

DECEPTION IN PLACE OF EQUAL AND IMPARTIAL ADMINISTRATION OF JUSTICE: THE USE OF DECEPTION WHEN INTERROGATING JUVENILES

EMILY A. MORAN*

INTRODUCTION.....	2
I. JUVENILES.....	8
A. <i>Deception Often Used on Juveniles</i>	9
B. <i>Impact of Deception on Juveniles</i>	10
C. <i>Local and State Court Administrative Rules Protecting Juveniles</i>	14
II. CURRENT DOJ POLICIES ON INTERROGATIONS.....	15
A. <i>Legislative Rules v. Guiding Documents</i>	15
B. <i>Electronic Recording of Interrogations and Body-Worn Cameras</i>	16
C. <i>Justice Manual</i>	19
D. <i>Interrogation Techniques and Other Deceptive Tactics Used by DOJ</i>	20
III. DOJ'S POST-CONVICTION REVIEW FOR CONVICTIONS INVOLVING HAIR ANALYSIS.....	23
A. <i>Wrongful Convictions Involving Hair Analysis</i>	23
B. <i>DOJ Post-Conviction Review Process</i>	25
C. <i>Impact on States</i>	26
IV. RECOMMENDATIONS.....	27
A. <i>Memorandum</i>	28
B. <i>Including a New Provision in the Justice Manual</i>	30
C. <i>Post-Conviction Review of Convictions Obtained Using Deceptive Tactics</i>	31
D. <i>Counterarguments</i>	33

* Emily A. Moran, J.D. Candidate, American University Washington College of Law (2025), B.A. International Relations, Colgate University (2022). Thank you to the *Administrative Law Review* staff for their valuable contributions to this piece. A special thanks to my parents Leslie and James Moran, and my brother Will Moran for their love and support while writing this piece. I dedicate this Comment to those wrongly incarcerated because of deceptive interrogation tactics.

CONCLUSION	34
------------------	----

INTRODUCTION

The Exonerated Five, the Groveland Four, Huwe Burton, Peter Reilly, Leon Brown, and hundreds more juveniles have had their convictions overturned because law enforcement agents induced them into making false confessions through deceptive interrogation tactics.¹ A Florida judge exonerated the Groveland Four after decades of jail time because of the prosecution’s gross miscarriage of justice when they were juveniles.² Law enforcement coerced Huwe Burton into offering a false confession at sixteen years old, leaving Burton to spend nineteen years in prison.³ At eighteen, law enforcement induced Peter Reilly into falsely confessing by lying “that he failed a polygraph exam,” resulting in Reilly serving prison time.⁴ Leon Brown was convicted at fifteen and sentenced to death based on a coerced

1. See *Exoneration Detail List*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Feb. 1, 2024) (showing a collection of people who have been wrongfully convicted and exonerated across the United States); Amanda Holpuch, *Four Black Men Wrongly Charged With Rape Are Exonerated 72 Years Later*, N.Y. TIMES (Nov. 22, 2021), <https://www.nytimes.com/2021/11/22/us/groveland-four-exonerated-florida.html> (explaining that the members of the Groveland Four—Charles Greenlee, Ernest Thomas, Samuel Shepard, and Walter Irvin—were exonerated seventy-two years after charges were first filed); Elizabeth Vulaj, *From the Central Park 5 to the Exonerated 5: Can It Happen Again?*, N.Y. STATE BAR ASS’N (Aug. 1, 2019), <https://nysba.org/from-the-central-park-5-to-the-exonerated-5-can-it-happen-again/> (detailing the forced confession of the Exonerated Five—Yusef Salaam, Korey Wise, Raymond Santana Jr., Kevin Richardson, and Antron McCray—due to the police’s lies and use of physical force); Stacey Stowe, *Exonerated But in Dark: Police Keep Files Closed*, N.Y. TIMES (Jan. 23, 2004), <https://www.nytimes.com/2004/01/23/nyregion/exonerated-but-in-dark-police-keep-files-closed.html> (explaining that Peter Reilly, after being lied to by police, was not exonerated until evidence was found placing him away from the scene of the crime).

2. See Sara Weisfeldt, *4 Black Men Exonerated More Than 70 Years After Being Wrongly Accused of Raping a White Teen Girl*, CNN, <https://www.cnn.com/2021/11/22/us/groveland-four-exonerated-florida/index.html> (Nov. 23, 2021, 9:58 AM); Holpuch, *supra* note 1 (stating that charges against the Groveland Four were initially filed seventy-two years ago, which “left a trail of destruction,” resulting in the mob killing of two and a lengthy period of incarceration for the other two).

3. See *Cases: Huwe Burton*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/huwe-burton/> (last visited Feb. 1, 2024).

4. See Saul Kassir, *Law Enforcement Experts on Why Police Shouldn’t Be Allowed to Lie to Suspects*, TIME (Dec. 16, 2022, 7:00 AM) [hereinafter Kassir, *Law Enforcement Experts*], <https://time.com/6241531/police-deception-tactics-suspects-consequences/>.

confession.⁵ In 2015, then-Governor Pat McCrory of North Carolina pardoned Leon Brown after thirty-one years in prison.⁶ Ava Duvernay's television series, *When They See Us*, popularized the Exonerated Five case.⁷ The New York City District Attorney's Office, spearheaded by Linda Fairstein, wrongly convicted the Exonerated Five of raping a woman in Central Park when they were juveniles based on law enforcement's use of deceptive tactics to elicit false confessions from all five boys.⁸ Law enforcement, through promises that the boys would be able to go home if they confessed, induced false confessions from the five juvenile boys who were in the wrong place at the wrong time.⁹ In 2020, shortly after Netflix released the series, New York passed the Central Park Five Law, requiring law enforcement officers to record juvenile interrogations.¹⁰ In these five notable cases, all the suspects (except three of the Groveland Four) were at or under the age of eighteen.¹¹

The Department of Justice (DOJ) can oversee law enforcement conduct under 34 U.S.C. § 12601.¹² Section 12601 states the Attorney General "may in a civil action obtain appropriate equitable and declaratory relief to

5. See Maurice Possley, *Leon Brown*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4493> (Mar. 14, 2023) (stating that Brown's sentence was reduced from death to life in prison upon review).

6. See *id.*

7. See *When They See Us* (Netflix May 31, 2019) (showcasing how law enforcement officers coerced four young Black men into confessing using deceptive interrogation tactics).

8. See *id.*; Lena Finkel, *Central Park Five Prosecutor Says She Did Nothing Wrong, Takes No Responsibility*, FEMESTELLA (June 7, 2019), <https://www.femestella.com/when-they-see-us-central-park-five-linda-fairstein/> (explaining that Linda Fairstein took an active role, along with police officers, in ensuring the Exonerated Five were incarcerated).

9. *When They See Us*, *supra* note 7; see Yusef Salaam, Kevin Richardson & Raymond Santana, *We Are the 'Exonerated 5.' What Happened to Us Isn't Past, It's Present.*, N.Y. TIMES (Jan. 4, 2021), <https://www.nytimes.com/2021/01/04/opinion/exonerated-five-false-confessions.html> (stating the experience of the Exonerated Five while in law enforcement custody).

10. See Rose Adams, *New 'Central Park Five' Law Requires Cops To Videotape Juvenile Interrogations*, N.Y. STATE SENATE (Dec. 13, 2020), <https://www.nysenate.gov/newsroom/in-the-news/2020/velmanette-montgomery/new-central-park-five-law-requires-cops-videotape-0> (citing Rose Adams, *New 'Central Park Five' Law Requires Cops to Videotape Juvenile Interrogations*, BROOKLYN PAPER (Dec. 14, 2020), <https://www.brooklynpaper.com/central-park-five-juvenile-interrogations/>).

11. See *supra* note 1 and accompanying text.

12. See 34 U.S.C. § 12601; *Conduct of Law Enforcement Agencies*, C.R. DIV., U.S. DEP'T OF JUST., <https://www.justice.gov/crt/conduct-law-enforcement-agencies> (Nov. 1, 2023) (explaining that § 12601 permits the Department of Justice (DOJ) "to review the practices of law enforcement agencies that may be violating people's federal rights").

eliminate [unlawful conduct]” within governmental authority.¹³ The statute defines unlawful government conduct as “conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”¹⁴ DOJ’s mission is guided by Thomas Jefferson, who once wrote, “[t]he most sacred of the duties of government [is] to do equal and impartial justice to all its citizens.”¹⁵ DOJ holds itself to a standard that promotes independence and impartiality, honesty and integrity, respect, and excellence.¹⁶ DOJ’s charge is to “uphold the rule of law, to keep our country safe, and to protect civil rights.”¹⁷ Further, DOJ is an influential policymaker for issues surrounding law enforcement and prosecutorial conduct, specifically regarding juveniles.¹⁸ DOJ includes the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which acts as the national leader in juvenile justice, providing programs that support state and local governments in their efforts to lower youth delinquency rates and prevent violence.¹⁹ The vision of OJJDP is to “envision[] a nation where all children are free from crime and violence. Youth contact with the justice system should be rare, fair, and beneficial.”²⁰ DOJ also publishes a Justice Manual that guides the United States Attorney’s Office (USAO) and DOJ subagencies like the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), United States Marshall Service (USMS), and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in their conduct.²¹ The Justice Manual also describes model behavior to be used daily by prosecutors.²²

13. 34 U.S.C. § 12601(b).

14. § 12601(a).

15. *Organization, Mission and Functions Manual Overview*, U.S. DEP’T OF JUST., <https://www.justice.gov/doj/organization-mission-and-functions-manual> (last visited Jan. 21, 2024).

16. *See id.*

17. *Id.* (outlining the mission and purpose of DOJ).

18. *See* U.S. Dep’t of Just., Just. Manual § 9-8.000 (2018). *See generally* *Organization, Mission and Functions Manual Overview*, *supra* note 15 (explaining that the Justice Manual contains guidance and organizational structures for various agencies); U.S. Dep’t of Just., Just. Manual (2018) (outlining the policies federal prosecutors and agents follow across the country).

19. *About OJJDP*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, U.S. DEP’T OF JUST., <https://ojjdp.ojp.gov/about> (last visited Feb. 1, 2024).

20. *Id.*

21. *See* U.S. Dep’t of Just., Just. Manual § 1-1.100 (2018); *Organization, Mission and Functions Manual Overview*, *supra* note 15.

22. *See* U.S. Dep’t of Just., Just. Manual § 9-27.000 (2018) (outlining guidelines for

The Justice Manual also outlines the particular processes for federal prosecution of juveniles.²³

Historically, Congress and federal agencies have sought to protect juvenile rights.²⁴ In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP), which established OJJDP.²⁵ Congress reauthorized the JJDP once²⁶ prior to introducing the Juvenile Justice Reform Act (JJRA) in 2018.²⁷ The JJRA amended the JJDP to focus on racial disparities and collect more data to analyze what fosters disparities in the juvenile justice system.²⁸ Further, the JJRA continued to implement policies to stop juveniles from being held with adults while awaiting trial.²⁹ Lastly, the JJRA outlines a new process for holding juveniles in violation of a court order.³⁰ Congress has also introduced other related legislation on adoption, child abuse, prison rape, homelessness, and immigration to combat problems in the juvenile justice system and to protect minors.³¹

In various cases, the Supreme Court has also protected the rights of juveniles.³² In *Roper v. Simmons*,³³ the Court ruled that sentencing a person under eighteen to death was unconstitutional.³⁴ Further, in *Graham v. Florida*,³⁵ the Court held that lower courts cannot sentence juvenile offenders to life without the possibility of parole for nonhomicide offenses.³⁶ Shortly

federal prosecutors).

23. See § 9-8.000 (establishing guidelines for prosecution of juveniles in federal court).

24. See, e.g., *Legislation*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, U.S. DEP'T OF JUST., <https://ojdp.ojp.gov/about/legislation> (last visited Feb. 1, 2024) (describing the history of federal legislation passed regarding the treatment of juveniles in the justice system); *Roper v. Simmons*, 543 U.S. 551, 570–71, 579 (2005) (holding that it is unconstitutional for juveniles to receive the death penalty); *J.D.B. v. North Carolina*, 564 U.S. 261, 277, 281 (2011) (holding a suspect's age must be considered when determining whether an individual is in custody).

25. Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP), Pub. L. No. 93-415, 88 Stat. 1109 (codified at 42 U.S.C. § 5601); *Legislation*, *supra* note 24.

26. *Legislation*, *supra* note 24.

27. Juvenile Justice Reform Act (JJRA), Pub. L. No. 115-385, 132 Stat. 5123 (2018) (codified as 34 U.S.C. § 10101).

28. See § 223(15)(A)–(C), 132 Stat. at 5137.

29. See § 205(11)(B)(i), 132 Stat. at 5135–36.

30. See § 205(11), (15), 132 Stat. at 5135, 5137.

31. See *Legislation*, *supra* note 24 (listing legislation related to the JJDP that was passed by Congress).

32. See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

33. 543 U.S. 551 (2005).

34. *Id.* at 578.

35. 560 U.S. 48 (2010).

36. *Id.* at 82.

after, the Court, in *Miller v. Alabama*,³⁷ extended protections for juvenile offenders in ruling that they could not be subject to mandatory life sentences without the possibility of parole.³⁸ In addition, the Court in *J.D.B. v. North Carolina*³⁹ found that lower courts must consider the suspect's age when determining if the person is in custody.⁴⁰

Although the Court has historically protected the rights of juveniles in trial and post-conviction sentencing, it has not protected juveniles against law enforcement deception during investigations and interrogations.⁴¹ In *Frazier v. Cupp*,⁴² the Court held that law enforcement can not only use deceptive tactics to elicit a false confession but also that the false confession is admissible as evidence in a criminal proceeding.⁴³ The Court did not distinguish between whether this ruling applies to adults or juveniles, suggesting instead that deception can be used at any age.⁴⁴ However, in subsequent decisions, like *Fare v. Michael C.*,⁴⁵ the Court employed a totality of the circumstances test to determine whether an individual, juvenile or otherwise, was induced into an involuntary confession, with age being among the factors considered.⁴⁶ Likewise, the Court held in *Fare* that when a juvenile asks for a probation officer to be present, the Court does not consider that to be invoking the Fifth Amendment protection against self-incrimination.⁴⁷ Overall, the Court made no exception to its custodial interrogation test for juveniles—maintaining the same qualification for custody, interrogation, and invocation of rights across all ages.⁴⁸

Juveniles are susceptible to false confessions.⁴⁹ Children are between two

37. 567 U.S. 460 (2012).

38. *Id.* at 489.

39. 564 U.S. 261 (2011).

40. *Id.* at 281.

41. *See, e.g., Frazier v. Cupp*, 394 U.S. 731, 738 (1969).

42. 394 U.S. 731 (1969).

43. *Id.* at 738, 740.

44. *Id.*

45. 442 U.S. 707 (1979).

46. *See id.* at 726, 728.

47. *Id.* at 724–27.

48. *Id.* at 726.

49. SAMUEL R. GROSS, MAURICE J. POSSLEY, KAITLIN JACKSON ROLL & KLARA HUBER STEPHENS, NAT'L REGISTRY OF EXONERATIONS, GOVERNMENT MISCONDUCT AND CONVICTING THE INNOCENT 59 (2020) [hereinafter GROSS ET AL., GOVERNMENT MISCONDUCT], https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf.

and three times more likely than adults to produce a false confession.⁵⁰ In 2020, a study by the National Registry of Exonerations found that “[36%] of exonerees who were under [eighteen] at the time of the crime with which they were charged falsely confessed, compared to 10% of exonerees who were [eighteen] or older.”⁵¹ Further, as the Innocence Project notes, “[b]ecause minorities are more likely to be arrested as juveniles, false confessions and fictitious incriminating statements are more prone to occur.”⁵² The Innocence Project also determined that “[m]any African-American and Hispanic exonerated men who were arrested as juveniles in urban communities were coerced into giv[ing] incriminating statements that significantly differed from the crime scene evidence.”⁵³ In 2021, Illinois became the first state to pass a bill stopping the use of deceptive tactics by law enforcement when interrogating minors.⁵⁴ Similar bills have now passed in California,⁵⁵ Delaware,⁵⁶ and Oregon.⁵⁷ On June 13, 2023, the Connecticut Senate approved, and the governor signed, a bill banning the use of coercive interrogations on juveniles into law.⁵⁸ The Vermont legislature also recently introduced a bill attempting to ban deception by law enforcement; however, it was vetoed by Governor Phil Scott.⁵⁹ Legislation

50. 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, 1731 (2017).

51. See GROSS ET AL., GOVERNMENT MISCONDUCT, *supra* note 49, at 59.

52. See Edwin Grimsley, *What Wrongful Convictions Teach Us About Racial Inequality*, INNOCENCE PROJECT (Sept. 26, 2012), <https://innocenceproject.org/news/what-wrongful-convictions-teach-us-about-racial-inequality/> (explaining that because minority neighborhoods are labeled high-crime areas, police concentrate on these areas, leading to higher police contact).

53. See *id.* (describing the relationship between wrongful convictions and race).

54. 705 ILL. COMP. STAT. 405/5-401.6 (2022); Press Release, Gov. Pritzker Signs Landmark Legislation Advancing Rights of Most Vulnerable in Illinois’ Justice System (July 15, 2021), <https://www.illinois.gov/news/press-release.23581.html> (“Senate Bill 2122 makes Illinois the first state in the nation to bar law enforcement from using deceptive tactics when interrogating young people.”).

55. CAL. WELF. & INST. CODE § 625.7 (Deering 2022).

56. DEL. CODE ANN. tit. 11, § 83:447 (2022).

57. See 2012 Or. Laws 487; *Oregon Deception Bill is Signed into Law, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (June 16, 2021), <https://innocenceproject.org/news/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/>.

58. See Hugh McQuaid, *Restrictions on Deceptive Police Tactics Signed into Law*, CT NEWS JUNKIE (June 13, 2023), <https://ctnewsjunkie.com/2023/06/13/restrictions-on-deceptive-police-tactics-signed-into-law/> (discussing that the Connecticut Senate signed a bill into law rejecting the use of deceptive interrogation tactics on juveniles).

59. Peter Hirschfeld, *Gov. Scott Vetoes Bill Banning Deceptive Police Interrogation Tactics with*

on banning deceptive interrogation tactics on juveniles began in the last three years, and states continue to pursue this issue.⁶⁰

Thus, DOJ should publish a memorandum stopping deceptive interrogation tactics when interrogating juveniles and implement a post-conviction review process modeled on previous DOJ programs to halt the negative impacts of deceptive interrogation on juveniles. Part I of this Comment evaluates the impact of deceptive interrogation techniques on juveniles, current deceptive tactics utilized by law enforcement, and court rules in place that protect juveniles. Part II analyzes current DOJ policies on interrogations, including the Justice Manual, standard interrogation techniques, and previous memorandum mandating electronic recording of interrogations. Part III examines the existing DOJ post-conviction review process for convictions attained using hair analysis as a potential model for a post-conviction review process for convictions achieved by a juvenile's false confession. Part IV recommends DOJ publish a memorandum mandating its organization and subagencies stop using deceptive interrogation tactics on juveniles. Additionally, DOJ should create a new provision in the Justice Manual outlining what conduct is deceptive under § 9-8.000 to enforce that DOJ subagencies to stop utilizing the deceptive techniques and tactics. Lastly, DOJ should implement a post-conviction review process for convictions obtained using deceptive tactics modeled on previous DOJ post-conviction reviews.

I. JUVENILES

The JJDP, reauthorized in 2018, made critical reforms to the juvenile justice system, including creating the OJJDP.⁶¹ Federal courts do not prosecute most juvenile crimes as federal courts typically transfer juveniles to state and local treatment programs.⁶² The OJJDP assists state and local governments in the prosecution of juveniles and aims to improve the juvenile justice process, supporting the statutory separation under the JJPA to federally prosecute juveniles only in severe cases.⁶³ However, juveniles still

Young People, VT. PUB. (June 1, 2023), <https://www.vermontpublic.org/local-news/2023-06-01/gov-phil-scott-vetoes-bill-to-ban-deceptive-police-interrogation-tactics-with-young-people-vermont>.

60. See *supra* notes 54–59 and accompanying text.

61. See *Legislation, supra* note 24.

62. See *OJJDP Priorities*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, U.S. DEP'T OF JUST., <https://ojjdp.ojp.gov/about/ojjdp-priorities> (last visited Feb. 1, 2024).

63. See JJPA, Pub. L. No. 93-415, 88 Stat. 1109 (1974); *History of the JJPA*, COAL. FOR JUV. JUST., <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency->

engage with the federal justice system, and DOJ sets forth policies that federal investigators and prosecutors follow.⁶⁴

A. Deception Often Used on Juveniles

Commonly, law enforcement officers use deceptive tactics to illicit confessions and, therefore, increase the number of convictions they obtain.⁶⁵ The Supreme Court held in *Sorrells v. United States*⁶⁶ that “[a]rtifice and stratagem may be employed to catch those engaged in criminal enterprises.”⁶⁷ Further, in *Frazier v. Cupp* and *Fare v. Michael C.*, the Court did not distinguish between adults and juveniles regarding deceptive interrogation techniques.⁶⁸ The Court stated that age is only one factor to consider when determining if law enforcement is interrogating an individual.⁶⁹ Law enforcement can question juveniles in the same manner as adults because of the Court’s failure to afford juveniles special protections from deceptive tactics.⁷⁰ The Innocence Project found that it is almost always legal for law enforcement to lie or make false claims during an interrogation.⁷¹ Law enforcement can lie to the suspect about their involvement in the crime, whether another individual has made statements alleging their guilt, and about evidence found at the scene.⁷² Law enforcement can also conduct polygraph examinations and falsely present the results to individuals, including juveniles, to claim they are not telling the truth.⁷³ Additionally, law enforcement often uses the Reid Technique—a

prevention-act (last visited Feb. 1, 2024) (stating the OJJDP “is dedicated to training, technical assistance, model programs, and research and evaluation, to support state and local efforts”).

64. See U.S. Dep’t of Just., Just. Manual § 9-8.000 (2018); *United States v. Male Juvenile*, 280 F.3d 1008 (9th Cir. 2002) (outlining the prosecution of a juvenile).

65. See Irina Khasin, *Honesty Is the Best Policy: A Case for the Limitation of Deceptive Police Interrogation Practices in the United States*, 42 VAND. J. TRANSNAT’L L. 1029, 1036 (2009); Kassir, *Law Enforcement Experts*, *supra* note 4.

66. 287 U.S. 435 (1932).

67. See *id.* at 441.

68. Compare *Frazier v. Cupp*, 394 U.S. 731, 739 (1969), and *Fare v. Michael C.*, 442 U.S. 707, 726 (1979) (applying the same test to determine custody toward adults and juveniles), with *Roper v. Simmons*, 543 U.S. 551, 579 (2005) (lessening punishments for juveniles as compared to adults).

69. See *Frazier*, 394 U.S. at 739; *Fare*, 442 U.S. at 726.

70. See Nigel Quiroz, *Five Facts About Police Deception and Youth You Should Know*, INNOCENCE PROJECT (May 13, 2022), <https://innocenceproject.org/news/police-deception-lying-interrogations-youth-teenagers/>.

71. See *id.*

72. See *id.*

73. Joseph Stromberg, *Lie Detectors: Why They Don’t Work, and Why Police Use Them Anyway*,

manipulative questioning method that uses deceptive methods to induce someone into being truthful—on juveniles because it is the most prevalent interrogation tactic in the United States.⁷⁴ However, as the Court suggested in *J.D.B. v. North Carolina*, “the pressure of custodial interrogation is so immense that it ‘can induce a frighteningly high percentage of people to confess to crimes they never committed.’ That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.”⁷⁵

Overall, law enforcement is legally authorized to lie and make false statements to juveniles while they are in custody, use polygraph examinations, and employ the Reid Technique.⁷⁶ These approaches to interrogating juveniles often have a negative impact, such as causing a juvenile to make a false confession that later results in a wrongful conviction.⁷⁷

B. *Impact of Deception on Juveniles*

The Exonerated Five each spent years in prison for a crime they did not commit, and their story is similar to hundreds of others who were also exonerated or who are still in prison because of the use of deceptive interrogation techniques.⁷⁸ In the case of the Exonerated Five, law enforcement officers deceived the five juveniles by continually telling the young boys they were free to go home if they confessed to the crimes.⁷⁹ The Exonerated Five recounted their interrogation in detail by stating:

During the hours of relentless questioning that we each endured, detectives lied to us repeatedly. They said they had matched our fingerprints to crime scene evidence and told each of us that the others had confessed and implicated us in the attack. They said

VOX (Dec. 15, 2014), <https://www.vox.com/2014/8/14/5999119/polygraphs-lie-detectors-do-they-work>.

