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CONFESSION OBSESSION: HOW TO PROTECT MINORS IN INTERROGATIONS

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I. INTRODUCTION

In 1989, five young boys, also known as the Central Park Five, were wrongfully convicted for the rape and beating of a female jogger in Central Park.¹ These five boys, whose ages range from fourteen to sixteen years old, were subject to thirty hours of interrogation without any parents or attorneys present.² In the interrogation of the five young boys, not only were denied their basic rights of life, liberty and property, but the officers extracted false confessions from four out of the five young teens.³ In December 2002, thirteen years after their conviction, Matias Reyes, an inmate in the federal prison, confessed that he was solely responsible the crime.⁴ This began the investigation led by the New York County District Attorney, Robert M. Morgenthau, who found DNA evidence which corroborates Reyes' confession.⁵ Mr. Morgenthau joined the defense's motion to vacate the prior convictions of these men.⁶

Five boys were sentenced to prison to leave thirteen years later as men, all because the criminal justice system failed them.⁷ This tragedy brings to question, what would have happened if the case of the Central Park Five was tried in Europe? Would the outcome of these five boys be different? If it would, then something needs to be fixed in the justice system in order to protect the future of America's youth.

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¹ Benjamin Weiser, *5 Exonerated in Central Park Jogger Case Agree to Settle Suit for \$40 Million*, N.Y. TIMES (June 19, 2014), <https://www.nytimes.com/2014/06/20/nyregion/5-exonerated-in-central-park-jogger-case-are-to-settle-suit-for-40-million.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Even after applying the European laws to the facts of the Central Park Five case, it is not guaranteed that there would be a different outcome. There were also numerous contributing factors during that time period which played a role in the conviction of the five boys.⁸

The Note begins with looking at the historical background of the European Convention on Human Rights (hereinafter ECHR), to understand why this declaration was created and who it is meant to protect.⁹ Article 3 of the ECHR defines, “torture” and “inhuman or degrading treatment.”¹⁰ By using this guideline, it can be established that interrogations used to obtain a forced confession would fall under the categories of “torture” and “inhuman or degrading treatment.” ECHR Article 3 is similar to the Eighth Amendment of the United States Constitution, which prohibits cruel and unusual punishment.¹¹ Both nations have similar laws in place for protecting the people, but is one more effective over the other?

Forced confessions have been deemed untrustworthy in a court of law. It can be argued that by obtaining this type of confession would violate the Eighth Amendment and ECHR Article 3. In order to understand why forced confessions should be a violation, the Note classifies it into two categories. First when forced confessions are obtained for the war on terrorism. The second category is when forced confession are obtained by law enforcements officers in preparation of trial. This would help to understand which techniques are used and their purposes in each of two categories. It is also important to understand that interrogating adults are much different than interrogating minors.

In Europe, when minors enter the justice system, they are treated differently than adults because of their specific needs and vulnerabilities.¹² The officers who are involved in cases with minors must proceed with extreme care and sensitivity.¹³ Once the minors are involved with the justice system, they are separated into two

⁸ *Id.*

⁹ *What is the European Convention on Human Rights?*, EQUALITY AND HUMAN RIGHTS COMMISSION, (Apr. 19, 2017), <https://www.equalityhumanrights.com/en/what-european-convention-human-rights>.

¹⁰ Eur. Ct. H.R. Art. III.

¹¹ U.S. CONST. Amend. VIII.

¹² International Committee of the Red Cross, *International Rules and Standards for Policing*, ICRC 26, <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0809.pdf>.

¹³ *Id.*

categories: the child victim or the juvenile suspect.¹⁴ Distinctively, Europe approaches interrogations with minors by adapting to the minor's maturity and the severity of the cases.¹⁵ This would pertain to how minors are questioned, and how these specialized procedures can prevent them from going down the path as a career criminal.¹⁶ In 2014, the European Commissioner passed a law in order to increase the protection of juvenile defendants.¹⁷ This law would be the key element that would have changed the lives of the five young boys who were wrongfully convicted if the Central Park Five case was tried in Europe.

By examining the excruciating details of the interrogation of each of the Central Park Five boys, readers can recognize what those young boys went through. They can try to understand the boys' fears, emotions, and painful experiences. After gaining this new perspective, this Note will begin a new analysis to see how far the Central Park Five case would have gone if these interrogations took place in Europe. With the various European laws, along with contributing factors of age and race, what would be the outcome of the retrial?

II. EUROPEAN LAWS REGARDING HUMAN RIGHTS

Across the sea, there is an international convention that drafted the ECHR.¹⁸ The idea of this convention was first proposed during the Second World War in the early 1940s.¹⁹ The purpose of drafting the ECHR was to ensure the citizens that the government would not be allowed to dehumanize the people and abuse their rights with impunity.²⁰ After the war ended, over 750 delegates, including leaders from civil societal, academic, business, religious, trade unions, and politicians, gathered in The Hague to begin shaping the ECHR.²¹ They

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Press Release, *Children in Criminal Proceedings: European Commission proposal to increase protection makes a decisive step forward*, EUROPEAN COMMISSION (June 6, 2014), https://europa.eu/rapid/press-release_IP-14-636_en.htm.

