Introduction

Much of what passes for knowledge about police interviewing practices is no more than assumption and conjecture. Such knowledge probably owes more to television, films, or novels than to any informed understanding of what happens in police interview rooms. Because of the secrecy that has always surrounded police-suspect interviews and the traditional reluctance of police officers to allow outsiders access to the interview room, debates on the crucial questions of interview procedures had to be conducted in something of an information vacuum.¹

Police interrogation raises complex legal, normative, and policy questions about justice administration and the relationship between the individual and the state. A fundamental tension exists between interests of law enforcement and protecting citizens. How should we structure the criminal process to maintain fair procedures, to process cases efficiently, to assure accurate fact-finding, to prevent police misconduct, and to protect the community from criminals? What practices should a democratic society allow police to use when they question citizens?

These questions become even more problematic when police question juveniles. For more than a century, juvenile and criminal justice policies have reflected two competing images of youth. On one hand, policymakers describe children as immature and vulnerable. On the other hand, they depict youths as mature, responsible, and adultlike. These competing constructs of youth implicate substantive policies (culpability and criminal responsibility) and procedural policies (competence to exercise legal rights) in the justice system.

At the beginning of the twentieth century, Progressive Era reformers emphasized youths’ immaturity and vulnerability and created a separate juvenile court to shield children from criminal trials and punishment in adult prisons. They characterized children as irresponsible and incompetent, rejected claims for procedural protections, and created a civil, rehabilitative system for young people in lieu of punitive criminal justice.² By the end of the twentieth century, lawmakers adopted harsh, get-tough policies that equated adolescents’ culpability with that of adults. In the 1980s and 1990s, states revised laws to prosecute more and younger juveniles in criminal court and to punish delinquents more severely.³ The
imagery of youth shifted from vulnerable children to mature, responsible offenders. The increased legal complexity and consequences of delinquency proceedings make greater demands on youth who may lack the ability or judgment to exercise rights effectively.

Over the past three decades, a procedural and substantive convergence has transformed the juvenile court from a nominally rehabilitative, social welfare agency into a second-class criminal court for young people. While the sanctions of juvenile courts may be less harsh than criminal sentences, the direct penalties (institutional confinement) and collateral consequences (transfer to criminal court, use of delinquency convictions to enhance sentences, sex offender registration, and the like) share similar penal elements. The Supreme Court recognized that "the State intended to punish its juvenile offenders," and In re Gault adopted the Fifth Amendment privilege against self-incrimination to bolster the adversarial model in juvenile courts. Breed v. Jones applied the Fifth Amendment prohibition on double jeopardy to delinquency adjudications.

We believe it is simply too late in the day to conclude . . . that a juvenile is not put in jeopardy at a proceeding whose object is to determine whether he has committed acts that violate a criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years. . . . [T]here is little to distinguish an adjudicatory hearing . . . from a traditional criminal prosecution.

Accordingly, one cannot justify a less protective legal framework to interrogate juveniles than for adults because of juvenile courts’ rehabilitative claims. On the other hand, adolescents’ developmental differences may warrant different procedural safeguards during interrogations.

Obtaining information from suspects is a critical part of any criminal investigation. Offenders’ confessions and admissions may be keys to successful criminal and delinquency prosecutions because they lead almost ineluctably to a plea or conviction. Despite the crucial role of interrogation in criminal and juvenile justice, we know remarkably little about what happens when police question suspects, what the outcomes of interviews are, or how they affect justice administration.

Police, prosecutors, defense lawyers, and trial judges who deal regularly with the fruits of interrogation—confessions, admissions, denials, and leads to corroborating evidence—do not have the luxury to systematically
analyze the process. Police have resisted incursions into interrogation rooms by social scientists, whom they suspiciously regard as outsiders and potential critics. Law professors, psychologists, and criminologists who write about interrogation lack access to the places where police question criminal suspects. Appellate courts frame rules of interrogation based on a narrow and biased sample of cases. To obtain appellate review, a defendant must move to suppress a confession, receive an adverse ruling, plead guilty and preserve the right to appeal, or take the case to trial.

Most of what appellate judges, criminologists, legal scholars, and the public think we know about interrogation derives from aberrational cases of egregious abuses, false confessions and wrongful convictions, or television drama programs, “reality” shows, and movies that misleadingly depict how police question suspects. In the four decades since Miranda, we have few empirical studies about what actually occurs inside an interrogation room and no observational studies of how police question juveniles.