74. See Brian R. Gallini, *Police “Science” in the Interrogation Room: Seventy Years of Pseudo-Psychological Interrogation Methods to Obtain Inadmissible Confessions*, 61 HASTINGS L.J. 529, 536 (2010).

75. *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).

76. See, e.g., Quiroz, *supra* note 70.

77. Maclen Stanley, *Stop Lying to Juveniles During Police Interrogations*, PSYCH. TODAY (Jan. 28, 2022), <https://www.psychologytoday.com/us/blog/making-sense-chaos/202201/stop-lying-juveniles-during-police-interrogations>.

78. See Aisha Harris, *The Central Park Five: ‘We Were Just Baby Boys’*, N.Y. TIMES (May 30, 2019), <https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us.html>; see also *supra* note 1.

79. *Analysis of Confessions in ‘89 NYC Rape*, ABC NEWS (Sept. 25, 2002, 7:04 PM), <https://abcnews.go.com/Primetime/story?id=132077&page=1>.

that if we just admitted to participating in the attack, we could go home. All of these were blatant lies.⁸⁰

The wrongful conviction of the Exonerated Five is not an isolated event—27% of wrongful convictions generally are due to false confessions.⁸¹ Further, studies have shown 44% of wrongfully convicted juveniles were convicted as a result of a false confession.⁸² False confessions can result from law enforcement’s use of “intimidation, force, coercive tactics, isolation during interrogations, deceptive methods that include lying about evidence, and more.”⁸³ Other circumstances, such as the length of time of the interrogation, mental and physical exhaustion, and challenges in comprehending constitutional rights, can increase the likelihood of a false confession.⁸⁴ Further, studies show that “[o]n average, people who falsely confessed were interrogated for up to [sixteen] hours before admitting to a crime they did not commit.”⁸⁵ Children are more vulnerable because they often lack the understanding of constitutional law to challenge a law enforcement officer.⁸⁶ Moreover, an individual’s brain is not fully developed until the age of twenty-five,⁸⁷ and “[d]ecades of neuroscientific research has confirmed that the pre-frontal cortex, an area of the brain commonly referred to as the ‘executive center,’ and involved in the controlling of impulses, assessment of risk, and weighing of consequence, is still significantly

80. Salaam et al., *supra* note 9. *But see* Jacey Fortin, *Interrogation Company Insists That ‘When They See Us’ Got It Wrong*, N.Y. TIMES (Oct. 17, 2019), <https://www.nytimes.com/2019/10/17/us/reid-technique-when-they-see-us.html> (positing that *When They See Us* mischaracterized police officers interrogation techniques).

81. *See, e.g., Explore the Numbers: Innocence Project’s Impact*, INNOCENCE PROJECT, <https://innocenceproject.org/exonerations-data/> (last visited Feb. 1, 2024) (outlining statistics of wrongful convictions); *Exoneration Detail List*, *supra* note 1; Weisfeldt, *supra* note 2; Kassir, *Law Enforcement Experts*, *supra* note 4; *Cases: Huwe Burton*, *supra* note 3.

82. *See* Saul M. Kassir, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. HUM. BEHAV. 3, 19 (2010), [https://web.williams.edu/Psychology/Faculty/Kassir/files/White%20Paper%20-%20LHB%20\(2010\).pdf](https://web.williams.edu/Psychology/Faculty/Kassir/files/White%20Paper%20-%20LHB%20(2010).pdf).

83. *False Confessions*, INNOCENCE PROJECT, <https://innocenceproject.org/false-confessions/> (last visited Feb. 1, 2024).

84. *See id.* (“[R]esearch shows that the reliability of confessions is greatly reduced after a prolonged interrogation”).

85. *See id.*

86. *See id.*

87. *See, e.g., Stanley*, *supra* note 77. *But see O’JJDP Priorities*, *supra* note 62 (stating that, “[b]ecause their developing brains are more malleable than those of adults, young people are also more capable of change and rehabilitation”).

underdeveloped in juveniles.”⁸⁸ Under high-stress environments, a juvenile’s underdeveloped brain is more susceptible to producing a false confession.⁸⁹ A study determined that “[a]n immature pre-frontal cortex, coupled with other neurodevelopmental factors such as increased dopaminergic activity in the limbic system, culminates in a juvenile mind that is uniquely susceptible to deceit, particularly under high-stress environments.”⁹⁰ Studies also show that one in four juveniles between the ages of sixteen and seventeen and nearly seven in ten children between the ages of twelve and fifteen have falsely confessed when convicted of a crime.⁹¹

In *Roper v. Simmons*, the Supreme Court implicitly recognized how a juvenile’s underdeveloped brain may lead to a lack of understanding along with “impetuous and ill-considered actions and decisions.”⁹² *Roper* discussed a juvenile’s lack of maturity, noting their vulnerability to negative influences, more “transitory” traits, as well as how their lack of responsibility is legally recognized by bright-line age requirements for jury duty and marriage.⁹³ Further, in *Thompson v. Oklahoma*,⁹⁴ the Court held “less culpability should attach to a crime committed by a juvenile . . . [and that] their irresponsible conduct is not as morally reprehensible as that of an adult.”⁹⁵ Nevertheless, the Supreme Court continues to allow law enforcement to use deceptive interrogation tactics against juveniles.⁹⁶

Likewise, OJJDP advocates for withholding young people from environments where they may face scenarios that would impair their

88. Stanley, *supra* note 77; *see also* LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE 46–65 (2014) (describing how policies of different institutions need to be adapted to better suit how juveniles are treated in society).

89. *See* Stanley, *supra* note 77.

90. *See id.*

91. *See Youth Against Wrongful Convictions*, INNOCENCE PROJECT <https://innocenceproject.org/petitions/youth-against-wrongful-convictions/> (last visited Feb. 1, 2024); *Fact Sheet on the Juvenile Justice System*, AM. CIV. LIBS. UNION (July 5, 1996), <https://www.aclu.org/documents/aclu-fact-sheet-juvenile-justice-system> (stating that the American Civil Liberties Union in 1996, found “the rearrest rate for children sentenced in juvenile court [in New Jersey and New York] was 29% lower than the rearrest rate for juveniles sentenced in the adult criminal court”). *But see* Kassir et al., *supra* note 82 (according to a 2005 sample of wrongful convictions of juveniles, 44% of those were due to false confessions).

92. *Roper v. Simmons*, 543 U.S. 551, 568–70 (2005); Kassir et al., *supra* note 82.

93. *Roper*, 543 U.S. at 569–70.

94. 487 U.S. 815 (1988).

95. *Id.* at 835.

96. *See* Stanley, *supra* note 77 (giving examples of cases where the Supreme Court has allowed deceptive interrogation tactics).

development, such as adult prisons.⁹⁷ The OJJDP also published a bulletin stating:

[T]he transition to adulthood involves the acquisition of more adultlike psychosocial capabilities and more adult responsibilities; however, not all adolescents mature to the same degree. Youth whose antisocial behavior persists into early adulthood exhibit lower levels of psychosocial maturity in adolescence and also demonstrate deficits in the development of psychosocial maturity compared with other antisocial youth.⁹⁸

Deceptive interrogation tactics used on juveniles often lead to wrongful convictions, which can have a dire impact on a juvenile's development and future.⁹⁹ While there is limited research on the psychological impact of wrongful convictions, some studies show a need for programs targeting mental health, readjustment, and improving public perception of wrongly convicted individuals.¹⁰⁰ Wrongfully convicted individuals likewise often face suicidal ideations, post-traumatic stress disorder (PTSD), anxiety disorders, sleeping problems, and strains on their relationships.¹⁰¹ These associated psychological impacts are likely the result of the countless and unnecessary years wrongfully convicted individuals and exonerees spend in prison, on average 11.6 years.¹⁰² The Innocence Project recommends providing a wrongfully convicted person a minimum of \$50,000 in compensation for every year wrongfully incarcerated as compensation.¹⁰³ In addition to compensation for time lost, the Innocence Project recommends additional compensation for coverage of attorney's fees and for released exonerees to

97. Laurence Steinberg, Elizabeth Cauffman & Kathryn C. Monahan, *Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders*, OJJDP JUV. JUST. BULL., Mar. 2015, at 2, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf> (outlining research on the psychosocial maturity of convicted juveniles).

98. *Id.* at 9.

99. See Kassin et al., *supra* note 82 (describing that *Miranda* warnings are not adequate to stop innocent people from being convicted and that the Reid technique and other similar approaches create an immediate slant towards guilt when people are interrogated); Steinberg et al., *supra* note 97 (discussing changes in juvenile offender's psychosocial maturity over time).

100. Samantha K Brooks & Neil Greenberg, *Psychological Impact of Being Wrongfully Accused of Criminal Offences: A Systematic Literature Review*, 61 MED. SCI. L. 44, 44, 52 (2020).

101. See *id.* at 47–48.

102. See Samuel R. Gross, Maurice Possley, Ken Otterbourg, Klara Stephens, Jessica Weinstock Paredes & Barbara O'Brien, *Race and Wrongful Convictions in the United States*, NAT'L REGISTRY OF EXONERATIONS (2022) (“[W]e don't begin to learn about them until the convicted defendants are exonerated, on average 11.6 years later.”).

103. INNOCENCE PROJECT, MAKING UP FOR LOST TIME: WHAT THE WRONGFULLY CONVICTED ENDURE AND HOW TO PROVIDE FAIR COMPENSATION 4 (2009), https://www.innocenceproject.org/wp-content/uploads/2016/06/innocence_project_compensation_report-6.pdf.

be provided “immediate services including housing, transportation, education, workforce development, physical and mental health care through the state employee’s health care system and other transitional services,”¹⁰⁴ along with an acknowledgment of the exoneree’s wrongful conviction.¹⁰⁵ A wrongful conviction has a life-altering impact on a juvenile, and deceptive interrogation tactics are often the root cause of these flagrant miscarriages of justice.¹⁰⁶

C. Local and State Court Administrative Rules Protecting Juveniles

Some state courts have developed procedural safeguards and rules in juvenile courts to protect youths.¹⁰⁷ For instance, in Ohio, a child’s right to counsel cannot be waived if there is a conflict with the child’s parents or if the child commits a felony.¹⁰⁸ Further, Hawaii has a state court rule protecting a juvenile’s constitutional rights while being interrogated, which states, “[n]o extra-judicial statement by the child made as a result of a custodial interrogation by a police officer shall be admitted into evidence absent a showing that required warnings of the child’s constitutional rights were given [to] the child in a meaningful way.”¹⁰⁹ Likewise, states have also passed laws requiring parents, legal guardians, or counsel to be present during interrogations for statements made by juveniles to be admissible in court.¹¹⁰ Colorado’s statute on parental presence for juveniles states:

A statement or admission of a juvenile made as a result of the custodial interrogation of the juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile are not admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation¹¹¹

Maine has passed a similar statute stating that juveniles cannot be

104. *See id.* at 5.

105. *See id.*

106. Stanley, *supra* note 77.

107. *See, e.g.*, Ohio R. Juv. P. 3, Waiver of Rights; Haw. R. Fam. Ct. 142; COLO. REV. STAT. §§ 19-2.5-601 to -613 (2021); ME. REV. STAT. ANN. tit.15 § 3203-A (2023); N.D. CENT. CODE § 27-20.2-26 (2023).

108. *See* Ohio R. Juv. P. 3, Waiver of Rights; *see also* Loc. R. Prac. for Hamilton Cnty Juv. Ct. 4, Legal Guardian Required (requiring the presence of a legal representation for all court proceedings).

