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### Do Juveniles Understand What an Attorney is Supposed to Do Well Enough to Make Knowing and Intelligent Decisions About Waiving Their Right to Counsel?: An Exploratory Study

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**Editor's Note:**

*The data gathered for this study was from juveniles who were in a facility and thus had experience with the system, which may have informed their assessment of zealous representation and attorney-client privilege. As the title indicates, this is an exploratory study. No additional literature on this specific topic can be found and thus this article provides a useful framework as well as useful preliminary findings that can guide future research.*

*The manuscript uses a non-probability sample. This approach is typical in the social sciences, especially in the justice system, given the legal and ethical difficulties associated with having human beings randomly assigned to systemic interventions. The manuscript explicitly notes this generalizability issue.*

*While the authors and this journal do not think this article is the last word on juvenile understanding of zealous representation and attorney-client privilege, we collectively hope it begins a conversation about an important but unresearched aspect of juvenile waiver of Miranda rights.*

*This study examines juveniles' understanding of attorney-client privilege and zealous representation using a sample of committed juveniles. Since these attributes are what make an attorney's assistance valuable, an understanding of these basic concepts should be a necessary pre-requisite for any juvenile's valid waiver of the right to counsel under Miranda. The impact of respondents' various demographic attributes, exposure to the legal system and attitudes regarding the fairness of court proceedings and the outcome of their own case on their understanding of the duty to zealously represent and attorney-client privilege are analyzed. Findings suggest that even among juveniles who have been through the system, various aspects of zealous representation and attorney-client privilege are not fully understood. Greater experience with the system and living in an urban area tend to correlate with greater understanding of attorney-client privilege. Urban dwellers are, however, less likely to think that it is wise for defendants to tell their attorneys the whole story. The policy implications of these results are evaluated.*

**Keywords:** *Miranda; Waiver; Juveniles; Attorney-client privilege; Zealous representation*

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## INTRODUCTION

From the common law defense of infancy to the modern day debate about whether life imprisonment is ever an appropriate punishment for juveniles, Anglo-American jurisprudence has struggled with how to treat the youngest of citizens. Children, or juveniles as they are often referred to in legal contexts, are the recipients of both extraordinary tolerance and extraordinary repression at the hands of the courts. On the one hand, people who are less than 18 years old at the time they commit a crime cannot be executed no matter how heinous or depraved the crime and irrespective of the number of victims (see e.g., *Roper v. Simmons*, 2005). On the other hand, juveniles can be taken into custody and punished for staying out too late or disobeying their parents' lawful orders even if they were engaged in nothing more nefarious than hanging out with their friends (see e.g., *Smook v. Minnehaha County*, 2006).

Arresting an adult under similar circumstances would clearly violate the Fourth Amendment, but the Supreme Court has made clear that adult and juvenile constitutional rights are not necessarily coextensive (see e.g., *New Jersey v. T.L.O.*, 1985). While juveniles have constitutional rights, they are not always entitled to the same range of protections as adults. The issue of which rights a juvenile is entitled to in the context of the Fifth Amendment's prohibition against involuntary self-incrimination has recently been the subject of significant research and debate (see e.g., Feld, 2013). A significant amount of this research focuses on whether juveniles are capable of understanding and appreciating the meaning of *Miranda* warnings and whether, and under what circumstances, juveniles can validly waive their Fifth Amendment rights.

Inherent in this discussion is an assumption that juveniles understand what lawyers do and that they know why defense attorneys are important to the criminal justice process. These assumptions usually remain unexamined and even unexpressed, yet they are critical to the debate about what the Fifth Amendment should mean in the juvenile context. Clearly, if juveniles are unaware that defense attorneys are supposed to advocate for them and that their lawyers are not

just another part of the juvenile justice process trying to ensure punishment, they are unlikely to appropriately value the assistance of a defense attorney. A right that is not understood and not properly valued may be thrown away easily and inadvisably. This research attempts to fill a void by explicitly exploring whether juveniles comprehend what a lawyer is supposed to do for them. A baseline understanding of the role and function of an attorney should be a precondition for any knowing and intelligent waiver of the right to counsel.

