

Taking the Next Step in *Miranda* Evaluations: Considering Racial Trauma and the Impact of Prior Police Contact

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By law, before interrogating a suspect who is in custody, the police should inform them of their *Miranda* rights—the rights against self-incrimination and to an attorney. When a suspect or defendant waives their *Miranda* rights, a judge ultimately determines whether the waiver was legal. In making this determination, the judge employs the totality of the circumstances (TOC) analysis, which includes factors related to the individual defendant as well as the environment in which they waived their rights. Frequently, forensic psychologists evaluate a defendant to offer courts a clinical opinion about the defendant's ability to understand and appreciate their *Miranda* rights and to provide other TOC information. These evaluations are referred to as *Miranda* evaluations. Using *Miranda* evaluations as an illustration, this article describes how the critical, yet often overlooked, concepts of racial trauma and vicarious and direct prior police contacts should routinely be considered as part of forensic evaluations. After providing a succinct overview of the relevant legal issues related to *Miranda* rights and of the existing guidelines for conducting *Miranda* evaluations, we discuss the psychological impact of racial trauma and prior vicarious and direct police contacts. We provide case examples to illustrate how evaluators can consider the impact of racial trauma and prior police contact when conducting *Miranda* evaluations. This article serves as a practical guide for understanding how and why—in the context of their lived experiences—suspects may waive their *Miranda* rights. Finally, we recommend how to improve policy and research to better capture issues related to racial trauma and prior police contacts.

Public Significance Statement

The work of forensic psychologists can help shape policy and law at local and national levels. Using *Miranda* evaluations as an example, we demonstrate how forensic psychologists can modify their existing practices to ensure their work more accurately reflects the lived experiences of the people they evaluate and research.

Keywords: *Miranda* waiver evaluations, vicarious and direct police contact, racial trauma, forensic mental health assessment

Compared with their White counterparts, Black pedestrians are stopped more frequently (Goel et al., 2016; Ridgeway, 2007) and forced to endure more intrusive stops (Cooley et al., 2020; Levchak, 2021; Ridgeway, 2007). A similar racial disparity exists among motorists (Hannon et al., 2021; Roach et al., 2020; Warren et al., 2006). Police are more likely to murder a Black motorist than one who is White (Buehler, 2017; Edwards et al., 2019). Compared with their light-skinned counterparts, darker-skinned Blacks are more likely to be stopped by the police (Kizer, 2017; Monk, 2019; White, 2015).

Broadly speaking, there are two types of police stops: vicarious and direct. When the police stop you, you experience a direct stop; when you witness or learn about the police stopping someone else, you experience a vicarious stop. Around the globe, people experienced a vicarious police stop when they witnessed George Floyd begging for his life as the police murdered him. The emotional impact of vicarious police contact differs along racial lines (Eichstaedt et al., 2021). Eichstaedt and colleagues used Gallup poll data to compare the emotional states of nearly 50,000 U.S.

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citizens before and after Floyd's murder. Overall, they found a roughly 38% increase in anger and sadness following his murder, and the increase was greater in Minnesota, where Floyd's murder took place, than in other states. Further, the magnitude of the emotional response was different for Black Americans, who experienced a statistically significantly larger increase in depression and anxiety symptoms following Floyd's murder, compared with their White counterparts (Eichstaedt et al., 2021).

The increased emotional distress could be an example of the detrimental consequence of "linked fate." Linked fate refers to the idea that seeing or learning of race-based discrimination or violence experienced by someone of your racial group increases your distress and concern that you or your loved ones could have been the victim of that act (Monk, 2020). The increase in emotional distress among Black Americans following Floyd's murder may also be a manifestation of racial trauma. Racial trauma or race-based stress refers to the psychological and emotional distress caused by experiencing or witnessing racial bias, ethnic discrimination, and systems of violence (Carter, 2006; Comas-Díaz et al., 2019; Williams et al., 2021).

In the wake of George Floyd's murder at the hands of police, the American Psychological Association passed a resolution apologizing to people of color (POC) for the organization's role in promoting and perpetuating racism and failing to challenge racism and racial discrimination in the United States (American Psychological Association, 2021a). Although this apology is needed and arguably long overdue, it is just the beginning. The next logical step is for forensic clinicians to reevaluate how they conduct evaluations and question whether the studies they rely on accurately reflect the lived experiences of people who are not White.

Using *Miranda* evaluations as an example, this article aims to help clinicians and, indirectly, researchers, take this critical next step. By focusing on the issue of racial trauma and prior police contacts, we provide guidance on how forensic clinicians can collect data that meaningfully reflect the lived experiences of the people being evaluated while providing courts with valuable information they can use to answer the legal issues at hand. We begin with an overview of the legal underpinnings of *Miranda* evaluations. This is followed by a discussion of how clinicians are currently instructed to conduct *Miranda* evaluations. From both a clinical and empirical perspective, the existing *Miranda* literature does not recognize the concept of racial stress or racial trauma and equates prior police contacts to narrowly defined (but easily counted) indicators, such as age at first arrest, the number of previous arrests, or the number of felony arrests (e.g., Cooper & Zapf, 2008; Grisso, 1981; Rogers et al., 2017). As Eichstaedt et al. (2021) demonstrated, this narrow definition does not reflect the lived experience of police contact and disregards the differential effects of police contacts based on the race of the person experiencing them. After exploring the concept of racial trauma, we provide a more ecologically valid definition of prior police contacts and discuss how to incorporate racial trauma and this ecologically valid definition into *Miranda* evaluations. Finally, we discuss research and policy recommendations.

