COMMENT

JUVENILE DUE PROCESS: APPLYING CONTRACT PRINCIPLES TO ENSURE VOLUNTARY CRIMINAL CONFESSIONS

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INTRODUCTION

Recognition that juveniles are limited in their decisionmaking informs most areas of the law. In recent years, the Supreme Court has afforded enhanced protections to youth in the criminal context due to their developmental immaturity and heightened state of vulnerability. But the current legal framework surrounding interrogations and the admissibility of confessions does not sufficiently protect youth from coercive interrogation practices.

Due process requires that a confession be voluntary, with voluntariness determined by a totality of the circumstances test. This standard aims to protect vulnerable suspects from coercive practices, but it is too vague to give useful guidance to both judges and police officers about the ways in which youth are different from adults. This can leave children subject to coercive interrogation tactics, resulting in involuntary and often false confessions that courts nonetheless regularly admit.

The inadequacy of the due process voluntariness standard demands a reevaluation of how the law's protective function can be improved. Contract principles—which strive to protect a party's autonomy while also protecting that party from exploitation—can inform possible solutions to rebalance the power dynamic between youth suspects and adult interrogators. In contract law, the crux of proper bargaining is voluntary assent. But assent loses its legal effect where a superior party exerts undue influence or misrepresents material information to get it, thereby overcoming the weaker party's will and stripping the agreement of its voluntary quality. Applying voluntary-assent contract principles to the interrogation of juveniles in criminal cases might yield useful insights into whether current standards for juvenile interrogations meet due process standards.

This Comment argues that contract principles, which protect vulnerable adults from coercion and misrepresentation in their everyday bargaining, can inform due process protections for youth under criminal interrogation. To this end, a confession should be deemed involuntary if it was obtained by undue influence—in the form of extreme pressure or abuse of trust—or by misrepresentation. This will add substance to the current voluntariness standard, giving judges and police officers more guidance about proper police

conduct. It will also prompt a shift from confession-seeking interrogation techniques, like the Reid Method, in favor of information-seeking techniques, like the PEACE Method.

This Comment proceeds in four parts. Part I explores the history of juvenile interrogation law, the inadequacy of the current totality of the circumstances test, and the Supreme Court's recognition that children need additional safeguards to meet the Constitution's due process requirements. Part II discusses the prevalence of false confessions, the factors that contribute to false confessions, and the developmental differences between juveniles and adults that make youth suspects more prone to giving false confessions.

Part III views current interrogation law through a contractual lens to highlight how the current voluntariness standard is failing to protect juveniles from coercive police tactics. More specifically, it explores how certain interrogation techniques violate key voluntariness requirements in contract law, inducing involuntary, and often false, confessions. Part IV explains how embracing contract principles to help assess the voluntariness of a juvenile confession will help protect youth from due process violations and bring interrogation law in line with other areas of the law. Knowing that a judge may deem a confession involuntary if undue influence or misrepresentation occur provides straightforward guidance to officers and incentives to abandon coercive tactics. In this section, I will also introduce the PEACE Method of interviewing, which complies with the voluntariness principles imported by contract law, as a viable alternative to the Reid Method. This Comment concludes that these changes are warranted by the disproportionate number of false confessions obtained from youth, the science explaining that developmental differences cause this disproportionality, and the legal recognition that youth defendants require additional safeguards.

I. BACKGROUND

A. *The History of Juvenile Interrogation Law*

Affording enhanced protections to juvenile suspects during interrogations is not a novel idea. In 1948, the Court decided *Haley v. Ohio*, invalidating a juvenile's confession as involuntary, and thus inadmissible, for the first time.[1] The suspect was fifteen years old, interrogated by as many as six officers, and the interrogation lasted from midnight until his confession around 5:00 am.[2] A plurality concluded these circumstances were such that his confession

1 332 U.S. 596, 599-601 (1948).
2 *Id.* at 598-601.

was involuntary due to coercion.[3] The Court recognized that children are more susceptible to police pressures, declaring, "when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used."[4] Fourteen years later, the Court echoed this reasoning in *Gallegos v. Colorado*.[5] The Court found the confession of a fourteen-year-old boy, who was detained for five days without being advised of his rights or the ability to see a lawyer or parent, to be involuntary.[6] The Court noted the power disparity between the interrogator and the teenage defendant and reasoned that the defendant could not "be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions."[7]

In deciding these cases, the Court relied on the Fourteenth Amendment's Due Process Clause, which has provided a constitutional limit on police interrogations since the 1930s.[8] Due process requires that a confession be voluntary, meaning that the confession be made freely, and not be the product of coercion that overcomes the will of the individual.[9] In determining voluntariness, courts apply a totality of the circumstances test, which requires judges to evaluate "both the characteristics of the accused and the details of the interrogation."[10]

Factors that judges take into account include the suspect's age, education, the length of detention, the nature of the questioning, and the use of physical force.[11] Aside from the use of physical force, however, there is no particular tactic that, standing alone, renders a statement involuntary.[12] Instead, judges must "throw all of these factors into a hat, mix them up in a totality of the circumstances approach, reach in and attempt to pull out the answer to a

3 *Id.* at 600-01.

4 *Id.* at 599; *see also id.* ("That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces.").

5 370 U.S. 49, 54 (1962).

6 *Id.* at 49-50, 55.

7 *Id.* at 54; *see also id.* ("[W]e deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.").

8 MATTHEW LIPPMAN, CRIMINAL PROCEDURE 286 (4th ed. 2020).

9 *See* BARRY FELD, KIDS, COPS, AND CONFESSIONS: INSIDE THE INTERROGATION ROOM 14 (2013) ("The due process approach focused on a person's 'free will' decision to make a statement . . . . '[W]hether the behavior of the State's law enforcement officials was such as to overbear [the suspect's] will to resist and bring about confessions not freely self-determined . . . .'") (second alternation in original). Feld explains that the question of voluntariness turns on "whether the state used fundamentally unfair or coercive tactics to obtain a statement" and statements will be excluded if "elicited by psychological or physical coercion." *Id.* at 5.

10 *Id.* at 15 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)).

11 *Id.* at 15-16.

12 *See id.* at 15 ("Except in extreme cases of physical brutality, judges faced a difficult task to distinguish voluntary from coerced confessions.").

question that can never be answered with confidence by a judge, psychiatrist, or magician."[13] This abstract test—taking into account this laundry list of factors—can lead to arbitrary and inconsistent decisions.[14]

Shortly after *Gallegos*, the Supreme Court recognized the shortcomings of the voluntariness standard and supplemented this nebulous standard with the Fifth Amendment's protections against self-incrimination found in *Miranda v. Arizona*.[15] The *Miranda* Court decided that preventative measures were necessary to protect suspects from coercion inherent in custodial interrogations, reasoning that "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice."[16] Therefore, under *Miranda*, officers are required to warn suspects of their right to silence and counsel before proceeding with any custodial interrogation.[17] The following year, the Court extended these protections to youth in *In re Gault*.[18]

The *Gault* Court saw custodial interrogations as even more coercive for young suspects. It declared that "admissions and confessions of juveniles require special caution,"[19] and therefore, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."[20]

Following these cases, which placed additional constitutional limits on interrogation practices, *Miranda*-based Fifth Amendment claims—not voluntariness claims—have become the primary vehicle for efforts to suppress

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13 Mark A. Godsey, *Rethinking the Involuntary Confession Rule: Toward a Workable Test for Identifying Compelled Self-Incrimination*, 93 CALIF. L. REV. 465, 469 (2005) (footnote omitted).

14 *See* FELD, *supra* note 9, at 17 ("Tactics that rendered one suspect's confession involuntary might not produce a similar outcome in another case with somewhat different facts."); *cf.* FELD, *supra* note 9, at 14 (explaining that the Supreme Court "could more easily articulate [the] constitutional values" behind the voluntariness requirement than "provide guidance for trial judges" on how to apply these values in practice).

15 *See* 384 U.S. 436, 458 (1966) ("[W]e can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning.").

16 *Id.*; *see also* RONALD J. ALLEN, CRIMINAL PROCEDURES 869 (3d ed. 2016) (explaining that there was dissatisfaction with the voluntariness test because its subjectivity failed to make clear to lower courts and police what it would take to render a concession voluntary, prompting the Court to seek alternatives to this test).

17 *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966) ("Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.").

18 *See In re* Gault, 387 U.S. 1, 47 (1967) ("It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children.").

19 *Id.* at 45.

20 *Id.* at 55.

confessions.[21] However, where due process voluntariness arguments are still made, courts weigh valid *Miranda* waivers heavily without engaging in an evaluation of the tactics used during the interrogation itself.[22]

This heavy reliance on *Miranda* is problematic not only because it detracts from a thorough due process evaluation, but also because the development of key case law relating to juveniles' *Miranda* rights predates the scientific findings that youth are developmentally different from adults.[23] In *Fare v. Michael C.*, the Court addressed a juvenile's waiver of *Miranda* rights for the first time.[24] The Court held that a sixteen-year-old suspect's explicit request to speak with his probation officer during an interrogation did not constitute a request for counsel, and thus an invocation of his Fifth Amendment rights under *Miranda*.[25] The primary issue was whether juveniles should be judged by the same standard as adults when determining the validity of a *Miranda* waiver.[26] And despite earlier recognition of heightened protections for youth during interrogations,[27] the Court found that the same totality of the circumstances test used to assess the validity of an adult's *Miranda* waiver was

21 *See* Martin Guggenheim & Randy Hertz, J.D.B. *and the Maturing of Juvenile Confession Suppression Law*, 38 WASH. U. J. L. & POL'Y 109, 131-33 (2012) (noting that defense attorneys began relying less on due process involuntariness claims and more on *Miranda*-based claims because "*Miranda* was not only the better constitutional basis for seeking to suppress a confession, but essentially the *only* constitutional claim worth raising in most cases").