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## LEGAL BACKGROUND

The right to counsel afforded defendants under the Sixth Amendment to the U.S. Constitution is often recognized as “the most important of rights granted to criminal defendants by the Constitution” (*McGriff v. Dept. of Corrections*, 2003, p. 1236). Like their adult counterparts in criminal court, juveniles are entitled to the assistance of counsel in delinquency proceedings (*In re Gault et al.*, 1967). The right to counsel is critical because it safeguards other rights by facilitating vigorous enforcement of those through the assistance of a trained advocate.

As advocates, defense attorneys have an obligation to zealously represent their clients (ABA Model Code of Professional Responsibility, Canon 7). In other words, defense attorneys are obligated to act in their clients’ best interests, without regard to the public good or other considerations (Smith, 2000). Unlike prosecutors, who at least in theory have an obligation to see that justice is done (*Brady v. Maryland*, 1963), defense attorneys work only for their clients. Defense attorneys are obligated to pursue all applicable procedural and substantive defenses without regard to a client’s factual guilt or innocence, so long as they do not suborn perjury or perpetrate another fraud upon the court (Sterling, 2009). This duty to zealously represent their clients within the bounds of their ethical duties is one of the key reasons defense attorneys are so valuable to the accused.

The duty to zealously represent would be nearly impossible to fulfill if attorneys were not able to candidly gather information from their clients. Attorney-client privilege has long been regarded as essential to an attorney’s function as an advocate (Hazard, 1978). Unless the client consents or waives the privilege, attorney-client privilege prohibits attorneys from disclosing to third parties anything their clients tell them during the course of the representation, except in rare instances where such disclosure is necessary to prevent a crime or the occurrence of substantial bodily harm (ABA Model Code of Professional Responsibility, Canon 4). This privilege extends to all clients irrespective of the client’s age or status as a juvenile (see e.g., Sterling, 2009). Attorney-client privilege enables clients to fully disclose what happened so that their attorneys can properly prepare their defenses, without fear of their lawyers becoming witnesses against them or otherwise assisting the state in building its case. Defense counsel stripped of attorney-client privilege would be at best useless to the accused and at worst extremely detrimental, potentially providing the state with damning evidence from the defendant’s own mouth which might otherwise have been unavailable.

In addition to providing a right to counsel at trial, the Sixth Amendment provides defendants with the right to counsel at any critical stage of the proceeding (see e.g., *White v. Maryland*,

1963). In other words, the Supreme Court recognizes that the right to have counsel at trial would be meaningless if the accused was denied the assistance of an attorney at prior stages which might be outcome-determinative, such as arraignment (*Hamilton v. Alabama*, 1961). While the right to counsel under the Sixth Amendment does not usually attach until the defendant has been charged, defendants are also afforded the right to counsel under the Fifth Amendment in certain situations.

The Fifth Amendment grants defendants access to counsel to prevent the state from compelling defendants to incriminate themselves. The U.S. Supreme Court has held that the Fifth Amendment requires that suspects be advised, prior to any custodial interrogation, that they have the right to remain silent and that if they choose to give up that right, anything they say may be used against them in a court of law. They must also be informed that they have the right to an attorney prior to answering any questions and that if they cannot afford an attorney, one will be provided for them free of charge (*Miranda v. Arizona*, 1966; *Dickerson v. United States*, 2000).<sup>1</sup> These are, of course, the now familiar *Miranda* warnings.

Although the U.S. Supreme Court has never been asked to explicitly address the issue of whether *Miranda* warnings apply to juveniles, its existing jurisprudence certainly suggests that they do. In *Fare v. Michael C.* (1979), a juvenile was given *Miranda* warnings and in response asked to speak to his probation officer. The U.S. Supreme Court found that a request to speak to a probation officer was not the same as a request to speak to an attorney, so the juvenile had failed to invoke his Fifth Amendment rights, and his subsequent statements were admissible (*Fare v. Michael C.*, 1979).