¹⁸ *What is the European Convention on Human Rights?*, EQUALITY AND HUMAN RIGHTS (Apr. 19, 2017), <https://www.equalityhumanrights.com/en/what-european-convention-human-rights>.

¹⁹ *What is the Europe Convention on Human Rights?*, AMNESTY INTERNATIONAL UK (Aug. 21, 2018), <https://www.amnesty.org.uk/what-is-the-european-convention-on-human-rights>.

²⁰ *Id.*

²¹ *Id.*

began proposing a list of rights that need to be protected and even drew some of the articles from the Universal Declaration of Human Rights.²² On September 3, 1953, the Convention came into full effect with the intention that it be a “simple, flexible roundup of universal rights, whose meaning could grow and adapt to society’s changing needs over time.”²³ Not only was the ECHR supposed to protect the people from the state’s wrongdoing, but it also imposed a duty on the state to protect the people.²⁴ The ECHR protects the human rights of individuals who are citizens of countries that are a part of the Council of Europe.²⁵ The Council of Europe, which is completely separate and larger from the European Union, was established in 1949.²⁶ If a country decides to leave the European Union, their membership with the Council of Europe would be unaffected.²⁷

The ECHR also led to the establishment of the European Court of Human Rights (ECtHR) in 1959.²⁸ They would oversee the government to ensure that they are meeting their obligations under ECHR.²⁹ If an individual from a state of the Council of Europe believes that their rights have been violated under ECHR, they would bring their case in front of the ECtHR for judgment.³⁰

Article 3 of the ECHR states, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” This is one of the articles that was extracted from the Universal Declaration of Human Rights when the leaders were drafting the convention.³¹ When it comes to the prohibition of torture under Article 3, there is a

²² *Id.* It was clear at the end of Second World War that human rights may not be universally respected, after all almost 17 million people were killed during the Holocaust. *Id.* Under the guidance of Eleanor Roosevelt, representatives from the 50 states of the United Nation came together to construct a list of human rights. *Id.* On December 10, 1948, the General Assembly of the United Nation announced the Universal Declaration of Human Rights that belongs to everyone and should be abide by. *Id.*

²³ *Id.*

²⁴ *What is the European Convention on Human Rights, supra* note 18.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *What is the Europe Convention on Human Rights, supra* note 19.

minuscular difference between the term “torture” and “inhuman or degrading treatment.”³²

The “inhuman or degrading treatment” has a broader spectrum under Article 3.³³ The ill treatment must be at a minimum level of severity, where it causes another individual bodily harm or intense mental suffering.³⁴ The spectrum for assessing what is considered the minimum level varies from case to case.³⁵ Factors such as sex, age, state of health, and the duration of the treatment of the victim are all taken into account when analyzing the case.³⁶ It is not required for the state to intend to inflict this harm, but the state must use reasonable means to prevent any ill treatment.³⁷ The state would also have to intervene and protect those who are at an immediate risk of ill treatments and then provide remedy if it had taken place.³⁸

Torture speaks to the inhuman action that would cause another person mental or physical harm.³⁹ The key difference between torture and inhuman treatment is that torture has to be deliberate and more than ill treatment.⁴⁰ Under this section of Article 3, the definitions and characterization of torture is very closely analogized to the Eighth Amendment of the United States Constitution.⁴¹

The Eighth Amendment of the United States Constitution states, “Excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.”⁴² However, the Eighth Amendment is different than Article 3 of the ECHR. The Eighth Amendment focuses on post-conviction whereas the ECHR extends to what happens prior to conviction.⁴³

³² Ireland v. United Kingdom, App. No. 5310/71, Eur. Ct. H.R., (Plenary Ct.), para 167, (judgment 18 Jan. 1978), <http://hudoc.echr.coe.int/fre?i=001-57506>.

³³ Ireland v. United Kingdom, App. No. 5310/71, para 167.

³⁴ *Id.* at 162.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 118.

³⁸ *Id.*

³⁹ *Id.* at 129.

⁴⁰ *Id.*

⁴¹ There are three elements when determining if an action can be classified as “torture”. There has to be (1) an intentional infliction of severe physical or mental suffering (2) by a public official who can be directly or indirectly involved (3) with the particular purpose. *What is Torture?*, ASSOCIATION FOR THE PREVENTION OF TORTURE, <https://www.apr.ch/en/what-is-torture/>.

⁴² U.S. CONST. Amend VIII.