22 *See* FELD, *supra* note 9, at 250 (explaining that the objectivity of the *Miranda* factor has distracted judges from evaluating the tactics used to elicit confessions); *see generally infra* Section III.A (explaining the implications of relying heavily on *Miranda* in assessing the voluntariness of a confession).

23 For a 1979 juvenile *Miranda* waiver case that predates the scientific findings that children's brains do not fully develop until adulthood, see Fare v. Michael C., 442 U.S. 707 (1979). For more recent scientific findings on the development of children's brains, see, for example, Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 449-53 (2013) (discussing the progress that has been made in the last twenty-five years in understanding "that several major morphological and functional changes occur in the human brain during adolescence"); Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 440 (2012) (discussing how the results of a study suggest how psychosocial influences affect legal decisionmaking and "a much stronger tendency for adolescents than for young adults to make choices in compliance with the perceived desires of authority figures"); Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 50 CT. REV. 70, 70 (2014) ("There is now incontrovertible evidence that adolescence is a period of significant changes in brain structure and function. Although most of this work has appeared just in the past 15 years, there is already strong consensus among developmental neuroscientists about the nature of these changes.").

24 442 U.S. at 726-27.

25 *Id.* at 723-24.

26 *Id.* at 725.

27 *See supra* notes 1–7, 18–20 and accompanying text (discussing Supreme Court decisions that afforded enhanced protections to youth).

"adequate" in assessing the validity of a juvenile's waiver,[28] leaving youth without increased protections during interrogations.[29]

B. *Continued Recognition That Juveniles Are Different*

Today, we know that juveniles are developmentally different from adults, and with the science to support these findings, courts have once again begun to account for juvenile differences. Research on adolescent brain development shows that the prefrontal cortex of the brain does not fully develop until adulthood, which developmental psychologists now consider to happen around age twenty-five.[30] This area of the brain is responsible for judgment, maturity, foresight, self-control, and decisionmaking, which helps us understand why children and adolescents are "especially at risk" in the criminal justice system.[31]

In a series of recent decisions, the Supreme Court has recognized that juveniles have reduced moral and developmental capacity, and thus should be held to a different standard by the justice system than adults. In 2005, *Roper v. Simmons* abolished the death penalty for individuals who were under eighteen years old at the time they committed a crime.[32] The Court drew from adolescent brain research showing that youth "are more vulnerable or susceptible to negative influences and outside pressures" than adults.[33] Applying similar reasoning, the Court prohibited life without parole sentences for non-homicide offenses committed by individuals under eighteen years old in *Graham v. Florida* five years later.[34] The Court

28 *See Fare*, 442 U.S. at 725 (explaining that "[t]here is no reason to assume that . . . juvenile courts, with their special expertise in this area—will be unable to apply the totality-of-the-circumstances analysis," which must account for "the juvenile's age, experience, education, background, and intelligence"). *But see* FELD, *supra* note 9, at 8 (explaining how research "indicates that young and mid-adolescents do *not* possess the competence of adults to exercise *Miranda*"). Although a consideration of these factors would suggest courts invalidate many *Miranda* waivers, trial courts consistently "find that children as young as ten or eleven years of age, with no prior law enforcement contact, with limited intelligence or significant mental disorders, and without parental assistance made valid waivers." *Id.* at 43.

29 *See Fare*, 442 U.S. at 729-30 (Marshall, J., dissenting) (arguing that the Court should have adopted broader protections for juvenile suspects by holding that a juvenile's request for any adult "obligated to represent his interests" should be treated as an invocation of Fifth Amendment rights).

30 *Cf.* Arain et al., *supra* note 23, at 456 (discussing how the prefrontal cortex "matures independent of puberty and continues to evolve up until 24 years of age").

31 FELD, *supra* note 9, at 252; *see also* INT'L ASS'N OF CHIEFS OF POLICE, REDUCING RISKS: AN EXECUTIVE'S GUIDE TO EFFECTIVE JUVENILE INTERVIEW AND INTERROGATION 4 (2012) [hereinafter IACP] ("Because the pre-frontal cortex is not fully developed until the end of adolescence, it does not regulate a teenager's judgment and decision-making as well as in adults.").

32 543 U.S. 551, 568 (2005).

33 *Id.* at 569; *see infra* Part II (providing a more in-depth explanation of adolescent brain development); *see also infra* Section III.C and Section III.D (using research on adolescent development to explain why youth are particularly susceptible to coercive interrogation tactics).

34 560 U.S. 48, 74-75 (2010).

explained that juveniles have "[d]ifficulty in weighing long-term consequences" and "limited understandings of the criminal justice system and the roles of the institutional actors within it."[35] The Court extended that prohibition to sentences for homicide convictions of juveniles in *Miller v. Alabama* in 2012, just two years later.[36] Again, the Court premised its holding on the idea that juveniles have not developed adult decisionmaking capacity.[37] These cases, coined the "*Roper* trilogy," collectively hold that juveniles are "intrinsically and developmentally different from adults" and thus deserve greater protections when facing prosecution.[38]

In the custodial interrogation context, the Supreme Court has started to apply these scientific findings.[39] In *J.D.B. v. North Carolina*, the Court unequivocally acknowledged that age must be considered when determining whether a suspect is in custody and thus entitled to *Miranda* warnings.[40] Here, the Court reviewed the admissibility of an un-*Mirandized* statement made by a thirteen-year-old boy while being questioned by a uniformed officer and school administrators in a school conference room.[41] The Court remanded the case, mandating that the lower court consider the child's age at the time of the interrogation to determine if he was in custody, recognizing a child's age will impact how he will perceive his freedom to leave.[42] The Court grounded its reasoning in "common sense"[43] and the widespread legal and judicial recognition that children, as a class, are different from adults and therefore need different protections.[44] This represented an important step

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35 *Id.* at 78.

36 567 U.S. 460, 465 (2012).

37 *Id.* at 479-80.

38 Ariel Spierer, Note, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, 92 N.Y.U. L. REV. 1719, 1738 (2017).

39 *See* J.D.B. v. North Carolina, 564 U.S. 261, 273 (2011) (citing social science and cognitive science authorities to confirm fundamental differences between juvenile and adult minds).

40 *See id.* at 265 ("Seeing no reason for police officers or courts to blind themselves to that commonsense reality [that children are more susceptible to police questioning], we hold that a child's age properly informs the *Miranda* custody analysis.").

41 *Id.* at 265-68.

42 *Id.* at 271-72.

43 *See id.* at 279-80 ("[O]fficers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.").

44 The Supreme Court stated,

> [L]egal disqualifications placed on children as a class—*e.g.*, limitations on their ability to . . . marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal. . . . As this discussion establishes, "[o]ur history is replete with laws and judicial recognition" that children cannot be viewed simply as miniature adults. We see no justification for taking a different course here.

towards recognizing the need for added protections for juveniles in the custodial interrogation context because presumably, more juvenile suspects are given *Miranda* warnings when age is a relevant factor in the custody analysis.

However, the protections of *J.D.B.* only extend so far. The *J.D.B.* Court reasoned that youth are particularly vulnerable to both custodial pressures *and* coercive interrogation tactics,[45] but this decision only held that age is relevant to the custody analysis—it did not reach questions about interrogation practices.[46] It also did not rein in courts from over-emphasizing *Miranda* waivers when considering voluntariness due process challenges, leaving youth vulnerable to coercive interrogation tactics.[47]

The Supreme Court now explicitly acknowledges that a defendant's youth demands heightened criminal protections.[48] The Court's reasoning in the interrogation line of cases and the "*Roper* trilogy" comprehensively explain the developmental differences that make youth more likely to succumb to interrogation pressures, resulting in involuntary and even false confessions.[49] Nevertheless, the Supreme Court has not yet extended these protections to the interrogation context. This leaves youth vulnerable to coercive interrogation tactics overtly aimed at inducing confessions.

II. THE PREVALENCE OF FALSE CONFESSIONS, PARTICULARLY AMONG YOUTH

A false confession is an admission of guilt along with a "postadmission narrative" about "a crime that the confessor did not commit."[50] False confessions are a leading causes of wrongful convictions, contributing to

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Id. at 273-74.

45 *Id.* at 271-72.

46 *See* Spierer, *supra* note 38, at 1740 (recognizing that *J.D.B.* "addressed the 'custodial' aspect of a custodial interrogation," but not "what actually happens once an officer gets a juvenile suspect alone in the interrogation room").

47 *See infra* Section III.A (explaining the perverse effects of *Miranda* in relation to the voluntariness test).

48 *See, e.g.*, Graham v. Florida, 560 U.S. 48, 76 (2015) ("[C]riminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."); *J.D.B.*, 564 U.S. at 272 (explaining that a child's age is not merely a chronological fact, "[i]t is a fact that generates commonsense conclusions about behavior and perception. Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge." (internal citations omitted)).