109. Haw. R. Fam. Ct. 142.

110. *See* COLO. REV. STAT. §§ 19-2.5-203; ME. REV. STAT. ANN. tit.15 § 3203-A; N.D. CENT. CODE § 27-20.2-26.

111. *See* COLO. REV. STAT. § 19-2.5-203(1).

questioned until a legal custodian is notified of the arrest and has given permission to continue without the parent or if the officer made reasonable efforts to contact a guardian.¹¹² Additionally, the North Dakota legislature passed a statute requiring counsel to be provided for children deemed indigent, meaning a parent or guardian cannot be present during an interrogation.¹¹³

II. CURRENT DOJ POLICIES ON INTERROGATIONS

In the Justice Manual, DOJ outlines guidelines that law enforcement agents and prosecutors must follow while interrogating suspects.¹¹⁴ The Justice Manual includes information on electronically recording confessions, body-worn cameras (BWCs), and polygraph examinations.¹¹⁵ In addition, DOJ released a separate memorandum mandating its agents electronically record interrogations and confessions in certain circumstances.¹¹⁶ While the Justice Manual details the contours of the permissible use of various electronic aids throughout the interrogation process, as well as the admissibility of electronically recorded evidence, it does not expressly state DOJ's stance on the use of deceptive interrogation tactics.¹¹⁷

A. Legislative Rules v. Guiding Documents

Agencies can use the formal rulemaking process to propose policies or promulgate memoranda to clarify rules that their subagencies must follow and other agencies may adopt.¹¹⁸ DOJ has the power to create rules and publish memoranda regarding policies that fall under its jurisdiction.¹¹⁹ As it stands, there is no DOJ rule, memoranda, or policy regulating deceptive interrogation tactics.¹²⁰ The Administrative Procedure Act (APA) defines a legislative rule as “an agency statement of general or particular applicability

112. See ME. REV. STAT. ANN. tit.15 § 3203-A.

113. See N.D. CENT. CODE § 27-20.2-26 (2023).

114. See U.S. Dep't of Just., Just. Manual §§ 9-13.001, 9-13.100, 9-13.300 (2018).

115. See *id.*

116. See Memorandum from James M. Cole, Deputy Att'y Gen., U.S. Dep't of Justice, to Assoc. Att'y Gen & Assistant Att'ys Gen, Pol'y Concerning Elec. Recording of Statements (May 12, 2014), <https://s3.documentcloud.org/documents/1165406/recording-policy.pdf> (stating the DOJ and its sub agencies will begin electronically recording interrogations in certain circumstances).

117. See generally U.S. Dep't of Just., Just. Manual (2018).

118. See generally FED. REG., A GUIDE TO THE RULEMAKING PROCESS (2009), https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (explaining the rulemaking process).

119. Act of June 22, 1870, Pub. L. No. 41-97, 16 Stat. 162.

120. See generally U.S. Dep't of Just., Just. Manual (2018); 28 C.F.R. pt. 1 (2018).

and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency”¹²¹ Legislative rules are legally binding and require, at minimum, notice-and-comment procedures under the APA, whereas memoranda and other guiding documents do not require the same oversight.¹²² Guidance documents are considered to be general statements of policy and are often exempt from statutory requirements.¹²³ Agencies traditionally use guidance documents, such as memoranda, to provide regulatory assistance and clarity.¹²⁴ DOJ often publishes memoranda to issue guidance for internal agency use.¹²⁵ In addition, DOJ provides constraints on the intended use of guiding documents in accordance with the Court and the APA.¹²⁶ DOJ also states its guidance documents should be “clear, transparent, and readily accessible to the public . . . reflect the breadth of expertise within [DOJ] and should be drafted in a way that does not create inconsistencies among different components.”¹²⁷

B. *Electronic Recording of Interrogations and Body-Worn Cameras*

On May 12, 2014, DOJ issued a memorandum mandating that the FBI, DEA, ATF, and USMS electronically record statements in certain circumstances.¹²⁸ The memorandum established “a presumption that

121. 5 U.S.C. § 551(4).

122. JARED P. COLE & TODD GARVEY, CONG. RSCH. SERV., R44468, GENERAL POLICY STATEMENTS: LEGAL OVERVIEW 2–3 (2016).

123. 5 U.S.C. § 553(b)(A), (d)(2); *see also* TOM C. CLARK, U.S. DEP’T OF JUST., ATTORNEY GENERAL’S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT (1947), <http://library.law.fsu.edu/Digital-Collections/ABA-AdminProcedureArchive/1947cover.html>.

124. COLE & GARVEY, *supra* note 122 at 1; *see* Nina A. Mendelson, *Regulatory Beneficiaries and Informal Agency Policymaking*, 92 CORNELL L. REV. 397, 398 (2007).

125. *See Documents of Prior Administrations*, OFF. OF INFO. POL’Y, U.S. DEP’T OF JUST. (Aug. 31, 2023), <https://www.justice.gov/oip/documents-prior-administrations> (showing prior memoranda used for internal DOJ use).

126. *Kisor v. Wilkie*, 139 S. Ct. 2,400, 2,420 (2019) (plurality opinion) (quoting *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 97 (2015)). *See generally* Memorandum from Merrick Garland, Att’y Gen., U.S. Dep’t of Just., to Heads of All Department Components, Issuance and Use of Guidance Documents by the Dep’t of Just. (July 1, 2021) [hereinafter *Memorandum from Att’y Gen. Merrick Garland*] (stating DOJ’s guidance documents should make clear they do not legally bind the public and can never be the basis for enforcement).

127. Memorandum from Att’y Gen. Merrick Garland, *supra* note 126.

128. Memorandum from James M. Cole, *supra* note 116; *see also* Press Release, Off. of Pub. Affs., U.S. Dep’t of Just., Attorney General. Holder Announces Significant Pol’y Shift

statements made by individuals in federal custody, after they have been arrested but before their initial [court] appearance, will be electronically recorded.”¹²⁹ The policy behind the memorandum was to hold law enforcement agencies accountable and increase confidence in the agencies to protect the public.¹³⁰ Attorney General Holder stated, “[i]t will allow us to document that detained individuals are afforded their constitutionally-protected rights. And it will also provide federal law enforcement officials with a backstop, so that they have clear and indisputable records of important statements and confessions made by individuals who have been detained.”¹³¹ DOJ implemented a memorandum instead of a formal rule because the policy is not intended to be legally binding on the public; the electronic recording policy is only binding on DOJ and its subagencies.¹³² DOJ published a memorandum mandating electronically recording interrogations to apply internally within DOJ and to evolve its policies to conform with state policies around the country.¹³³ Along with the memorandum, the USAO implemented a separate training program to ensure its officers and prosecutors were aware of the new policy and knew how to use electronic recording technology properly.¹³⁴ Before DOJ implemented this policy, the FBI was strongly against recording interrogations.¹³⁵ However, studies have shown that “recording does not cause suspects to refuse to talk, fall silent, or stop making admissions.”¹³⁶ DOJ has not separately promulgated a rule in the Code of

Concerning Elec. Recording of Statements (May 22, 2014) [hereinafter Press Release, Concerning Elec. Recording of Statements], <https://www.justice.gov/opa/pr/attorney-general-holder-announces-significant-policy-shift-concerning-electronic-recording>.

129. Press Release, Concerning Elec. Recording of Statements, *supra* note 128; *see* Memorandum from James M. Cole, *supra* note 116.

130. Memorandum from James M. Cole, *supra* note 116.

131. Press Release, Concerning Elec. Recording of Statements, *supra* note 128.

132. 5 U.S.C. §§ 551–59; *see* Press Release, Concerning Elec. Recording of Statements, *supra* note 128; Memorandum from the Att’y Gen. Merrick Garland, *supra* note 126.

133. Recent Administrative Policy, *Dep’t of Justice, New Department Policy Concerning Electronic Recording of Statements*, 128 HARV. L. REV. 1552, 1553 (2015) [hereinafter *Dep’t of Justice, New Department Policy Concerning Electronic Recording of Statements*]; Memorandum from James M. Cole, *supra* note 116.

134. *See Dep’t of Justice, New Department Policy Concerning Electronic Recording of Statements*, *supra* note 133, at 1553; Memorandum from James M. Cole, *supra* note 116.

135. *See* Memorandum from FBI Off. of the Gen. Couns. to All Field Offs., Elec. Recording of Confessions and Witness Interviews (Mar. 23, 2006), http://www.nytimes.com/packages/pdf/national/20070402_FBI_Memo.pdf. (outlining that the FBI did not want to record interviews because they believed it would make suspects uncomfortable, the court would misinterpret the content, and it would be logistically difficult).

136. *See* RICHARD A. LEO, POLICE INTERROGATION AND AMERICAN JUSTICE 303 (2008).

Federal Regulations that mandates electronically recording interrogations.¹³⁷

DOJ was not the first to implement a policy requiring law enforcement or prosecutors to record statements and confessions.¹³⁸ Alaska, Minnesota, Illinois, and DC had passed legislation or had judicial precedent mandating recording interviews.¹³⁹ Recording interviews allows the court to analyze a criminal confession to determine its veracity, thus making it more difficult for the court to uphold a false confession.¹⁴⁰ In doing so, courts have been able to uncover suspect confession inconsistencies with more efficiency and consistency.¹⁴¹ Furthermore, videotaping confessions also lowers the cost of judicial review of custodial interrogations.¹⁴² With the numerous benefits of recording interviews, several jurisdictions have passed legislation to mandate recorded confessions, some including juvenile-specific recording statutes.¹⁴³

DOJ also mandates its agents to wear and utilize BWCs.¹⁴⁴ An agent must turn on the BWC during the agent's task force operations, including, but not limited to, executing a search warrant and a planned attempt to serve a search or arrest warrant.¹⁴⁵ There are many exceptions to turning on BWC, including when the agents use deceptive tactics.¹⁴⁶ Law enforcement officers

137. See generally 28 C.F.R. pt. 1 (2018) (showing the absence of a DOJ rule on mandatory recording of interrogations).

138. *Dep't of Justice, New Department Policy Concerning Electronic Recording of Statements*, *supra* note 133, at 1553.

139. See *id.* (stating Alaska and Minnesota supreme court's required recording of interrogations, and Illinois became the first state to pass legislation on the same issue with many others following suit).

140. See Gail Johnson, Commentary, *False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 B.U. PUB. INT. L.J. 719, 735 (1997).

141. See *Dep't of Justice, New Department Policy Concerning Electronic Recording of Statements*, *supra* note 133, at 1556-57; Thomas P. Sullivan, *Police Experiences with Recording Custodial Interrogations*, 88 JUDICATURE 132, 134 (2004) (outlining there is no need for officers to take notes risking omissions, fewer pretrial motions to suppress, and prevents false claims of misconduct against officers).

142. Kevin Lapp, *Taking Back Juvenile Confessions*, 64 UCLA L. REV. 902, 932 (2017).

143. See *Dep't of Justice, New Department Policy Concerning Electronic Recording of Statements*, *supra* note 133, at 1554; Lapp, *supra* note 142, at 932 (stating California, DC, North Carolina, Illinois, and Wisconsin have statutes that require the recording of some juvenile interrogations).

144. See e.g., Memorandum from Lisa Monaco, Deputy Att'y Gen., U.S. Dep't of Just., Pol'y Regarding Body-Worn Cameras (June 7, 2021), <https://www.justice.gov/dag/page/file/1402061/download>.

145. See U.S. Dep't of Just., Just. Manual § 9-13.100 (2018) (discussing obtaining evidence, and how DOJ regulates body-worn camera (BWC) procedure).