More recently, the Court confronted the issue of whether a child's age should be considered in evaluating whether the child was in custody for *Miranda* purposes (*J.D.B. v. North Carolina*, 2011). The state maintained that the child was free to leave and, therefore, was not in custody during the interview with the police that occurred at the child's school. Because *Miranda* warnings are only constitutionally mandated when the subjects of the interrogation are in custody and thus reasonably believe they are not free to go, the government argued that the police failure to *Mirandize* the child before questioning him did not affect the admissibility of his statements. Noting that a child's age may well influence his reasonable belief regarding whether he was free to leave, the U.S. Supreme Court held that it was reversible error for the lower court to refuse to consider the child's age in ruling on the suppression motion.

While the Supreme Court insists that suspects in custody must be advised of their Fifth Amendment rights prior to being subjected to custodial interrogation via the warnings contained in *Miranda*, they leave the decision about whether to actually invoke those rights to the suspects themselves. Invocations must be made unambiguously and the Court has remained firm that suspects may waive their rights and speak to the police so long as the waiver is knowing, voluntary, and intelligent (*Maryland v. Shatzer*, 2010). A voluntary, knowing, and intelligent waiver must not only be free from threats and coercion, it must also be made with an

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<sup>1</sup> Once charges have been filed, the Sixth Amendment attaches. The Sixth Amendment provides a right to counsel at post-arraignment interrogations (*Michigan v. Jackson*, 1986).

understanding of what the right is and with an intention to relinquish it (see e.g., *Johnson v. Zerbst*, 1938; *Iowa v. Tovar*, 2004; *Maryland v. Shatzer*, 2010; *Davis v. Unites States*, 1994).<sup>2</sup>

Although the Supreme Court appears to be willing to allow children to waive their *Miranda* rights, it is not entirely clear what impact their status as juveniles should have on the validity of their waiver or on the circumstances under which they might be permitted to waive those rights (see e.g., *Fare v. Michael C.*, 1979; *J.D.B. v. North Carolina*, 2011). The constitutional rights of children are not necessarily coextensive with those of adults, nor are they necessarily implemented and enforced in the same manner (*New Jersey v T.L.O.*, 1985). Thus, it is an open question as to whether special rules are warranted with regard to juveniles and *Miranda* warnings. The Court's recent decision in *J.D.B. v North Carolina* (2011), however, suggests that it may be willing to extend special safeguards to juveniles in this context.

Pending action by the Supreme Court, a number of states have found *Miranda* inadequate and have taken the initiative to impose additional safeguards for juveniles in their jurisdictions facing custodial interrogations. For example, a number of states require that juveniles be afforded the opportunity to consult with a parent, guardian, or other trusted adult before they can waive their *Miranda* rights and/or have that adult present during the interrogation (*Lewis v. State*, 1972; *State in Interest of Dino*, 1978; *In re K.W.B.*, 1973; *In re E.T.C.*, 1982; *State ex rel. J.M. v. Taylor*, 1981). Some states require that juveniles accused of crimes which would constitute felonies if committed by adults be informed of the possibility of prosecution in adult court in order for a waiver of rights to be deemed valid (see e.g., *State v. Benoit*, 1985). Quite a few jurisdictions use specialized *Miranda* warnings for juveniles (Rogers et al., 2012; Rogers et al., 2008). The New Hampshire Supreme Court, for example, recommends that police in that state use a more elaborate *Miranda* form that explains the core *Miranda* rights in much greater detail (*State v. Benoit*, 1985). Significantly, the Court appeared to conclude that an understanding of attorney-client privilege is a prerequisite to a knowing and intelligent waiver of *Miranda* rights as it recommended the following language for juveniles:

You have the right to talk to a lawyer before any questioning. You have the right to have the lawyer with you while you are being questioned. The lawyer will help you decide what you should do or say. The things you say to the lawyer cannot be used in court to prove what you may have done (*State v. Benoit*, 1985, p. 307).