Throughout this article, we use the word *race* as a social construct that groups people based on perceived shared characteristics and not a biologically meaningful concept (American Psychological Association, 2021b). We intentionally use the racial category *Black* instead of *African American* to remind readers of the historical and contemporary impact of this social construct. For example, the impetus for racial trauma is not that a person identifies as African

American, Haitian, or Bahamian but that the perpetrator of the racial discrimination views the person as Black. Similarly, as it pertains to police contact, we use the term *Black* and not *African American* to remind the reader of the systemic differential treatment by police based on the officer's perception of a person's race. Additionally, in the context of police contacts, we intentionally use the term *Black* to remind the reader of the role colorism plays in police contacts. Finally, when reviewing the literature, we use the term *Black* for consistency and readability and encourage readers to review the referenced literature with this in mind.

Legal Underpinnings of *Miranda* Evaluations

Under the Fifth Amendment of the U.S. Constitution (U.S. Const. amend. V., n.d.), individuals have the right against self-incrimination, meaning they cannot be forced to disclose information that can be used against them in a criminal case. In 1966, in a landmark decision that forever changed the landscape of the U.S. criminal justice system, the Supreme Court of the United States held that the privilege against self-incrimination is threatened when a person is put into custody and interrogated by law enforcement. In that case, *Miranda v. Arizona* (1966), the court ruled that before the police can question a suspect who is in custody, they must give the suspect warnings (now commonly referred to as "*Miranda* warnings"), including the right to remain silent and the right to consult with an attorney prior to answering questions. *Miranda v. Arizona* also determined that police must obtain a valid waiver of those rights before questioning a suspect. To be valid, this waiver must be made knowingly, intelligently, and voluntarily (*Johnson v. Zerbst*, 1938; *Miranda v. Arizona*, 1966).

Courts have further defined voluntary as a "deliberate choice free from intimidation, coercion, or deception" (*U.S. v. Taylor*, 2014, p. 23; see also, *Coleman v. Hardy*, 2012). "Knowing" and "intelligent" have been defined as making a waiver with "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it" (*U.S. v. Taylor*, 2014, p. 23). To ensure these standards are met, courts must consider the totality of the circumstances (TOC). The TOC analysis means that in determining whether the waiver is constitutional, judges consider factors related to the individual suspect as well as the circumstances of the waiver. It is a flexible analysis which considers all factors and no one factor overrides the others. Courts have articulated specific TOC factors related to the suspect to be considered, including "age, experience, education, background, and intelligence" (*Fare v. Michael C.*, 1979, p. 726). Judges must determine an adequate, lawful waiver on the unique facts and circumstances surrounding each case (*Cunningham v. Conway*, 2010), including both the specific circumstances of the interrogation and the unique characteristics of the suspect; courts have specifically recognized the mental health of the suspect as well as prior experiences with the law as salient, relevant factors to be considered in the TOC analysis (*Davis v. U. S.*, 1998).

States have enacted various safeguards (such as having a parent in the room during a custodial interrogation) to protect a vulnerable population's interest. The following examples include protections for youths, and given that criminal law is state specific, these safeguards vary significantly across states. Many states take a tiered approach by outlining safeguards to children within certain age brackets—safeguards that are higher than the TOC standard established in *Fare v. Michael C.* (1979; Sahdev, 2018). For example, in

New Mexico, there are no special protections beyond the TOC analysis for children between the ages of 15 and 17, but statements from those under 13 are per se inadmissible. If the statement is made by a 13- or 14-year-old youth, there is a rebuttable presumption that it is inadmissible (*New Mexico Children's Code*, 2016). Kansas guarantees protections only for children 14 or under, which includes the inadmissibility of confessions unless offered (and *Miranda* rights are waived) after consultation with the child's parent or attorney (*Revised Kansas Juvenile Justice Code*, 2007). However, Illinois offers protection based on the offense and the child's age at the time of the offense. Specifically, those who are under the age of 15 at the time of the offense and accused of a homicide or sexual offense may not waive their right to an attorney and an attorney must be present for the entire custodial interrogation (*Juvenile Court Act of 1987*, 1987).

Courts are beginning to incorporate the lived experiences of POC into their reasoning and decisions. For example, in *U.S. v. Smith* (2015), the Seventh Circuit concluded that a reasonable person in Smith's circumstances might not feel free to ignore the police. They explicitly considered Smith's identity as a young Black man and his lived experiences of being in a community where police and citizen relationships were strained, and they questioned whether a reasonable person in these circumstances could truly feel free to leave a police interaction (*U.S. v. Smith*, 2015). Citing an earlier case as precedent, *Smith* also stated that, while race is "not irrelevant" it is also not "dispositive," and is a factor to be considered in the TOC analysis (2015, p. 13). In *Commonwealth v. Warren* (2016), a Massachusetts court relied on a Boston Police Department report to reach its verdict. This report found that the police department engaged in racial profiling to disproportionately target Black Bostonians. The court reasoned that because Black Bostonians were disproportionately targeted and profiled, fleeing from police may very well be the result of legitimized fear, not of guilt.

