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Kathryn C. Donoghue

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“YOU THINK HE GOT SHOT? DID YOU MAYBE SHOOT HIM BY ACCIDENT?”: LINGUISTIC MANIPULATION OF THE COMMUNICATIVELY IMMATURE DURING POLICE INTERROGATIONS

*Kathryn C. Donoghue**

I. INTRODUCTION

An eight-year-old boy, only a child in the third grade, walked home from school to discover two men slain, lying in pools of blood, at the boy's small house in Arizona.¹ At the police station, two detectives escorted him to an interrogation room.² Without a lawyer or guardian present, the officers questioned him.³

- 1 Officer I need you to be real truthful with me [...]
2 You gotta be honest [...]
3 Where was Jim
4 Child: Laying on the ground
5 Officer: How did Jim get on the ground
6 Child: I think he got shot
7 Officer: You think he got shot?
8 Did you maybe shoot him by accident?
9 Child: NO
 f
10 Officer: Do you think that might be possible?
11 that you would—you know that something happened and maybe it
→ 12 was an acc:ident?
 acc
13 Child: [5 second pause] Why would I shoot Jim? Why would I shoot Jim?
 p
14 Officer: I-I-I don't know. I'm just trying to think maybe you were playing
with
15 a gun and it just went off accidentally or somethin'.

* J.D. Candidate, 2010, University of Richmond School of Law; B.A., 2007, University of Mary Washington, *summa cum laude*. Thank you to Dr. Christina Kakavá, my teacher and mentor, for your guidance and support.

1. *Boy, 8, Gives Taped Account in Shooting Deaths*, CNN.COM, Nov. 18, 2008, <http://edition.cnn.com/2008/CRIME/11/18/arizona.boy.murder/index.html> (last visited Jan. 5, 2010).

2. *See id.*

3. *Id.*

- acc*
- 16 Child: [3 second pause] No. [...]
- p*
- 17 Officer: I'm having a little bit of a problem here okay?
18 I think you need to start telling us the truth? [...]
19 Okay sweetie we nee:d to know the truth
dec
- 20 It's IMPO:RTANT
21 We have to know [...]
22 But if you're not honest with me, if you're not truthful
23 then it's not going to look good?
24 Okay?
25 So it's real important you tell us what happened yesterday
26 I think you know a little more than you're telling us.
acc
- 27 Child: I don't know if the gun went off by accident?
28 but it might've but I don't know
acc
- 29 Officer: Oka:y. Um again /?/
30 Child: I think so maybe but I don't-I don't?
31 think?
32 I don't know?
33 Officer: So you think you might have shot at him accidentally and it
might've.
- p*
- 34 Child: 'Cause I already saw bleeding
35 and um I—I kind of saw him shaking
36 and I think—I think I was holding the gun?
37 and I don't—I think it might've? gone off or I don't know⁴
acc

4 Transcript of Videotape, *Boy, 8, Charged with Murder* (CNN television broadcast Nov. 18, 2008) (on file with author). The videotaped interrogation has been transcribed linguistically according to transcription conventions prescribed by Deborah Tannen. DEBORAH TANNEN, CONVERSATIONAL STYLE: ANALYZING TALK AMONG FRIENDS xix (2005). The transcription key is listed below:

- A. underline marks emphatic stress
- B. CAPS marks very emphatic stress
- C. . marks sentence-final falling intonation
- D. ? mark yes / no question rising intonation
- E. : indicates lengthened vowel sound (extra colons indicate greater lengthening)
- F. *p* piano (spoken softly)
- G. *f* forte (spoken loudly)
- H. *acc* spoken quickly
- I. *dec* spoken slowly
- J. → at right of line indicates sentence continues without break in rhythm (look for next line)
- K. /?/ indicates transcription impossible
- L. [...] indicates omitted spoken exchange

Id.

Wrongful convictions fracture the foundation of the legal system, compromising the legitimacy of criminal justice and shrouding law enforcement practices in veils of secrecy. Because jurors regard confessions as evidence strongly indicative of guilt, false confessions are a valid concern.⁵ When the justice system legitimizes false confessions, innocent persons are subjected to the rigors of trial, conviction, prison, and condemnation. Recent exonerations credit exculpatory DNA evidence,⁶ but ignore the fact that language itself can be manipulated to distort the truth.

Linguistics, or the scientific study of language, shares an inextricable link with the law.⁷ Indeed, research on language and the law principally acknowledges the adversarial dynamic ingrained in legal discourse.⁸ An examination of these verbal interactions exposes a pattern of language manipulation, or the use of linguistic features to exploit less powerful participants and to negotiate meaning.⁹ Thus, linguistic manipulation lurks behind the closed doors of police interrogations because law enforcement officers recognize language as a valuable tool.¹⁰ Police trained in the intricate art of interrogation learn how to exploit their sophisticated language proficiency against less skilled criminal suspects.¹¹

It is undeniable that "punishment of the innocent makes a mockery of the law."¹² Police who linguistically coerce false confessions from communicatively immature suspects mock the criminal justice system by evading accountability and convicting the vulnerable.¹³ This paper documents how common linguistic strategies directed at certain vulnerable groups have the potential to elicit false confessions. Part II reviews linguistic strategies routinely employed by trained interrogators. Part III then explores how mentally challenged and juvenile suspects,

5. Jacqueline McMurtrie, *The Role of the Social Sciences in Preventing Wrongful Convictions*, 42 AM. CRIM. L. REV. 1271, 1280 (2005).

6. *Id.* at 1271 & n.2 (citing Samuel R. Gross et al., *Exonerations in the United States: 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 523–24 (2005)).

7. ROGER W. SHUY, *LINGUISTICS IN THE COURTROOM: A PRACTICAL GUIDE* 93 (2006).

8. JOHN GIBBONS, *FORENSIC LINGUISTICS: AN INTRODUCTION TO LANGUAGE IN THE JUSTICE SYSTEM* 75 (2003). The justice system, Gibbons reasons, is society's most direct and powerful institution. *Id.* Society give the authority to apply the law to police, prosecutors, and judges. *Id.* That authority necessarily forms an unequal distribution of power between law enforcement and society. *Id.* Language behavior is thus "[a]n important manifestation of power relations . . ." *Id.* This paper focuses on how power and authority are utilized linguistically in the context of police interrogations.

9. *Id.* at 74–75.

10. *Id.* at 75.

11. See John Carroll, *Lawyer's Response to Language and Disadvantage Before the Law*, in *LANGUAGE AND THE LAW* 306, 308–09 (John Gibbons ed., 1994).

12. SCOTT CHRISTIANSON, *INNOCENT: INSIDE WRONGFUL CONVICTION CASES* 9 (2004).

13. See *infra* Parts II, III, V.

otherwise known as communicatively immature groups, are more susceptible to deceptive linguistic strategies. Part IV discusses how interrogators learn to extract confessions, while Part V considers whether mandatory video recording can prevent police from committing these language crimes. Turning to the confession from that eight-year-old boy,¹⁴ Part VI transcribes the confession using linguistic conventions to showcase the purposeful language manipulation targeted at this child in order to quite possibly secure a false confession.