49 *See J.D.B.*, 564 U.S. at 269 (explaining that the risk of custodial pressure inducing false confessions is "all the more acute . . . when the subject of custodial interrogation is a juvenile"); *see also id.* at 264-65 (considering a child's age to be relevant in determining whether the child was in custody because "[i]t 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").

50 Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY & L. 332, 333 (2009).

"roughly 25% of all convictions that were later overturned based on DNA evidence."[51] They are also one of the most misinterpreted "causes of error" in the criminal justice system because the occurrence of false confessions remains counterintuitive to many people who incorrectly assume that people will not act counter to their self-interest and falsely confess to a crime they did not commit.[52] This assumption persists because people are often unfamiliar with the causes of false confessions.[53]

For a false confession to occur, law enforcement must first misclassify an innocent person as guilty.[54] After this misclassification, researchers have determined that the following factors contribute to false confessions: (1) the "compromised reasoning ability of the suspect" due to age or limited education; (2) a young person's desire to please authority figures; (3) "the real or perceived intimidation of the suspect by law enforcement"; (4) the perceived threat of force by law enforcement during the interrogation; (5) "untrue statements about the presence of incriminating evidence"; and (6) "[f]ear, on the part of the suspect, that failure to confess will yield a harsher punishment."[55]

Each of these factors is inherently present when officers employ the Reid Method of interrogation—the most common interrogation technique in the United States—while interrogating youth suspects.[56] The Reid Method is a confrontational, guilt-presumptive, accusatory form of questioning.[57] It consists of maximization techniques, which exert pressure on the suspect to confess by accusing him of lying and threatening harsher treatment, as well as minimization techniques, which minimize the suspect's culpability by rationalizing the crime and implying promises of leniency.[58] Using these techniques in tandem may wear the suspect down and convince him that the only way to escape this stressful experience is to comply with the interrogators' wishes.[59] When this occurs and a suspect confesses merely

51 *Understand the Problem*, BLUHM LEGAL CLINIC WRONGFUL CONVICTIONS OF YOUTH (Oct. 28, 2019), http://www.law.northwestern.edu/legalclinic/wrongfulconvictionsyouth/understandproblem/ [https://perma.cc/8SER-RJZS].

52 Leo, *supra* note 50, at 332-33.

53 *Id.* at 333.

54 *Id.* at 334.

55 *False Confessions & Recording of Custodial Interrogations*, INNOCENCE PROJECT (Dec. 12, 2018), https://www.innocenceproject.org/false-confessions-recording-interrogations/ [https://perma.cc/BM73-77QD].

56 Spierer, *supra* note 38, at 1725.

57 *Id.* at 1721.

58 FELD, *supra* note 9, at 110-11, 126-27.

59 *See* Leo, *supra* note 50, at 335 (describing the process in which an interrogated person is made to feel that "he has no choice but to comply with the wishes of the interrogator" as a form of psychological coercion used in interrogation).

based on the perception that he has no choice but to do so, this confession is involuntary by definition and may also be false.[60]

Although the Reid Method serves to exploit all suspects' vulnerabilities, even those of the most hardened criminals, youth suspects are particularly susceptible to giving false confessions, as the factors above suggest.[61] In fact, youth only represent about 8.5% of all arrests,[62] yet in a study of 113 documented false confessions, they made up about one-third of the false confessions.[63] This disproportionate rate of false confessions from youth can primarily be attributed to the developmental differences between juveniles and adults.[64]

The prefrontal cortex of the brain, which is responsible for judgment and decisionmaking, continues to develop until the end of adolescence.[65] Developmental changes within this brain region are essential to both developing higher-order cognitive functions, such as foresight, and the weighing of risks and rewards.[66] As a result, adolescents tend to favor short-term, immediate rewards without properly weighing long-term consequences.[67] Coinciding with these findings is research that demonstrates

60 *See id.* ("When a suspect perceives that he has no choice but to comply, his resultant compliance and confession are, by definition, involuntary and the product of coercion.").

61 *See id.* ("Highly suggestible or compliant individuals are not the only ones who are unusually vulnerable to the pressures of police interrogation. So are the developmentally disabled or cognitively impaired, juveniles, and the mentally ill.").

62 Kevin Lapp, *Taking Back Juvenile Confession*, 64 UCLA L. REV. 902, 920 (2017) (citing *Crime in the United States 2015*, U.S. DEP'T JUST., https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-38 [https://perma.cc/E684-A8TY] (reporting that 709,333 persons under eighteen years old were arrested in 2015)).

63 Steven A. Drizin & Richard A. Leo, *The Problems of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 944 (2004).

64 *See* IACP, *supra* note 31, at 4 ("Because the pre-frontal cortex is not fully developed until the end of adolescence, it does not regulate a teenager's judgment and decision-making as well as in adults."); *see also* FELD, *supra* note 9, at 252 ("Research on adolescent brain development, judgment, maturity, and self-control demonstrates why younger juveniles are especially at risk.").

65 IACP, *supra* note 31, at 4; *cf.* 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) ("[Juvenile] suspects are terrified, alone, and surrounded by indicia of authority.").

66 *See* Robert E. Shepherd, *The Relevance of Brain Research to Juvenile Defense*, 19 CRIM. JUST., Winter 2005, at 51 (explaining that the prefrontal cortex–"which plays a critical role in the executive functions of the brain–those involved when a person plans and implements behaviors by selecting, coordinating, and applying the cognitive skills necessary to accomplish goals"–is still maturing during adolescence, which can lead to "impairments of foresight, strategic thinking, and risk management").

67 IACP, *supra* note 31, at 4; *see also* FELD, *supra* note 9, at 240 (explaining that juveniles' "impulsive decision-making, limited ability to consider long-term consequences, and greater desire to obey and please authority figures heightens their risk" to falsely confess); Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 466 (2009) (explaining the neurobiological evidence that supports the notion that adolescent brains develop better executive functioning capacity, including the ability to plan and balance risks and rewards).

that youth tend to be highly compliant toward authority figures, trusting of authority, and acquiescent due to their eagerness to please authority figures.[68] This is why adolescents often comply with police, offering confessions without considering the long-term consequences.[69]

III. VIEWING INTERROGATION TACTICS THROUGH A CONTRACTUAL LENS

This section uses contract principles to demonstrate that current due process and *Miranda* protections are inadequate and explores how popular interrogation tactics violate key voluntariness requirements in contract law, inducing involuntary, and often false, confessions. Principles from contract law may be able to provide protection for youthful suspects in ways that due process and *Miranda* rules cannot. Contract law seeks to protect weaker parties without infringing on their autonomy, ensuring that ostensibly voluntary agreements are actually that. While different policy considerations underlie contract and criminal law, the voluntariness protections from the former are necessary and would be effective in protecting the rights of youth facing criminal interrogation.

Drawing from other areas of law, particularly in the juvenile context, is not new. In *J.D.B. v. North Carolina*, the Supreme Court noted that tort law's "reasonable person" takes into account what is typical for children and applied this approach to the criminal context.[70]

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68 Leo, *supra* note 50, at 336; *see also* Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 357 (2003) ("Adolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of a plea agreement.").

69 Leo, *supra* note 50, at 336; *see also* Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 953 (2010) ("Many traits of adolescence, such as a foreshortened sense of future, impulsiveness, and other defining characteristics of youth . . . help to explain why juveniles falsely confess to police….").

70 564 U.S. 261, 274 (2011) (citing RESTATEMENT (SECOND) OF TORTS § 283A (AM. LAW INST. 1965)); *see also* RESTATEMENT (SECOND) OF TORTS § 283A & cmt. a (AM. LAW INST. 1965) (providing for a standard for children of "a reasonable person of like age, intelligence, and experience under like circumstances," on the basis that "[a] child is a person of such immature years as to be incapable of exercising the judgment, intelligence, knowledge, experience, and prudence demanded by the standard of the reasonable man applicable to adults"). As RESTATEMENT (SECOND) OF TORTS § 283 cmt. c (AM. LAW INST. 1965) explains, this modified standard of conduct for children reflects the notion that

> a standard of conduct demanded by the community for the protection of others against unreasonable risk. . . . [m]ust be the same for all persons, since the law can have no favorites; and yet allowance must be made for some of the differences between individuals, the risk apparent to the actor, his capacity to meet it, and the circumstances under which he must act.

A. *Miranda Does Not Manifest Voluntariness*

Contract law values protecting a party's reliance on objective assent to an agreement, however, courts have developed doctrines to ensure that a contract *will not be enforced* against a party *whose objective assent was not voluntary*.[71] These doctrines protect vulnerable parties by allowing courts to look "beyond the manifestation of intent."[72] The justification is that "adher[ing] to objectivity could mask the fact that the apparent assent was not genuine, but was obtained by deceit or improper bargaining tactics."[73] In such instances where assent is not truly voluntary, the contract will be voidable.[74]

Similar to contract law, where an objective test to determine assent is insufficient to speak to a party's voluntariness in entering the agreement, viewing a waiver of *Miranda* as objective proof that a confession is voluntary is insufficient to speak to a party's voluntariness. Nevertheless, in the post-*Miranda* era, courts evaluating the admissibility of a confession tend to focus narrowly on whether police gave a *Miranda* warning and suspects waived their rights, rather than on the voluntariness of the confession itself.[75]

While the *Miranda* Court should be praised for its efforts to inform suspects of their rights and empower them to assert those rights, the use of *Miranda* in the intervening decades demonstrates that merely advising suspects of their rights is not the same as ensuring their protection.[76] Consequently, *Miranda* has failed in its attempt to rectify the shortcomings of the voluntariness standard because after suspects waive their *Miranda* rights, officers proceed with the same interrogation techniques they used to secure waivers, leading suspects to fall victim to these pressures again.[77] Further, when courts find a valid waiver of *Miranda*, the inquiry tends to end there.[78] Courts commonly defer to the *Miranda* safeguard, using the fact that

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71 BRIAN BLUM, CONTRACTS: EXAMPLES AND EXPLANATIONS 415 (5th ed. 2011).