Modern courts have recently begun to acknowledge the impact of race-related factors, and many seem willing, and in some cases eager, to consider this information. This section has discussed various legal precedents, including case law (e.g., *Cunningham v. Conway*, 2010; *Fare v. Michael C.*, 1979; *People v. Cipriano*, 1988) and statutes (e.g., *New Mexico Children's Code*, 2016), in which courts are instructed to consider experience and background in the TOC analysis in *Miranda* cases. Although these concepts are not defined, they certainly allow the courts to consider the lived experiences of POC, as was the case in *Commonwealth v. Warren* (2016) and *U.S. v. Smith* (2015). By opening the door to consideration of lived experiences of POC, courts appear to be inviting psychologists to provide input into how racial trauma and vicarious and direct police contacts relate to a defendant's decision to waive their *Miranda* rights. If courts are signaling interest in this information, as some cases suggest, psychologists can answer this call by considering racial trauma and vicarious and direct police contacts in their evaluations of *Miranda* waivers.

Evaluating the Capacity to Waive *Miranda* Rights Evaluations: Current Practices and Considerations

Capacity to waive *Miranda* evaluations (referred to in this article simply as *Miranda* evaluations) are a type of forensic assessment in which the evaluator collects and analyzes relevant information (psychological, cognitive, environmental, and procedural factors)

that courts can use to determine whether the defendant provided a legally valid waiver (see generally, *Goldstein & Goldstein*, 2010; *Grisso*, 2013). *Miranda* evaluations share the same basic tenets as other forensic evaluations (*American Psychological Association*, 2013). These generally include using multiple sources of data (e.g., records, tests, and interviews), including only data relevant to answering the psycholegal question posed in the referral, and differentiating facts from inferences and conclusions (*DeMier*, 2013; *Goldstein et al.*, 2012; *Grisso*, 2010; *Witt*, 2010). This section briefly describes the way in which forensic literature currently instructs clinicians on how to conduct *Miranda* evaluations.

Record Review

Many factors, such as age, intelligence, education, reading abilities, and the circumstances of how the *Miranda* rights were conveyed influence one's decision to waive them. Thus, evaluators must explore records regarding both the defendant's psychosocial history as well as records that indicate the conditions of the *Miranda* waiver. Of particular importance are the review of school records, especially special education documents and prior academic testing when cognitive impairment is an issue (although admittedly these records may be more challenging to obtain the further removed an evaluatee is from formal schooling). Psychiatric illness may impact *Miranda* comprehension. For example, *Cooper and Zapf* (2008) identified an inverse relationship between severity of illness and level of *Miranda* comprehension. Moreover, they specifically found that individuals diagnosed with psychosis had lower levels of *Miranda* comprehension. Therefore, forensic evaluators are advised to thoroughly review all available psychiatric records.

The examiner should also obtain a copy of the *Miranda* warnings the police gave the defendant. If the warnings were provided to the defendant in written format, the evaluator should ask the defendant to read the warnings during the interview. For nonnative-English speakers, police departments may still offer materials written in English, creating concerns about comprehension. Moreover, translated materials can be rife with distortions. For example, the concept of free legal services may be omitted; legal concepts may differ across countries, leading to mistranslation of language and concepts; (*Rogers et al.*, 2009); or warnings, written at a low reading level in English, may be translated to more advanced reading levels. Alternatively, *Miranda* warnings may be read to a person in custody, which brings its own unique considerations. For example, research indicates that the speed at which some officers read the warnings may make the warnings incomprehensible (*Snook et al.*, 2016).

The conditions of the police interrogation are factors relevant to the waiver analysis. In some jurisdictions, *Miranda* waivers may be either audio- or videotaped. The forensic examiner is advised to review these recordings, which can provide useful information as to the circumstances of the waiver as well as to the specific behaviors of the defendant (e.g., self-dialoging possibly indicative of hallucinations or sensory disturbances absent external stimuli). Regarding youths, counterintuitively, parental presence does not always assist in the preservation of *Miranda* rights (e.g., three of the four youths who gave self-incriminating statements in the Central Park jogger case had parents sitting with them; parents are not always well-informed about *Miranda*; e.g., *Warner & Cleary*, 2022).

Moreover, the examiner may review the defendant's criminal record, which will indicate how many times they may have been

read their *Miranda* rights, a factor courts often believe is related to *Miranda* comprehension and legal waiver but that research has not been supported (e.g., Grisso, 1981). Psychologists have long researched whether the number of prior arrests impacts the arrestee's *Miranda* comprehension and waiver, with mixed results. In one study, after three or more felony charges, White youths showed improved *Miranda* comprehension, whereas Black youths did not (Grisso, 1981).

Interviews With the Defendant

Miranda evaluations require the evaluator to gather a developmental history, typical of other forensic evaluations, focused on relevant factors including developmental maturity, educational experiences (as related to reading and special education), and history of psychological symptoms. Related to the TOC, the forensic examiner also asks the defendant a series of questions regarding what the police told them about their *Miranda* rights and subsequently how the arrestee perceived, understood, and interpreted those rights prior to waiving them and making potentially incriminating statements to the police. The evaluator should assess whether the examinee has an appreciation for the consequences and the gravity of waiving *Miranda* rights.

Collateral Interviews

In *Miranda* evaluations, examiners attempt to interview people present at the time of the *Miranda* waiver. For adults and youths, this may include an advocate or a parent. These observers can provide insight into what occurred during the *Miranda* waiver as well as what advice they provided. Collateral observers such as parents, teachers, and social workers can expound on a youth's maturity level and intellectual functioning. Mental health providers can also give valuable information that can factor into the analysis. In addition, *Miranda* evaluations may include an attempt to interview the officers who were present at the time of arrest, waiver, or interrogation to get their perspective on and behavioral observations during the event.