146. See *id.*

can voluntarily turn off a BWC when undercover personnel or confidential informants are present, during witness interviews conducted on the scene, if personnel are using special or sensitive equipment or investigative techniques, during actions by nonlaw enforcement actors on the scene, or during investigations involving national security, medical facilities, public corruption, and other sensitive material.¹⁴⁷ BWCs and electronic recording of interrogations ensure that agents are held accountable for their actions and encourage them to comply with policies that do not result in false confessions or wrongful convictions.¹⁴⁸

C. *Justice Manual*

The Justice Manual, published by DOJ and adopted by the USAO, covers topics ranging from federal prosecution principles to civil rights to tax law.¹⁴⁹ Section 9-5.000 includes guidelines for forensic evidence, expert testimony, and eyewitness testimony as part of the discovery process.¹⁵⁰ Further, under § 9-5.002, prosecutors must review the evidence and make disclosures to defense counsel, including exculpatory information.¹⁵¹ The Justice Manual also includes principles of federal prosecution in § 9-27.000,¹⁵² with a specific section on juvenile prosecution under § 9-8.000.¹⁵³ Under § 9-13.000, regarding obtaining evidence, the Justice Manual describes the implementation of electronically recording custodial interviews, wearing BWCs, and polygraph examinations.¹⁵⁴

147. *See id.*

148. *See id.* § 9-27.000; Joel M. Schumm, NAT'L ASS'N OF CRIMINAL DEF. LAWYERS, *Policing Body Cameras Policies and Procedures to Safeguard the Rights of the Accused* (Mar. 2017), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/bwc/pdfs/BWC-NACDL-March2017.pdf> (“The use of body cameras under the carefully crafted policies outlined below offers the potential to ensure both police accountability and to create and maintain a fuller evidentiary record, which is essential to further the search for truth in investigations and trials.”).

149. *See generally* U.S. Dep't of Just., Just. Manual (2018) (outlining a compilation of all of DOJ's policies and procedures in one location); U.S. Dep't of Just., U.S. Att'ys' Manual (1997), <https://www.justice.gov/archives/usam/united-states-attorneys-manual> (showing that the U.S. Attorneys' Manual is no longer in effect and was replaced by the Justice Manual in 2018).

150. *See* U.S. Dep't of Just., Just. Manual § 9-5.000 (2018) (describing how the section mandates when evidence is turned over and the process of including expert witnesses for forensic issues).

151. *See id.* § 9-5.002.

152. *See id.* § 9-27.000.

153. *See id.* § 9-8.000 (outlining the federal juvenile justice procedures and the standards federal prosecutors must follow).

154. *See id.* §§ 9-13.000, 9-13.100, 9-13.300.

D. *Interrogation Techniques and Other Deceptive Tactics Used by DOJ*

Interrogators developed the Reid technique in the 1940s, and it has evolved to become the standard in the field.¹⁵⁵ The Reid Technique is the favored interrogation technique used by various law enforcement agencies in the United States.¹⁵⁶ The Reid Technique trains officers to use deceptive tactics to ascertain a confession by whatever means necessary.¹⁵⁷ The technique's purpose "is to elicit incriminating statements, admissions, and perhaps a full confession in an effort to secure the conviction of offenders."¹⁵⁸ The Reid Technique contains two parts: (1) the Behavioral Analysis Interview to determine if the suspect is guilty or innocent and (2) if the officer develops a "strong presumption of guilt," a subsequent nine-step interrogation process.¹⁵⁹ The nine-step interrogation process utilizes psychological manipulation to make the suspect gradually more susceptible to telling the truth.¹⁶⁰ However, officers rarely employ different tactics when interrogating youths, despite the known developmental and psychological vulnerabilities of juveniles.¹⁶¹ Particularly, as commentators note:

[T]he Reid Technique [M]anual explains that the use of introducing false evidence, a

155. See generally FRED E. INBAU, JOHN E. REID, JOSEPH P. BUCKLEY & BRYAN C. JAYNE, CRIMINAL INTERROGATION AND CONFESSIONS (4th ed. 2001) [hereinafter INBAU ET AL., 4th ed.]. See Kassin et al., *supra* note 82, at 6–7; *The Reid Technique—Celebrating 75 Years of Excellence*, REID, <https://reid.com/75-years-of-excelence> (last visited Feb. 1, 2024).

156. Spierer, *supra* note 50, at 1721. But see *When They See Us*, *supra* note 7 (showing a scene where a new prosecutor is reopening the Exonerated Five case and stating, "[t]he Reid technique has been universally rejected.").

157. See Spierer, *supra* note 50, at 1721.

158. Kassin et al., *supra* note 82, at 6.

159. See *id.*; Paulo Barbosa Marque & Michel St-Yves, *Interviewing Psychopaths: Toward a Science of Investigative Interviewing of Psychopathic Suspects*, 10 PSYCHOPATHY & CRIM. BEHAV. 219, 219 (2021) ("The process begins with a careful factual analysis of the case, followed by the behavior analysis interview (a nonaccusatory interview designed to gather investigative and behavioral information), followed when appropriate by the Reid nine steps of interrogation aimed at breaking the suspect's resistance."). But see *Miranda v. Arizona*, 384 U.S. 436, 450 (1966) (outlining that the Reid Technique is a problematic tool used "to minimize the moral seriousness of the offense, to cast blame on the victim or on society. 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—that he is guilty." (citing FRED E. INBAU & JOHN E. REID, CRIMINAL INTERROGATION AND CONFESSIONS 1 (1962))).

160. See Spierer, *supra* note 50, at 1721 (discussing the nine-step Reid Technique, which has been criticized for being psychologically manipulative).

161. See *id.* at 1729 (detailing the utilization of the Reid Technique on juveniles, despite a juvenile's vulnerabilities).

common strategy, should be avoided when interrogating a juvenile Notably, however, the [Reid Technique Manual] does not prohibit other forms of deception and does not categorically proscribe the use of false evidence. Thus, the danger of impermissible deception is not truly mitigated.¹⁶²

In 2012, the American Civil Liberties Union (ACLU) sent a letter to FBI Director Robert Mueller after a Freedom of Information Act (FOIA) request uncovered that the FBI continued to use the Reid Technique and other problematic interrogation tactics on suspects.¹⁶³ The ACLU's letter stated that the "[FBI] interrogation 'primer' . . . entitled, 'Cross Cultural, Rapport-Based Interrogation,' . . . strongly endorses the use of the 'Reid Technique,' which the Supreme Court long ago criticized in *Miranda v. Arizona* as a coercive practice that produces false confessions."¹⁶⁴ Despite the public criticism, a 2019 article published in the FBI's Law Enforcement Bulletin titled *Current State of Interview and Interrogation* describes that the Reid Technique continues to be used by law enforcement agencies.¹⁶⁵ The article qualifies the endorsement by stating that the Reid Technique can lead to false confessions if officers "are unaware of the psychological impact of their approach, as well as their own potential biases."¹⁶⁶

The FBI has also regularly employed other deceptive tactics to induce confessions.¹⁶⁷ In 2007, the FBI created a fake Associated Press news article to yield a confession.¹⁶⁸ In 2021, a Florida court exonerated the Groveland Four after a FOIA request revealed that FBI officers beat the four men and manufactured evidence of their guilt.¹⁶⁹ The FBI also regularly employs

162. See *id.* at 1729 n.69 (citing FRED E. INBAU, JOHN E. REID, JOSEPH P. BUCKLEY & BRYAN C. JAYNE, *CRIMINAL INTERROGATIONS AND CONFESSIONS* 254–55 (5th ed. 2013)).

163. Letter from Laura W. Murphy, Dir., Am. C.L. Union and Devon Chaffee, Legis. Couns. Am. C.L. Union to Robert S. Mueller, Dir., FBI (Aug. 2, 2012), <https://www.aclu.org/documents/letter-director-fbi-regarding-interrogation-primer>.

164. See *id.*

165. See Michael Bret Hood & Lawrence J. Hoffman, *Current State of Interview and Interrogation*, FBI LAW ENF'T BULL. (Nov. 6, 2019), <https://leb.fbi.gov/articles/featured-articles/current-state-of-interview-and-interrogation> (detailing that using the Reid Technique has been standard for multiple law enforcement agencies for a significant amount of time).

166. *Id.*

167. James B. Comey, *To Catch a Crook: The FBI's Use of Deception*, N.Y. TIMES (Nov. 6, 2014), <https://www.nytimes.com/2014/11/07/opinion/to-catch-a-crook-the-fbis-use-of-deception.html> (stating that the Federal Bureau of Investigation (FBI) used "deceptive tactics" at times).

168. Chris Grygiel, *FBI Says It Impersonated AP Reporter in 2007 Case*, ASSOCIATED PRESS (Nov. 7, 2014), <https://apnews.com/article/89470f11697641518c1043aab01773ac>; see also Comey, *supra* note 167.

169. See Jason Vermes, *Exoneration of Black Men Known as the Groveland Four 'Hard to Put into*

deceptive tactics when conducting interrogations using polygraph tests.¹⁷⁰ Law enforcement, after employing a polygraph exam in an interrogation, will often falsely tell the suspect that they failed the exam—a tactic that frequently leads individuals to falsely confess.¹⁷¹ For example, law enforcement induced eighteen-year-old Peter Reilly to falsely confess to the murder of his mother by employing deceptive tactics, including convincing Reilly that he failed a polygraph exam.¹⁷² While DOJ does not use polygraph evidence at trial, it does continue to allow the FBI to conduct polygraph examinations on suspects.¹⁷³ The FBI also uses wiretapping,¹⁷⁴ informants,¹⁷⁵ and undercover agents,¹⁷⁶ all of which are considered deceptive tactics.¹⁷⁷ The DEA, ATF, and USMS all employ these tactics.¹⁷⁸

Words,' Says Author, CBC RADIO (Nov. 27, 2021), <https://www.cbc.ca/radio/day6/exoneration-of-black-men-known-as-the-groveland-four-hard-to-put-into-words-says-author-1.6263181> (describing the wrongful conviction of the Groveland Four); *see also* Erik Ortiz, *Groveland Four, the Black Men Accused in a 1949 Rape, Get Case Dismissed*, NBC NEWS (Nov. 22, 2021, 7:16 PM), <https://www.nbcnews.com/news/us-news/groveland-four-black-men-accused-1949-rape-get-case-dismissed-rcna6016> (stating an FBI agent testified that the prosecution manufactured evidence in the 1949 case against the Groveland Four).

170. *See* OFF. OF THE INSPECTOR GEN., DEP'T OF JUST., EVALUATION AND INSPECTIONS REPORT I-2006-008, USE OF POLYGRAPH EXAMINATIONS IN THE DEPARTMENT OF JUSTICE (2006), <https://oig.justice.gov/reports/plus/e0608/results1.htm> (reporting that the FBI conducted over 38,000 polygraph examinations from 2002 through 2005); *see also* Stromberg, *supra* note 73 (detailing that polygraph examinations are routinely used for interrogating suspects).

171. *See* Kassin, *Law Enforcement Experts*, *supra* note 4 (providing examples of and explaining police tactics that involve officers lying about polygraph results); *see also* RUSS FORD WITH CHARLES PEPPERS & TODD C. PEPPERS, *CROSSING THE RIVER STYX: THE MEMOIR OF A DEATH ROW CHAPLAIN* (2023) (discussing various cases of innocence on death row and how they were obtained by deceptive tactics).

172. Kassin, *Law Enforcement Experts*, *supra* note 4.

173. U.S. Dep't of Just., Just. Manual § 9-13.300 (2018) (stating DOJ believes that polygraph examinations should not be used as evidence during trial).

174. 18 U.S.C. § 2516.

175. *What is the FBI's Policy on the Use of Informants?*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/about/faqs/what-is-the-fbis-policy-on-the-use-of-informants> (last visited Feb. 1, 2024).

176. *See* Consolidated and Further Continuing Appropriations Act of 2013, Pub. L. No. 113-6, § 207, 127 Stat. 198, 258 (codified as amended at 28 U.S.C. § 533) (showing that the FBI finances undercover operations).

177. *See generally* INBAU ET AL. 4th ed., *supra* note 155, at 67–68, 599, 607 (discussing deceptive tactics used to garnish confessions).