II. LINGUISTIC STRATEGIES EMPLOYED DURING POLICE INTERROGATIONS

Eliciting information and confirming a version of events envisioned by the questioner are two objectives of questioning.¹⁵ Within police interrogations, officers focus more attention on securing the second goal.¹⁶ This narrow focus compels officers to utilize coercive questioning techniques so they can secure a confession and an eventual conviction.¹⁷ Appropriately, there is a critical distinction between questioning and interrogation. While questioning embodies a genuine search for the truth, better suited for satisfying the first objective, interrogation challenges, cross-examines, and traps suspects into admissions.¹⁸ These coercive questioning techniques are the product of subtle, but powerful, linguistic strategies, and when “vulnerable and persuadable witnesses are involved, [it] has led to a number of proven miscarriages of justice.”¹⁹ When trained interrogators abuse their linguistic proficiency, they commit a language crime, or a crime accomplished through language alone.²⁰ Disturbingly, these language crimes are the product of conscious and deliberate choice.²¹

14. *See supra* notes 1–4 and accompanying text.

15. GIBBONS, *supra* note 8, at 95.

16. *See id.* at 96.

17. *Id.* On the contrary, eliciting information, the first objective, would not respond particularly well to coercive questioning. *Id.* Instead, interviewers would favor open-ended questions which enable suspects to communicate their version of the events without the risk of outside influences. *Id.*

18. ROGER W. SHUY, THE LANGUAGE OF CONFESSION, INTERROGATION, AND DECEPTION 12–13 (1998) [hereinafter CONFESSION, INTERROGATION, AND DECEPTION]. Interviewers, on the other hand, merely probe, inquire, suggest, and uncover. *Id.*

19. GIBBONS, *supra* note 8, at 95. Interrogators’ single-minded determination to obtain confessions has been linked to this unfortunate truth. *Id.*

20. ROGER W. SHUY, CREATING LANGUAGE CRIMES: HOW LAW ENFORCEMENT USES (AND MISUSES) LANGUAGE 6–7 (2005) [hereinafter CREATING LANGUAGE CRIMES].

21. *See id.* at 11–12.

A. Power and Interaction

The exercise and abuse of legal power shares a close relationship with inequality.²² The unequal power dynamic between officers and suspects naturally influences police interrogations.²³ Police officers occupy institutional roles, and as such, their status surpasses that of individuals subject to interrogation; within that role, interrogators enjoy a power advantage over suspects.²⁴ Because police can more easily tap into the law's power, interrogators deliberately use that power to subordinate suspects.²⁵ Status bequeaths power, and in conversations, power bestows conversational rights.²⁶ Interactional power thus translates to an ability to engage in persuasive communication techniques.²⁷ Officers can control and maneuver topics while they collect information that will lead to logical conclusions, such as guilty confessions.²⁸ By molding and shaping language, interrogators weave elicited information to satisfy the requirements of a prosecution.²⁹ Simply put, "interrogators make ample use of their power. They challenge, warn, accuse, deny, and complain. They are more direct. They demand and they dominate."³⁰

Police extract these confessions through intricate question-answer sequences.³¹ During these exchanges, police exploit their status differential and control the organization and chronology of the suspect's narrative.³² The implications of such fragmented narratives place suspects at a further disadvantage.³³ When presented to a jury at trial, these accounts reflect poorly upon the suspect's credibility and reliability.³⁴ Accordingly, the "power asymmetries do not only affect the right to ask questions, and the obligation to answer them.... Power asymmetries can also affect the *content* of the less powerful person's

22. JOHN M. CONLEY & WILLIAM M. O'BARR, *JUST WORDS: LAW, LANGUAGE, AND POWER* 8, 14 (2d ed. 2005).

23. *See* CONFESSION, INTERROGATION, AND DECEPTION, *supra* note 18.

24. *CREATING LANGUAGE CRIMES*, *supra* note 20, at 5.

25. *See* CONLEY & O'BARR, *supra* note 22, at 3, 8.

26. *See* *CREATING LANGUAGE CRIMES*, *supra* note 20, at 31.

27. *Id.* at 31–32.

28. *See id.* at 32.

29. *Id.* at 5.

30. CONFESSION, INTERROGATION, AND DECEPTION, *supra* note 18, at 13.

31. GIBBONS, *supra* note 8, at 97.

32. *See id.*

33. *Id.* at 91.

34. *Id.* at 90–93 (discussing how fragmented narratives elicited at trial negatively imply the witness' lack of control with lack of competence and power).

answers.”³⁵ Police accomplish this through an arsenal of linguistic strategies reflecting their powerful status.

B. Indicators of Powerful Speech and Less Powerful Speech

Indicators of powerful speech and less powerful speech are interwoven within speech forms. For instance, the following attributes signal powerful speech: (1) loudness; (2) varied intonation or a larger pitch range; (3) repetition; (4) silent pauses instead of filled pauses (i.e. “um” or “er”); (5) absence of expressions of agreement; (6) fluency; (7) interrupting; and (8) coherence.³⁶ In contrast, the following linguistic features denote less powerful speech: (1) hedges (i.e. “sort of” or “you know”); (2) hesitation (i.e. “um” or “let’s see”); (3) uncertainty often manifested by asking many questions; (4) use of “sir” or “ma’am”; (5) mitigation (i.e. “sorry to trouble you”); (6) use of intensifiers (i.e. “very” and “definitely”); and (7) drawn out time between speech.³⁷ Powerful speech attributes also imply interactional power “because powerful speakers are more likely to be able to dominate discourse, and because less powerful speakers may be less convincing as witnesses.”³⁸

Police possess a predictable, but nevertheless disquieting, power to silence suspects through interruptions.³⁹ These interjections indicate that police control turn-taking, or the back-and-forth turns between speech participants.⁴⁰ As the more powerful participants, police officers dictate who may speak, when a person may speak, and topics that may be discussed.⁴¹ Significantly, “[t]he more information there is in the question, the less control the answerer has over the information, or the loading in the language used to describe it.”⁴² Suspects, once again at a disadvantage, must then endure lines of questioning, which are more than likely counter to their wishes, for as long as law enforcement officers pursue that topic.⁴³

35. *Id.* at 98 (emphasis added).

36. *Id.* at 88.

37. *Id.*

38. *Id.*

39. *Cf. id.* at 125 (discussing how lawyers use interruptions during cross-examination in order to prevent a witness from “finish[ing] what s/he is saying, particularly if it contradicts some element of the ‘story’ that counsel is trying to construct”). In principle, interruptions during courtroom examinations should only happen when answers are irrelevant. *Id.*

40. *See id.* at 93–95 (commenting how turn taking conventions reflect a hierarchical social structure).

41. *See id.* at 97–98.

42. *Id.* at 98.