⁴³ John F. Stinneford, *Against Cruel Innovation: The Original Meaning of the Cruel and Unusual Punishments Clause, and Why It Matters Today*, CONSTITUTION CENTER,

III. CLASSIFYING FORCED CONFESSIONS

A forced confession can be classified into two categories. The first category is obtaining a false confession in order to use it as a weapon in the war on terrorism. The second category is getting a forced confession in order to use it as evidence at trial. When there is a threat of terrorism that places thousands of people's lives at risk, is it the job of the government to ensure their safety? It comes down to one moral question; whether it is justified for one individual to suffer through torture and inhuman treatment if it may save the lives of others. Specifically, Guantanamo Bay has gained the reputation of being egregious and oppressive with respect to human rights.⁴⁴ The conditions and ill treatment that these prisoners were held in were a violation of not only the Eighth Amendment, but also of Article 3 of the ECHR. The prisoners were subject to torture during interrogations, extensive solitary confinement, exposing them to long period of extreme cold and hot, and death.⁴⁵ It was later disclosed by the former top military commander at Guantanamo, that at least half of the people being detained did not belong there.⁴⁶ Some of the people detained were picked up through a mistake of identity.⁴⁷ It is not a secret that a place like this exists, but there has not been drastic action from our nation or others to shut it down or reform the conditions.⁴⁸

<https://constitutioncenter.org/interactive-constitution/interpretation/amendment-viii/clauses/103#against-cruel-innovation-the-original-meaning-of-the-cruel-and-unusual-puni>, (last visited Feb. 15, 2021).

⁴⁴ Guantanamo Bay is a United States military prison just right off the coast of Cuba, where war prisoners are sent to be held indefinitely without a trial.

⁴⁵ *Q&A: Guantanamo Bay, US Detentions, and the Trump Administration*, HUMAN RIGHTS WATCH (June 27, 2018), <https://www.hrw.org/news/2018/06/27/qa-guantanamo-bay-us-detentions-and-trump-administration#q2>.

⁴⁶ JANE MAYER, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* 184 (Anchor 2009).

⁴⁷ *Id.*

⁴⁸ Back in the 2004, the Supreme Court had split rule on the prisoners at Guantanamo Bay that they still retain some rights but did not specify how these rights are to be exercised. CNN Editorial Research, *Guantanamo Bay Naval Station Fast Facts*, CNN (Aug. 26, 2019), <https://www.cnn.com/2013/09/09/world/guantanamo-bay-naval-station-fast-facts/index.html>. In 2005, the Court did not review whether the government's plan for military trials for the detainees would unfairly deny them of their basic legal rights. *Id.* In 2006, the power of the government to conduct the military trials were limited. *Id.* The Supreme Court ruled for there to be a new procedure to prosecute the "enemy combatants" or release them back to military. *Id.* Days after President Obama's inauguration day in 2009, he signed an executive order to close down the prison within a year, but then retracts it months later. *Id.* Since then over a hundred prisoners have been relocated. *Id.* In 2018, current President Trump signs an executive order to keep

President Obama tried to set a goal to shut the prison camp down, but that was unsuccessful.⁴⁹ The United States Attorney General Jeff Sessions released a statement which states, “it remains essential that we use every lawful tool available to prevent as many (terrorist) attacks as possible.”⁵⁰ This statement can be interpreted as an approval for the inhuman treatment and torture of those being detained at the prison because the end would justify the means.

The other category (that is the focus of this discussion) is obtaining a forced confession to use it as evidence in a trial. Although a confession alone is not sufficient to secure a conviction, for centuries it has been considered the *queen of evidence* in the legal field.⁵¹ With this type of notoriety, courts in the European Union placed restrictions on the techniques state officers are allowed to use during an interrogation.⁵² The restrictions are meant to prevent officers from using ill treatment to extract a false confession from the defendants. There are five techniques stated in *Ireland v. United Kingdom* that were banned from use in interrogations.⁵³ The deep interrogation methods of hooding the detainees, depriving them of food, water and sleep, subjecting them to white noises and compelling them to be in stress positions were brought to the European Courts by Ireland because it was believed that these techniques were classified as torture.⁵⁴ The five methods used in the interrogation cause intense physical and psychological pain, which would have violated the international ban on torture; however the Court ruled that these techniques do not amount to the definition of torture.⁵⁵ Instead, the Court labelled these techniques as inhuman treatment, which would

the prison open indefinitely and for new prisoners to be sent here. *Id.* In 2019, the Supreme Court rejected the notion of holding suspects of terrorist activity who have not been charged for over two years. *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Peter Brooks, *The Truth About Confessions*, N.Y. Times (Sept, 1, 2002), <https://www.nytimes.com/2002/09/01/opinion/the-truth-about-confessions.html#:~:text=In%20a%20legal%20context%2C%20a,plea%20bargain%20without%20further%20ado>.

⁵² Natasha Simonsen, *‘Is torture ever justified?’: The European Court of Human Rights decision in Gafgen v. Germany*, EJIL: TALK! (June 15, 2010), <https://www.ejiltalk.org/%E2%80%98is-torture-ever-justified%E2%80%99-the-european-court-of-human-rights-decisions-in-gafgen-v-germany/>.

⁵³ *Ireland v. United Kingdom*, App. No. 5310/71, para 165.

⁵⁴ *Id.* at 167.