At first blush, the Fifth Amendment privilege against self-incrimination is an anomalous constitutional provision. Other testimonial privileges—for example, doctor-patient, priest-penitent, or attorney-client—promote important relationships and serve social values in contexts where candor is paramount: health, salvation, or effective representation. By contrast, only people who believe they are guilty of a crime may invoke the Fifth Amendment to withhold information. Unlike the Fourth Amendment, which protects only “reasonable expectations of privacy” and even then only conditionally, the Fifth Amendment applies increasingly as the state’s belief in a suspect’s guilt rises. The protections of the Fifth Amendment are contrary to common sense, common morality, and decent conduct outside the courtroom. Every parent teaches a misbehaving child that the most important thing is to “tell the truth.” The privilege functions as an impediment to finding the truth because in most instances, an accused person will be the best source of information about what happened. Rather than to protect the innocent, it may make it more difficult for a blameless person to establish the truth because it prevents police from questioning the guilty one. Western European democracies have no similar absolute prohibition; some allow judges or prosecutors to question defendants in court, and others draw negative inferences from a person’s refusal to answer police questions.

With so little to commend the privilege against self-incrimination, why is it enshrined in the Constitution and popular culture—“I plead the Fifth”? Perhaps it protects an inarticulate innocent person from a bad trial
performance if compelled to answer. Perhaps it encourages police to conduct better investigations if they have to work independently. Perhaps it allows a guilty person to avoid the “cruel trilemma” of self-incrimination, contempt for refusal to answer, or perjury conviction for answering falsely. Perhaps it protects personal dignity by not requiring a person to condemn him- or herself.

While the Fifth Amendment serves those functions incidentally, it serves as a bulwark of the adversarial process. The adversarial model envisions a passive umpire who adjudicates a dispute between two equal parties—the state and defendant. Although the truth may emerge in a partisan battle in which each side presents its version, ascertaining the truth is not the only goal of the adversary system. Rather, the Fifth Amendment privilege, like other constitutional procedural protections, furthers three interrelated values. One, of course, is to promote factual accuracy—to ensure the reliability of the process and to reduce the possibility that the state will punish an innocent person. Second, the adversarial process makes the individual unavailable to the state as a source of evidence and thereby limits the pressure the state can bring to bear in pursuit of its own goals. Protecting citizens from government coercion is a value in itself and reduces the risk of errors that could systematically favor the state. Third, the adversarial process promotes respect for individual dignity and autonomy. It posits equality between the individual and the state and recognizes that allowing one side to use the other as a source of evidence could subvert that balance.

For more than a century, the Court’s interrogation decisions have attempted to balance between the state’s need for information that an individual possesses with protection of personal autonomy and freedom from police coercion. If the privilege functions to preserve the adversary process, then the state only threatens that balance when it seeks potentially incriminating disclosures from the individual. Because the person questioned usually knows whether the information sought will incriminate, he or she bears the burden to assert the privilege and preserve the adversarial balance. The privilege is not self-invoking and requires affirmative action by a suspect to secure its protections.

The Court has recognized that certain compulsive pressures may impair or prevent a person from asserting the privilege—that is, may overbear his or her free will. The Court has used three constitutional strategies—Fourteenth Amendment due process voluntariness, Sixth Amendment right to counsel, and Fifth Amendment privilege against self-incrimination
— to regulate interrogation, to restrict coercive pressures, and to preserve the adversarial process. The Court’s Fourteenth Amendment decisions focus on whether a suspect’s statement was voluntary under the totality of the circumstances—that is, whether the state used fundamentally unfair or coercive tactics to obtain a statement. The Court excluded involuntary statements that police elicited by psychological or physical coercion because they were unreliable, overwhelmed a person’s free will, and used tactics a free society cannot condone. The Court’s Sixth Amendment decisions recognized that interrogation constitutes a critical stage in the criminal process because a confession effectively determines the outcome of a defendant’s trial. Suspects need tactical and strategic advice of counsel to decide whether to confess, and the Court excluded confessions in which the state deprived them of legal assistance. The Court used the Fifth Amendment privilege against self-incrimination to protect suspects from the compulsive pressures of custodial interrogation. The Court extended the Fifth Amendment privilege to the most inquisitorial stage of the adversarial process (the interrogation room), required police to advise suspects of the rights to remain silent and to assistance of counsel (the Miranda warning), and empowered them to terminate questioning. Crucially, suspects’ burden to assert the privilege arises when they are least able to do so—alone, isolated, and subject to the compelling pressures of custodial interrogation.