43. *See id.*

Hence, the idea that police interrogators will take advantage of such institutional authority and manipulate it to suit their purposes is easy to imagine.⁴⁴ In effect, police may systematically construct a version of the events and then block the suspect from denying that version.⁴⁵ Even though a suspect may try to dodge insinuations and deny allegations, the interrogator can aggressively and persistently pursue those topics by repeating and rephrasing the questions.⁴⁶ A suspect may attempt to evade, but eventually he will likely yield to the officer's linguistic arsenal.⁴⁷ As a result, "[b]y controlling question form, the [interrogator] is thus able to transform the [questioning] from dialogue into self-serving monologue."⁴⁸

Thus, interrogators routinely shape language to form the illusion of a crime.⁴⁹ By overlapping the suspect's speech and blocking the suspect's statements, interrogators effectively answer *for* the suspect.⁵⁰ Ambiguous questions, which imply more than one correct response, also frequently hinder a suspect's effective communication.⁵¹ In the "Hit-and-Run" strategy, interrogators actually intermingle incriminating facts into their own questions without giving the witness time to respond or deny before changing the subject.⁵² The use of such subtle and deceptive tactics risk that a suspect's knowledge of the criminal act will over time come to encompass these facts as well.⁵³ Alarming, officers may even inaccurately restate what a suspect says during the interrogation,⁵⁴ because the intentional and patterned use of these strategies forms the illusion of a crime committed by the accused.⁵⁵

44. Cf. CONLEY & O'BARR, *supra* note 22, at 26–27 (discussing how lawyers can control when a witness' turn begins by ending a question, thereby using silence to challenge a witness' credibility, and how lawyers can frame a witness' evasive answer in a follow-up question to crumble the witness' resistance).

45. GIBBONS, *supra* note 8, at 97 (stating that in order to persuade suspects into confirming law enforcement's version of events, police may prevent suspects from denying their version).

46. Cf. CONLEY & O'BARR, *supra* note 22, at 26 (discussing how lawyers may rephrase, repeat, or elaborate on questions a witness has evaded answering).

47. Cf. *id.* (describing how witnesses eventually yield to a lawyer's questioning).

48. *Id.* While the authors frame this statement in the context of adversarial cross-examination, police interrogation has been offered as a close linguistic parallel. See *infra* note 57 and accompanying text.

49. See CREATING LANGUAGE CRIMES, *supra* note 20, at 4–5.

50. *Id.* at 16–17.

51. *Id.* at 15.

52. *Id.* at 21–22.

53. *Id.* at 22.

54. See, e.g., *id.* at 26–27.

55. *Id.* at 29.

C. Question-Answer Sequences

Question-answer sequences comprise the basic interaction between suspects and police interrogators, but more significantly, these sequences construct, contribute, and shape the linguistic manipulation of suspect testimony.⁵⁶ The question-answer sequences in police interrogations are comparable to cross-examinations in the courtroom.⁵⁷ In both, suspects or witnesses must answer questions posed by the more powerful participants, the interrogators or lawyers.⁵⁸ These rules unnaturally favor the institutional authorities, thereby linguistically empowering interrogators and lawyers over witnesses and suspects.⁵⁹

Five linguistic features, in particular, permit such pervasive control over admissions.⁶⁰ First, police, as the more powerful participants, can deem whether silences are appropriate or inappropriate.⁶¹ This enables the interrogator “to evade the[] normal rules of give and take”⁶² and potentially deprive suspects of “any practical countervailing resource.”⁶³ Second, through question form, interrogators can limit a witness’ responses to advance their own carefully-constructed version of events.⁶⁴ Third, topic management can enable the police to rephrase, pursue, and emphasize certain issues.⁶⁵ Fourth, questions can also contain embedded assessments of the witness, otherwise known as evaluative commentaries.⁶⁶ Here, interrogators can structure a question to serve as an evaluative commentary while simultaneously requiring the suspect to confirm that evaluation in his response.⁶⁷ Finally, officers can challenge the witness’ capacity for knowledge to dispute the witness’ accuracy and credibility.⁶⁸

Because suspects have a tendency to accept information as truth even when first introduced through question-answer sequences, interrogators

56. See GIBBONS, *supra* note 8, at 97.

57. *Id.*

58. *Id.*

59. CONLEY & O’BARR, *supra* note 22, at 21.

60. See *id.* at 22. While the source material restrains its discourse analysis to question-answer sequences in the courtroom context, these same linguistic features equally correspond to interrogations staged by law enforcement officers. See *supra* note 57 and accompanying text.

61. See *id.* at 22–23.

62. *Id.* at 23.

63. *Id.* at 24.

64. See *id.* at 24–26.

65. See *id.* at 26–27.

66. See *id.* at 27–29.

67. See *id.* at 28.

68. See *id.* at 29–30.

routinely embed facts matching their version of the events into their question forms.⁶⁹ Accordingly, “[t]he more information there is in the question, the less control the answerer has over the information, or the loading in the language used to describe it.”⁷⁰ During these question-answer sequences, suspects are also more likely to respond to the last question asked within a set of propositions, a trend termed the recency principle.⁷¹ While asking compound questions is a sustainable objection in court, compound questions posed during police interrogations do not draw the same opposition.⁷² Suspects can incriminate themselves because they are unable to break down complex question forms.⁷³ As a result, skilled interrogators can manipulate this principle, purposefully asking compound questions in order to elicit a suspect’s admission of guilt, regardless of whether the suspect is in fact guilty of the offense.

Tag questions, another linguistic strategy, tempt witnesses to agree with the interrogators’ propositions by tacking on phrases, such as “correct?” or “isn’t that right?”, at the end of the questions.⁷⁴ These questions direct the suspect to one specific answer (yes or no) by restricting the suspect’s permissible response forms through a linguistic demand for compliance.⁷⁵ Again, the tag question implicitly requests the suspect to confirm the interrogator’s assessment.⁷⁶ The effect of this question form is extremely significant. Continual use of tag questions enables the questioner to dominate the discourse and often obtain risk-free corroboration of his accusations.⁷⁷ Therefore, interrogators can direct suspects to *agree* with their accusations and, at the same time, *restrict* suspects from offering extra information that could neutralize that interpretation.⁷⁸ Furthermore, interrogators can switch between questioning styles, incorporating a suspect’s prior statements into very formal question-answer sequences.⁷⁹ Specific tactics include using difficult vocabulary, quoting a suspect’s words or someone else’s words,

69. GIBBONS, *supra* note 8, at 98.

70. *Id.*

71. CONFESSION, INTERROGATION, AND DECEPTION, *supra* note 18, at 37.

72. *See id.* at 38–39.

73. *Id.*

74. LAWRENCE M. SOLAN & PETER M. TIERSMA, SPEAKING OF CRIME: THE LANGUAGE OF CRIMINAL JUSTICE 67 (2005).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *See* Mark Brennan, *Cross-Examining Children in Criminal Courts: Child Welfare Under Attack*, in LANGUAGE AND THE LAW 199, 211 (John Gibbons ed., 1994).

and repeating a suspect's previous responses.⁸⁰

While these linguistic strategies do not engage "physical hitting or shoving... , disguised or covert language power can produce a similar form of bullying."⁸¹ Concededly, most adults can probably withstand an officer's leading questions and the accompanying suggestive inferences.⁸² However, when it comes to more vulnerable members of society, such as mentally challenged or juvenile suspects, it is uncertain whether they can defend themselves against intense and deliberate linguistic manipulation.⁸³

III. THE EXPLOITATION OF COMMUNICATIVELY IMMATURE SUSPECTS

During police interrogations, officers exploit their language expertise to distort and manipulate the linguistic inequalities between law enforcement and suspects. In particular, mentally challenged persons face police coercion on a more frequent basis, yet these vulnerable members of society often fail to even understand the purpose of the interrogation.⁸⁴ Like the mentally challenged, juvenile suspects also enter the interrogation room at a severe linguistic disadvantage.⁸⁵ False confessions, which more than likely will lead to wrongful convictions, thus reflect linguistic exploitation employed against communicatively immature suspects.