⁵⁵ *Id.*

be a violation of Article 3.⁵⁶ The European Court essentially defined prisoner abuse to be less than torture.⁵⁷

In *Ireland*, the court stated which techniques are not permitted in an interrogation room, however, *Jalloh v. Germany* expanded the holding by focusing on the method by which evidence is obtained during interrogation.⁵⁸ In *Jalloh*, the police officer saw the defendant take two tiny plastic bags out of his mouth and exchange it with money.⁵⁹ Suspecting drug dealing, the officer arrested the defendant right after he swallowed another tiny bag but found no evidence on the defendant.⁶⁰ The officer believed the swallowed bag to be cocaine, so he took the defendant to the hospital to regurgitate the bag.⁶¹ When the defendant refused to take the medication to induce the vomiting, four officers held the defendant, while the doctor forcibly inserted a tube into his nose with salt solution and Ipecacuanha.⁶² This force resulted in the defendant regurgitating a bag containing .2182 grams of cocaine.⁶³

The *Jalloh* court held that the officers' actions were a direct violation of Article 3 of ECHR, since the officers interfered with the physical and mental integrity of the defendant.⁶⁴ There was a less intrusive alternative in obtaining the swallowed bag for evidence that would not have resulted in the defendant having "feelings of fear, anguish and in inferiority that were capable of humiliating and debasing him."⁶⁵ The officers' actions also put the defendant's health at risk.⁶⁶ A less intrusive alternative would have been to wait for the bag to pass through the defendant's body naturally. Therefore, it was concluded that the defendant in *Jalloh* was subjected to inhuman and degrading treatment.⁶⁷

⁵⁶ *Id.*

⁵⁷ *The Five Techniques*, RIGHTS INFO, <https://rightsinfo.org/stories/the-five-techniques/>.

⁵⁸ *Jalloh v. Germany*, App. No. 54810/00, Eur. Ct. H.R. (Gr. Chamber), para 3 (judgment 11 July 2006), <http://hudoc.echr.coe.int/eng-press?i=003-1723669-1807285>.

⁵⁹ *Jalloh v. Germany*, App. No. 54810/00, para 1.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 3.

⁶⁶ *Id.*

⁶⁷ *Id.*

Using evidence that was obtained through compulsory treatments diminishes the essential privilege against self-incrimination.⁶⁸ Despite the detainee's serious allegations or how essential the evidence obtained can be for the trial, if the evidence was obtained under suspicious circumstances like in *Jalloh*, it would not give the defendant a chance of a fair trial.⁶⁹ It does not matter whether the officer intends to inflict pain and suffering upon the defendant, because the matter still is a violation of the core right guaranteed by the ECHR. Forcibly obtaining a false confession from the detainees would fall under this court's holding.⁷⁰

Not only are forced confession deemed unreliable, but they are also a violation of Article 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁷¹ Article 15 states, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."⁷² The term "torture" is defined under Article 1 as "any act by which severe pain or suffering, whether physical or mental, is internationally inflicted on a person for such purposes as obtaining from him... for a confession, punishing him for an act he ... suspected of having committed..."⁷³ These Articles were put in place to prevent the unlawful behavior from State officials and stop the abuse of power.⁷⁴ Any confession obtained under these harsh condition, would be considered inadmissible as evidence.⁷⁵

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of December 1984*, UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

⁷² *Id.*

⁷³ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN GENERAL ASSEMBLY (Dec. 10, 1984), <https://www.refworld.org/docid/3ae6b3a94.html>.

⁷⁴ International Committee of the Red Cross, *International Rules and Standards for Policing*, ICRC 26, <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0809.pdf>.

⁷⁵ *Id.* at 27.

IV. PROCEDURES IN JUVENILE CASES

Children are entitled to the same fundamental human rights and freedom that are granted to adults, some would even argue they are entitled to more.⁷⁶ When law enforcement encounters minors in the justice system, they are required to exercise the utmost care and sensitivity.⁷⁷ Law enforcement officials have to pay careful attention to the minor's specific needs, rights, and vulnerability.⁷⁸ When analyzing the roles of minors within the criminal justice system, they can be classified into two categories: child victims or juvenile suspects.⁷⁹

Within the United Nations Human Rights Council is the Committee on the Rights of the Child (CRC), which is composed of eighteen individual experts who monitor the implementation of a child's rights within the States' of the European Union's parties.⁸⁰ The CRC recommended the concept of exempting minors from criminal justice proceedings.⁸¹ The idea was that the minor's conduct would not conform to the social norms, which is essential to their maturation process and the child-oriented approach.⁸² The goal of this approach is to prevent the child from going down the path of becoming a career criminal.⁸³ Due to their own maturity, the juvenile suspects should be given special protection and treatment.⁸⁴ With this in mind, law enforcement officials involved in the juvenile justice need to have appropriate training on the best way to handle, interrogate and treat the minors when they enter into the juvenile justice system.⁸⁵

Studies found juveniles, along with people who are intellectually impaired, are more likely to give a false confession when they are interrogated by police or authority figures.⁸⁶ Between the years of 1989

⁷⁶ *Id.* at 26.

⁷⁷ *Id.* at 27.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Committee on the Rights of the Child*, UNITED NATIONS HUMANS RIGHTS, <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>.