The Court’s struggle and ultimate failure to adequately regulate interrogation practices reflects the constraints of constitutional adjudication and fundamental tensions in justice administration. Herbert Packer’s “Two Models of the Criminal Process”—the Due Process model and the Crime Control model—identifies the inherent contradiction that interrogation poses for an adversarial justice system. The Due Process model reflects a commitment to an adversarial process, whereas the Crime Control model envisions a more inquisitorial justice system. The Due Process model relies on formal fact-finding at trial, buttressed by procedural safeguards to assure reliable findings of legal guilt. The Crime Control model relies on informal, administrative procedures to separate innocent from probably guilty suspects. This inquisitorial stage views the accused as a primary source of evidence and relies heavily on confessions to screen suspects and fuel guilty pleas.

Suspects must assert their privilege against self-incrimination when they are most vulnerable—after arrest and prior to formal initiation of the judicial proceedings. During this narrow window of opportunity—typically
36 to 48 hours—the juvenile and criminal justice process more closely resembles an inquisitorial Crime Control system than an adversarial Due Process system. A person isolated in a police-dominated environment must courageously confront his or her interrogators and clearly invoke the right to remain silent or the right to counsel to preserve the adversarial balance.

The organization of this book reflects three analytic goals. First, it uses Packer’s Crime Control and Due Process models to highlight the inquisitorial heart of our nominally adversarial process and the central role that interrogation plays. Constitutional theory notwithstanding, juvenile and criminal justice is an inquisitorial system for nearly all offenders. Police establish most offenders’ guilt through informal, administrative fact-finding—interrogation—that leads to guilty pleas. A guilty plea in court ratifies the real trial that occurred when police questioned the suspect. Most jurisdictions do not create a complete record of what transpired during that critical stage of the process. Mandatory recording provides an objective basis for courts to review what happened inside the interrogation room that determined most defendants’ guilt.

Second, the book empirically analyzes routine interrogation of older delinquents charged with felonies. Unlike most states, Minnesota has required police to record interrogations of criminal suspects for nearly two decades. Analyses of 307 tapes and transcripts describe in rich detail what actually happens when police interrogate serious young offenders. They begin to fill many gaps in knowledge about what happens and provide a framework for replication in other states as access to recordings increases.

Third, the book compares and contrasts these routine felony interrogations with those that elicited false confessions. While false confessions rightly garner legal and media scrutiny, policymakers require a baseline of everyday felony interrogations to determine whether and how these are aberrant outliers. Contrasting routine questioning with false confessions enables police, lawyers, and judges to identify interrogations that require enhanced scrutiny, to adopt policies to protect citizens, and to assure the reliability and integrity of the justice system.

Packer’s Due Process and Crime Control models contrast the theory and practice of criminal justice administration. The vast majority of defendants plead guilty, and their cases receive no adversarial testing. They plead because they already confessed at the station house. The Court’s three constitutional strategies to regulate interrogation all failed for the same reason—trial judges had no record of what happened during infor-
mal administrative fact-finding. Under the Fourteenth Amendment, trial judges admit only voluntary confessions, but without an independent record, they cannot assess the coerciveness of tactics, their impact on a suspect, or the reliability of a statement. Similarly, *Miranda* required the state to meet a heavy burden to prove a knowing, intelligent, and voluntary waiver of rights but did not require police to record warnings, waivers, or statements. Without an objective record, police almost invariably prevail in the swearing contest with defendants at the suppression hearing. Although the Due Process model envisions a formal adversarial proceeding to establish legal guilt, in reality few defendants receive a trial. The interrogation room is the trial—confessions determine guilt, and defendants have no record on which to appeal for judicial review.