A. Mentally Challenged Suspects

Mentally challenged suspects are particularly vulnerable to exploitive interrogation tactics because they possess qualities of "suggestibility, acquiescence, and social difficulty."⁸⁶ A threshold question would seem to be whether mentally impaired individuals could even "voluntarily, knowingly, and intelligently" waive their *Miranda* rights prior to

80. *Id.* at 214–15.

81. CREATING LANGUAGE CRIMES, *supra* note 20, at 35.

82. SOLAN & TIERSMA, *supra* note 74.

83. *See id.*

84. *See* Solomon M. Fulero & Caroline Everington, *Assessing the Capacity of Persons with Mental Retardation to Waive Miranda Rights: A Jurisprudent Therapy Perspective*, 28 LAW & PSYCHOL. REV. 53, 53 (2004).

85. *See infra* Part III.B.

86. *Id.* at 65. The authors consider how these deficiencies impact a juvenile's waiver of his constitutional rights prior to interrogation. *Id.* at 55. The potential for self-incrimination is the troubling result. *Id.*

interrogation.⁸⁷ However, the Supreme Court of the United States held that even a confession elicited from a mentally challenged suspect in the midst of a psychotic episode was voluntary unless the police exploited that impairment through coercive actions.⁸⁸ Coercive actions, however, do not only encompass physical threats; sophisticated language manipulation qualifies as coercion as well.

Mentally challenged suspects lack competent social intelligence and cognitive understanding.⁸⁹ Therefore, social situations such as interrogations pose a unique dilemma because these suspects have trouble interpreting social cues, recognizing how to act appropriately, and appreciating the consequences of their actions.⁹⁰ More troubling, mentally challenged suspects not only suffer from impaired cognitive abilities, but they frequently behave in a manner consistent with deception.⁹¹ Body movements such as avoiding eye contact, appearing anxious, and other elusive actions cloak these suspects in a shroud of guilt.⁹²

As targets of interrogation, the mentally challenged, therefore, must overcome two overwhelming disadvantages: a failure to understand and a susceptibility to coercion.⁹³ Mentally challenged suspects fail to subjectively understand the purpose of custodial interrogation because they suffer from impaired cognitive abilities resulting in underdeveloped vocabularies and limited reasoning and linguistic capabilities.⁹⁴ When placed in the midst of interrogation, an extremely potent social situation, mentally challenged suspects tend to acquiesce and seek short

87. See *Miranda v. Arizona*, 384 U.S. 436, 447 (1966). In *Miranda*, the Supreme Court held procedural safeguards are necessary to protect a criminal defendant's Fifth Amendment privilege against self-incrimination during custodial interrogation. *Id.* at 444. In order to avoid an involuntary, coerced confession, these procedural safeguards include warning the accused of his right to remain silent, that any statement the accused makes may be used as evidence against him, and that the accused has the right to an attorney. *Id.* The Court ruled an accused could waive his rights provided that the waiver is made "voluntarily, knowingly, and intelligently." *Id.*

88. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). In *Connelly*, the defendant, while suffering from a psychotic state in which he claimed he listened to the "voice of God," confessed to murdering a young girl at an earlier time. *Id.* at 160–61. The Supreme Court held this mental infirmity was in no way dispositive; instead, the Court ruled the defendant's mental condition was merely one factor to be considered when determining whether a confession was voluntary under the due process clause of the Fourteenth Amendment. *Id.* at 164.

89. Fulero & Everington, *supra* note 84, at 58.

90. *Id.*

91. William C. Follette et al., *Mental Health Status and Vulnerability to Police Interrogation Tactics*, 22 CRIM. JUST. 42, 44 (2007).

92. *Id.*

93. *Id.* at 45.

94. *Id.*

term relief from the pressures of questioning.⁹⁵ Placed in this unfamiliar and intimidating situation, they will likely “rely on the external cues (verbal and nonverbal) provided by others.”⁹⁶ This reliance can even lead them to affirmatively answer the most absurd questions.⁹⁷

Interrogation tactics are “intended to mislead, impair thought processes, and relentlessly push a suspect, against his or her best interests, in the direction of confession.”⁹⁸ Communicatively immature suspects, such as the mentally challenged, are particularly at risk when these persuasive and persistent interrogation strategies are employed.⁹⁹ As interrogators control the conversation, interrupting and accusing suspects of lying, the mentally challenged respond by seeking to avoid conflict and please the interrogators.¹⁰⁰ This willingness to appease their interrogators leads suspects to “tell the questioner whatever they perceive that he or she wants to hear.”¹⁰¹ The grossly unfair result is subtle language manipulation employed by trained interrogators against suspects suffering from limited cognitive abilities and immature communication skills.

B. Juvenile Suspects

Like the mentally challenged, juveniles must also cope with their susceptibility to language exploitation. Unlike the mentally challenged, though, juveniles have a distinct forum for their legal proceedings—the Juvenile and Domestic Relations Court.¹⁰² The very existence of a separate court emphasizes how juveniles are often found legally incompetent because of their impaired cognitive functioning, decreased reasoning ability, and limited decision-making ability.¹⁰³ Juvenile courts embrace the notion that juveniles are physically, mentally, and intellectually different from adults.¹⁰⁴ Consequently, “juveniles have increasingly more liberty to lose when they are arrested and

95. *Id.* at 47.

96. Fulero & Everington, *supra* note 84, at 56–57.

97. *Id.* at 57.

98. Follette et al., *supra* note 91, at 46.

99. *See id.* at 48–49.

100. *Id.* at 43, 45.

101. Fulero & Everington, *supra* note 84, at 57.

102. *See* Barry C. Feld, *Juveniles' Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26, 47 (2006) [hereinafter *Juvenile's Competence to Exercise Miranda*].

103. *Id.*

104. Lisa M. Krzewinski, Note, *But I Didn't Do It: Protecting the Rights of Juveniles During Interrogation*, 22 B.C. THIRD WORLD L.J. 355, 355 (2002).

interrogated."¹⁰⁵

Alarminglly, the criminal justice system once acknowledged the vulnerability of juveniles in the interrogation process but nonetheless persisted in treating them as the functional equivalent of adults.¹⁰⁶ Courts weighed the voluntariness of a juvenile's confession against the same standard as an adult confession—asking whether the confession was given knowingly, intelligently, and voluntarily under all the circumstances.¹⁰⁷ Yet juveniles' youthfulness meant they lacked comparable cognitive reasoning as adults.¹⁰⁸ As a result, the Supreme Court in *In re Gault* determined that juveniles require more procedural safeguards,¹⁰⁹ largely because "[s]ocial expectations of obedience to authority and children's lower social status make them more vulnerable than adults during interrogation."¹¹⁰ Three factors, in particular, feed that vulnerability: (1) youthfulness; (2) coercive interrogation techniques; and (3) prolonged questioning.¹¹¹

Compared to adults, children do not possess the same life experiences, the same psychological faculty to elude interrogation pressures, or the same understanding of legal rights and consequences.¹¹² Like the mentally challenged, juveniles suffer from a bias toward acquiescence, which reflects communicatively immature minds unequipped with the cognitive tools necessary to recognize or anticipate police strategies and manipulation.¹¹³ As the less powerful participants, juveniles speak indirectly to officers, seeking to avoid conflict and end the interrogation process.¹¹⁴

Perhaps more damaging, juveniles tend to yield to that authority, so they are more susceptible to false suggestions proffered by more sophisticated and powerful language users, such as police interrogators.¹¹⁵

105. *Id.* at 365.

106. Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 222 (2006) [hereinafter *Police Interrogation of Juveniles*].

107. *Id.*

108. *Id.* at 223–24.

109. 387 U.S. 1, 41 (1967). The Supreme Court ruled the assistance of counsel was a necessary component for juvenile representation in order to comport with due process. *Id.*

110. *Police Interrogation of Juveniles*, *supra* note 106, at 230.

111. *Id.* at 242.

112. *Id.* at 244.

113. *See id.* at 230.

114. *Id.* Particularly within the context of their *Miranda* rights, juveniles' undeveloped communicative styles place them at a disadvantage because they may be linguistically unable to invoke their rights clearly and unambiguously as required. *Id.*

115. Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 282 (2007).

Because juveniles rarely think strategically, they are also more likely to respect feelings of loyalty, thereby wrongly assuming responsibility for other members of their peer groups.¹¹⁶ Juveniles have a tendency to seek and depend on peer approval even in the midst of interrogation.¹¹⁷

Thus, youthfulness unsurprisingly lends itself to vulnerability at the hand of manipulative linguistic strategies.¹¹⁸ For instance, leading questions, which embed incriminating information within the question form, are particularly destructive.¹¹⁹ Because youths prefer acquiescence over conflict, juveniles may willingly adopt an interrogators' version of events even if that version incriminates them in the crime.¹²⁰ Interrogators may also employ forced-choice questions and implied or internal suggestions in order to further weaken the veracity of children's testimony.¹²¹ The result is frightening: "children who harbor false beliefs incorporate those beliefs to such a convincing degree that it is difficult to tell them apart from children who are telling the truth."¹²² Juveniles, particularly young children, internalize those false beliefs until they begin to believe in its truthfulness even as they remain ignorant that these beliefs are actually falsehoods.¹²³ Termed coerced internalized confessions, this tendency guides juvenile suspects to subjectively believe they have committed the alleged crimes.¹²⁴ Furthermore, the exploitation of child witnesses during cross-examination directly correlates to the interrogation of juvenile suspects. As in the courtroom, interrogations embody an adversarial exchange between interrogators and suspects.¹²⁵ However, children's past experiences have not prepared them for such an attack.¹²⁶ While lawyers and interrogators have long been exposed to the subtle art and intricate nature of language, juveniles lack comparable language mastery.¹²⁷

116. *Juvenile's Competence to Exercise Miranda*, *supra* note 102, at 57–58.

117. Krzewinski, *supra* note 104, at 362.

118. *Police Interrogation of Juveniles*, *supra* note 106, at 242–43 (discussing how the youthfulness of suspects and interrogation tactics of police can lead to false confession).

119. *Id.* at 245.

120. *See id.* at 230, 260.

121. Drizin & Luloff, *supra* note 115, at 279.

122. *Id.* at 283.

123. *Id.* at 282–83.

124. Gail Johnson, *False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 B.U. PUB. INT. L.J. 719, 727 (1997).

125. *See Brennan*, *supra* note 79, at 210–11.

126. *Id.* at 211.

127. *Id.* at 210–11. However, away from the legal realm of interrogation and trial proceedings, juveniles "show themselves to be masterful linguists." *Id.* at 211.

In essence, children do not realize that their responses during interrogations form a part of the larger conversational exchange.¹²⁸ Lawyers and interrogators purposefully manipulate the statements of juveniles, an idea wholly unfamiliar to the communicatively immature and particularly unbeknownst to juvenile suspects.¹²⁹ Thus, "[t]he expectation that the child witness can keep in step with these quick changes of language register is unreasonable given their relatively short exposure to the world of language and its subtleties."¹³⁰ The persistent and repeated use of such exploitative tactics indicates a troubling ambivalence toward the vulnerable groups of our community.¹³¹

Even with public awareness of the danger of wrongful convictions, particularly within the realm of mentally challenged and juvenile suspects, juries continue to trust elicited confessions.¹³² This disregard for documented susceptibility denotes a troubling social commentary and signals an unsettling trust in law enforcement. Jurors consider confessions reliable even when there is no other physical evidence linking a suspect to a crime.¹³³ This perplexing tendency also indicates a significant divide between the communicatively mature and the communicatively immature. Legally competent adults comprise the jury pool for legal proceedings. However, they possess sophisticated language and cognitive abilities and do not represent a comparable peer group for mentally challenged suspects or juvenile suspects. Jurors perhaps have difficulty accepting the notion that someone may falsely confess even though a person's memory has proven to be malleable and easily vulnerable to suggestions.¹³⁴

IV. MANIPULATING FALSE CONFESSIONS

In 1923, Judge Learned Hand said, "Our procedure has been always haunted by the ghost of the innocent man convicted."¹³⁵ While Judge

128. *See id.*

129. *Id.*

130. *Id.*

131. *See Carroll, supra* note 11, at 307.

132. *See McMurtrie, supra* note 5. Juries continue to convict defendants even without corroborating evidence perhaps because "[t]he idea that an individual would confess to a crime, particularly a horrific crime such as murder or rape, . . . runs counter to the intuition of most people." *Id.*

133. *Id.*

134. *Id.* at 1284. Child victims, in particular, are more susceptible to suggestion on topics involving bodily contact and bodily touching. *Id.* at 1285. Unfortunately, jurors remain oblivious to the fact that certain interview techniques have the danger of imprinting false memories. *Id.*

135. *United States v. Garsson*, 291 F. 646, 649 (S.D.N.Y. 1923).

Hand imagined this ghost was “an unreal dream,”¹³⁶ that dream has become reality as more and more wrongful convictions and DNA-based exonerations permeate the media. In view of that, confessions encapsulate a unique dichotomy. While confession in the religious sense is exalted as therapeutic and spiritually-cleansing, confession in the world of police interrogations is susceptible to misinterpretation and the threat of wrongful conviction.¹³⁷ Having firmly taken root in the criminal justice system, the seeds of that injustice can often be traced back to elicited false confessions.¹³⁸

Interrogators attend specialized schools to master interrogation techniques and study methods to capitalize on a suspect’s emotions and perceptions.¹³⁹ Police learn four specific goals for interrogation: (1) collecting; (2) evaluating what is collected; (3) analyzing for meaning; and (4) reporting findings.¹⁴⁰ To accomplish these four objectives, interrogators employ a number of techniques designed “to establish rapport and a positive relationship with a suspect.”¹⁴¹ However, do not be fooled into thinking that interrogations are innocent fact-finding endeavors.¹⁴² Police purposefully utilize interrogations to elicit incriminating statements through trickery, deception, and language manipulation.¹⁴³ In fact, “a confession is compelled, provoked and manipulated from a suspect by a detective who has been trained in a genuinely deceitful art.”¹⁴⁴

Without question, the Reid Nine Steps of Interrogation is the most prominent theory of law enforcement interrogation tactics.¹⁴⁵ “[B]ecause persuasion occurs in fairly predictable stages,” this nine-step approach compels a guilty person to confess through a structured step-

136. *Id.*

137. CONFESSION, INTERROGATION, AND DECEPTION, *supra* note 18, at 1–3.

138. Steven A. Drizin & Marissa J. Reich, *Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions*, 52 *DRAKE L. REV.* 619, 620 (2004).