Formal Testing

Achievement testing can also be administered given how relevant language levels are in understanding *Miranda* warnings, particularly if the defendant has not recently undergone such testing. Intelligence testing might also be relevant, as individuals with intellectual disabilities have significantly lower comprehension of *Miranda* rights (Erickson et al., 2020; Rogers & Drogin, 2019). Tests that distinguish between genuine or exaggerated symptoms or effort might also be administered. Given that the evaluatee is asked to recall events that occurred weeks, months, and sometimes years prior, tests may be used to assess potential memory impairments. Finally, specific instruments designed to assess *Miranda* comprehension (e.g., *Miranda* Rights Comprehension Instruments [MRCI]; Goldstein et al., 2012; Standardized Assessment of *Miranda* Abilities [SAMA]; Rogers et al., 2012) are useful in these evaluations.

Interpreting the Data and Communicating to the Court

As is best practice in all forensic report writing, evaluators should test hypotheses (Heilbrun, 2001). Goldstein and Goldstein (2010)

highlight the need for evaluators to examine the link between the clinical findings and the capacity of the evaluatee to have made a knowing, intelligent, and voluntary waiver. As mapped onto the case law, the concept of "knowing" has been operationalized by psychologists to mean "understanding" (i.e., how well did the defendant understand the waiver?; Goldstein & Goldstein, 2010). The concept of "intelligent" has been operationalized as "appreciation" (i.e., how well did the defendant appreciate the *Miranda* rights and the consequences of waiving them? Goldstein & Goldstein, 2010). Psychologists may make several hypotheses about how independent, compounded, or intersecting factors, such as the defendant's intellectual functioning, youth, developmental maturity, or mental state, may have impacted their ability to fully understand and appreciate the waiver. Again, as is the case in all forensic evaluations, in communicating with the court, psychologists should provide an opinion grounded in clinical data and science and be transparent in their thinking, highlighting for courts what data were relied on, what hypothesis ultimately became their opinion, and what hypotheses were considered and ultimately rejected.

Racial Trauma as a Construct Influencing *Miranda* Waivers

Forensic psychologists often work in settings in which POC are overrepresented. Black inmates are overrepresented in our prison populations (Carson, 2020), and POC are targets of violence perpetrated by White leaders (Alexander, 2010). These disparities impact perceptions; only one in five Black individuals believe that law enforcement applies laws equally across races, and 50% believe that law enforcement perceives all Black people as suspects, resulting in the wrong identification and subsequent arrest of innocent Black people (Jones-Brown, 2000). And, even more relevant for forensic psychologists, Black defendants are more likely to be involuntarily hospitalized, more likely to be referred for competence to stand trial evaluations, and more likely to be deemed incompetent as a result (Harris & Weiss, 2018). Inherent racism and inequalities such as these, which have plagued disadvantaged individuals and communities of color for hundreds of years, can result in racial trauma, a factor that can provide critical information in the context of *Miranda* waiver evaluations.

Racial trauma is characterized by repeated exposure to real or perceived threats related to racial discrimination. It develops, in part, because of traumatic encounters that include threats of harm or injury, humiliation and shaming, or witnessing and hearing about harm to POC (Carter, 2006; Comas-Díaz et al., 2019). In the context of the impact of racial trauma, level of acculturation can contribute to or minimize the development of racial trauma based on socioeconomic status. For example, POC who live in affluent neighborhoods may feel compelled to accommodate the values of the dominant culture to avoid triggering or experiencing the effects of racial trauma. As part of the acculturation process, POC may experience internalized racism by embracing racial stereotypes about their own culture, thereby attempting to avoid the physiological or psychological responses to racial discrimination or prejudice within the communities in which they reside or during interactions with police (Assari et al., 2017; Williams et al., 2021).

The empirical literature suggests that POC who experience racism, discrimination, and various forms of microaggressions (i.e., indirect, subtle, or unintentional discrimination against members of marginalized

groups such as ethnic minorities) are likely to develop mental and physical health concerns (Lockwood & Cuevas, 2022; Williams et al., 2021). For instance, the Kaholokula (2016) meta-analysis revealed an association between exposure to racism and psychological and physical distress. The consequences of racial bias, ethnic discrimination, and systems of violence on racial and ethnic minorities who have experienced brief or prolonged emotional pain can be detrimental not only for the individual but also for future generations and the communities in which POC reside (Assari et al., 2017; Williams et al., 2021).

The overall impact of racial trauma includes a significant psychological burden. Racial trauma can result in depression, irritability, increased anxiety, intrusive thoughts (e.g., flashbacks, vivid dreams, nightmares), physiological responses (e.g., headaches, chest pains, insomnia), low self-esteem, and hypervigilance (Assari et al., 2017; Chou et al., 2012; Fernando, 1984; Lockwood & Cuevas, 2022; Saleem et al., 2020; Torres & Ong, 2010).

Racial trauma, including discrimination, is also associated with symptoms of major depressive disorder, agoraphobia (both with and without panic disorder), and posttraumatic stress disorder (PTSD). Helplessness in the context of a racial trauma can include feeling as though one does not have control or agency over how they are perceived and treated by others. In a study of 172 Black young adults, 37% endorsed mood disruption and severe symptoms of depression, which was further associated with perceived racial discrimination (Madubata et al., 2018). Suicidal thoughts and behaviors can also increase as perceived discrimination increases (Polanco-Roman et al., 2019).