⁸¹ ICRC, *supra* note 74, at 23.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Tamar R. Birckhead, *The Age of the Child: Interrogating Juveniles After Roper v. Simmons*, 65 WASH. & LEE L. REV. 385, 392 (2008).

to 2003, it was recorded that at least 42 percent of juveniles were convicted due to forced confessions.⁸⁷ This is extremely high when compared to the statistics for adult convictions, which is 13 percent.⁸⁸ In addition, when it came to the exonerated adults who have mental disabilities, 69 percent gave false confessions.⁸⁹ There is a systematic bias within the criminal justice system that has been shown by social scientists.⁹⁰ When it comes to child victims, commonly, they will have difficulties remembering the events but try their hardest to tell the truth.⁹¹ Whereas, when it is a juvenile suspect, they can actually recall the events but are more likely to be purposely dishonest about it.⁹²

In 2014, the European Commissioner proposed a step forward to increase protection of children within the criminal proceedings.⁹³ The European Commissioner was concerned that the European judicial system had not yet adapted to the vulnerabilities and special needs of youth offenders in the criminal justice system.⁹⁴ In order to protect these youthful offenders, the commissioner proposed that “children must be assisted by a lawyer”.⁹⁵ It is due to the child’s inability to fully grasp the consequences of their actions and their statements made to law enforcement, that the child should not be able to waive their right to an attorney.⁹⁶ The majority of the states within the European Union have passed this proposal into law, which does not allow children under the age of eighteen to waive their right to an attorney.⁹⁷ The following European Union states are: Austria, Belgium, Croatia, Denmark, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, Malta, Romania and Slovenia.⁹⁸

On September 23, 2003, the Committee of Minister recommended to the Council of Europe an adaptation of a new

⁸⁷ *Id.*

⁸⁸ Bill Moushev, *False Confessions: Coercion Often Leads to False Confessions*, PITTSBURGH POST-GAZETTE (Aug. 31, 2006), <http://www.post-gazette.com/pg/06243/717790-84.stm>.

⁸⁹ *Id.*

⁹⁰ Birckhead, *supra* note 86, at 392.

⁹¹ *Id.*

⁹² *Id.*

⁹³ European Commission: Press Release, *supra* note 17.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Right for Plaintiffs to waive their law*, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, <https://fra.europa.eu/en/publication/2018/minimum-age-childrens-rights-justice/plaintiffs-waive>.

⁹⁸ *Id.*

procedure for handling juvenile delinquency and the role of juvenile justice.⁹⁹ The procedure discusses what police officers should do when juveniles are detained and how they should be treated differently than adult detainees.¹⁰⁰ The officers need to take into account the offender's age, vulnerability and level of maturity.¹⁰¹ After taking that into account, the officers would inform their rights and safeguards in a way that the minors can fully comprehend.¹⁰² When minors are being questioned, they should be accompanied by a parent, legal guardian or any appropriate adult and they should have access to a lawyer.¹⁰³

Psychologists recommend that officers should take a different approach when questioning minors, from how they talk to them to the type of questions they should ask.¹⁰⁴ An example would be asking a minor the frequency of an experience.¹⁰⁵ The interviewers are recommended to phrase the questions of whether the event happened "one time or more than one time?"¹⁰⁶ This technique will ensure the interviewers are getting a more accurate answer.¹⁰⁷ When conducting an investigative interview on children, the question types recommended are open prompt.¹⁰⁸ This type of questioning would not have any specific information within the question that the child did not previously mention.¹⁰⁹ The purpose of this method is so the child can generate their own response using their own words, whereas the closed prompt question would require the child to just confirm or deny the information that is thrown at them.¹¹⁰ "Tell me what happened? What happened next" versus "Did he hurt you?" The latter option would be beneficial to the child even though during the course of the questioning, the child did not mention that he was hurt or injured.¹¹¹ A

⁹⁹ See *Salduz v. Turkey*, App. No. 36391/02, Eur. Ct H.R. (Gr. Chamber), (judgment 27 Nov. 2008).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Katalin Balogh & Heidi Salaets, *Children and Justice: Overcoming Language Barriers – Cooperation in interpreter-mediated questioning of minors*, 115 (2015),

https://www.arts.kuleuven.be/tolkwetenschap/projecten/co_minor_in_quest/children-and-justice-1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 118.

¹⁰⁹ *Id.* at 118-119.

¹¹⁰ *Id.*

¹¹¹ *Id.*

benefit to using open prompt questions is that it avoids “putting words into the mouths of children” or shaping their answers.¹¹²

The most problematic type of questioning would be suggestive questions, which would prompt the interviewee to formulate their answers into the expected responses.¹¹³ With this type of questioning, the officer may introduce details that were not disclosed by the child,¹¹⁴ which can lead them to implanting information in the child’s answer.¹¹⁵ These techniques can negatively affect the quality of evidence that provided during the interview.¹¹⁶ “These include the use of misleading information and props, repetition of closed questions, imagination inflation and inappropriate reinforcement...”¹¹⁷

V. THE FACTS OF THE CENTRAL PARK 5 CASE

On April 19, 1989, the twenty-eight-year-old investment banker, Trisha Meili, went for a jog in Central Park and was later found brutally beaten and raped.¹¹⁸ She was left for dead at the bottom of the ravine in northern Central Park.¹¹⁹ On that same night, a group of teenagers between the ages of 13 to 17 were suspected to be involved in assaulting other joggers, throwing rocks at those riding bikes and even harassing a homeless man.¹²⁰ When the Meili’s case was reported, the enforcement officers promptly associated it with the group of teenagers roaming.¹²¹ It was this night that 5 young boys soon became known as the Central Park 5, or presently known as the Exonerated 5. Their

¹¹² *Id.*

¹¹³ *Id.* at 121.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 122.