139. Drizin & Luloff, *supra* note 115, at 270–71 (discussing the nine steps of the “Reid Technique,” the most widely used method in interrogation); see *infra* note 145 and accompanying text.

140. CONFESSION, INTERROGATION, AND DECEPTION, *supra* note 18, at 6.

141. *Police Interrogation of Juveniles*, *supra* note 106, at 256.

142. See Drizin & Luloff, *supra* note 115, at 271.

143. *Id.* at 270–71.

144. DAVID SIMON, *HOMICIDE: A YEAR ON THE KILLING STREETS* 199 (1991).

145. Drizin & Luloff, *supra* note 115, at 270; see FRED E. INBAU ET AL., *CRIMINAL INTERROGATION AND CONFESSIONS* 212 (4th ed. 2001). First developed in the 1940s and 1950s, the Reid Technique outlines a basic interview and interrogation process. *Id.* at ix. The Reid Technique continues to expand across the United States, Canada, Europe, and Asia. *Id.* Through seminars and training courses, interrogators learn the proper application of the technique, gain experience with specific interrogation tactics, and comprehend the underlying principles behind those tactics. See *id.*

by-step program.¹⁴⁶ Against this backdrop, interrogators may exploit communicatively immature suspects through linguistic strategies.¹⁴⁷

Not only do interrogators employ linguistic strategies *against* suspects, they also analyze suspects' communications *from* a linguistic perspective.¹⁴⁸ By analyzing a suspect's verbal responses, interrogators can draw conclusions about a suspect's truthfulness or deceptiveness.¹⁴⁹ Interrogators are also taught how paralinguistic behaviors—or speech characteristics present during a suspect's verbal communication—have the potential to alter the plain meaning of a suspect's words.¹⁵⁰ Criminal investigators not only focus attention on the explicit content of a suspect's response, but also examine that verbal response within the larger paralinguistic realm of language behavior.¹⁵¹

Confessions are categorized as commissives, a type of speech act "which commit[s] the speaker to a certain course of action," thereby

146. *Id.* at 212. During step one, the interrogator explicitly apprises the suspect that he is alleged to have committed the crime. *Id.* at 213. Step two develops the theme, otherwise known as the moral or psychological excuses for the suspect's criminal offense. *Id.* During step three, the interrogator handles the suspect's expected admissions of denial, while step four advises the interrogator on how to deal with a suspect's economic, religious, or moral reasons why he would not have committed the offense. *Id.* at 213–14. During step five, the interrogator positions himself physically closer to the suspect in order to expound upon the theme. *Id.* at 214. At step six, the interrogator keys into the suspect's passive mood, while the suspect internally debates whether to confess the truth. *Id.* In step seven, the interrogator presents an alternative question, normally a positive and a negative choice, although either option implicates the suspect. *Id.* During step eight, the interrogator elicits an oral account of the details surrounding the offense. *Id.* Finally, step nine involves procuring the final confession, preferably converting the oral confession to a written confession. *Id.* Interrogations may not necessarily encompass every step. *Id.* at 212. Also, interrogators should keep alert for behavioral responses that are indicative of the suspect's innocence. *Id.*

147. *See supra* Part II.

148. *See* INBAU ET AL., *supra* 145, at 138–43.

149. *See id.* at 130–43. For instance, interrogators are encouraged to presume the following generalizations: (1) truthful suspects may respond directly to questions, while deceptive suspects may answer evasively; (2) truthful suspects may deny broadly, while deceptive suspects may specifically deny allegations; (3) truthful suspects may respond confidently and definitively, while deceptive subjects may qualify their responses; and (4) truthful subjects may respond spontaneously, while deceptive subjects may respond with rehearsed responses. *Id.* at 132–38.

150. *Id.* at 138. Instead of relying on the explicit content of the suspect's response, interrogators consider the more subtle speech patterns inherent in a suspect's speech. *See id.* Response latency, or "the length of time between the last word of the interviewer's question and the first word of the subject's response," is particularly significant because a delayed response is suspicious when in response to basic questions. *Id.* at 134. Response length and response delivery are similarly important. *Id.* at 140–41. Deceptive suspects will respond minimally while truthful suspects are likely to embark on a lengthier response. *Id.* at 140. Interrogators focus on a suspect's response rate, pitch, and clarity to see whether the linguistic cues parallel the plain meaning of the suspect's words. *Id.* at 141. Stop-and-start behavior—when suspects begin a thought, stop, and then resume speaking in a new direction—is another clue to deception. *Id.*

151. *See id.* at 139.

recognizing the power of a confession.¹⁵² However, note the problematic nature of this classification. Confessions commit the speaker to the truth of his words *regardless* of whether it is true or not.¹⁵³ Thus, the very act of confessing can nevertheless bind confessors to crimes they did not commit. Confessions are also susceptible to ambiguity because “confessions are dialogically constructed” from multiple parts of a suspect’s spoken admissions.¹⁵⁴ Suspects may confess to some facts without intending to or without the awareness that in the process he simultaneously implicates himself in the crime.¹⁵⁵ This self-generated guilt can occur even without interrogators employing overt and deceitful language tactics like misleading questions or trickery.¹⁵⁶ Linguistic manipulation through seemingly simple techniques, such as question-answer sequences and conversational styles, can also deceive speakers into certain admissions.¹⁵⁷ The danger arises when interrogators weave those admissions into a piecemeal confession for a crime—a crime which the suspect may or may not have committed.¹⁵⁸ In essence, one could argue that “a criminal confession can never truly be called voluntary.”¹⁵⁹

V. FUTURE CONSIDERATIONS

In response to a recent swell of wrongful convictions, the criminal justice system faces mounting concerns of reliability and accountability.¹⁶⁰ Police often are not held accountable when wrongful convictions occur largely because the public cannot eavesdrop into the interrogation rooms.¹⁶¹ These concerns render the relationship between law enforcement and society “unnecessarily strained” as the public increasingly loses faith in the nation’s criminal justice system.¹⁶² Society insists that mandatory electronic recording will prevent false confessions, improve the administration of justice, and hopefully ease

152. CONFESSION, INTERROGATION, AND DECEPTION, *supra* note 18, at 4.

153. *Id.*

154. *Id.* at 9.

155. *Id.*

156. *Id.* at 11.

157. *See id.*

158. *Id.* at 9.

