still in prison when his confession was so clearly coerced and false. It's true—and tragic—that Brendan's case is still unresolved. Each level of the Wisconsin state court system rejected his argument that his confession was involuntary and coerced by police, and his case is now before the federal courts. He remains in adult prison, sentenced to spend his life behind bars.

But this, too, is sadly not unique. Confessions are incredibly powerful evidence. A full 81% of proven false confessors whose case went to trial were convicted—and that figure does not account for those false confessors who pled guilty before trial. (Of the first 125 DNA exonerees who falsely confessed, 11% pled guilty.) People, including judges and juries, are very reluctant to believe that a confession might be false—and the result, too often, can be a wrongful conviction.

Confessions can also contaminate other evidence in a case. A confession can cause police to view other evidence with bias that assumes the confessor's guilt, encourage detectives to ignore exculpatory evidence and alternative suspects, and to end an investigation as soon as they have a confession. Confessions also often impact a defense lawyer's performance because he or she may assume the client's guilt and, in turn, may forego investigating the client's innocence and rush to cut a deal for the client with the prosecutor. While laws in several states now require interrogations to be recorded, such laws by themselves are often not enough to persuade a jury that a confession was coerced unless an expert takes the stand to parse each tactic and explain its effect on the suspect. Troublingly, many courts do not permit such experts to testify.

We are now in a new post-*Making a Murderer* era. The show masterfully presents Brendan's interrogation in a way that makes the falseness of his resulting statement clear; indeed, the show has made the idea of a false confession accessible to a wide-ranging audience for the first time. With any luck, judges will recognize that tactics which may be legitimate when used on adults may be coercive when applied to children and suppress confessions that result from such tactics. With any luck, jurors' and judges' perceptions of confessions may change in the future. They will stop placing blind faith in the reliability of confessions and demand greater corroboration of confessions.

Even further, teachers and parents can also change how this story plays out for their children and students. Teachers should fight the use of the Reid Technique in their schools, and parents should demand that they be notified *before* a principal plans to interrogate their child. Information is power, and *Making a Murderer* has made the public a lot more informed about how interrogation tactics can increase the risk of juvenile false confessions. In short, the tide may be turning. For children like Brendan, John, and so many others: Here's hoping. **IN**

Discussion Questions

1. Do you think it is appropriate for school administrators to adopt police interrogation techniques when questioning students? Why?
2. Do you think that *Miranda* rights should apply when speaking with police on school grounds? When speaking with school officials? Why?
3. Why do you think that confessions, even if false, are so persuasive to juries, and accepted in courts?
4. How might schools, police, and communities ensure that no juvenile falsely confesses to a crime? What practices and safeguards might be put in place?

Suggested Resources

- Center on Wrongful Convictions of Youth, Bluhm Legal Clinic at Northwestern University Pritzker School of Law http://www.law.northwestern.edu/legalclinic/wrongfulconvictionsyouth/
- International Association of Chiefs of Police, *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, 2012. Available: http://www.theiacp.org/Portals/0/pdfs/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf
- *Making a Murder*, Directors Moira Demos and Laura Ricciardi, Synthesis Films & Netflix, 2015.

Preserving Scalia's Legacy:
His Best Tips from
Making Your Case: The Art of Persuading Judges

Top 20 Tips from Scalia and Garner:

1. Know your audience.
2. Know your case.
3. Yield indefensible terrain - ostentatiously.
4. Communicate clearly and concisely.
5. Assume a posture of respectful intellectual equality with the bench.
6. Restrain your emotions. And don't accuse.
7. Control the semantic playing field.
8. Strengthen your command of written English.
9. Consult the applicable rules of court.
10. Spend plenty of time simply "getting" your arguments.
11. Sit down and write. Then revise. Then revise again. Finally, revise.
12. Value clarity above all other elements of style.
13. Use paragraphs intelligently; signpost your arguments.
14. Make it interesting.
15. Banish jargon, hackneyed expressions, and needless Latin.
16. Consider using contractions occasionally - or not.
17. Don't overuse italics; don't use bold type except in headings; don't use underlining at all.
18. Describe and cite authorities with scrupulous accuracy.
19. Cite authorities sparingly.
20. Quote authorities more sparingly still.

Source: Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (2008).

Introductory Signals

Normal citation	Case (1) directly states the proposition; (2) identifies the source of a quotation; or (3) identifies an authority referred to in the text.
E.g.	Cited authority states the proposition; other authorities also state the proposition, but citation to them would not be helpful or is not necessary. "*E.g.*" may also be used in combination with other signals, preceded by a comma: *"See, e.g.,"* or *"But see, e.g.,"*.
See	Cited authority clearly supports the proposition. "*See*" is used instead of normal citation when the proposition is not directly stated by the cited authority but obviously follows from it; there is an inferential step between the case cited and the proposition it supports.
See also	Cited authority constitutes additional source material that supports the proposition. "*See also*" is commonly used to cite an authority supporting a proposition when authorities that state or directly support the proposition already have been cited or discussed. The use of a parenthetical explanation of the source material's relevance following a citation introduced by "*see also*" is encouraged.
Accord	"*Accord*" is commonly used when two or more cases state or clearly support the proposition but your text quotes or refers to only one; the others are then introduced by "*accord*."
See generally	Cited authority presents helpful background material related to the proposition.
Cf.	Cited authority supports a proposition different from the main proposition but sufficiently analogous to lend support. Literally, *"cf."* means "compare." The citation's relevance will usually be clear to the reader only if it is explained. Parenthetical explanations, however brief, are therefore strongly encouraged.
But cf.	Cited authority supports a proposition analogous to the contrary of the main proposition.
But see	Cited authority clearly supports a proposition contrary to the main proposition. "*But see*" is used where "*see*" would be used for support.
Contra	Cited authority directly states the contrary of the proposition.

Source: Bluebook, Rule 1.2