¹¹⁷ *Id.*

¹¹⁸ KEN BURNS: THE CENTRAL PARK FIVE (Amazon Prime Video 2013); Elizabeth Vulaj, *From the Central Park 5 to the Exonerated 5: Can it Happen Again*, NYSBA (Aug. 1, 2019), [https://www.esquire.com/entertainment/a27574472/when-they-see-us-central-park-5-false-confessions/](https://nysba.org/from-the-central-park-5-to-the-exonerated-5-can-it-happen-again/#:~:text=According%20to%20the%20teens%2C%20the,confessions%20was%20not%20put%20on; Kate Storey, 'When They See Us' Shows The Disturbing Truth About How False Confession Happen, Esquire (Jun. 1, 2019), <a href=); Lauren Cook, *Central Park Five: What to Know About the Jogger Rape Case*, AM NEW YORK (June 2019), <https://www.amny.com/news/central-park-five-1.19884350>.\

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

names are Kevin Richardson, Raymond Santana, Antron McCray, Yusef Salaam and Korey Wise.¹²²

All five young boys admitted to being in the park that night and each was picked up at separate times.¹²³ Raymond and Kevin were the first to be picked up, since they were brought in with the group of teenagers caught roaming the park.¹²⁴ The officers then went to Antron's home to take him down to the station with his father.¹²⁵ Yusef was the next person to be picked up by law enforcement, while he was with Korey.¹²⁶ The officers had no intention of bring Korey down into the station, because he was not on their list of suspects, however Korey went to the precinct voluntarily so his friend Yusef would not be alone.¹²⁷ Aside from Yusef and Korey, none of the other boys knew each other before they were brought in.¹²⁸

Kevin Richardson, age 14,¹²⁹ was the first of the five to be brought into interrogation.¹³⁰ The officers used physical force when they arrested Kevin and they left a bruise on his face.¹³¹ When Kevin's interrogation began, he tried to tell another officer what happened to his face.¹³² However, that failed when Kevin was asked to point out the officer responsible for the bruise.¹³³ Kevin was too afraid.¹³⁴ Kevin stated that the officers' demeanor changed when he tried to tell the officers what happened and because of that he did not feel safe to actually name the officer.¹³⁵ When Kevin's mother arrived at the precinct, she insisted on seeing her son, but instead of listening to her request, the officer put his arm around her shoulder and deliberately led her in the opposite direction.¹³⁶ Kevin's room was then closed,

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Aisha Harris, *The Central Park 5: 'We were just baby boy'*, N.Y. TIMES (May 30, 2019), <https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us.html>

¹³⁰ BURNS, *supra* note 118; Vulaj, *supra* note 118; Storey *supra* note 118; Cook *supra* note 118.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

which marked the beginning of the interrogation.¹³⁷ The officer started off their interrogation by saying, “Well we just heard that a woman was raped and beaten in the park.”¹³⁸ As the interrogation went on, Kevin remained consistent with the fact that he did not know who they were talking about and that he was not a part of the group that committed the crime.¹³⁹ The detectives grew agitated and appeared angrier since they were not getting the answers they wanted from Kevin.¹⁴⁰ The interrogation escalated to the detectives yelling and spitting on him.¹⁴¹ Kevin Richardson was deprived of food, drinks and sleep during his interrogation.¹⁴² The detectives gave Kevin a pen with paper and proceeded to coach him on what to write down as his testimony.¹⁴³

Raymond Santana, age 14,¹⁴⁴ was brought in at the same time as Kevin Richardson.¹⁴⁵ His father came to the precinct and saw Raymond in a room with numerous other kids.¹⁴⁶ When Raymond’s father asked an officer if he could see his son, the officer denied him and told him to return in the morning.¹⁴⁷ After being denied the right to see his son, Raymond’s father went to work and left Raymond’s grandmother behind, who was not fluent in English.¹⁴⁸ The detectives began the line of questioning by asking, “What happened to the lady?” in which Raymond replied by saying “What lady?”¹⁴⁹ The detectives then asked, “What do you mean what lady? The lady that was beaten and raped in the park?”¹⁵⁰ When Raymond consistently pleaded to the detectives that he did not know what they were talking about, the detectives would then reset and start the line of questionings again from the beginning.¹⁵¹ Each time the detectives restated their

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Harris, *supra* note 129.