Examining other areas of jurisprudence may help to inform the discussion of what, if any, special protections are warranted for juveniles facing police interrogation. Typically, the government is charged with acting in the best interest of the child when it intervenes in children's lives (see e.g., *Chafin v. Chafin*, 2013; Thompson, 2008). Indeed, the juvenile court system in the United States was founded on the notion of *parens patriae*, the idea that the government must sometimes act in place of parents who cannot or will not provide their child with appropriate care, supervision, and training (Burns, 1996). Both court-appointed special advocates (CASA)

<sup>2</sup> Traditionally, once suspects invoked their *Miranda* rights, the police could not make further attempts to interrogate them until counsel was made available unless the suspects initiated the subsequent contact and indicated a current willingness to waive their rights (*Edwards v. Arizona*, 1981). The Supreme Court later clarified the temporal reach of an invocation, finding that a two-week break in custody is sufficient to permit the police to re-approach suspects and re-Mirandize them in an attempt to obtain valid waivers (*Maryland v. Shatzer*, 2010).

and *guardian ad litem*s are charged with investigating and asserting the child's best interest in juvenile court in order to facilitate appropriate decision-making by the juvenile court judge (Costantakos, 2007). The extent to which the child's best interest and *parens patriae* will ultimately be accommodated with the interests of law enforcement in spelling out comprehensive requirements surrounding juveniles' waiver of their *Miranda* right awaits further guidance from the Supreme Court.

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## PRIOR EMPIRICAL RESEARCH

There is very little empirical research specifically examining how well juveniles understand the role of an attorney as advocate and the implications of attorney-client privilege. There is, however, some research looking at how well juveniles understand the meaning of the right to counsel more generally. For example, Rogers and his colleagues (2012), in an extensive study of *Miranda* warnings used by various jurisdictions nationwide, found that an attorney's role is either not explained at all or is described as limited to passive activities such as "being present." At best, juveniles were told they could consult with or be advised by an attorney (Rogers et al., 2012). Being told that they can be advised by or consult with an attorney, absent an understanding of a lawyer's advocacy role and attorney-client privilege, probably does not adequately convey to juveniles that talking to their lawyer is very different from talking to the police.

The lack of research on what juveniles understand about the advocacy role of an attorney and attorney-client privilege is unfortunate because, as discussed in Section 2, attorney-client privilege is one of the key reasons lawyers are able to act as effective advocates for their clients. Although this piece of the puzzle is missing, there is quite a bit of research considering the more general question of whether juveniles are capable of understanding *Miranda* warnings and whether they are capable of understanding the ramifications of a decision to waive their *Miranda* rights.

Abundant literature documents that *Miranda* warnings vary considerably from jurisdiction to jurisdiction (see e.g., Rogers et al, 2012). Along with textual variances come marked differences in the degree of education and sophistication necessary to understand the meaning of these warnings. Rogers and his colleagues (2012) found that although some jurisdictions used juvenile *Miranda* warnings which were less than 75 words, others used warnings well in excess of 300 words. They note that many of these lengthier warnings require juveniles to retain and process many more concepts than even an adult with excellent working memory would be capable of handling (Rogers et al, 2012). Moreover, oral administration of warnings, which is typical, exacerbates the difficulty in comprehension caused by length.

More troubling still, Rogers and his colleagues (2012) found that although most of these juvenile warnings should have been comprehensible to juveniles with a seventh- to ninth-grade education, some required a college-level reading ability (Rogers et al, 2012). Their findings concerning waiver are similar, suggesting that the language the police use to ask juveniles to waive their rights is skewed toward encouraging waiver and rarely mentions the risks associated with it (see

also Feld, 2013). Moreover, there are significant comprehension problems associated with waiver language (Goldstein & Goldstein, 2010; Rogers et al., 2012). These comprehension problems may explain why so many juveniles fail to invoke their rights and are interrogated without the benefit of defense counsel (Cleary, 2013).

Psychologists and other experts have amassed a considerable amount of data that indicate that cognitive skills and frontal lobe structures continue to develop throughout adolescence (Feld, 2013; Johnson et al., 2009; Scott and Grisso, 1997; Scott and Steinberg, 2008). The evidence suggests that mental and physiological differences make it more difficult for juveniles than adults to understand the substance of their rights as well as the ramifications of waiving those rights (Abramovitch et al., 1995; Feld, 2013; Grisso, 1980; Viljoen and Roesch, 2005). In other words, juveniles are demonstrably less able than adults to comprehend their *Miranda* rights and knowingly and intelligently waive them (Goldstein et al., 2012; Viljoen et al., 2007). These deficits increase as the age of the child decreases (see Grisso, 1980; Grisso et al. 2003; Viljoen and Roesch, 2005; Viljoen et al., 2007). Even as older juveniles develop cognitive skills that are comparable to adults, they lack maturity of judgment until their twenties and thus remain at a disadvantage when making legal decisions like whether to waive *Miranda* rights (Feld, 2013).