There are notable barriers to considering a diagnosis of PTSD as it pertains to racial trauma. For many reasons, including bias and lack of awareness or comfort in discussing racial issues, clinicians fail to recognize and ultimately appropriately diagnose individuals with PTSD on the basis of the evaluatee's experiences with racial trauma (Saleem et al., 2020). Saleem et al. (2020) assert that from as young 3 months old, children can perceive racial differences based on skin tone and can develop a worldview in which they perceive threats to their safety based on skin color, thereby eliciting feelings of fear and worry not only for themselves but for their caretakers as well. This means that racial trauma can serve as one of the many precipitating traumatic events of PTSD. Avoidance in this context can look like staying away from individuals or dominant race groups in general, whereas hypervigilance might include one's assessment of safety and perceptions that their safety is at risk based on their race (Saleem et al., 2020). Black college students experience significantly more anxiety on the basis of their experiences with racial trauma than White students do (Williams et al., 2018).

Particularly relevant in the context of *Miranda* evaluations as they pertain to the knowing and intelligent waiver, cognitive impairments may develop as a result of racial trauma. These can include difficulty concentrating, processing and retaining information, and communicating with others. This can call into question an individual's ability to fully attend to their *Miranda* rights (presented either verbally or in written format), as well as their ability to concentrate on and reason through potential consequences of enacting a waiver. Evaluating these concepts and providing this information to the court is relevant because it relates to the experience prong of the TOC analysis, as these experiences can shape behavior and perceptions. Ignoring the impact of racial trauma could undermine the validity of assessments typically used to answer psycholegal questions posed by courts (Carter & Sant-Barket, 2015; Lockwood & Cuevas, 2022).

Notably, while executing a *Miranda* waiver, youths of color in particular may be impaired in their ability to advocate for themselves as a result of experiences with racial trauma; they can become silent and acquiesce to authorities—such as parents or police officers—present in the room (Hardy, 2013). Najdowski (2011) asserted that Black suspects may engage in self-regulatory behaviors (e.g., hypervigilance or nonverbal behavioral cues, including tapping, fidgeting, and lack of eye contact) aimed at reducing anxiety. The use of self-regulatory behaviors leads to cognitive fatigue and subsequently compromises an individual's ability to resist the pressure to waive *Miranda* rights to escape the police encounter (Najdowski, 2011; Najdowski et al., 2015).

Consider the case example of “Myles,” a young adult who identifies as Black and has been the victim of racial attacks on social media. Since the attacks started, he has struggled to focus in class, resulting in difficulty processing and retaining his lessons. He cannot communicate these difficulties to his teachers and family members. Behaviorally, he has been isolating from his friend group and spending more time in his room, and when he does interact with family members, he is more withdrawn and, in an uncharacteristic manner, appears to say “yes” to whatever is asked of him. His tendency to acquiesce, which directly relates to his racial trauma, should be considered in the context of a *Miranda* evaluation and could be relevant to the TOC analysis.

Without acknowledging the above definition of racial trauma and its impact, clinicians may interpret Myles' withdrawing and acquiescence as a sign of malingering or exaggeration. This is a failure to generate and consider alternative hypotheses, a tenet of best practices in forensic mental health assessment. Modern courts are exploring these lived experiences and using them to shape their opinions (*Commonwealth v. Warren*, 2016; *U.S. v. Smith*, 2015). This is an open acknowledgement by courts and a signal to forensic psychologists that evaluation and communication of racial trauma and its impact on experience in psycholegal contexts is necessary.

Prior Police Contact as a Construct Influencing *Miranda* Waivers

Typically, *Miranda* research operationalizes prior police contacts as something easily counted, such as the number of prior arrests, felony arrests, or court referrals (e.g., Cooper & Zapf, 2008; Grisso, 1981; Rogers et al., 2017). This narrow and unrealistic definition of prior police contact is a proxy for direct prior exposure to the *Miranda* warnings (this would exclude exposure via television shows). This narrow definition ignores the impact of contact with the police that did not result in an arrest. Additionally, this narrow definition of prior police contact reflects a failure to understand existing racial differences in the perception of police. For example, having police in middle and high schools leaves White students, but not students of color, feeling safer in school (Theriot & Orme, 2016). Among adults of nine racial groups (including Latinx, biracial, Black, and Asian), racialized confidence in the police extends beyond high school, with White college students having the highest confidence in the police (Senreich & Williams-Gray, 2021). Marginalized Americans, especially Black Americans, live in fear that the police will kill them or someone in their family, yet very few Whites experience this fear (Pickett et al., 2021). This section offers a more ecologically valid conceptualization of prior police contact. Clinicians and researchers are urged to use this new definition of

prior police contact as they explore the relationship among this factor, a person's understanding of the *Miranda* warnings, and their decision to waive *Miranda* rights.

An Ecologically Valid Definition of Prior Police Contact

We believe that an ecologically valid definition of prior police contact as it relates to *Miranda* research and evaluations includes both vicarious and direct police contact, regardless of whether the contact results in an arrest. We also believe that the ecologically valid definition relates to the "experience" prong of the judicial TOC analysis discussed previously. To be clear, our proposed ecologically valid definition of police contact is vicarious and direct police contact. In the spirit of ecological validity, we deliberately place the word "vicarious" before "direct" in these discussions to respectively reflect their emotional salience and overall impact. Although not everyone will experience direct police contact, most people—especially POC—will experience vicarious police contacts. Consistent with linked fate, as described earlier, and the experiences of the authors of color, one's expectation and emotional response to a direct contact is shaped by vicarious contacts.