*Miranda* provided judges with an objective alternative to a subjective inquiry about the voluntariness of a confession. It represented a symbolic expression of Packer’s Due Process model—a *per se* rule to regulate police conduct, a mechanism to inform defendants of their rights, and a strategy to maintain the individual and state balance in an adversarial process.16 *Miranda* erroneously assumed that a police-administered warning could offset the compulsive pressures of custodial interrogation and empower a suspect to assert the rights. Over three decades, *Miranda* has transmogrified from a protection for suspects to a safe harbor for police. The vast majority of suspects waive their rights despite a warning. Trial judges focus narrowly on whether police gave and suspects waived their rights, rather than on the voluntariness and reliability of confessions. If a suspect waives his or her rights, then police interrogate him or her as they did previously, and courts admit virtually any statement. *Miranda* simplified judicial review and enabled judges to avoid scrutiny of the subsequent statements.

This book begins to fill the empirical void about what happens in the interrogation room. It analyzes quantitative and qualitative data—tapes and transcripts, police reports, juvenile court files, and sentence reports—of routine interrogations of 307 sixteen- and seventeen-year-old youths whom prosecutors charged with a felony offense. Interviews with more than three dozen police, prosecutors, defense lawyers, and judges supplement these analyses. The book examines how police secured *Miranda* waivers, elicited information, and built the files that justice-system personnel used. It explores how youths’ prior record and responses influence interrogations and how waivers of *Miranda* affect case processing.

Over the past three decades, developmental psychologists have examined juveniles’ ability to exercise *Miranda* rights. The research questions
whether youths possess competence, judgment, and understanding to employ legal rights. It indicates that young and mid-adolescents do not possess the competence of adults to exercise *Miranda*. Developmental psychologists argue that younger juveniles' limited competence warrants greater procedural safeguards. While most sixteen- and seventeen-year-old youths can understand *Miranda*, their performance remains problematic. I situate these interrogations of delinquents in the broader *Miranda* framework. Are the Court's surmises about young people's ability to exercise *Miranda* realistic? What types of pressures do police use when they question youths? How do juveniles perform when measured against the legal standard developed for adults?

Contrary to the popular view of interrogation as a rigorous and grueling inquisition, I find, as have other researchers, that routine questioning “involve[s] relatively simple and straightforward interchanges with reasonably compliant suspects.” 17 Although false confessions almost invariably involve lengthy, coercive questioning, police conclude routine felony interviews quickly and with few psychological manipulations. This study provides an empirical baseline of routine felony interrogations. When corroborated by research in other jurisdictions, police, lawyers, judges, and policymakers will be better able to distinguish routine questioning from that which may produce false confessions.

Chapter 1 briefly reviews the three constitutional strategies the Court uses to regulate interrogation. They all failed because the Court had no way to determine what actually happened when police questioned suspects. The *Miranda* Court had no empirical evidence of the way police questioned suspects and instead used interrogation training manuals and programs as a proxy for real interrogation. The Court described the Reid Method—a technique of interrogation used then and now. The Reid manuals and training programs teach police to isolate suspects and to use psychological tactics—maximization and minimization strategies—to heighten their stress and anxiety and to manipulate their vulnerabilities to obtain confessions. 18 Although developmental psychologists question whether youths possess the cognitive ability or judgment to function on par with adults, interrogation manuals instruct police to use the same techniques with children as with adults. Post-*Miranda* research focused primarily on the impact of warnings on confessions. There is limited empirical research on what happens when police question suspects. The chapter contrasts the confrontational Reid Method employed in the
United States with investigative interview techniques developed in the United Kingdom.

Chapter 2 analyzes the law that governs interrogating juveniles. The Court has emphasized that youthfulness heightens vulnerability and has directed close scrutiny of juveniles’ confessions. Despite concerns about youthfulness, the Court applies the legal standard for adults to evaluate juveniles’ waivers of rights—“knowing, intelligent, and voluntary under the totality of the circumstances.” Most states require juveniles to understand the words and concepts the Miranda warning and to assert their rights as clearly as adults. While the law posits the same standard for children and adults, developmental psychologists question adolescents’ competence to exercise rights and highlight their special vulnerabilities. Many juveniles—especially those fifteen years of age and younger—do not understand the words or rights contained in a Miranda warning. With impaired understanding, juveniles are at a comparative disadvantage and cannot meet adult performance standards. A disjuncture exists between legal expectations and developmental psychologists’ research on adolescents’ competence.