178. *See* § 207, 127 Stat. at 258 (stating the FBI, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and other federal agencies, such as the United States Marshall

III. DOJ'S POST-CONVICTION REVIEW FOR CONVICTIONS INVOLVING HAIR ANALYSIS

A. *Wrongful Convictions Involving Hair Analysis*

DOJ has successfully begun to remedy wrongful convictions obtained using hair analysis through post-conviction reviews. This DOJ process can be implemented to review convictions obtained using deceptive interrogation tactics.¹⁷⁹ Back in 1984, the FBI's handbook stated that microscopic hair examination is “[n]ot positive evidence.”¹⁸⁰ However, in 2009, the FBI reversed course and published an article that concluded that microscopic hair comparison “coupled with a properly trained, qualified examiner operating within a rigorous quality assurance/quality control program, provides credible and reliable results.”¹⁸¹ The article explained that “[i]n a microscopic hair comparison, the examiner is determining whether or not similar patterns of microscopic characteristics exist at each point of comparison along the hair shaft. This pattern-recognition process then continues in a step-by-step fashion along the length of the hair.”¹⁸²

For example, Santae Tribble spent twenty-eight years in prison after being convicted at seventeen years old based on hair analysis evidence that was ultimately found to be faulty.¹⁸³ Tribble spent more years of his life

Service (USMS), may conduct undercover investigations as necessary); *see also* 18 U.S.C. § 2516 (authorizing the use of wiretapping by any federal agency conducting an investigation into certain matters by the Attorney General); Pierre Thomas, *ATF Officials Ousted Over Raid*, WASH. POST (Oct. 1, 1993), <https://www.washingtonpost.com/archive/politics/1993/10/01/atf-officials-ousted-over-raid/1bfe3de7-de1a-4914-8491-e25d9ed48885/> (highlighting that the ATF utilizes undercover operatives); U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-807, CONFIDENTIAL INFORMANTS: UPDATES TO POLICY AND ADDITIONAL GUIDANCE WOULD IMPROVE OVERSIGHT BY DOJ AND DHS AGENCIES 3, 11 (2015) (detailing that USMS operates an informant program).

179. *See* discussion *infra* Sections III(B), IV(C).

180. Brandon L. Garrett & Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 VA. L. REV. 1, 49 (2009) (quoting FED. BUREAU OF INVESTIGATION, HANDBOOK OF FORENSIC SCI. 37 (1984)).

181. Cary T. Oien, *Forensic Hair Comparison: Background Information for Interpretation*, FORENSIC SCI. COMM'NS, Apr. 2009, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/forensic-hair-comparison-background-information-interpretation>, [https://archives.fbi.gov/archives/about-us/lab/forensic-science-communications/fsc/april2009/review/2009_04_review02.htm] (citing various studies from 1974 to 2005 that promote the use of hair analysis to obtain convictions).

182. *Id.*

183. *How Santae Tribble's Wrongful Conviction Prompted Review of the FBI's Use of Hair Analysis and Inspired the Innocence Project's Research*, INNOCENCE PROJECT (July 15, 2020) [hereinafter

incarcerated than free based on the testimony of an FBI hair analyst who claimed that the hair had a one-in-ten-million chance of being someone else's.¹⁸⁴ In a severed case, Cleveland Wright was convicted as Tribble's accomplice and spent twenty-eight years in prison.¹⁸⁵ Later, DNA testing of the hair originally used to convict Tribble proved that it did not match either Tribble or Wright, leading to dismissals of both cases.¹⁸⁶ Similarly, at seventeen, George Perrot was convicted of rape and burglary based on faulty hair analysis and spent almost thirty years in prison.¹⁸⁷ Likewise, seventeen-year-old Kevin Martin was convicted of rape and murder based on a faulty FBI hair analysis report.¹⁸⁸ Kirk Odom, who had an IQ of seventy-three and never finished high school, was convicted of rape at eighteen years old and spent more than twenty years in prison.¹⁸⁹ Odom's conviction was based on the statements of an FBI hair examiner who testified that Odom's hair matched the sample found on the victim's nightgown.¹⁹⁰ In yet another instance, Donald Gates was convicted at seventeen and spent almost thirty years in prison based on false hair analysis evidence and testimony.¹⁹¹ Seven years after he was convicted in 1981, Gates asked for DNA testing on hair evidence, which was inconclusive.¹⁹² Although it was discovered that hair analysis expert reports were fraudulent in 1997, the FBI only advised the prosecution in 2002.¹⁹³ At that point, DOJ sent a letter to the prosecutors in

Tribble's Wrongful Conviction Prompted FBI Review], <https://innocenceproject.org/news/santae-tribble-inspired-hair-analysis-review-work/>; Spencer Hsu, *Santae Tribble, Whose Wrongful Conviction Revealed FBI Forensic Hair Match Flaws, Dies at 59*, WASH. POST (July 5, 2020), https://www.washingtonpost.com/local/legal-issues/santae-tribble-whose-wrongful-conviction-revealed-fbi-forensic-hair-match-flaws-dies-at-59/2020/07/04/eb953b40-bbbf-11ea-bdaf-a129f921026f_story.html.

184. *Tribble's Wrongful Conviction Prompted FBI Review*, *supra* note 183.

185. Maurice Possley, *Cleveland Wright*, NAT'L REGISTRY FOR EXONERATIONS (May 12, 2020), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4365>.

186. *See id.*

187. Ed Pilkington, *Thirty Years in Jail For a Single Hair: The FBI's 'Mass Disaster' of False Conviction*, GUARDIAN (Apr. 15, 2015), <https://www.theguardian.com/us-news/2015/apr/21/fbi-jail-hair-mass-disaster-false-conviction>.

188. Maurice Possley, *Kevin Martin*, NAT'L REGISTRY FOR EXONERATIONS (May 2, 2022), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4475>.

189. Maurice Possley, *Kirk Odom*, NAT'L REGISTRY FOR EXONERATIONS (March 2, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3943>.

190. *Id.*

191. Maurice Possley, *Donald Eugene Gates*, NAT'L REGISTRY FOR EXONERATIONS (Nov. 20, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3233>.

192. *Id.*

193. *Id.*

Gates' case advising them the FBI agent's hair analysis testimony was not supported and asked them to determine if his defense counsel should be notified.¹⁹⁴ His defense counsel was never notified, and DC did not release Gates until 2009.¹⁹⁵ The head of the DC Public Defender Service's Special Litigation, Sandra Levick, discovered through her exoneration reviews that the FBI routinely exaggerated the scientific basis for hair microscopy in hundreds of cases, triggering the Innocence Project and National Association of Criminal Defense Lawyers (NACDL) to petition for the review of these falsified convictions obtained via hair analysis.¹⁹⁶

B. DOJ Post-Conviction Review Process

In 2013, the FBI admitted that hair analysis was invalid and began reviewing twenty-seven death penalty convictions that were based on hair analysis evidence.¹⁹⁷ In 2015, DOJ announced that it would conduct a thorough post-conviction review of federal court convictions obtained using hair analysis.¹⁹⁸ The announcement stated that 90% of federal trial transcripts from before 2000 contained inaccurate statements on hair analysis comparison.¹⁹⁹ In addition, DOJ reported that twenty-six of the twenty-eight FBI examiners who testified in these cases provided false testimony or doctored reports.²⁰⁰ DOJ also announced they would partner with the FBI, the Innocence Project, and NACDL to complete this project.²⁰¹

194. *Id.*

195. *Id.*

196. See *Tribble's Wrongful Conviction Prompted FBI Review*, *supra* note 183 ("But it was Levick's discovery that the FBI routinely exceeded the science and falsified probabilities of hair analysis in Tribble's and three other cases that triggered the Innocence Project's pressing of the FBI and [DOJ] to correct the falsehoods and notify affected defendants."); *News Release: FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90% of Cases in Ongoing Review: 26 of 28 FBI Analysts Provided Testimony or Reports with Errors*, NAT'L ASS'N OF CRIM. DEF. LAWS. (Apr. 20, 2015) [hereinafter *News Release: FBI Testimony on Hair Analysis Errors*], <https://www.nacdl.org/newsrelease/NewsRelease-04-20-2015>.

197. Spencer S. Hsu, *U.S. Reviewing 27 Death Penalty Convictions for FBI Forensic Testimony Errors*, WASH. POST (Jul 17, 2023, 7:07 PM), https://www.washingtonpost.com/local/crime/us-reviewing-27-death-penalty-convictions-for-fbi-forensic-testimony-errors/2013/07/17/6c75a0a4-bd9b-11e2-89c9-3be8095fe767_story.html.

198. *News Release: FBI Testimony on Hair Analysis Errors*, *supra* note 196.

199. *Id.*

200. *Id.*

201. *FBI/DOJ Microscopic Hair Comparison Analysis Review*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/how-we-can-help-you/fbidoj-microscopic-hair-comparison-analysis-review> (last visited Feb. 1, 2024) (stating the FBI worked as one of DOJ's partners to review convictions obtained using hair analysis evidence).

The post-conviction review program included conducting an independent investigation, using aggressive measures to gather all of the trial transcripts that included hair analysis, and encouraging states “to conduct their own independent reviews where its examiners were trained by the FBI.”²⁰² A post-conviction review only occurred if the defendant was convicted, local law enforcement did not conduct DNA analysis, the analysis occurred before the end of 1999, and the FBI provided the report of microscopic hair comparison to the local enforcement agency.²⁰³ The post-conviction review program also offered free, federally funded DNA testing when requested by the prosecution.²⁰⁴ However, DOJ, the FBI, the Innocence Project, and NACDL cannot regulate the cases in which the FBI testified in a state court, but stated in its press release, the FBI and DOJ “welcome[d] the public’s assistance in identifying any cases that may be subject to this review”²⁰⁵

C. *Impact on States*

The FBI trained 500–1,000 state and local crime lab analysts on hair analysis.²⁰⁶ In 2016, FBI Director James Comey sent a letter to state governors asking for assistance in reviewing state convictions that used hair analysis testimony provided by the FBI.²⁰⁷ Following the FBI and DOJ announcement of post-conviction review, eighteen state authorities began reviewing cases that employed hair analysis.²⁰⁸ Nevertheless, some states, like Colorado, did not assess the reliability of convictions obtained using hair analysis testimony until 2021.²⁰⁹

The Georgia Innocence Project has estimated that between 2% and 5%

202. *News Release: FBI Testimony on Hair Analysis Errors*, *supra* note 196.

203. *FBI/DOJ Microscopic Hair Comparison Analysis Review*, *supra* note 201.

204. *News Release: FBI Testimony on Hair Analysis Errors*, *supra* note 196.

205. *FBI/DOJ Microscopic Hair Comparison Analysis Review*, *supra* note 201.

206. Spencer S. Hsu, *FBI Admits Flaws In Hair Analysis Over Decades*, WASH. POST (Apr. 18, 2015) [hereinafter Hsu, *FBI Admits Flaws In Hair Analysis Over Decades*], https://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfab310_story.html.

207. Letter from James B. Comey, Dir., FBI, to Additional Governors (June 10, 2016), <https://www.fbi.gov/file-repository/second-governor-letter-061016.pdf/view>.

208. Hsu, *FBI Admits Flaws In Hair Analysis Over Decades*, *supra* note 206 (stating Texas, New York, North Carolina, and fifteen other states are reviewing convictions involving hair analysis).

209. Allison Sherry, *51 Prisoners Will Have Their Cases Reviewed for Potential Wrongful Convictions Over Hair Analysis*, CPR NEWS (Nov. 29, 2021), <https://www.cpr.org/2021/11/29/51-prisoners-will-have-their-cases-reviewed-for-potential-wrongful-convictions-over-hair-analysis/>.

of the United States prison population is innocent.²¹⁰ Some state and local authorities have established post-conviction review units as part of their law enforcement and prosecution divisions.²¹¹ Post-conviction review units analyze past convictions for accuracy, with some post-conviction integrity units reviewing instances where an agency removed bad actors and reopened their cases to evaluate their legitimacy.²¹² Across the states, 101 post-conviction integrity units exist, including numerous review units targeting hair analysis convictions.²¹³ Still, only fifty-one units have achieved exonerations.²¹⁴

Nevertheless, post-conviction review units are on the frontlines of overturning wrongful convictions.²¹⁵ Some states have already followed DOJ's lead by creating their own independent post-conviction review processes for hair analysis convictions.²¹⁶ These same states would likely act in accordance with DOJ again if it modeled and implemented a post-conviction review process of convictions obtained using deceptive interrogation tactics on juveniles.