The following vignette is based on police body camera footage from an actual incident that occurred in March 2017 in Grand Rapids, Michigan and demonstrates what experiences are missed when the narrow definition of police contact is used. Readers are invited to view the footage for themselves at https://youtu.be/_ONict5F3w4.

An adult tells an officer he saw two Black youths, one wearing a red casual athletic shirt and the other wearing a black outfit, and he believed one of them had a gun. Then the officer sees five Black youths walking down the street dressed in casual athletic wear. Two of them are in all black, two in all red, and one of them has on a white or green outfit. The officer gets out of his car, draws his gun while he crouches behind his car door, and orders the boys to "get on the ground." The boys comply. Beyond the boys, police sirens are flashing, but the distance is too great to determine if those officers are also pointing their guns at the boys. The officer repeatedly yells at a nearby woman to go back in her house.

The officer holding the boys at gunpoint is close enough that his body camera picks up some of what the boys say. More than once, they ask, "What did we do?" One boy quietly says, "They are going to try to put something on us, but we didn't do nothing." Another boy asks, "Can you please put your gun down?" Another boy loudly says, "I do not want to die, bro." At least one boy wails as he lies on the ground. None of the boys had a weapon, nor were they arrested. Instead, the police released them at the scene to their parents. (MLive, 2017)

Although this interaction with police did not result in an arrest, it exemplifies direct police contact for the five boys and vicarious contact for their parents and anyone else who witnessed the incident unfold or watched the video camera footage, which aired on local (e.g., Neavling, 2017), national (e.g., King, 2017), and international (e.g., Hobson, 2017) media and meets our definition of prior police contact.

Both qualitative and quantitative research exists exploring numerous aspects of the impact of vicarious and direct police contact on Black males. Themes that emerge from the qualitative research relate to how youths cope with vicarious and direct police contact and how that contact shapes the way they see and subsequently

interact with the police (Brunson, 2007; Fox-Williams, 2019; Lee & Robinson, 2019; Nordberg et al., 2016, 2018; Payne et al., 2017; Weitzer & Brunson, 2009). Quantitative research has examined the impact of vicarious and direct police contact on youths' future orientation (Testa et al., 2022), youths' perceptions of procedural (in)justice (Foster et al., 2022; Harris & Jones, 2020; Slocum & Wiley, 2018), and youths' legal cynicism and legal socialization (Geller & Fagan, 2019; Hofer et al., 2020). Given this growing body of qualitative and quantitative research, it is understandable that, from the youths' standpoint, the police pulled their guns on them for no apparent reason. Imagine that one of the boys was arrested and *Mirandized* 1–6 months following this police contact. In light of the aforementioned qualitative and quantitative research, coupled with his lived experience, it is easy to see how the above interaction with the police might influence his decision to waive his rights. Considering his lived experience, he might feel it is in his best interest to waive his rights to avoid what the police might do to him. He might even understand from a "technical" or constitutional perspective, the police are not supposed to do anything to a person who waives their rights. However, based on his lived experiences, he also understands that police do things to people that one might not expect or that he may not have imagined. Conversely, a person who experienced this police contact vicariously might choose to waive their rights, even if they understood them, because they feared what the police might do to them. If forensic clinicians and researchers continue to use a narrow definition of prior police contact that excludes racialized police contacts, they will fail to consider the impact of vicarious and direct contact even when it does not result in an arrest.

Psychological Impact of Vicarious Police Contacts

Vicarious police contact occurs when one witnesses, learns of, or knows about police contact that has occurred with someone else. Emotional responses to vicarious police contacts are racialized. For example, 28% of Black youths and 31% of multiracial youths, but only 11% of White youths, report feeling unsafe because of vicarious police contact (Jackson et al., 2021). Vicarious police contact is associated with increased emotional distress, including fear, anger, trauma symptoms, and depression (Bor et al., 2018; Das et al., 2021; Jackson et al., 2021; Jackson & Turney, 2021). Compared with mothers whose children have not been stopped by the police, those whose children have been stopped have a 69% and 79% increase in the odds of having depression-related sleep difficulties and anxiety-related sleep difficulties, respectively. Mothers' sleep difficulties were also correlated with the nature of the stop and how it impacted their child. More intrusive stops or those their children experienced as stigmatizing or traumatizing were associated with more maternal sleep difficulties (Jackson & Turney, 2021).

As a result of social media and more traditional media outlets, an extreme but tragically too common example of vicarious police contact is police murdering POC. The impact of this type of vicarious police contact is racialized and lasts for months after the killing (Bor et al., 2018; Das et al., 2021). For Black—but not White—Americans, police killing of an unarmed Black citizen is associated with worse mental health outcomes (Bor et al., 2018). In metropolitan counties where the police killed an unarmed Black person, there was an 11% increase in Black patients seen in the emergency department and diagnosed with depression (Das et al., 2021). This increase occurred during the month of the killing and the

3 months following it (Das et al., 2021). As the literature indicates, we live in a country where a person's race impacts how police view them and how they view police and also drives the psychological impact of encounters with the police. Yet, the impact of prior police contacts, especially those contacts that did not include a person being informed of their *Miranda* rights, is not something clinicians are instructed to consider when conducting *Miranda* evaluations.