72 *Id.*

73 *Id.*

74 *Id.* at 417.

75 *See* FELD, *supra* note 9, at 7 (stating that trial judges have a narrow focus "on whether police gave and suspects waived their rights, rather than on the voluntariness and reliability of confessions"); *see also id.* at 250 ("*Miranda* allows judges to focus on ritualistic compliance with a procedural formality rather than to examine closely the voluntariness of a waiver or reliability of statements."); *cf. id.* at 247 (explaining that "rather than handcuff the police, the warnings have liberated them," because adhering to Miranda affords a path to admissibility).

76 *See id.* at 7 ("*Miranda* has transmogrified from a protection for suspects to a safe harbor for police.").

77 *See id.* at 247 ("Despite the warning, people succumb to the compulsive pressures the warning is supposed to dispel, and they waive constitutional protections at very high rates. . . . Police interrogation practices did not change after *Miranda*.").

78 *See* Missouri v. Seibert, 542 U.S. 600, 608-09 (2004) (explaining that "giving the warnings and getting a waiver has generally produced a virtual ticket of admissibility . . . and litigation over voluntariness tends to end with the finding of a valid waiver"); *see also* FELD, *supra* note 9, at 250

warnings were given as objective proof that the suspect's due process rights were not violated, rather than probing deeper into this appearance of voluntariness as contract law courts do.[79]

This overreliance on *Miranda* when determining admissibility is misguided. First, it assumes that the waiver itself was valid. A waiver is only valid if it "is made voluntarily, knowingly[,] and intelligently."[80] In other words, a suspect must understand the *Miranda* vocabulary words and their meaning in *Miranda* contexts, appreciate the benefits or consequences of invoking or waiving their rights, and provide the waiver and statement free from police coercion.[81] However, comprehension studies consistently demonstrate that juveniles neither understand nor appreciate the meaning or legal consequences of the warnings they are waiving.[82] Nevertheless, courts tend to deem these waivers valid.[83]

Second, even assuming the waiver itself is valid, the constitutional requirement that suspects confess voluntarily is *separate* from the constitutional requirement that suspects be *Mirandized*.[84] Therefore a

(arguing that today "judicial review of a *Miranda* waiver is the beginning *and* the end of regulating interrogation"); Lapp, *supra* note 62, at 927 (explaining that "*Miranda* was not meant to displace the due process voluntariness inquiry," but it nevertheless "has become little more than a checkbox that police can easily satisfy in order to obtain an admissible confession").

79 *See* Amelia Courtney Hritz, Comment, *"Voluntariness with a Vengeance": The Coerciveness of Police Lies in Interrogations*, 102 CORNELL L. REV. 487, 492 (2017) ("Consistent with courts' deference to the *Miranda* safeguard, once suspects have been *Mirandized*, courts have deemed confessions to be voluntary despite police lies regarding the seriousness of the charges, promises of leniency, and the presence of physical evidence and accomplice statements.").

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

81 *See* Allyson J. Sharf et al., *Evaluating Juvenile Detainees' Miranda Misconceptions: The Discriminant Validity of the Juvenile Miranda Quiz*, 29 PSYCHOL. ASSESSMENT 556, 557 (2017) (describing the various prongs of *Miranda* and their focuses).

82 *See, e.g.*, RICHARD ROGERS & ERIC DROGIN, MIRANDIZED STATEMENTS 29 (2014) ("When questioned directly, most juveniles (71 percent) and adult respondents (69 percent) were unaware that questioning could continue indefinitely until they asserted their right to silence."); Heather Zelle et al., *Juveniles' Miranda Comprehension: Understanding, Appreciation, and Totality of Circumstances Factors*, 39 LAW HUM. BEHAV. 281, 291 (2015) ("The current study demonstrated the discontinuity that can occur between understanding and appreciation of related items (e.g., knowing that one can obtain a lawyer but not grasping what a lawyer is or does)").

83 *See* FELD, *supra* note 9, at 43 (explaining that waivers are generally only invalidated "under the most egregious circumstances," and that judges "regularly find that children as young as ten or eleven[,] . . . with no prior" encounters with the justice system, validly waived their rights); *see also id.* (explaining that because there are neither bright-line rules nor decisive factors to assess validity, when a child claims to understand these rights, *Fare* does not compel judges to probe further).

84 Confessions must be voluntary based on the Due Process Clause of the Fourteenth Amendment, which provides that "[n]o state shall . . . deprive any person of life, liberty, or property without due process of law," because an involuntary confession violates an individual's liberty to choose to confess. U.S. CONST. amend. XIV, § 1; LIPPMAN, *supra* note 8, at 286. On the other hand, suspects must be *Mirandized* based on the Fifth Amendment, which provides that "[no person] . . . shall be compelled in any criminal case to be a witness against himself," because courts recognize that without

thorough due process inquiry must *follow* such a finding of a valid waiver. Conflating the two deprives suspects of their full constitutional protections.[85] The totality of the circumstances test used to judge voluntariness provides "the only check on police conduct in the high percentage of interrogations where *Miranda* warnings have been provided and waived."[86] However, since many courts fail to thoroughly engage in this test *after* finding a waiver of *Miranda*, there has been little guidance about "permitted or prohibited interrogation techniques . . . allow[ing] police to bring substantial pressures to bear on vulnerable or unsophisticated suspects."[87] Without this guidance, the voluntariness test remains elusive and police continue to use coercive techniques on children.[88]

Therefore, rather than effectively ending the voluntariness inquiry based on the objective perception that *Miranda* was waived, courts are constitutionally required to engage in a voluntariness assessment. And because this voluntariness standard remains vague, contract principles—which are deemed necessary to ensure the voluntariness of contracts between bargaining adults—may inform the voluntariness of confessions given by youth suspects to adult interrogators. Without such protections, the fundamental rights of youth are at risk of being undermined.

B. *The Reid Method Unduly Influences Youth Suspects*

Courts deem contracts the result of improper bargaining when a party does not assent voluntarily, but instead assents because a superior party exerts undue influence over them.[89] In contract law, undue influence occurs where one party has a particularly strong influence over the other and abuses that influence to produce a better result for itself at the weaker party's expense.[90] Undue influence is seen in two general forms: (1) by exerting excessive

this warning, the inherently coercive nature of police interrogations may overwhelm suspects' ability to assert their right against self-incrimination. U.S. CONST. amend. V; LIPPMAN, *supra* note 8, at 286.

85 *Cf.* Dorothy Heyl, *The Limits of Deception: An End to the Use of Lies and Trickery in Custodial Interrogations to Elicit the "Truth"?*, 77 ALB. L. REV. 931, 938 (2013) (clarifying that *Miranda* does not change the fact that the admissibility of a statement made "in custody must be judged solely by whether [it was] 'voluntary'"); Lapp, *supra* note 62, at 927 (recognizing that *Miranda* has shifted the courts' "attention from the due process issue of involuntariness to issues concerning the . . . waiver of *Miranda* rights").

86 Godsey, *supra* note 13, at 508.

87 FELD, *supra* note 9, at 16; *see also id.* at 17 ("High-profile crimes create political pressures for police to solve a crime and for judges to find confessions voluntary despite strenuous interrogation tactics.").

88 *See id.* at 8 ("The Reid manuals . . . teach police to isolate suspects and to use psychological tactics . . . to heighten their stress and anxiety and to manipulate their vulnerabilities to obtain confessions . . . with children as with adults.").

89 BLUM, *supra* note 71, at 442.

90 *Id.*

pressure or unfair persuasion over the weaker party, often in oppressive circumstances;[91] or (2) by abusing the weaker party's trust that the dominant party will not act in a manner inconsistent with his welfare.[92]

The Reid Method of interrogation, which is a confrontational, accusatory method of questioning, and the most common interrogation technique in the United States,[93] results in officers exerting undue influence over suspects in both of these manners. While Reid interrogations are designed to exploit all suspects' vulnerabilities, youth suspects are particularly vulnerable to coercive interrogation practices.[94] Children are thus more prone to giving involuntary, and often false confessions, due to the developmental differences between juveniles and adults.[95]

First, I will explain how the Reid Method's use of maximization techniques, which exert pressure on the suspect to confess by accusing him of lying,[96] results in undue influence in the first form of undue influence: unfair persuasion. Next, I will demonstrate how the Reid Method's use of minimization techniques, which offer ways to minimize the suspect's culpability,[97] creates undue influence in the form of abuse of trust.

C. *Maximization Techniques: Intimidation, Confrontation, and Extreme Pressure Can Result in Undue Influence Through Over-Persuasion*

Maximization techniques induce a confession by "convey[ing] the interrogator's . . . belief that the suspect is guilty and that all denials will fail."[98] High-pressure maximization interrogations include confronting the suspect, accusing the suspect of lying, continuously demanding the suspect tell the truth, overriding any objections, warning about causing trouble for

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91 RESTATEMENT (SECOND) OF CONTRACTS § 177 (AM. LAW INST. 1981).