¹⁴⁵ BURNS, *supra* note 118; Vulaj, *supra* note 118; Storey *supra* note 118; Cook *supra* note 118.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

questions, they would add more details that were not mentioned before.¹⁵² When Raymond continued to deny knowing what the detectives were talking about, the detectives escorted his grandmother outside of the room.¹⁵³ The detective did not ask for the grandmother's consent to allow the officers to be alone with her grandson, but instead they just took her outside of the room and her fourteen year old grandson was then left to a brutal interrogation by the detectives, without anyone there to protect him.¹⁵⁴ Once his grandmother left, the detectives began calling Raymond numerous derogatory terms, such as "scum bag."¹⁵⁵ One detective started screaming at Raymond's face while the other detective was screaming on the side of him.¹⁵⁶ Another detective then placed a picture of Kevin in front of Raymond and said, "you know him, don't you? That scratch on his face is from the woman isn't it?"¹⁵⁷ Once again Raymond told the detectives that he did not know who Kevin was or what they were talking about. The detectives would ignore what he stated and proceeded to tell him the names of the other four boys with suggestions of what they were doing "during the crime."¹⁵⁸ When the detectives were not satisfied with what Raymond was saying, they told him "No one will believe that. It must be more believable. You have to make it more believable."¹⁵⁹

Antron McCray, was age 15,¹⁶⁰ when officers came to his home and brought him down the station to be questioned.¹⁶¹ Both Antron's father and mother were present when he was picked up from his home and when he was being interrogated.¹⁶² The detectives asked about the female in Central Park that night, but the only female that Antron was able to recall was the "white lady on the bike."¹⁶³ Antron's mother was asked to leave the room and his father, Bobby McCray, remained.¹⁶⁴

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

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Antron admitted to his involvement in the other attacks that happened in the park that night, but told the detectives that he didn't have anything to do with the attack on Meili.¹⁶⁵ Even though Antron repeatedly told the detectives that he did not do anything, they still screamed at him, "You're a liar!" and continued calling him a liar in their loud rough voices.¹⁶⁶ Unlike the others, after relentless questionings, Antron's father, Bobby McCray, instructed his son to lie because he believed that his son was being offered immunity.¹⁶⁷ Bobby later testified at trial stating that the officers told him to instruct his son to tell them what they wanted to know and if he cooperated then act as their witness then Antron would be free to go home.¹⁶⁸ Bobby testified to this believing that his son was being offered an immunity deal and that if he did not lie then his son would go to jail.¹⁶⁹

Yusef Salaam, age 15,¹⁷⁰ was the only one out of the five boys that did not sign any statements that the police prepared or create a taped confession.¹⁷¹ When Yusef's mother found out that he was taken, she was able to interrupt the interrogation.¹⁷² Before his mother intervened, Yusef told his mother that in the interrogation room, he felt like he was going to get killed by these officers.¹⁷³ Yusef did not feel safe from the moment he arrived at the precinct.¹⁷⁴

Lastly, Korey Wise, age 16, voluntarily went down the precinct when his friend Yusef was picked up.¹⁷⁵ He did not want his friend to be alone at the police station, so he went to offer moral support.¹⁷⁶ Because Korey was over the age of 15, a parent or guardian was not required to be present during his questioning.¹⁷⁷ Korey also suffered

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Ronald Sullivan, *Youth's Father Says He Urged Park-Rape Lie*, N.Y. TIMES (July 28, 1990), <https://www.nytimes.com/1990/07/28/nyregion/youth-s-father-says-he-urged-park-rape-lie.html>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Aaron Bady, *The Danger of Knowing One Thing About the Central Park Five*, THE WEEK (June 20, 2019), <https://theweek.com/articles/847842/danger-knowing-thing-about-central-park-five>.

¹⁷³ BURNS, *supra* note 118; Vulaj, *supra* note 118; Storey *supra* note 118; Cook *supra* note 118.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Alfred Joyner, *Who is Korey Wise? Tragic Victim from Central Park Five Series 'When They See Us' Spent 12 Years Behind Bars*, NEWSWEEK (June 5, 2019),

from hearing problems and learning difficulties, which made him more susceptible to the pressure, coercion and manipulation from detectives.¹⁷⁸ Korey was also specifically susceptible to the detective's aggressive questioning.¹⁷⁹ The detectives did not tell Korey that he was going to be interrogated.¹⁸⁰ Korey was simply told to go in a room to give the detectives a story and if he did then Korey and Yusef would be free to go.¹⁸¹ The detectives got in Korey's face, grabbed it and spit in it.¹⁸² This interrogation lasted through the night and Korey produced four different statements: two in writing and two video confessions, where the details given were inconsistent with the facts of the case.¹⁸³

The five boys were in custody ranging between fourteen to thirty hours each.¹⁸⁴ They were all deprived of food, drink and sleep during the course of their interrogations.¹⁸⁵ Their interrogations were not recorded from the beginning but rather after they "already confessed."¹⁸⁶ Kevin, Raymond and Yusef were all questioned without their parents' present, even though all were under the age of 15.¹⁸⁷

<https://www.newsweek.com/who-korey-wise-tragic-victim-central-park-five-series-when-they-see-us-spent-12-years-behind-1442265>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ BURNS, *supra* note 118; Vulaj, *supra* note 118; Storey *supra* note 118; Cook *supra* note 118.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Joyner, *supra* note 177.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