There is reason to believe that actual experience with the legal system may make a suspect more legally competent and astute (Buss, 2000; Viljoen and Roesch, 2005). Most defense attorneys subscribe wholeheartedly to the old adage “if you don’t talk, you might walk,” and suspects who have been through the system before are likely to have dealt with an attorney who admonished them about talking to the police. Indeed, the evidence suggests that time spent with an attorney positively impacts juveniles’ understanding of interrogation rights (Viljoen and Roesch, 2005). In addition to instruction from their previous attorneys, their prior experiences may have taught them that talking to the police only helps the state to prove its case (Feld, 2013). This may well explain why prior experience with the criminal justice system is a strong predictor of adult suspects’ assertions of *Miranda* rights (Leo, 1996). Similar learning likely occurs with juveniles suggesting that those with prior records may be more likely to invoke their rights, perhaps irrespective of the actual content of the warning or the manner in which it is delivered (Buss, 2000). One study found that prior arrest enhanced juveniles’ appreciation of the right to counsel (Viljoen and Roesch, 2005).

### Demographic Effects

While some evidence suggests that girls acquire verbal and possibly cognitive skills before boys (Kramer et al., 1997), this does not necessarily mean that girls will better understand their legal rights. Indeed, some researchers have found that gender does not significantly impact legal capacities (Grisso et al., 2003). Other research has found that females actually score worse than males on measures of understanding of adjudicative proceedings and appreciation of the right to silence (Viljoen and Roesch, 2005).

While boys may be better at comprehending what the right to silence means, there is some evidence to suggest that boys may be less cognizant of what attorney-client privilege means and may have a reduced understanding of the role of a lawyer as advocate. Specifically, Viljoen et al. (2005) found that “males were less likely to report that they would trust their attorneys

enough to disclose information about their case to them” (p. 272). Greater female willingness to disclose to attorneys might be a function of a greater understanding of what a lawyer is supposed to do for a client.

Ethnicity and/or race may also impact juveniles’ understanding of their legal rights. Research shows that juveniles from ethnic minority groups were less likely to disclose information to their attorneys (Viljoen et al., 2005). Socioeconomic status can also impact a juvenile’s appreciation of legal rights (Melton, 1980). Viljoen and colleagues (2005) found that juveniles from lower socioeconomic backgrounds were less likely than other juveniles to assert their interrogation rights. They suggested that this difference might be a product of lower-class children’s social experiences with rights (Viljoen et al., 2005).

As previously mentioned, cognitive function increases with age thus it is not surprising that younger children are less likely than older children to protect their legal self-interests (Feld, 2013; Grisso, 1980). For example, younger juveniles are more likely than older adolescents to waive their right to silence (Abramovitch et al., 1993; Grisso and Pomicter, 1977). Younger juveniles have also been shown to have a poorer understanding and appreciation of their interrogation rights than older adolescents and adults (Grisso, 1980). Some research also indicates that younger juveniles are more likely than older juveniles to waive their right to counsel and confess (Viljoen et al., 2005). It should be noted, however, that other research does not indicate that younger juveniles are more likely than older juveniles to waive the right to counsel during police questioning (Abramovitch et al., 1995).

Prior research indicates juveniles are significantly more likely to waive their *Miranda* rights than are adults (Goldstein and Goldstein, 2010). In a recent study, almost 93% of juveniles waived their *Miranda* rights (Feld, 2013). This eagerness to waive their rights may be due to a greater susceptibility to coercion or a greater deficit in understanding the importance of these rights to defendants. These extremely high rates of waiver among juveniles are especially alarming given evidence that juveniles may be particularly susceptible to interrogation-induced false confessions and resultant wrongful convictions (Boyd, 2004; Kassin et al., 2010; LaMontagne, 2013; Meyer and Reppucci 2007; Scott-Hayward, 2007).