92 *Id.*

93 *See* Spierer, *supra* note 38, at 1725-33 (describing the goals and tactics of the Reid Method).

94 Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW HUM. BEHAV. 3, 25 (2009) (explaining that research identifies two sets of risk factors for false confessions: the first set pertains to situational factors—which are inherent with the Reid Method—such as a lengthy custody and isolation, deprivation of sleep or other need states, presentations of false evidence to make the suspect feel trapped, and implied promises of leniency, and the second set "pertains to dispositional characteristics that render certain suspects highly vulnerable to influence and false confessions—namely, adolescence and immaturity").

95 *See infra* Part II (providing a more in-depth explanation of adolescent brain development); *see also* FELD, *supra* note 9, at 252 ("Research on adolescent brain development, judgment, maturity, and self-control demonstrates why younger juveniles are especially at risk.").

96 *See* RICHARD LEO, POLICE INTERROGATION AND AMERICAN JUSTICE 135 (2008) ("If a suspect denies that he committed the crime, interrogators frequently accuse him of lying.").

97 *See id.* at 133 ("Interrogators seek to persuade the suspect that he is trapped and powerless, to diminish his self-confidence to deny the detectives' accusations, and to offer him a way to seemingly minimize his culpability and mitigate his punishment if he provides a statement.").

98 Kassin et al., *supra* note 94, at 12.

others if no confession is made, and even presenting the suspect with real, implied, or false evidence.[99] False confession expert, Saul Kassin, explains that these tactics ultimately "shift the suspect's mental state from confident to hopeless."[100]

These maximization techniques, as the name suggests, are intended to maximize the pressure on the suspect—pressure that feels all the more intense on juvenile suspects. They take advantage of the suspect's "mental, moral, or emotional weakness," and thereby "overcome the will without convincing the judgment."[101] Although undue influence in contract law does not require a finding of an authoritative relationship or misrepresentation, courts consider these factors strong indicators of over-persuasion.[102] In addition, finding that an encounter takes place at an unusual time or place, without a third-party advisor to the weaker party, or with the use of multiple persuaders, further strengthens the case of over-persuasion.[103]

In the interrogation context, when officers employ Reid techniques, all of these indicators of undue influence are present. First, the interrogator's position of power over the child is self-evident.[104] Children are often taught from an early age to respect authority and tend to have an increased eagerness to please authority figures.[105] Because juveniles are particularly compliant toward authority figures, they are even more susceptible to these interrogation techniques.[106]

Next, interrogators begin their interrogation with a presumption of guilt.[107] When youth are confronted with accusations of guilt, they are more likely than adults to change their responses to fulfill the expectations of police interrogators.[108] Over time, this effect is even more pronounced: research shows that "[c]hildren who are asked the same question more than once may

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99 *See* FELD, *supra* note 9, at 112 (describing each of the stages of maximization interrogations); Kassin et al., *supra* note 94, at 12 (listing various maximization techniques).

100 Kassin et al., *supra* note 94, at 12.

101 Odorizzi v. Bloomfield Sch. Dist., 246 Cal. App. 2d 123, 130 (1966).

102 *Id.*

103 *Id.* at 133.

104 *See* Hritz, *supra* note 79, at 499 (explaining that during an interrogation, a police officer is "in a superior bargaining position" because they "are in complete control over the suspect's environment").

105 *See* Cauffman & Steinberg, *supra* note 23, at 440 (recognizing that adolescents are more likely "to make choices in compliance with the perceived desires of authority figures").

106 *See* Andrew J. Greer, Note, *Oh, The Places You'll Go!—Prison: How False Evidence in Juvenile Interrogations Unconstitutionally Coerces False Confessions*, 10 DREXEL L. REV. ONLINE 741, 761 (2018) ("Authoritarian pressures play no small role in false confessions among children.").

107 *See* FELD, *supra* note 9, at 233 (explaining that interrogation is a guilt-presumptive process, which "predisposes police to disbelieve true claims of innocence and to attend to information that confirms their belief").

108 *See* Cauffman & Steinberg, *supra* note 23, at 440 (recognizing that adolescents are more likely "to make choices in compliance with the perceived desires of authority figures").

assume they gave the 'wrong' answer the first time, and feel pressure to provide the 'right' answer when the question is repeated."[109] This can result in a child changing his story multiple times until receiving affirmation from the interrogator.[110]

The interrogation of an intellectually impaired teenage boy named Brendan Dassey, which was highlighted in the popular Netflix documentary, *Making a Murderer*, presents a clear example of this tendency of youth suspects to guess what they believe interrogators want to hear.[111] During his four interrogations, which took place over a period of forty-eight hours,[112] Dassey gave multiple conflicting statements when repeatedly asked who cut the victim's hair, finally admitting that he was "just guessing."[113] Then, when asked repeatedly about the number of times the victim had been shot, he changed his answer three times based on the feedback he received from the interrogators.[114] His first two guesses resulted in dissatisfied responses from the officer, so Dassey felt the need to make a third guess.[115] The officer was satisfied by this one, responding with praise: "That makes sense. Now we believe you."[116]

The guessing games that result from maximization techniques do not represent reliable admissions of guilt. Instead, as confession expert Richard Leo points out, they represent a child's tendency to be "highly compliant[,] . . . naively trusting of authority, acquiescent, and eager to please adult figures," making children "predisposed to be submissive when questioned by police."[117] Despite the widely accepted unreliability of these guessing games, the Seventh Circuit Court of Appeals did not consider Dassey's seemingly

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109 John E.B. Myers et al., *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 PAC. L.J. 3, 23 (1996).

110 *See* Spierer, *supra* note 38, at 1741 (explaining that the authoritative role of an officer causes children "to seek the interrogator's approval and to respond with the 'right' answers, even if they do not know what those are").

111 *See* Brief of Independent Law Enforcement Instructors and Consultants as Amici Curiae In Support of Petitioner at 13-20, Dassey v. Dittmann, 877 F.3d 297 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 2677 (2018) (No. 17-1172) (explaining how and why Dassey revised his answers to satisfy interrogators); MAKING A MURDERER (Netflix Dec. 18, 2015) (same).

112 Robert Barnes, *Supreme Court Won't Hear the Case of Brendan Dassey, Sentenced to Life as a Teen and Featured in 'Making a Murderer'*, WASH. POST (June 25, 2018), https://www.washingtonpost.com/politics/courts_law/supreme-court-wont-hear-the-case-of-brendan-dassey-a-teen-sentenced-to-life-and-featured-in-making-a-murderer/2018/06/25/6f97336e-787c-11e8-93cc-6d3beccdd7a3_story.html [https://perma.cc/6QXC-2ZK5].

113 Brief of Independent Law Enforcement Instructors and Consultants, *supra* note 111, at 13-16.

114 *Id.* at 18-19.

115 *See id.* at 18-20 (recognizing that Dassey was merely "fishing for 'correct answers,'" and that he tailored his guesses based on suggestive questions he was given and the praise he received when they were satisfied).

116 *Id.* at 20.

117 Leo, *supra* note 50, at 336.

textbook example of an involuntary confession to be involuntary.[118] Instead, the court held that the confession was voluntary, reasoning that Dassey, despite his intellectual disabilities and age, "spoke with the interrogators freely, after receiving and understanding *Miranda* warnings,"[119] further demonstrating that courts today often rely too heavily on the presence of a *Miranda* warning, without further engaging in a thorough totality of the circumstances assessment of voluntariness.

1. Isolation: A Contributing Factor to Undue Influence Through Over-Persuasion

Isolation intensifies pressure on suspects, and youth are particularly susceptible to this pressure because children have a heightened tendency to favor short-term, immediate rewards—like complying with an authoritative figure in hopes of ending an interrogation—without thoroughly considering the consequences.[120] As one commentator put it, when "[f]acing overbearing interrogators who refuse to take no for an answer, [a child] may reason that telling interrogators what they want to hear is the only way to escape."[121]

The International Association of Chiefs of Police (IACP) Executive's Guide to Effective Juvenile Interviews and Interrogations summarizes direct accounts from many youth who explain they falsely confessed because they wanted to put an end to the confrontational, intimidating

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118 *See* Dassey v. Dittmann, 877 F.3d 297, 313 (7th Cir. 2017) ("Given the many relevant facts and the substantial weight of factors supporting a finding that Dassey's confession was voluntary, the state court's decision was not an unreasonable application of Supreme Court precedent."); MAKING A MURDERER, *supra* note 111 (documenting the Seventh Circuit's decision). For procedural context, prior to this decision, U.S. Magistrate Judge William Duffin had overturned Dassey's conviction in August 2016, citing his age and lack of guardianship during his interrogation. Dassey v. Dittmann, 201 F. Supp. 3d 963, 1006 (E.D. Wis. 2016). When state prosecutors appealed, a three-judge panel for the Seventh Circuit Court of Appeals affirmed Duffin's ruling in June 2017 by a 2–1 vote. Dassey v. Dittmann, 860 F.3d 933, 983 (7th Cir. 2017). It was not until prosecutors appealed again that the entire Seventh Circuit reviewed the case, resulting in a 4–3 holding that the confession was voluntary. *Dassey*, 877 F.3d at 301.

119 *Dassey*, 877 F.3d at 301.