IV. RECOMMENDATIONS

The use of deceptive interrogation tactics during juvenile interviews and interrogations is prevalent in the criminal legal system, leads to wrongful convictions, and must be addressed by DOJ, as the national leader in policing policy.²¹⁷ First, DOJ should publish a memorandum mandating its

210. *Beneath the Statistics: The Structural and Systemic Causes of Our Wrongful Conviction Problem*, GA. INNOCENCE PROJECT, <https://www.georgiainnocenceproject.org/general/beneath-the-statistics-the-structural-and-systemic-causes-of-our-wrongful-conviction-problem/> (last visited Feb. 1, 2024). *But see* Beth Schwartzapfel & Hanna Levintova, *How Many Innocent People Are There in Prison?*, INNOCENCE PROJECT (Dec. 12, 2011), <https://innocenceproject.org/news/how-many-innocent-people-are-in-prison/>.

211. N'dea Yancey-Bragg, *Conviction Review Units Have Led To Exonerations In Florida, New York, Other States. Here's What They Do*, USA TODAY (Mar. 17, 2023), <https://www.usatoday.com/story/news/nation/2023/03/17/conviction-review-units-how-prosecutors-free-wrongfully-convicted/11443976002/>.

212. *Id.*

213. *Conviction Integrity Units*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx> (Nov. 7, 2023).

214. *Id.*

215. *See id.*; Yancey-Bragg, *supra* note 211 (“Conviction review units have made meaningful changes in their structure that lean toward ‘values of transparency, flexibility and independence.’” (quoting Marissa Bluestine, assistant director of the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School)).

216. Hsu, *FBI Admits Flaws In Hair Analysis Over Decades*, *supra* note 206.

217. *See* INBAU ET AL., 4th ed., *supra* note 155 at 67–68, 599, 607; Spierer, *supra* note 50.

subagencies halt use of deceptive interrogation tactics on juveniles. Second, DOJ should create a new provision in the Justice Manual prohibiting the use of deceptive tactics in juvenile interrogations. Third, DOJ should review convictions obtained by use of deceptive law enforcement tactics. Lastly, DOJ should create a post-conviction integrity unit to facilitate the various review processes of convictions.

A. Memorandum

DOJ should publish a memorandum prohibiting the use of deceptive interrogation tactics against juveniles.²¹⁸ The memorandum should be written using language similar to the memorandum regarding electronically recording interrogations.²¹⁹ Not only would the memorandum apply to DOJ and its subagencies, but the USAO will implement these policies.²²⁰ The language used should state, “[t]he policy applies to all places of detention where persons are held in connection with federal criminal charges and can be interviewed,” so a memo may include language such as: this policy on deceptive interrogation tactics shall apply to any place of detention, including where persons are held and can be interviewed.²²¹ While most juveniles interact with law enforcement at a local level, such a memorandum would stimulate a top-down change.

A DOJ memorandum regarding the prohibited use of deceptive interrogation tactics would be binding on DOJ and its subagencies without having a binding effect on the public.²²² As the memorandum has no binding force to preempt state law or action, it would influence the states, like the memorandum mandating electronically recording statements.²²³ A guiding

218. See *supra* Part II(A).

219. See Press Release, Concerning Elec. Recording of Statements, *supra* note 128.

220. See *id.* (explaining that once DOJ publishes a memo it applies to its subagencies, the United States Attorney’s Office (USAO) being one. The USAO will be the subagencies often prosecuting juveniles in federal court, therefore it will be the body implementing the memorandum’s policies).

221. *Id.*

222. See Press Release, Concerning Elec. Recording of Statements, *supra* note 128 (mandating that specific agencies electronically record “statements made by individuals in federal custody,” but reserving the right to those individuals to request that a statement not be recorded); Memorandum from the Att’y Gen. Merrick Garland, *supra* note 126.

223. See Memorandum from the Att’y Gen. Merrick Garland, *supra* note 126 (showing the memorandum mandating electronically recording statements was only for internal use and was not binding on the public; however, it did influence states to change their policies); 1 DEL. ADMIN. CODE §§ 801-27.0, 27.10.4 (2022) (referencing the three exceptions for nonrecording an interrogation in line with the Justice Manual).

document, like a memorandum, is more efficient and immediately effective compared to a legislative rule since DOJ can promulgate one without undergoing the notice-and-comment process, and states' law enforcement entities often adopt DOJ policies, memorandums, and manuals regardless.²²⁴

Public, state, and local support already exists for law enforcement to stop the use of deceptive law enforcement tactics broadly beyond juveniles.²²⁵ John Oliver, on HBO's "Last Week Tonight," stated, "[a]llowing the police to lie to suspects is crazy, most countries do not allow it and for a good reason, it is far too powerful a tool"²²⁶ when speaking to Christopher Tapp, who was wrongfully convicted at twenty years old by the Idaho Falls District Attorney's Office for a crime he did not commit.²²⁷ Moreover, states such as Illinois,²²⁸ California,²²⁹ Delaware,²³⁰ Connecticut,²³¹ and Oregon²³² have passed bills specifically ending the use of deceptive interrogation tactics on juveniles.

Most importantly, because DOJ implemented policies to electronically record interrogations later than the states,²³³ it has more of an incentive to

224. See *supra* Part II(A); see, e.g., Yancey-Bragg, *supra* note 211.

225. See Dep't of Justice, *New Department Policy Concerning Electronic Recording of Statements*, *supra* note 133, at 1554–55 (“And exonerations based on DNA evidence have sparked a change in public perception of the likelihood of false confessions and wrongful convictions.”); see also Rebecca Brown, *John Oliver: “Maddened” That it’s Legal for Police to Lie to Suspects During Interrogations*, *Innocence Project*, INNOCENCE PROJECT (Apr. 18, 2022), <https://innocenceproject.org/news/john-oliver-maddened-legal-police-lie-suspects-during-interrogations/> (discussing how John Oliver was outraged that law enforcement are able to use deceptive interrogation tactics to induce confessions).

226. Brown, *supra* note 225.

227. See *id.*; Vimal Patel, *Idaho City to Pay \$11.7 Million to Man Wrongfully Convicted in 1996 Killing* (June 10, 2022), <https://www.nytimes.com/2022/06/10/us/idaho-falls-christopher-tapp-settlement.html>.

228. See 705 ILL. COMP. STAT. 405/5–401.6 (2022).

229. CAL. WELF. & INST. CODE § 625.7 (West 2023); see also CAL. WELF. & INST. CODE § 626.8 (West 2014); cf. CAL. PENAL CODE § 859.5 (West 2017) (“[A] custodial interrogation of any person, including an adult or a minor, who is in a fixed place of detention, and suspected of committing murder, as listed in Section 187 or 189 of this code, or paragraph (1) of subdivision (b) of Section 707 of the Welfare and Institutions Code, shall be electronically recorded in its entirety.”) (showing methods to mitigate deceptive interrogation, including electronic monitoring of interrogations to create accountability for deceptive tactics).

230. See DEL. CODE ANN. tit. 11, § 83:447:2022(a) (2022).

231. See McQuaid, *supra* note 58 (reporting that Connecticut became one of a few states to restrict police from deceiving juvenile suspects).

232. See 2012 Or. Laws 487; *Oregon Deception Bill*, *supra* note 57.

233. See Douglas Starr, *The F.B.I.’s Interrogations, Finally on Film*, *NEW YORKER* (June 3, 2014), <https://www.newyorker.com/news/news-desk/the-f-b-i-s-interrogations-finally-on-film>. But see GROSS ET AL., *GOVERNMENT MISCONDUCT*, *supra* note 49, at 173 (asserting that

be ahead or alongside the states in ceasing deceptive interrogation tactics on juveniles—if not the public broadly.²³⁴ DOJ is essential in influencing states to improve their investigative and prosecution techniques.²³⁵ After DOJ agreed to electronically record interrogations, a news outlet stated, “[n]ow that the Feds are moving to recording, the rest of the states will be under pressure to fall into line: any unrecorded interrogation will increasingly seem slipshod.”²³⁶ In addition, once DOJ implements a policy ending the use of deceptive interrogation techniques in juvenile interviews, it can be added to the Justice Manual to train attorneys around the country.²³⁷ It can be assumed, then, that the states will also fall in line once DOJ implements a policy ending the use of deceptive interrogation techniques in juvenile interviews. Once DOJ implements the policy change and the states begin to follow, the policy can be added to the Justice Manual to train attorneys around the country.²³⁸

B. Including a New Provision in the Justice Manual

After publishing a memorandum, DOJ should incorporate a new provision in the Justice Manual mandating that DOJ subagencies and the USAO cease the use of deceptive interrogation tactics on juveniles.²³⁹ By outlining what behaviors and techniques constitute deceptive interrogation tactics in the Justice Manual, it will make it easier for DOJ subagencies and the USAO to implement and follow.²⁴⁰ In addition, it will be easier for states and local governments to adopt comparable policies and legislation. The Justice Manual currently includes guidance on prosecutorial conduct, obtaining evidence, and the prosecution of juveniles.²⁴¹ DOJ can add the new provision in the Manual under § 9-8.000, which currently covers the

“[a]t best, however, the role of the federal government will be limited” as changes in rules surrounding misconduct during investigations require a shift in the culture and institutions are responsible for perpetuating misconduct).

234. See Starr, *supra* note 233.

235. See *infra* Part II(C).

236. See Starr, *supra* note 233.

237. See generally U.S. Dep’t of Just., Just. Manual (2018) (providing DOJ policy for various topics, including electronic recording).

238. See *id.* (demonstrating the presence of other materials within the Manual used for training attorney’s across the country).

239. See *id.* § 9-800.

240. See *id.* § 9-27.130 (“One purpose of such procedures should be to ensure consistency in the decisions within each office by regularizing the decision-making process so that decisions are made at the appropriate level of responsibility.”)

241. See *id.* §§ 9-8.000, 9-13.000, 9-27.000.

prosecution of juveniles.²⁴² Under § 9-8.000, DOJ should create a new subsection titled “§ 9-8.230 Improper Interrogation Tactics” to outline the deceptive interrogation tactics that are no longer allowed when questioning juveniles. This section will assert that agents cannot lie to juveniles about the circumstances of the crime they are being accused of,²⁴³ that juveniles will not be subject to polygraph examinations,²⁴⁴ and that the Reid Technique will not be used on juveniles.²⁴⁵ DOJ should provide a clear and complete list to clarify what deceptive tactics are prohibited within its subagencies. Further, if any state wants to draft new legislation to adopt a similar policy, the Justice Manual provides a clear model.

C. *Post-Conviction Review of Convictions Obtained Using Deceptive Tactics*

DOJ should form a post-conviction review unit to analyze the instances when the FBI or other DOJ subagencies achieved convictions as a result of deceptive tactics used while interrogating juveniles. The program can be analogous to the program established by the FBI, DOJ, NACDL, and Innocence Project to review convictions obtained using hair analysis.²⁴⁶ DOJ should work with the NACDL and the Innocence Project again to coordinate their efforts in analyzing and recommending convictions that need review.

Despite a clear model, the program will be more challenging as it is more difficult to determine whether agents used deceptive tactics prior to 2014, which was when DOJ mandated the electronic recording of interviews and interrogations.²⁴⁷ However, DOJ can begin by reviewing interrogations that utilized the Reid technique,²⁴⁸ polygraph examinations,²⁴⁹ trial transcripts,

242. See *id.* § 9-8.000.

243. See Quiroz, *supra* note 70 (explaining that lying about evidence obtained can cause juveniles to make a false confession).

244. See Stromberg, *supra* note 73 (describing that polygraph examinations are unreliable and can be used as a tool to induce individuals into giving a false confession).

245. See Spierer, *supra* note 50, at 1727, 1743, 1748 (showing the Reid Technique is a problematic interrogation tactic that should not be utilized on juveniles).

246. See *FBI/DOJ Microscopic Hair Comparison Analysis Review*, *supra* note 201.

247. See Press Release, Concerning Elec. Recording of Statements, *supra* note 128; see also GROSS ET AL., GOVERNMENT MISCONDUCT, *supra* note 49, at 172–73 (stating DOJ can monitor and address law enforcement misconduct, as it did when it published the memorandum mandating electronically recording interrogations).

248. See Jennifer Kamorowski, *The Reid Technique and Law Enforcement Interrogations of Juveniles*, STRATEGIC SENT'G SOLS. LLC (Oct. 16, 2019), <https://jenniferkamorowski.net/2019/10/16/the-reid-technique-and-law-enforcement-interrogations-of-juveniles/> (discussing the criticisms of, and the dangers presented by, the Reid Technique in the context of juveniles).