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## DATA AND METHODS

### Study participants

#### Participants and procedures

The data for this article (N = 253) are derived from a non-probability sample of 14- to 19-year-old youth in two private, non-profit, long-term residential placement facilities for juvenile offenders (one male only and one female only) in Western Pennsylvania. Youth were sent to the facilities for a variety of property, person, drug, and status offenses. The vast majority of youth reported a history of involvement in delinquent behavior and the juvenile court spanning several years.

Data collection at the boys' facility occurred from June 2009 through August 2009. Criteria for boys being enrolled in the study included being between 14 and 18 years old and having been in the facility between three and 12 months when recruitment started. Data collection at the girls' facility occurred over a four-month period from October 2009 until February 2010. This facility is much smaller than the boys' facility so we attempted to include all the young women in the facility and all of those that entered during the data collection period. Data were collected in accordance with protocols approved by the Institutional Review Board at the University of Pittsburgh. After the study was described by facility staff and the youth expressed interest, supervisors at the facilities provided approval for the youth to take part in the study and the youth were referred to research staff. Overall, more than 95% of those referred assented to and completed the interview at both facilities.

Prior to administering the instrument, the interviewer explained the purpose of the study and received assent from each youth (consent from those 18 and 19 years old). Structured one-on-one interviews were carried out by trained graduate students using Computer-Assisted Survey Interview (CASI) techniques. Interviewers completed an intensive one-day training session and an interview editor was on-site to minimize interviewer omissions and errors as youth were interviewed.

Private areas in rooms allowed confidential interviews to be conducted simultaneously with between three and five youths. According to the CASI data collection procedures, each question was read to the respondents and supplemented with response cards. There was an on-site data editor free during the interviews to help answer any questions and provide quality control to data collection procedures.

#### Measures

Table 1 presents the descriptive characteristics of the sample. Most of the subjects interviewed were male (N=152) although about 40% were female (N=101). Sex was coded 1 for male and 0 for female. Although the gender composition of our sample does not match the overall gender composition of young people committed to juvenile justice residential facilities in the U.S. -- 87% male and 13% female (Sickmund et al., 2008) -- it does provide an opportunity to examine gender differences in the characteristics and behaviors of young people who are committed to these facilities.

Respondents were asked to self-identify in terms of race as being African-American, White, Latino/Latina, Biracial, or other (Table 1). For purposes of subsequent analyses, race was collapsed into two dichotomous variables reflecting whether the respondent self-identified as White (1) or something else (0) and whether the respondent self-identified as African-American (1) or something else (0).

In addition, respondents were asked to indicate their chronological age and their current or most recently completed grade in school. They were also asked where they lived and were offered a selection of responses from which to choose: urban, suburban, small town, or rural. This residency measure was dichotomized to reflect whether a respondent lived in an urban area (1) or other type of area (0). Respondents were also asked yes/no questions about whether they lived with their biological mother or biological father prior to commitment and whether their family

received public assistance such as Section 8 housing, food stamps, welfare payouts pursuant to Temporary Assistance for Needy Families (TANF), or medical care with the Pennsylvania ACCESS Card. Like all of the questions seeking yes/no answers, responses were coded 1 for yes and 0 for no. The measure of public assistance was used as a stand-in for socio-economic status (SES) in subsequent analyses.

Data about personal and familial legal exposure was also collected. Respondents were asked how many times they had been arrested and at what age they first came in contact with police and the juvenile court. Family involvement was measured through yes/no questions about whether parents or siblings had incarceration histories.

Respondents were also asked why they were referred to the facility and were offered multiple-choice responses: offense, probation violation, child welfare, or other. For purposes of further analyses, the referral variable was recoded: Delinquent offenses including probation violation were grouped together and coded 1; juveniles referred for other reasons were coded 0. Juveniles brought into the system for delinquent offenses including probation violation would have been entitled to an attorney pursuant to *In re Gault* (1967) and progeny, unlike juveniles brought in to the system for status or dependency reasons who may or may not have had contact with a defense attorney.