120 *See* LEO, *supra* note 96, at 233 ("Youth (especially young children) . . . lack the cognitive capacity and judgment to fully understand the nature or gravity of an interrogation or the long-term consequences of their responses to police questions."); *id.* at 203 ("The combined effect of these multiple stressors may overwhelm the suspect's cognitive capacities such that he confesses simply to terminate what has become an intolerably stressful experience."); Kassin et al., *supra* note 94, at 16 (explaining that suspects endure "prolonged isolation from significant others" which "constitutes a form of deprivation that can heighten a suspect's distress and incentive to remove himself or herself from the situation").

121 LEO, *supra* note 96, at 203; *see also* FELD, *supra* note 9, at 240 (explaining that "[t]he isolation, stress, and anxiety associated with interrogation intensify their desire to extricate themselves by the short-term expedient of confessing").

interrogation.[122] These youth compared the feeling of being interrogated to "an 18-wheeler driving on your chest and you believe that the only way to get that weight off your chest is to tell the police whatever they want to hear"[123] and feeling as though "[you are] choking, like there was no more air left in the room."[124] One explained he confessed because, "I was tired, I was scared, they wouldn't accept anything else from me . . . . They kept giving me suggestions, giving me some narratives that would make sense and I just picked the ones I thought they wanted to hear the most."[125] Finally, another explained that she "never thought of the consequences," but "just said it because they wanted [her] to."[126]

2. Misrepresentation: A Type of Undue Influence Through Over-Persuasion

Misrepresentation is another strong indicator of improper undue influence through over-persuasion because it occurs when the dominant subject applies pressure on the servient object to a degree that influences their decision.[127] Misrepresentation is generally distinct from coercion as a matter of contract law,[128] but I group it with undue influence because misrepresenting facts to suspects leads to over-persuasion, especially in youth suspects—despite the fact that interrogators may misrepresent facts without running afoul to criminal procedures. Richard Leo, a juvenile justice scholar, explains that confronting a suspect with false evidence is a commonly used interrogation technique because "[e]vidence ploys are used to make a suspect perceive that the case against him is so overwhelming that he has no choice but to confess because no one will believe his assertions of innocence."[129] This

122 *See* IACP, *supra* note 31 (summarizing how children responded to the pressures of interrogation); *see also* FELD, *supra* note 9, at 234 (explaining that confrontational interrogations lead to false confessions because the factors involved in such interrogations "increase susceptibility to social influences, impair complex decision-making, and heighten suggestibility").

123 IACP, *supra* note 31, at 4.

124 *Id.* at 14.

125 *Id.* at 3. *Cf.* ALLEN, *supra* note 16, at 861 ("[T]he factual accuracy of statements . . . is obviously problematic where the only means of halting an interrogation is to assent to the views of the interrogator.").

126 IACP, *supra* note 31, at 8.

127 *Cf.* Odorizzi v. Bloomfield Sch. Dist., 246 Cal. App. 2d 123, 130 (1966) (explaining that a finding of undue influence does not necessarily require a finding of misrepresentation, because "a person's will may be overborne" even without such a condition, but that "[p]ressure of whatever sort which overpowers the will without convincing the judgment is a species of restraint under which no valid contract can be made").

128 *Id.*

129 LEO, *supra* note 96, at 139; *see also* Hritz, *supra* note 79, at 498 ("[L]ies can vary targets' estimates of the costs and benefits of a course of action. For example, lies may foster an unnecessary loss of confidence in the targets' best option . . . [or] may eliminate or obscure the targets' perception

type of over-persuasion through misrepresentation should be prohibited because it threatens the reliability of the confessions it yields.

In contract law, when a court finds fraudulent misrepresentation, the contract will be voidable because the agreement was not truly voluntary—it was obtained by deceit.[130] To prove that a party engaged in fraudulent misrepresentation, the party must have (1) knowingly or recklessly made a false representation, on which (2) the party intended for another to rely, and (3) caused injury to the other party.[131]

The same definition should apply to suspects who enter confessions in response to misrepresentations by interrogators. An examination of the interrogation of seventeen-year-old Martin Tankleff demonstrates why.[132] After Tankleff came home to find his mother stabbed to death and father near death, he called 911.[133] Next, he went with the police to the station intending to give them information about his father's business partner, whom he suspected committed the attack.[134] The police, however, had already deemed him a suspect, and they proceeded to subject him to an intense interrogation.[135] The officers repeatedly confronted him with accusations of guilt.[136] At one point, an officer pretended to take a call outside the interrogation room.[137] When he re-entered, he told Tankleff that his father came out of the coma and asserted that it was Tankleff who stabbed his mother.[138] After being presented with this lie, Tankleff began to doubt his own innocence: he asked the officers, "Could I have blacked out and done

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of relevant alternatives."). Lying may be particularly problematic with youth, who already have trouble engaging in a proper cost-benefit analysis. *See* Marsha Levick & Elizabeth-Ann Tierney, *The United States Supreme Court Adopts a Reasonable Juvenile Standard in* J.D.B. v. North Carolina *for Purposes of the Miranda Custody Analysis: Can a More Reasoned Justice System for Juveniles Be Far Behind?*, 47 HARV. C.R.-C.L. L. REV. 501, 509 n.53 (2012) (citing Elizabeth Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 L. & HUM. BEHAV. 221, 231 (1995) ("[B]ecause adolescents tend to discount the future and weigh more heavily the short-term risks and benefits, they may experience heightened pressure from the immediate coercion they face.").

130 BLUM, *supra* note 71, at 419.

131 *Fraudulent Misrepresentation*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/fraudulent_misrepresentation [https://perma.cc/JNV5-JBVC] (last visited Jan. 2, 2020).

132 Brief of the Innocence Network as *Amicus Curiae* In Support of Petitioner at 17-19, Dassey v. Dittmann, 877 F.3d 297 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 2677 (2018) (No. 17-1172) (citing a compilation from People v. Tankleff, 199 A.D.2d 550, 606 N.Y.S.2d 707 (1993), People v. Tankleff, 49 A.D.3d 160, 848 N.Y.S.2d 286 (2007), and *Marty Tankleff's Fight for the Truth*, CBS NEWS (Jan. 26, 2008), https://www.cbsnews.com/news/marty-tankleffs-fight-for-the-truth/ [https://perma.cc/4LDE-TMJA]).

133 *Id.* at 17.

134 *Id.* at 18.

135 *Id.*

136 *Id.*

137 *Id.*

138 *Id.*

it? . . . Could I be possessed?"[139] The officer responded, "I think that's what happened to you."[140] Tankleff then confessed.[141] Realizing his mistake, he "almost immediately recanted" and refused to sign the confession.[142] This unsigned confession, however, remained the foundation for the prosecution's case.[143] Tankleff was found guilty and sentenced to fifty years.[144] He spent seventeen of those years in prison until new evidence suggested that it was, in fact, the business partner who orchestrated the murders of Tankleff's parents.[145]

Here, the officer (1) knowingly and intentionally falsely represented that the father came out of the coma and inculpated Tankleff. It (2) was intended for Tankleff to rely on this representation and confess. Indeed, in extreme circumstances, officers may be so persuasive that they cause an innocent child to internalize the accusation and believe he is actually responsible for a crime he never committed.[146] That was the case here: once Tankleff was presented with this false evidence, he went from affirmatively asserting his innocence, to doubting himself, to asking the officers whether he could have possibly committed these acts while in a different state of consciousness.[147] This sequence of events epitomizes undue influence through "persuasion which overcomes the will without convincing the judgment."[148] This confession was the product of manipulative, false evidence. Finally, inducing this confession (3) caused injury to the party because the confession—despite being recanted

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139 *Id.*

140 *Id.*

141 *Id.*

142 *Id.*

143 *Id.*

144 *Id.*

145 *Id.* at 18-19; People v. Tankleff, 49 A.D.3d 160, 182-83 (N.Y. App. Div. 2007).

146 *See, e.g.*, Laurel LaMontagne, Comment, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29, 31-33 (2013). The author explains the experience that induced fourteen-year-old Michael Crowe to falsely confess to the murder of his sister. Michael was subjected to lies, isolation, and false promises, and after repeatedly being told by his interrogators that he killed his sister, Michael went from denying this allegation to doubting himself. *Id.* at 31. Eventually, he confessed: "I'm not sure how I did it. All I know is I did it." *Id.* Later, he was exonerated by DNA evidence, and following his release explained, "[e]ventually, [the police] wear you down to where you don't even trust yourself. You can't trust your memory anymore." *Id.*

147 Brief of the Innocent Network, *supra* note 132, at 18.

148 Odorizzi v. Bloomfield Sch. Dist., 246 Cal. App. 2d 123, 130 (1966); *see also* FELD, *supra* note 9, at 242 ("Stressful conditions may cause children to change their stories and to actually believe their distorted version of the event."); Hritz, *supra* note 79, at 497-98 (explaining that lies told by police can "distort . . . information and therefore distort the situations as the targets of the lies perceive them").

and unsigned—was the foundation of the prosecution's case, resulting in his conviction and fifty-year sentence.[149]

In addition to case law, experiments also demonstrate that presenting suspects with false evidence induces them to accept blame for actions they did not take.[150] In one study, college students were warned not to press the ALT-key while typing because it would cause the computer to crash.[151] To account for varying levels of vulnerability, one group was prompted to type at a slow pace, while the other was prompted to type at a fast pace.[152] Experimenters manipulated the crash of each of the computers and accused each student of pressing the ALT-key.[153] During these accusations, half of the students within the fast-paced group and half within the slow-paced group were told that a confederate had witnessed them press the ALT-key—a form of false evidence.[154] Despite their innocence, 100% of the subjects in the fast-paced group presented with this false evidence signed written confessions.[155] This rate of confession was 35% higher than the fast-paced group that was not told there was a witness, and 65% higher than the slow-paced group without a witness.[156] Although this experiment did not involve a crime, it demonstrates how false evidence can induce suspects, particularly those who are most vulnerable, to accept responsibility for acts they did not commit.