Chapters 3, 4, 5, and 6 present the empirical core of the study. Chapter 3 analyzes juveniles’ exercise of Miranda rights—whether they make a knowing, intelligent, and voluntary waiver. It examines how and when police administer Miranda warnings, where and when they question suspects, who is present at the interrogation, and how police predispose youths to waive. Developmental psychologists report that most sixteen- and seventeen-year-olds can understand the words of a Miranda warning, even if they do not fully understand the concepts or appreciate the consequences of waiving.

Chapter 4 empirically analyzes how police interrogate the vast majority of youths who waive Miranda. It examines how police initiate an interview and frame their questions. It describes the psychological maximization and minimization techniques they use. It examines how police conclude an interview and demonstrate a voluntary waiver and statement.

Chapter 5 describes how juveniles respond to these tactics and their attitudes in the interrogation room. It examines how often police obtain confessions, admissions or denials, and leads to other evidence. It examines the length of interrogations and factors associated with longer questioning. It examines how juveniles’ decision to waive or invoke Miranda affects case processing—offense level at conviction, charge reduction, and
sentence. It depicts the Crime Control model in practice—confessions lead to guilty pleas.

Chapter 6 examines how interrogation practices vary with geographic context and produce "justice by geography." Juvenile justice administration varies in urban, suburban, and rural counties and affects how judges adjudicate and sentence youths. Youths' race and crimes vary with geographic locale and affect interrogation practices. Urban police question a larger proportion of minority juveniles and youths charged with more serious offenses than do suburban officers and use somewhat different strategies to question them. Suburban police contact juveniles' parents more frequently than urban officers do, and suburban parents attend interrogations more frequently than do urban parents. Parents' presence provides an opportunity to assess their role when police question their children. Juveniles' race affects juvenile justice administration. At every stage—arrest, intake, referral, petition, detention, trial, and disposition—youths of color fare less well than do their white counterparts, and disparate responses contribute to disproportionate minority confinement. Because geography and race overlap—urban minority and suburban white—the chapter examines whether youths of different races waive Miranda differently and whether police question and they respond differently.

Chapter 7 reviews research on false confessions and contrasts them with routine felony interrogations. Studies of false confessions identify recurring elements: poor investigations that misclassify innocent people as guilty, confrontational questioning, use of false evidence, lengthy interrogations, and vulnerable populations. False-confession research identifies youths—such as the sixteen- and seventeen-year-olds in this study—as among vulnerable populations.

Chapter 8 concludes with recommendations to reform the way police question suspects. Some focus on general interrogation practices—for example, mandatory recording of all interviews, prompt determination of probable cause, time limits on interrogation, and more use of investigative interview techniques rather than the confrontational Reid Method. Others focus on juvenile-specific reforms—mandatory assistance of counsel when police question delinquents fifteen years of age or younger. These reform proposals address the fundamental conundrum of interrogation in an adversarial process. Miranda failed to resolve its own internal contradiction—how can people subjected to the compulsive pressures of custodial interrogation make voluntary waiver decisions? Despite our nominally adversarial system, police interrogation is an inquisitorial process
and exemplifies the Crime Control model of criminal and juvenile justice. Only mandatory recording of interrogations can make visible that which takes place in secret, provide suspects with an objective record on which to appeal inquisitorial fact-finding, and enable trial judges to assess *Miranda* waivers and voluntariness and reliability of confessions. It enhances factual accuracy, limits government overreaching, and maintains a proper balance between the individual and the state.

Appendix 1 describes the study’s data and methodology. The Minnesota Supreme Court in *State v. Scales* required police to record custodial interrogations of criminal suspects, including juveniles. County attorneys in four counties—two urban and two suburban—provided unrestricted access to cull files of sixteen- and seventeen-year-old youths charged with a felony. The four counties represent half the population and half the delinquency filings in the state. We searched for and identified 307 files in which juveniles either invoked or waived *Miranda* and police questioned them. I copied and coded tapes or transcripts, police reports, juvenile court records, and sentence reports for those interrogations. I interviewed more than three dozen police, prosecutors, defense lawyers, and judges to learn about interrogation practices and to corroborate my findings with their experience.

Historically and currently, juvenile courts treat male and female delinquents differently. Appendix 2 compares and contrasts how police interrogated boys and girls—whether they questioned them differently, whether they responded differently, and whether their responses affected how courts disposed of their cases.