VI. HOW THESE CASES WOULD HAVE BEEN DIFFERENT IN EUROPE

Three of the five techniques that were banned in *Ireland v. United Kingdom*,¹⁸⁸ were used in the interrogation with the five young boys. Each boy was deprived food, water and sleep during the fourteen to thirty hours that they were in the custody of the police.¹⁸⁹ This would be considered a violation of ECHR Article 3. This violation would not have allowed this case to go to trial and instead a judge would determine whether the detectives violated Article 3 by subjecting each of the five young defendants to inhuman treatment during the course of the interrogations.¹⁹⁰

Europe has laws that are more equipped to protect the rights of juvenile offenders. It is thanks to the 2014 proposal by the European Commissioner, that not only would each juvenile be entitled to an attorney, but they could not waive that right.¹⁹¹ The United States needs a law like this because it is essential to protecting our youth. In addition, it would prevent another case like the Central Park 5 from happening again.

If Kevin, Raymond, Antron, Yusef, and Korey had an attorney present that night, without the option to waive it, then their conviction would not have happened. The forced confession from the young boys were the key evidence in their trial and if each of them had an attorney present, then the forced confession would most likely not have occurred. Each boy's attorney would have interfered with how the boys were treated. An attorney would have made sure that when Kevin Richardson's mother came to the precinct to see her son, that she would actually be escorted to her son and not the opposite direction.¹⁹² The attorney would have been able to stop the line of leading questions the detectives were asking Kevin.¹⁹³ It can also be argued with an attorney present, they could have demanded an investigation of the police officer who left the bruise on Kevin's face.¹⁹⁴

¹⁸⁸ See *Ireland v. United Kingdom*, App. No. 5310/71, para 96.

¹⁸⁹ BURNS, *supra* note 118; Vulaj, *supra* note 118; Storey *supra* note 118; Cook *supra* note 118.

¹⁹⁰ *Id.*

¹⁹¹ European Commission: Press Release, *supra* note 17.

¹⁹² See BURNS, *supra* note 118; Vulaj, *supra* note 118; Storey *supra* note 118; Cook *supra* note 118.

¹⁹³ See *Id.*

¹⁹⁴ See *Id.*

An attorney would have made sure Raymond fully understood the “deal” he was making with the detectives.¹⁹⁵ Legal counsel could have explained to Raymond that the detectives were lying and they had no intentions of releasing him once he told them exactly what they wanted to hear.¹⁹⁶ If Raymond knew the full consequences of admitting to a crime he did not do, then he most likely would not have signed the false confession.¹⁹⁷ The attorney would have ensured there was a translator for his grandmother, who acted as his guardian, to understand the proceedings and for her to stay in the room.¹⁹⁸

An attorney would make sure that Antron McClay’s father understood the severity and consequences of pressuring his son to lie to the police.¹⁹⁹ Yusef Salaam was the only one that did not lie to the detectives because his mother intervened before anything could happen.²⁰⁰ Lastly, Korey Wise’s attorney would have seen the injustice of the detectives taking him into the interrogation room when he was not picked up or placed under arrest.²⁰¹ Most importantly, their attorney would not have allowed the boys to sign the false confession or consent to making the tapes.²⁰² Without these confessions, the prosecution would not have a shred of evidence to charge these boys with a crime.²⁰³ The key reason why the boys were found guilty was because of the false confession tapes.²⁰⁴ Jurors had a difficult time believing that a person would create a false confession if they did not actually commit the crime.²⁰⁵

This one key law, that the majority of states in the European Union adopted, would have been the ultimate game changer for the Central Park Five case. In the United States, when it comes to the right of counsel, the court in *J.D.B. v. North Carolina*, decided that the age of the child would be relevant when the child is in custody under his Miranda rights, so long as the age of the child is known the

¹⁹⁵ *See Id.*

¹⁹⁶ *See Id.*

¹⁹⁷ *See Id.*

¹⁹⁸ *See Id.*

¹⁹⁹ *See Id.*

²⁰⁰ *See Id.*

²⁰¹ *See Id.*

²⁰² *See Id.*

²⁰³ *See Id.*

²⁰⁴ *See Id.*

²⁰⁵ *See Id.*

officer.²⁰⁶ In *J.D.B.*, the court states a child's age should be considered a factor when it comes to their voluntariness to waiving their rights to an attorney.²⁰⁷ Even after this case was decided, the discretion of giving a child an attorney or not is still left to the officer, since it is based on his subjective view of the child's age.²⁰⁸

When comparing this case law to the European law that was passed in 2012, it is clear that the United States Supreme Court did not do enough to protect the youth of this country who are placed under arrest. By saying age is considered a factor when it came to the minor's right to waive an attorney, it shows that the Court understands how vulnerable and easily influenced children can be during an interrogation. The Supreme Court fell short of protecting a child's right to have an attorney present. There must be a more aggressive approach to protecting a child's right to have an attorney present during an interrogation. The United States should follow the European model, which does not permit the right to counsel to be waived by a minor.

²⁰⁶ *J. D. B. v. North Carolina*, 564 U.S. 261, 271-272 (2011).

²⁰⁷ *J. D. B.*, 564 U.S. at 262.

²⁰⁸ *Id.* at 262-263.