D. *Minimization Techniques: Feigning Friendship, Solidarity, and Leniency Can Result in Undue Influence Through Abuse of Trust*

Minimization techniques used in juvenile interrogations induce confessions by providing justifications for the alleged acts and implying the child will feel better or benefit from confessing.[157] The minimization tactics employed by interrogators include sympathizing with the child, rationalizing

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149 *See* IACP, *supra* note 31, at 3 ("No evidence is more valuable than a defendant's own admission of guilt."); *see also* Drizin & Leo, *supra* note 63, at 961 ("[C]onfession evidence is inherently prejudicial and highly damaging to a defendant, even if it is the product of coercive interrogation, even if it is supported by no other evidence, and even if it is ultimately proven false beyond any reasonable doubt.").

150 *See, e.g.*, Saul M. Kassin & Katherine L. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 PSYCHOL. SCI. 125, 127 (May 1996) (providing support for this notion and suggesting that the memory can be altered for recent actions); Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 148 (1996) (finding that younger kids were much more likely to take responsibility when presented with false evidence).

151 Kassin & Kiechel, *supra* note 150, at 126.

152 *Id.*

153 *Id.*

154 *Id.*

155 *Id.* at 127.

156 *Id.*

157 FELD, *supra* note 9, at 126-27.

the crime by understating its seriousness, and implying promises of leniency.[158] The goal is to induce a statement by framing a confession as the suspect's best option.[159]

Applying the contract law lens, using multiple minimization techniques in an interrogation presents undue influence through abuse of trust. In contract law, the dominant feature of this type of unfair persuasion is the exploitation of a weaker party's trust in the dominant party.[160] Society teaches children to trust the police, creating for them the justified assumption that interrogating officers "will not act in a manner inconsistent with [their] welfare."[161] Since society holds officers to a higher moral standard[162] and youth tend to be "naively trusting of authority,"[163] training officers to use implied promises of help or leniency during youth interrogations is particularly problematic. Yet the Reid technique does just that.

The IACP report explains, "these indirect promises of leniency . . . can trigger involuntary or false confessions by presenting the juvenile with an offer he can't refuse: say what the police want to hear or face negative consequences."[164] One seventeen-year-old explained how he "had the perception that the police were there to help," so he "signed a confession under the pretense that [he] was going to go home later on that night, but it didn't work out that way."[165]

Brendan Dassey's case presents another example. Here, the officers feigned allegiance to Dassey as they reassured him, "Mark and I both are in your corner[.] We're on your side."[166] They also feigned sympathy[167] and rationalized his alleged actions as "mistakes" that he was forced into.[168] By

158 Kassin et al., *supra* note 94, at 12.

159 *Id.*

160 BLUM, *supra* note 71, at 442.

161 *See* RESTATEMENT (SECOND) OF CONTRACTS § 177(1) (identifying the circumstances where undue influence is "unfair persuasion of a party"); *see also* Spierer, *supra* note 38, at 1741 ("[C]hildren are taught to trust adults from a young age, and to regard law enforcement officers with both respect and deference.").

162 Hritz, *supra* note 79, at 501.

163 *See* Leo, *supra* note 96, at 233 ("[J]uveniles . . . are highly compliant [and] tend to be immature, naively trusting of authority, acquiescent, and eager to please adult figures. They are thus predisposed to be submissive when questioned by police.").

164 IACP, *supra* note 31, at 9.

165 *Id.* at 15.

166 Dassey v. Dittmann, 201 F. Supp. 3d 963, 970 (E.D. Wis. 2016); *see also id.* at 970 ("[N]o matter what you did, we can work through that. OK. We can't make any promises but we'll stand behind you no matter what you did. OK. Because you're being the good guy here.").

167 *See id.* ("[F]rom what I'm seeing . . . I'm thinking you're all right. OK, you don't have to worry about things.").

168 *See id.* at 971-72 ("We know what happened, it's OK . . . It's not your fault, he makes you do it."); *see also* Transcript of Interview by Marinette County Detectives with Brendan Dassey at 29 (Nov. 6. 2005) [hereinafter Dassey Interview], http://www.stevenaverycase.org/wp-

stating, "We know what happened, it's OK . . . . It's not your fault, he makes you do it," the interrogators minimized Dassey's culpability to help move him to a confession.[169] They also made clear that they would not accept Dassey's denials of guilt, which prompted him to take the "out" they were offering.[170] Finally, the officers implied that only a confession would help him.[171] While the interrogators repeatedly emphasized the need to be "honest," they made clear that their definition of "honesty" was a willingness to adopt their preferred version of events.[172]

Children not only have a tendency to trust authority figures and acquiesce to them—they also tend to lack the ability to properly weigh the costs and benefits of doing so.[173] As discussed above, children tend to discount the future and prioritize potential immediate gains over long-term losses.[174] Therefore, when interrogators imply a confession can help them or end the interrogation, juveniles are not only more likely to trust this implied promise,[175] but are also more likely to over-value this immediate gain over the unknown consequences that may stem from this confession.[176] Taken as a

content/uploads/2016/03/Brendan-Dassey-Interview-Transcript-2005Nov06.pdf [https://perma.cc/T7YF-JM5B] ("[P]eople don't mean to make mistakes but they do. Okay. The only way to make your mistakes right is by tellin' the truth, okay?").

169 *Dassey*, 201 F. Supp. 3d at 971; *see also* FELD, *supra* note 9, at 234 ("Minimization provides a moral justification . . . to neutralize guilt [which] may induce innocent people to adopt the proffered excuses as a mean[s] to end questioning.").

170 *Dassey*, 201 F. Supp. 3d at 972. For an explanation that these rationalizations create a false choice between the lesser of two evils, see Megan Crane et al., *The Truth About Juvenile False Confessions*, 16 INSIGHTS ON L. & SOC'Y 10, 13 (2016) (explaining that in Dassey's case, after the officers made clear that they believed he was guilty, they gave him two options: saying he chose to commit the act on his own, which would make him "look like a monster," or taking this "out," which would portray him "in a less heinous light").

171 *See Dassey*, 201 F. Supp. 3d at 970 ("[H]onesty is the only thing that will set you free. Right?").

172 *See id.* at 972 ("Brendan, be honest. You were there when she died and we know that. Don't start lying now. We know you were there . . . We already know, don't lie to us now, OK, come on."); *cf.* Miranda v. Arizona, 384 U.S. 436, 450 (1966) (explaining that officers using the Reid Method "are instructed to minimize the moral seriousness of the offense . . . . These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already . . . .").

173 *See* ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 39-40 (2010) (discussing the differences between adolescents and adults in considering long-term consequences and providing several scientific explanations for this disparity).

174 *See infra* Section II.C (explaining why children are more likely to emphasize immediate rewards rather than long-term consequences).

175 *See* Spierer, *supra* note 38, at 1741-42 ("More often than not, juveniles focus solely on any semblance of short-term relief, and fail to comprehend the long-term consequences of their actions.").

176 *See* LaMontagne, *supra* note 146, at 36 ("When faced with options in an interrogation, juveniles tend to act impulsively and prioritize an immediate outcome without balancing it against future consequences.").

whole, interrogations that employ these techniques result in self-incriminating statements that are rarely voluntary, and are oftentimes false.[177]

IV. EMBRACING CONTRACT PRINCIPLES TO PROMPT A SHIFT FROM CONFESSION-SEEKING TACTICS TO INFORMATION-SEEKING TACTICS

Involuntary and false confessions are "inextricably linked to police interrogation procedures," and youth are over twice as likely as adults to fall victim to the combined use of maximization and minimization tactics.[178] Given the developmental differences between youth and adults, it comes as no surprise that children make up a disproportionate number of false confessions.[179] The officer first gets a child to feel trapped and hopeless, recognizing some suspects will succumb when confronted with guilt.[180] The officer then offers him a way to "seemingly minimize his culpability and mitigate his punishment if he provides a statement," recognizing others will be persuaded by a perceived promise to avoid harsher punishment.[181] Employing this "double-barreled" approach overwhelms the suspect's resistance and encourages him to admit responsibility.[182] Sometimes, officers will toggle between these contrasting techniques multiple times over the course of one interview.[183] Using these techniques in tandem creates confusion and psychological distress for youth who tend to be more willing

177 Crane et al., *supra* note 170, at 13; *see also* Naomi E. S. Goldstein et al., *Good-Bye to Waiver: A Developmental Argument Against Youth's Waiver of Miranda Rights*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 35 (2018) ("[P]olice often exploit the vulnerabilities of youth by capitalizing on both their susceptibility to pressure and authority, as well as their difficulties with abstract thinking and reasoning.").

178 Redlich & Goodman, *supra* note 150, at 154; *see also* FELD, *supra* note 9, at 231 ("False confessions occur when police erroneously misclassify an innocent person as guilty and then use confrontational tactics—maximization and minimization—to elicit an admission.").

179 *See* Crane et al., *supra* note 170, at 12 ("In a study of 125 proven false confessions, 63% of false confessors were under the age of twenty-five . . . . Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults."); *see also* Spierer, *supra* note 38, at 1730 ("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.").