249. See OFF. OF THE INSEPECTOR GEN., *supra* note 170; Stromberg, *supra* note 73.

and preliminary hearings discussing the voluntariness of a confession or recorded interrogations²⁵⁰—similar to the materials analyzed in the review of hair analysis convictions.²⁵¹

Moreover, the program will influence states to independently conduct post-conviction reviews, comparable to how the states adopted post-conviction review processes in the aftermath of DOJ's decision to review convictions obtained using hair analysis evidence.²⁵² In conjunction with publishing a memorandum, this program will set an example for state and local governments nationwide and further establish DOJ as a policy leader in ending false confessions and wrongful convictions.

Additionally, over one hundred post-conviction integrity units have been formed by state prosecutors and local attorneys in the past few years.²⁵³ Post-conviction integrity units work on behalf of and alongside prosecutorial offices around the United States to “prevent, identify, and remedy” wrongful convictions.²⁵⁴ Post-conviction integrity units have been responsible for over 670 exonerations.²⁵⁵ DOJ currently has a post-conviction integrity unit called Upholding the Rule of Law and Preventing Wrongful Convictions Program (ROL/WCR).²⁵⁶ In 2022, this program provided over six million dollars to state, local, and nonprofit organizations that research and assist wrongfully convicted individuals.²⁵⁷ The program “supports WCR entities providing high-quality and efficient post-conviction representation for defendants in post-conviction claims of innocence. Where possible, the ROL/WCR Program seeks to identify actual perpetrators of crimes, bring justice to victim(s), and enact measures to prevent future errors and ensure justice, thereby enhancing public safety.”²⁵⁸ In addition, the USAO for the District of Columbia has a special litigation division with a conviction integrity unit that reviews post-conviction cases in the District of Columbia

250. See Press Release, Concerning Elec. Recording of Statements, *supra* note 128.

251. See *FBI/DOJ Microscopic Hair Comparison Analysis Review*, *supra* note 201; see Letter from James B. Comey, Dir., FBI, to Additional Governors, *supra* note 207.

252. See Yancey-Bragg, *supra* note 211.

253. See *id.* (stating that “there are now more than 115 in the country’s more than 2,500 prosecutor’s offices”); see also GROSS ET AL., GOVERNMENT MISCONDUCT, *Government Misconduct and Convicting the Innocent*, *supra* note 49, at 168–69.

254. *Conviction Integrity Units*, *supra* note 213.

255. See Yancey-Bragg, *supra* note 211.

256. BUREAU OF JUST. ASSISTANCE, U.S. DEP’T OF JUST., BJA FY 2022, UPHOLDING THE RULE OF LAW AND PREVENTING WRONGFUL CONVICTIONS PROGRAM 5–6 (2022), <https://bja.ojp.gov/funding/O-BJA-2022-171215.pdf>.

257. See *id.* at 1, 7.

258. See *id.* at 5.

Superior Court or the United States District Court for the District of Columbia.²⁵⁹ However, DOJ itself does not have a centralized conviction integrity unit to investigate instances of wrongful convictions across the United States. To further serve as a policy leader and model, DOJ should establish a centralized post-conviction integrity unit to investigate past wrongful convictions obtained by DOJ. DOJ should place the program as a new subsection within DOJ's criminal division. Also, the program should remedy previous instances of wrongful convictions by training prosecutors on nondeceptive investigative and prosecutorial techniques. If DOJ were to lead these efforts, not only would this increase protections for all those facing the justice system, but it would strengthen protections for the most vulnerable: juveniles.

D. Counterarguments

Law enforcement officers and federal agents have used deceptive interrogation strategies for decades.²⁶⁰ Officers often argue that deceptive tactics and psychological persuasion are justified.²⁶¹ Law enforcement officers regularly use wiretapping, informants, and undercover officers to solve crimes and get confessions.²⁶² The Supreme Court has also stated that using deceptive tactics to elicit confessions is constitutional, and the evidence received is later admissible.²⁶³ Fred Inbau, a leading advocate for deceptive interrogation techniques, argues for deceptive interrogation tactics only when they do not result in false confessions or violate an individual's constitutional rights.²⁶⁴ Mr. Inbau argues that when law enforcement makes threats of injury, nonupholdable promises for leniency, or no *Miranda*

259. *Special Proceedings*, U.S. ATT'Y'S OFF. D.C. (May 31, 2023), <https://www.justice.gov/usao-dc/special-proceedings>.

260. See *infra* Part II(D).

261. See Laura Hoffman Roppé, Comment, *True Blue? Whether Police Should Be Allowed To Use Trickery and Deception To Extract Confessions*, 31 SAN DIEGO L. REV. 729, 751 (1994); see also INBAU ET AL. 4th ed., *supra* note 155, at 67–68.

262. See U.S. Dep't of Just., Just. Manual §§ 9-7.100, 9-7.301 (2018); *Undercover and Sensitive Operations Unit, Attorney General's Guidelines on FBI Undercover Operations*, U.S. DEP'T OF JUST. ARCHIVES (Nov. 13, 1992), <https://www.justice.gov/archives/ag/undercover-and-sensitive-operations-unit-attorney-generals-guidelines-fbi-undercover-operations> (detailing the guidelines the FBI utilizes for undercover agents); cf. *Explore the Numbers: Innocence Project's Impact*, *supra* note 80 (showing 18% of wrongful convictions involve informants).

263. *Frazier v. Cupp*, 394 U.S. 731, 737–39 (1969).

264. See FRED E. INBAU, JOHN E. REID, & JOSEPH P. BUCKLEY, *CRIMINAL INTERROGATION AND CONFESSIONS* xiv (3rd ed. 1986) [hereinafter INBAU ET AL., 3rd ed.].

warnings are given, deceptive interrogation tactics should not be used.²⁶⁵ However, Mr. Inbau utilizes deceptive techniques within the Reid Technique when these circumstances are not present.²⁶⁶ Mr. Inbau, alongside other leading experts, authored a book discussing the benefits of using the “baiting technique” to imply and convey to a suspect that law enforcement found evidence linking them to a specific crime by fingerprints or confronting them with “incriminating circumstantial evidence.”²⁶⁷ Despite the efforts of advocates for deceptive techniques, potential jurors recognize deceptive tactics as coercive but often believe that they are nevertheless necessary to attain confessions.²⁶⁸

However, the impact deceptive interrogation tactics have on producing false confessions and, therefore, causing wrongful convictions outweighs any benefit they hold in producing reliable results and convictions.²⁶⁹ Deceptive interrogation tactics cause innocent juveniles—and more broadly, innocent individuals—to spend decades imprisoned for crimes they did not commit, and law enforcement tactics should be altered to stop the use of these harmful interrogation tactics.²⁷⁰

CONCLUSION

Deceptive interrogation tactics directly cause false confessions and wrongful convictions. Hundreds of juveniles have been wrongfully convicted in the United States and have spent decades in prison as a result of deceptive interrogation techniques. DOJ can halt future wrongful convictions and work towards rectifying wrongful convictions of those like the Exonerated Five, Groveland Four, Peter Reilly, Huwe Burton, and Leon Brown. States like Illinois, Oregon, and countless others have begun implementing statutes that prohibit the use of deceptive interrogation tactics on juveniles.²⁷¹ DOJ

265. *See id.*

266. *See* INBAU ET AL., 4th ed., *supra* note 155, at 229.

267. *Id.* at 193, 229.

268. *See* Richard A. Leo & Brittany Liu, *What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?*, 27 BEHAV. SCIS. & THE L., 381, 381, 383, 393 (2009).

269. *See supra* Part I(B).

270. *See supra* Part I(B); Samuel R. Gross & Barbara O'Brien, *Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases*, 5 J. EMPIRICAL LEGAL STUD. 927, 933, 935 (2008).

271. *See* 705 ILL. COMP. STAT. 405/5-401.6 (2022); CAL. WELF. & INST. CODE § 625.7 (Deering 2022); DEL. CODE ANN. tit. 11, § 83:447 (2022); *Oregon Deception Bill is Signed into Law*, *supra* note 57. S. B. S4205, 2023–24 Leg., Reg. Sess. (N.Y. 2023) (“A confession, admission or other statement by a defendant who is under eighteen years of age shall be presumed to be

already includes OJJDP, which outlines and trains attorneys about working in the juvenile justice system.²⁷² The vision of OJJDP is to “envision[] a nation where all children are free from crime and violence.”²⁷³ It is known that juveniles are still developing and, therefore, when faced with high stress, are highly susceptible to deceptive interrogation tactics and often falsely confess.²⁷⁴ Additionally, when juveniles are questioned by law enforcement officers who use manipulative tactics like the Reid Technique, polygraph examinations, and lying about the circumstances of a crime, they are more likely to falsely confess.²⁷⁵ There is no reason the vision of OJJDP should not include ample advocacy for the cessation of deceptive interrogation techniques being used on juveniles.

Twenty-seven percent of wrongful convictions result from false confessions, and juveniles have a heightened likelihood of falsely confessing.²⁷⁶ Organizations like DOJ must put safeguards in place to protect juveniles. If DOJ implements policies to reject deceptive interrogation techniques, state and local governments will likely follow its lead.²⁷⁷ When DOJ began reviewing convictions obtained through faulty hair analysis testimony, eighteen states resultantly changed their own recording policies.²⁷⁸ Further, many other states followed suit when DOJ published a memorandum mandating the electronic recording of interrogations.²⁷⁹

If DOJ wants to adhere to the words of Thomas Jefferson, that “[t]he most sacred of the duties of government [is] to do equal and impartial justice to all its citizens,”²⁸⁰ then it must implement policies to stop the use of deceptive interrogation tactics against juveniles. Juveniles have bright-line age requirements on things such as jury duty and marriage because of their presumed natural vulnerabilities to negative influences and lack of settled character traits.²⁸¹ Therefore, policies that affect juveniles should be adapted

involuntarily made when . . . a public servant knowingly engages in deception during such custodial interrogation”); S. B. A543, 2023–24 Leg., Reg. Sess. (N.Y. 2023) (same).

272. *About OJJDP*, *supra* note 19.

273. *See id.*

274. *See Stanley*, *supra* note 77.

275. *See generally Spierer*, *supra* note 50.

276. *See Explore the Numbers: Innocence Project’s Impact*, *supra* note 81.

277. *See Hsu*, *FBI Admits Flaws in Hair Analysis Over Decades*, *supra* note 206.

278. *See id.*

279. *See supra* Part III(C); GROSS ET AL., GOVERNMENT MISCONDUCT, *supra* note 49, at 172–73 (“It can also lead by example, as it did in 2014, when it reversed course and began to require electronic recording of interrogations . . .”).

280. *See Organization, Mission and Functions Manual Overview*, *supra* note 15.

281. *Roper v. Simmons*, 543 U.S. 551, 569, 570 (2005); *see Kassir et al.*, *supra* note 82, at 19.

to conform with their brain and development levels to encourage a more equal and impartial justice system.²⁸² Although there are counterarguments and justifications for using deceptive tactics, like wiretapping and undercover informants to obtain convictions, the negative implications of deception outweigh the positives—especially with juveniles.²⁸³

By publishing a memorandum ending deceptive interrogation tactics against juveniles, DOJ will cause many other states to follow as they did after the electronic recording memorandum and the post-conviction review of hair analysis-based convictions.²⁸⁴ Scholars have stated, “[t]he federal government is, in this respect, far behind the states. Alaska required recording in 1985, followed by Minnesota in 1994; now twenty states require it, as do the District of Columbia and hundreds of individual precincts.”²⁸⁵ By creating a memorandum, a new provision in the Justice Manual, and a post-conviction review of convictions obtained using deceptive interrogation tactics, DOJ can rectify past wrongful convictions and ensure that wrongful convictions of juveniles do not occur in the future.

282. See Kassin et al., *supra* note 82, at 19, 30.

283. Hoffman Roppé, *supra* note 261, at 751.

284. See Hsu, *FBI Admits Flaws in Hair Analysis Over Decades*, *supra* note 206; *Dep't of Justice, New Department Policy Concerning Electronic Recording of Statements*, *supra* note 133, at 1554.

285. See Starr, *supra* note 233.