Psychological Impact of Direct Police Contacts

POC are forced to endure more police contacts than their White counterparts (e.g., Figures & Legewie, 2019; Goel et al., 2016; Zeiders et al., 2021). The mental health consequences of the contacts are substantial. For POC, across their life spans, police contacts are associated with increased emotional distress, including anxiety, depression, and posttraumatic stress symptoms, and these symptoms increase with each additional police contact (e.g., Del Toro et al., 2019; Gearhart et al., 2022; Geller et al., 2014; Jackson et al., 2019; Jindal et al., 2022; McLeod et al., 2020; Turney, 2020). POC are often subjected to harsher and more intrusive police stops that involve being frisked, searched, and handcuffed. These intrusive police stops are associated with increased emotional distress (e.g., Geller et al., 2014; Jackson et al., 2019; Turney, 2020).

Proposed Changes to Current *Miranda* Evaluation Practices and Considerations

Existing instructions on conducting *Miranda* evaluations provide virtually no guidance on incorporating racial trauma and the impact of prior vicarious and direct police contacts when providing information related to the TOC. In this section, we discuss how clinicians can modify existing practices to include gathering and integrating additional information, namely the role that racial trauma and the impact of vicarious and direct prior police contact plays in *Miranda* waiver evaluations. By no means is the following discussion exhaustive. Instead, it is offered to encourage clinicians to think about how they can incorporate these crucial concepts—racial trauma and prior vicarious and direct police contact—into existing evaluation methods.

Record Review

We are not suggesting changes to the types of records routinely reviewed for this type of evaluation. Instead, in reviewing the documents, the clinician should note events that may have resulted in racial trauma as well as instances in which the defendant may have had prior police contacts as we define it. For example, when reviewing school disciplinary records, note whether a school resource officer, which is a police officer assigned to a school, was involved. Similarly, when reviewing the defendant's police records, the evaluator will want to note any police contact listed (including if the defendant was a victim or witness and if the encounter resulted in an arrest). During the interview portion of the assessment, the evaluator will want to review these noted contacts with the defendant to explore their psychological impact. Similarly, the evaluator can ask collateral sources about some of these instances to obtain additional information about how, if at all, the contacts affected the defendant. The resulting information could support or refute what the defendant provided.

Interviews With the Defendant

We suggest that evaluators expand each portion of the interview (psychosocial history and information related to *Miranda*) to explore whether and how racial trauma and vicarious and direct prior police contact impacted the defendant's psychological well-being and influenced the decision-making process that resulted in the waiver. When collecting a psychosocial history, evaluators should ask about the examinee's racial identity and experiences of racism and oppression, including questions that assess racial trauma. Moreover, the evaluator should do more than ask the defendant how many times they have heard their *Miranda* rights or how many times they have been arrested. Instead, we are proposing that the evaluator spend time exploring the number and type of the previous contacts and their impact, as well as the defendant's perspective. The following inquiries might provide this information: Was this defendant ever stopped and frisked (which may not be part of the legal/arrest record if the stop did not lead to an arrest), did they interact with police at their school, did they witness friends or family interacting with police during a traffic stop, and have they witnessed police interacting with individuals in their neighborhood?

Evaluators should also inquire as to what the defendant has been exposed to via media sources (e.g., witnessing police brutality on the news). Evaluators should spend time exploring how, if at all, these experiences impacted the defendant. This should result in a better understanding of how these experiences shaped the defendant's knowledge of the legal system and the defendant's knowledge of what the police actually do as opposed to what, from a purely legal perspective, they are or are not supposed to do. Similarly, this exploration can help the evaluator better understand the defendant's emotional state when the waiver was provided and over the course of the interrogation. The following case example of "Dillen," a Mexican American male, illustrates some of these points:

While interviewing Dillen, the clinician used basic clinical interview skills to learn about his prior vicarious and direct police contacts. In describing his most recent contact, Dillen told the evaluator the police stopped him and one of his close friends 3 months ago while they were walking in their neighborhood. The police frisked them, asked them some questions, and then took his friend away. The next day, Dillen's friend told him that while the police drove him around, they asked him about different crimes and insisted he either was involved in or knew something about them. At one point, they let a lady look at him as he sat in the back seat. Then the police told him to get out of the car, and he had to walk for an hour before he arrived home. Since learning about what happened to his friend, Dillen has had intrusive thoughts of the police "snatching him," cannot stop thinking about the police taking him so far away he cannot find his way home, and his body "gets tight" whenever he sees a police officer. He has also had difficulty sleeping. As one would do in any *Miranda* evaluation, the evaluator explored Dillen's understanding and appreciation of his *Miranda* rights and of the circumstances of the waiver. Dillen had a good understanding of his *Miranda* rights, as evidenced by the testing results and his responses during the interview. However, he also explained that he waived his rights because his body was "getting tight," he felt like he was getting lightheaded, and [he] feared what the police could do to him if he did not sign the waiver.

Dillen's case demonstrates how expanding *Miranda* evaluations to include an exploration of prior vicarious and direct police contact

can result in clinically useful information and information directly related to the court's TOC analysis.