180 LEO, *supra* note 96, at 133; *see also infra* Section III.C (explaining the Reid Method's use of maximization techniques).

181 *Id.*; *see also infra* Section III.D (explaining the Reid Method's use of minimization techniques).

182 Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 433 (2013).

183 *See, e.g.*, Dassey Interview, *supra* note 168, at 29-40 (showing how Detective Baldwin initially feigns friendship with Dassey before exerting pressure on him, repeatedly accusing him of lying, and then comforting Dassey again).

to submit to authority figures and unable to accurately weigh the costs and benefits of their choices.[184]

The Supreme Court recognizes the importance of providing youth with the "safeguards necessary to assure that admissions or confessions . . . are not the mere fruits of fear or coercion, but are reliable expressions of the truth."[185] But legal and scientific recognition alone is not enough. The voluntariness standard, as it stands, remains vague, prompting judges to rely too heavily on *Miranda*, rather than inquire into what practices are actually used on youth during an interrogation.[186]

The imprecision of this voluntariness standard could be cured through an application of contract law principles.[187] In contract law, when a bargaining adult's will is overcome by undue influence, any resulting contract is voidable because his assent was not truly voluntary.[188] Similarly, when a suspect confesses as a result of "his will ha[ving] be[en] overborne" by undue influence, such a confession should be inadmissible under the Fourteenth Amendment because it was not truly voluntary.[189]

Encouraging judges to assess voluntariness with an eye towards undue influence and misrepresentation would provide clearer guidance to both officers and judges about the boundaries of permissible police conduct.[190] Further, it will result in heightened scrutiny being applied to Reid Method-induced confessions, which are inherently likely to place undue influence on

184 Grisso et al., *supra* note 68, at 357; *see also* Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 274 (2007) ("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.").

185 *In re* Gault, 387 U.S. 1, 47 (1967).

186 *See* Eve Brensike Primus, *The Future of Confession Law: Toward Rules for the Voluntariness Test*, 114 MICH. L. REV. 1, 3 (2015) (explaining that, while Due Process voluntariness requirements still apply, the standard is "as hazy and unfocused as ever . . . and almost always arriving at the conclusion that what the police did was, all things considered, acceptable").

187 *See* Dickerson v. United States, 530 U.S. 428, 444 (2000) (Scalia, J., dissenting) (explaining that under the totality-of-the-circumstances test, "[t]he line between proper and permissible police conduct and techniques and methods offensive to due process is, at best, a difficult one to draw").

188 Odorizzi v. Bloomfield Sch. Dist., 246 Cal. App. 2d 123, 130 (1966).

189 *See* Culombe v. Connecticut, 367 U.S. 568, 602 (1961) (explaining that the test of voluntariness turns on whether a confession was the product of free choice or coercion: if "he has willed to confess, it may be used against him . . . [but] if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process"); *see also* Watts v. Indiana, 338 U.S. 49, 59-60 (1949) (explaining that confessions achieved by "threats, promises, or inducements, which torture the mind but put no scar on the body . . . [may] not only break[] the will to conceal or lie, but may even break the will to stand by the truth").

190 *See* Michael Wayne Brooks, *Kids Waiving Goodbye to Their Rights: An Argument Against Juveniles' Ability to Waive Their Right to Remain Silent During Police Interrogations*, 13 GEO. MASON L. REV. 219, 241 ("The totality test is unfair to all parties involved: police do not have clear guidance; courts are faced with an almost entirely discretionary decision as to whether or not to admit evidence; and minors are left vulnerable to the discretion of law enforcement and the courts.").

juvenile suspects. Knowing such scrutiny will be applied when the Reid Method is used will prompt officers to shift from confession-seeking interrogations to investigative interrogations.[191]

Such a shift will help reduce involuntary confessions, given that the confrontational and manipulative tactics endorsed by the Reid method "prevent a person from making a free-will choice to remain silent—the antithesis of voluntariness."[192] It will also help reduce the number of false confessions, because as the Supreme Court recognizes, the narrow focus on extracting confessions encourages the use of unfair tactics on vulnerable children, increasing the risk that they falsely confess.[193]

A. *The PEACE Method: A Move Towards Preserving the Voluntariness of Confessions*

Investigating officers can shift their focus from eliciting a confession to eliciting accurate information from suspects by abandoning the Reid maximization and minimization techniques in favor of factfinding techniques that comply with the voluntariness principles imported by contract law. The PEACE method, which is widely accepted in the United Kingdom, offers a realistic alternative.[194] PEACE stands for the five stages of this interview method: (1) prepare and plan; (2) engage and explain; (3) account; (4) closure; and (5) evaluate.[195] This method has been accurately 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."[196] It is more developmentally appropriate for youth

191 *See* Spierer, *supra* note 38, at 1724 (arguing that holding the Reid technique unconstitutional, due to "its presumption of guilt and reliance on coercion and deceit," would lead to a shift to PEACE techniques which would "help protect children within the bounds created by the Court's precedent and prevent juveniles from falsely confessing with such regularity").

192 FELD, *supra* note 9, at 244.

193 *See* Corley v. United States, 556 U.S. 303, 321 (2009) ("[T]here is mounting empirical evidence that these pressures [of psychological interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed.").

194 *See* Spierer, *supra* note 38, at 1746-49 ("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 . . . .").

195 Douglass Starr, *The Interview: Do Police Interrogation Techniques Produce False Confessions?* THE NEW YORKER (Dec. 1, 2013), https://www.newyorker.com/magazine/2013/12/09/the-interview-7 [https://perma.cc/FQR7-5UNS].

196 *Id.* at 1749.

because it is less confrontational and manipulative than the Reid Method, and is more conversational and focused on obtaining information.[197]

The PEACE method requires officers to explain the objectives of the interview to the suspect, elicit the suspect's side of the story through open-ended conversational questions, and actively listen to the content elicited to evaluate if it corroborates any preexisting evidence.[198] In contrast to the Reid Method, it prohibits the use of false evidence, confrontational questioning, promises of leniency, and lessening the seriousness of the crime, all of which have been proven to overcome the will of a susceptible child, resulting in involuntary, and often false confessions.[199] While critics may argue methods like this will not be effective in obtaining confessions from guilty perpetrators, PEACE has been proven to be "as effective as current coercive interrogation practices in eliciting confessions from criminals, but [has] reduce[d] the incidence of false confessions since it does not subject innocent suspects to psychological coercion."[200]

In practice, assessing interrogations through a contractual lens also requires all police–suspect interviews to be electronically recorded. An electronic recording holds officers accountable. It also creates an objective record[201] for the court to use in assessing whether a confession was voluntary or coerced.[202] In addition, recordings provide officers both protections against "frivolous allegations of abuse"[203] and a reliable account of the interview so they will not need to rely on notes or memory.[204] Lastly, recordings pay for themselves by reducing the need for costly pretrial hearings to determine

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197 *See id.* at 1748 ("The PEACE method 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).").

198 *Id.* at 1748-49.

199 FELD, *supra* note 9, at 256-57.

200 Timothy E. Moore & C. Lindsay Fitzsimmons, *Justice Imperiled: False Confessions and the Reid Technique*, 57 CRIM. L.Q. 509, 541 (2011); *see also* LaMontagne, *supra* note 146, 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.").

201 For information about the proper way to obtain an objective recording, see *False Confessions & Recording of Custodial Interrogations*, INNOCENCE PROJECT (Dec. 12, 2018), https://www.innocenceproject.org/false-confessions-recording-interrogations/ [https://perma.cc/T9N8-XWCA], explaining that a video recording will only be reliable if the camera is focused only on the interrogator or on both the suspect and the interrogator. When it is fixed on the suspect only, jurors tend to conclude the confession was voluntary. *Id.*

202 FELD, *supra* note 9, at 263; *see also id.* at 7 (explaining that, without a recording, "[t]he interrogation room is a trial—confessions determine guilt, and defendants have no record on which to appeal for judicial review.").

203 IACP, *supra* note 31, at 12.

204 FELD, *supra* note 9, at 263.

what happened during the interrogation.[205] In the United Kingdom, recordings have been mandatory for over twenty years,[206] and in the United States, sixteen states and the District of Columbia mandate electronic recordings of interviews.[207] This practice has not come at the expense of law enforcement.[208]

Knowing that the presence of undue influence through over-persuasion or abuse of trust may make a confession legally involuntary would incentivize officers to embrace this shift from confession-driven techniques to less coercive factfinding alternatives. Encouraging judges to determine voluntariness with an eye towards these contract law principles is not an unwarranted extension of the Supreme Court's protection of youth. In fact, it is warranted by the need to bring interrogation law in line with other areas of the law, since youth are at a heightened risk of due process violations. Further, it would recognize the disproportionate number of false confessions obtained from youth, the psychological research on developmental differences that explain this disproportion, and the legal findings that these differences warrant additional legal safeguards.

205 IACP, *supra* note 31, at 12.

206 FELD, *supra* note 9, at 262-63.

207 IACP, *supra* note 31, at 12.

208 *Id.*; *see also* Saul M. Kassin et al., *Does Video Recording Inhibit Crime Suspects?*, 43 LAW & HUM. BEHAV. 45, 52-53 (2019) (finding that randomly informing suspects that their interrogations were being recorded did not impact how often or how much they spoke, their tendency to waive Miranda rights, or make admissions of guilt).