159. SIMON, *supra* note 144.

160. Drizin & Reich, *supra* note 138.

161. *See* McMurtrie, *supra* note 5, at 1282 (arguing that interrogations should be videotaped to deter misconduct by police and to ensure a reviewable record of the interrogation).

162. Drizin & Reich, *supra* note 138, at 633.

the relationship between law enforcement and society.¹⁶³

Protecting a suspect's rights has thus assumed particular importance.¹⁶⁴ A contemporaneous record of the interrogation would disclose the circumstances and conditions under which police elicited the incriminating confession.¹⁶⁵ Rejecting the claim that privacy is an essential component to securing confessions, proponents of recording maintain it would permit independent review by the fact-finder.¹⁶⁶ Hence, secrecy in the interrogation room can no longer be tolerated unless society wishes to subject itself to "numerous false confessions, unreliable and inaccurate assessments of confession evidence, and a resulting distrust of police and loss of faith in the justice system."¹⁶⁷

Electronic recording of custodial interrogations has long been pitched as the gateway solution for conquering false confessions.¹⁶⁸ Communicatively immature groups, such as juveniles and the mentally challenged, undeniably warrant protection from manipulative interrogation techniques.¹⁶⁹ Because interrogators co-author confessions,¹⁷⁰ the lack of an unambiguous record jeopardizes fundamental fairness and due process.¹⁷¹ While truth-finding stands as the iconic mission of the criminal justice system, a suspect's constitutional rights cannot be wholly subverted, and a proper balance must be found.¹⁷² Accordingly, an objective record based on interrogation recordings and transcripts has the best potential to expose manipulation.¹⁷³ It permits outside examination of the record to consider whether police are responsible for incriminating information in the confession.¹⁷⁴ Through recording, a fact finder can therefore judge

163. *Id.* at 622.

164. *Id.* at 623.

165. *Id.*

166. *Id.* at 623, 629.

167. *Id.* at 646.

168. *See id.* at 621–28. In 1931, the National Commission on Law Observance and Enforcement ("Wickersham Commission") acknowledged that interrogations incorporated secrecy and deceptive tactics. *Id.* at 621. The Wickersham Commission recommended creating a record to document exactly what transpired during interrogations. *Id.* at 621–22. Since the 1970s, the American Law Institute and the National Conference of Commissioners on Uniform State Laws have also argued that mandatory video-recording is necessary to safeguard criminal procedural due process. *Id.* at 626.

169. *See Johnson, supra* note 124, at 729.

170. *Id.* at 751.

171. *Id.* at 744.

172. Steven A. Drizin & Beth A. Colgan, *Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions*, 32 LOY. U. CHI. L.J. 337, 340–41 (2001).

173. Johnson, *supra* note 124, at 737.

174. *Id.*

whether “a statement contains facts uniquely known to the perpetrator or whether police supplied those facts to the suspect during interrogation.”¹⁷⁵

Video recording also captures verbal and non-verbal communication.¹⁷⁶ Linguistic cues such as voice intonation, speed, tempo, length of pauses, and body movement contribute important information to the determination of whether interrogators manipulated false confessions.¹⁷⁷ Electronic recordings may also prompt interrogators to use open-ended questions instead of more coercive, close-ended questioning strategies.¹⁷⁸ “Tape recordings guarantee the accuracy and verifiability of the actual words being used....”¹⁷⁹ Electronic video recording invades the realm of privacy and secrecy once blocked from the public eye. Yet, critics claim mandatory video recording is infeasible because interrogations take place at crime scenes and rural areas, not merely in isolated rooms at the precinct.¹⁸⁰ Furthermore, opponents fear video recording would persuade suspects to remain silent instead of voluntarily speaking with the police.¹⁸¹

Though recording custodial interrogations is itself “simple, easy, and absolutely essential”¹⁸² only a few states require law enforcement to video record the interrogations.¹⁸³ However, if the system fails to adapt to the needs of the communicatively immature, a system of hopelessness will continue to permeate the court system.¹⁸⁴ Manipulation will suppress the truth and wrongful convictions will

175. *Police Interrogation of Juveniles*, *supra* note 106, at 305.

176. CREATING LANGUAGE CRIMES, *supra* note 20, at 3.

177. *Id.* at 3–4.

178. GIBBONS, *supra* note 8, at 111.

179. CREATING LANGUAGE CRIMES, *supra* note 20, at 3.

180. Drizin & Colgan, *supra* note 172, at 391.

181. *Id.* at 392.

182. *Police Interrogation of Juveniles*, *supra* note 106, at 307.

183. Drizin & Colgan, *supra* note 172, at 339; McMurtrie, *supra* note 5, at 1282. The Supreme Courts of Alaska and Minnesota respectively held that law enforcement must electronically record custodial interrogations. *Stephan v. State*, 711 P.2d 1156, 1159 (Alaska 1985); *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994). The Supreme Court of Wisconsin limits electronic recording to juvenile custodial interrogations. *In re Jerrell*, 699 N.W.2d 110, 113 (Wis. 2005). Texas must electronically record custodial interrogations and confessions pursuant to a statute passed by the state legislature. TEX. CODE CRIM. PROC. ANN. art. 38.22(3) (Vernon 2005). Similarly, in Illinois, the legislature requires electronic recording of custodial interrogations in homicide cases. 20 ILL. COMP. STAT. ANN. 3930/7.2 (West 2008). Further, a 1993 U.S. Justice Department report concluded that one-third of the nation’s largest police precincts voluntarily tape-recorded confessions because it gifted judges with a reliable record to measure whether a confession is voluntary, resulted in more convictions and plea bargains, and reduced the number of charges of police misconduct. Drizin & Colgan, *supra* note 172, at 339–40.

184. *See* Drizin & Luloff, *supra* note 115, at 311.

continue unchallenged.¹⁸⁵

Aside from mandatory video-recording of police interrogations, other practices could work to reduce the prevalence of wrongful convictions among communicatively immature suspects. First, interrogators could place more emphasis on plain language instead of referring to legal terms and practice.¹⁸⁶ Second, law enforcement could deemphasize the threatening nature of legal proceedings, beginning with the interrogation, so they are less overwhelming to persons with low language capabilities.¹⁸⁷ Although it could be counter-productive, officers and lawyers may be trained on effective communication techniques.¹⁸⁸ Because prolonged interrogation lends itself to false confessions, police could also limit the length of interrogations for juveniles and the mentally challenged.¹⁸⁹ To

reduce linguistic manipulation among these vulnerable groups, state legislatures could also require law enforcement to provide automatic legal counsel prior to and during police questioning.¹⁹⁰

VI. CASE STUDY

Prosecutors in rural St. Johns, Arizona, charged an eight-year-old boy for the shooting deaths of his father and his father's friend after eliciting a confession from the third grade child.¹⁹¹ Even though officers stressed that the boy needed to be truthful, police allegedly never read the boy his *Miranda* rights.¹⁹² Police initially questioned the boy about what he witnessed that afternoon, but midway through the session, detectives switched from interviewing to interrogating the boy as a suspect in the slayings.¹⁹³ At first, the boy repeatedly denied responsibility.¹⁹⁴ During the first twelve minutes of the tape, the boy described how he stepped

185. See Johnson, *supra* note 124, at 751.

186. Carroll, *supra* note 11, at 309.

187. *Id.*

188. *Id.*

189. *Police Interrogation of Juveniles*, *supra* note 106, at 308.