Collateral Interviews

We anticipate that the sources of collateral information will not change. Instead, the scope of those interviews may change. For example, assume that Dillen was a 15-year-old youth. Evaluating a youth typically includes gathering information from the youth's parent or caregiver. In Dillen's case, that interview would be expanded to include exploring the police encounter that Dillen described and how it affected him. For example, how does his caregiver describe his sleep pattern over the past weeks? Typically, as part of the interviews with the parent and Dillen, the evaluator would explore what role the parent played in advising Dillen to waive his rights. However, we suggest taking this one step further. In the interview with the parent, the clinician would explore how the parent's prior experiences with the police and racial trauma influenced how they advised Dillen.

Testing and Instruments

We are not suggesting changing the instruments typically administered as part of a *Miranda* evaluation. However, regarding *Miranda*-specific instruments, such as the MRCI (Goldstein et al., 2012) or the SAMA (Rogers et al., 2012), we are suggesting an important change. Specifically, after administering the instruments in a standardized fashion, evaluators should use a follow-up technique similar to the one used with critical items of the Personality Assessment Inventory (Morey, 2007). Consider asking open-ended questions about some of the items in which the defendant earned partial credit. This could generate additional useful information. Using the stem, "Can you help me understand what you were thinking when you said . . ." provides the defendant an opportunity to explain what they were thinking and demonstrate how their prior experiences with the police or racial trauma may have influenced their understanding of their *Miranda* rights.

Interpreting the Data and Communicating to the Court

We are not minimizing the need for clinicians to generate and test hypotheses. As with any characteristic (e.g., psychosocial maturity, mental illness, or in this case, racial trauma or impact of prior police contact), it is not enough to say the defendant has that characteristic. The evaluator must draw a line between the characteristic and the defendant's ability to understand and appreciate their *Miranda* rights or relate the attribute to the TOC. This is not a novel concept. What is new is that we are explicitly asking clinicians to routinely collect data related to racial trauma and the impact of prior police contact. If these data are not collected, they cannot be incorporated in the interpretative process and the clinician cannot consider them while generating and analyzing alternative hypotheses.

We are not proposing any changes to how the clinician communicates their opinion about a defendant's ability to understand and appreciate their rights. Clinicians are expected to provide information for courts to consider in their TOC analysis. Courts routinely consider a defendant's background and experience. Psychologists are in a unique position to provide courts with information about

how the impact of the racial trauma and vicarious and direct police contact—aspects of a person's background or experience—may have influenced a defendant's decision to waive their rights.

Research and Policy Implications and Recommendations

In this section, we apply some of the recommendations made to psychologists and researchers outside of forensic psychology (Buchanan et al., 2021; Galán et al., 2021) and then offer a policy recommendation directed at law enforcement. Expanding on their suggestions, we recommend that researchers and practitioners work with community partners to develop creative ways to increase the public's understanding of their *Miranda* rights (including the purpose of these rights, what asserting their rights means, and the consequences of waiving their rights) and how racial trauma and vicarious and direct police contact impact mental health and behavior. Among other things, this will involve seeking input from community partners about how to tailor the message to engage citizens of different ages.

In line with Buchanan et al. (2021) and Galán et al. (2021), we recommend that researchers in the area of psychology and law collaborate with community partners at each step of the research process and budget to compensate their community partners. We believe that these collaborations will generate more ecologically valid research. For example, if researchers had conducted focus groups with racially and ethnically diverse community partners (who did and did not have direct experience with the legal system) and asked them to describe their prior experiences with the police, researchers would have a better understanding of the frequency and impact of vicarious and direct police contact for POC. They would also have a better understanding of racial differences in perceptions of the police and would have gained a better understanding of the inherent limits of equating prior police contacts to those contacts that resulted in an arrest or a court referral. Finally, we recommend that with the assistance of community partners, researchers should explore the following topics: (a) how parents' experiences of racialized trauma and vicarious and direct police contact influence what they tell their children about waiving their *Miranda* rights, (b) the relationship between understanding and appreciating one's *Miranda* rights and scores on an existing racial discrimination or racial trauma scale, and (c) what within-group variables influence these two topics.

On the basis of the work of the American Psychological Association Task Force on Race and Ethnicity Guidelines in Psychology (2019), as well as the recommendations of Buchanan et al. (2021) and Galán et al. (2021), we recommend that forensic researchers familiarize themselves with and apply the concepts of positionality and cultural humility to their work. If researchers do this, they will be less likely to treat racial differences as a noise variable to statistically control for and be more likely to consider the sociocultural factors that promote and maintain racial differences and to examine how those factors influence the larger legal issue at hand. In this vein, we recommend that forensic psychologists use qualitative research methods to amplify the lived experiences of POC.

We recommend that both practitioners and researchers work with police departments to develop policies and procedures that result in information or data that judges could consider in the TOC analysis. For example, forensic psychologists are trained to inform examinees

of important concepts, such as the purpose of the evaluation and limits of confidentiality, and ascertain and document the examinees' understanding before conducting the evaluation. Psychologists could work with police to help them develop a similar procedure for documenting the suspect's understanding of their *Miranda* rights prior to waiving them.

Forensic psychologists should not miss the opportunity to respond when courts signal their desire for information regarding how experiences can shape behavior and psycholegal concepts. Although this article focuses on *Miranda* evaluations and, by extension, *Miranda* research, we encourage clinicians and researchers to consider what they can do to increase the ecological validity of all of their work and to ensure it reflects the lived experience of the people who are impacted by their work.

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