190. Fulero & Everington, *supra* note 84, at 69.

191. *Boy, 8, Gives Taped Account in Shooting Deaths*, *supra* note 1.

192. *Id.*

193. See *id.*

194. *Id.*

off the bus, walked around the block a few times, saw a white car speed down the block, and then saw the first victim, already shot, lying on the ground.¹⁹⁵ The boy said he went upstairs to speak with his father but instead found his father's body.¹⁹⁶ After forty-five minutes of questioning, the boy confessed to shooting the two victims.¹⁹⁷ Captured on tape, the boy said, "I think I was holding the gun and I don't—I think it might've gone off or I don't know."¹⁹⁸ Examined linguistically, however, the veracity of this confession, particularly as seen in the following excerpt, is less than reliable.

- 1 Officer I need you to be real truthful with me [...]
 2 You gotta be honest [...]
 3 Where was Jim
 4 Child: Laying on the ground
 5 Officer: How did Jim get on the ground
 6 Child: I think he got shot
 7 Officer: You think he got shot?
 8 Did you maybe shoot him by accident?
 9 Child: NO
 f
 10 Officer: Do you think that might be possible?
 11 that you would—you know that something happened and maybe it
 → 12 was an acc:ident?
 acc
 13 Child: [5 second pause] Why would I shoot Jim? Why would I shoot Jim?
 p
 14 Officer: I-I-I don't know. I'm just trying to think maybe you were playing
 with
 15 a gun and it just went off accidentally or somethin'.
 acc
 16 Child: [3 second pause] No. [...]
 p
 17 Officer: I'm having a little bit of a problem here okay?
 18 I think you need to start telling us the truth? [...]
 19 Okay sweetie we nee:d to know the truth
 dec
 20 It's IMPO:RTANT
 21 We have to know [...]
 22 But if you're not honest with me, if you're not truthful
 23 then it's not going to look good?
 24 Okay?
 25 So it's real important you tell us what happened yesterday
 26 I think you know a little more than you're telling us.
 acc
 27 Child: I don't know if the gun went off by accident?
 28 but it might've but I don't know

195. *Id.*

196. *Id.*

197. *See id.*

198. Transcript of Videotape, *supra* note 4.

Donoghue: "You Think He Got Shot - Did You Maybe Shoot Him by Accident?": L

acc

29 Officer: Oka:y. Um again /?/

30 Child: I think so maybe but I don't-I don't?

31 think?

32 I don't know?

33 Officer: So you think you might have shot at him accidentally and it might've.

P

34 Child: 'Cause I already saw bleeding

35 and um I—I kind of saw him shaking

36 and I think—I think I was holding the gun?

37 and I don't—I think it might've? gone off or I don't know¹⁹⁹

acc

During this segment of the video-taped interrogation, officers elicit the confession solely by employing linguistic strategies designed to manipulate a suspect's admission of guilt.²⁰⁰ Among the three participants, the child undeniably occupies the less powerful role.²⁰¹ The child uses a remarkable number of hedges,²⁰² such as "I think" (lines 30–31, 36–37), "maybe" (line

30), and "I don't know" (lines 27–28, 30–32, 37), which reflect the child's less powerful status.²⁰³ These speech attributes reinforce the notion that children are particularly susceptible during the adversarial nature of police interrogations.

The eight-year-old denies shooting the two victims on *four* separate turns: (1) "No" (line 9); (2) "Why would I shoot Jim? Why would I shoot Jim?" (line 13); (3) "No" (line 16); and (4) "I don't know if the gun went off by accident but it might've but I don't know" (lines 27–28).²⁰⁴ Notably, the child's first denial is quite emphatic ("NO"), but over the next few turns, the boy's denials become less confident and more incriminating.²⁰⁵ Even though the child denies accidentally shooting the men over subsequent turns, his intonation rises, turning his denial into more of a question and more likely a request for approval from his interrogator (lines 30–32, 36–37).²⁰⁶ Recognizing how the

199 *Id.*

200. *See supra* Part II.

201. *See supra* Part II.A–B.

202. *See supra* note 37 and accompanying text.

203. Transcript of Videotape, *supra* note 4.

204. *Id.*

205. *See id.*

206. *Id.*; *see supra* note 120 and accompanying text.

interrogator rejects his denials, the child eventually succumbs to the interrogator's coercive questioning (lines 36–37) while the interrogator persists, emphasizing that the boy must be truthful and remarking that he knows more than he is telling (lines 17–26).²⁰⁷ Again the officer appeals to the child's basic conception of right and wrong, giving the impression that if the child admits that the gun accidentally fired it would be the truthful, expected, and acceptable response.

Since juvenile suspects have a bias toward acquiescence,²⁰⁸ the child could merely be adopting the interrogator's version of events—a version of events first introduced by the interrogator through the leading question, “You think he got shot? Did you maybe shot him by accident?” (lines 7–8).²⁰⁹ Through the remaining turns, the child internalizes that suggestion, potentially subscribing to its truthfulness. The interrogator planted that seed, that incriminating inference, through the use of a leading question.²¹⁰ Once the interrogator pursued that line of questioning, the boy's denials became more hesitant. Therefore, by controlling the turn-taking and regulating the topics discussed, the interrogator subjected the child to repeated lines of questioning while systematically authoring his own version of the crime.²¹¹ The child, perhaps believing he could no longer endure the intense interrogation, begins believing the interrogator's version of events. To escape the oppressive line of questioning, he internalized the interrogator's version of events or merely repeated that version. From this short excerpt, it is evident the interrogator exploited the child's vulnerability and manipulated an arguably false confession through effective linguistic strategies.

VII. CONCLUSION

Skilled interrogators employ an arsenal of linguistic strategies against communicatively immature suspects in order to elicit confessions. Through sophisticated question-answer sequences, structured to reflect the interrogator's institutional status, officers challenge, cross-examine, and trap suspects into admissions.²¹² These confessions deserve to be examined critically because mentally challenged and juvenile suspects are

207. Transcript of Video, *supra* note 4.

208. *See supra* Part III.B.

209. Transcript of Videotape, *supra* note 4.

210. *See supra* note 69 and accompanying text.

211. *See supra* Part III.C.

212. CONFESSION, INTERROGATION, AND DECEPTION, *supra* note 18, at 13.

easily susceptible to these linguistic strategies.²¹³ Consider how the interrogation of the eight-year-old murder suspect incorporated sophisticated language manipulation.²¹⁴ The police got a confession, but it is uncertain whether this confession is reliable. Without the benefit of video-recording, a linguistic examination of the child's verbal and nonverbal cues could not have occurred. Mandatory video-recording opens the door to the interrogation room and thus has the potential to cure the travesty of false confessions.²¹⁵ By video-taping this confession, outside examination of the record can take place.²¹⁶ Where police are responsible for supplying the incriminating information, as in this excerpt, that manipulation can finally be exposed.

213. *See supra* Part III.

214. *See supra* Part VI.

215. *See supra* Part V.

216. Johnson, *supra* note 124, at 737.