#### Knowledge of the role of an attorney

Subjects were asked to respond to a number of statements concerning the role and function of attorneys and the court. These statements related to the duty to zealously represent, attorney-client privilege, and the respondents' beliefs in the fairness of the outcome of their case and of the court system generally. Respondents were asked to respond using a Likert scale and, except where otherwise indicated, the Likert scale responses were coded as follows: strongly agree (1), agree (2), neither agree nor disagree (3), disagree (4), and strongly disagree (5).

#### Zealous representation

In order to determine whether respondents believed their defense attorneys zealously represented them, they were asked to respond using the Likert scale described in the previous section to the following statements:

If the court gets you a lawyer because you cannot afford to pay for one, that lawyer is there to represent you (hereinafter referred to as represents you).

Your lawyer did fight hard with you (hereinafter referred to as fought hard).

Your lawyer did not listen to what you wanted to do (hereinafter referred to as didn't listen).

Your lawyer did tell you the truth (hereinafter referred to as truthful).

Your lawyer did give you good advice (hereinafter referred to as good advice).

The most important role of the defense attorney is to do what you want them to do (hereinafter referred to as do what want)

Your lawyer cared more about getting your case over with quickly than about getting justice for you (hereinafter referred to as get it over)

For purposes of further analysis, the individual items measuring aspects of understanding zealous representation were dichotomized to distinguish responses supportive of the concept of zealous representation from those which were not. Responses of agree or strongly agree relative to statements that the lawyer represented respondents, fought hard, was truthful, gave good advice, and did what respondents wanted them to do were coded 1. Disagreement or strong disagreement with statements that the lawyer did not listen and cared more about concluding the case than getting justice were likewise coded 1 as supportive of the concept of zealous representation. On the other hand, responses indicating disagreement, strong disagreement, or neither agreement nor disagreement with statements that the lawyer represented respondents, fought hard, was truthful, gave good advice, and did what respondents wanted them to do were coded 0. Responses agreeing, strongly agreeing, or neither agreeing nor disagreeing that the lawyer did not listen and wanted to conclude the case more than get justice for the client were likewise coded 0 as unsupportive of the concept of zealous representation.

#### Attorney-client privilege

Understanding of attorney-client privilege was tested by asking respondents whether their attorney could tell various people about what they talked about without first securing the respondents' permission. Specifically, respondents addressed the following statements:

Without your permission, your lawyer can tell your parents what you talk about when you meet.

Without your permission, your lawyer can tell the police about what you talk about when you meet.

Without your permission, your lawyer can tell the judge what you talk about when you meet.

Without your permission, your lawyer can tell your probation officer what you talk about when you meet.

For purposes of further analysis, the individual items measuring specific dimensions of attorney-client privilege were dichotomized. Respondents answering disagree or strongly disagree were coded with a 1 to reflect a correct understanding of how attorney-client privilege operates in each of the specified contexts. Respondents giving other answers were coded with 0, indicating that they did not understand how attorney-client privilege operated in these contexts. These four dichotomized variables were then added together to create a scale reflecting understanding of attorney-client privilege. A zero on the scale variable indicates that respondents thought their attorney could talk to all of the identified groups without their permission, while a 4 indicates that respondents knew that their attorney was prohibited from disclosing their communications to police, parents, judges, and probation officers.

One question provided information about whether respondents appreciate the behavioral implications of attorney-client privilege and the defense attorney's role as zealous advocate. Clients who fully appreciate these concepts should recognize that confiding in their attorney cannot hurt them and may help them by facilitating preparation of a proper defense. To determine if respondents were able to make this cognitive leap, they were asked to respond to the following statement, "It is a good idea for people charged with a crime to tell their lawyer the whole story."

#### Belief in fairness of the courts and their case

Respondents were also asked to respond to items reflecting both general and specific belief in the fairness of the courts. First, they were asked to respond to the statement, "Many people convicted of crimes in the courts are actually innocent." This item was recorded differently than the other Likert scale questions and used the following scale: strongly disagree (1), disagree (2), agree (3), and strongly agree (4). Subjects also responded to the following statement: "The outcome of your case was fair." Responses to this item were recorded using the standard Likert scale discussed previously.

#### Analytic plan

Given the nature of the data and the research question, primary analyses were descriptive in nature. Of specific interest was discerning the proportion of committed juveniles who displayed an incorrect or deficient understanding of concepts related to zealous representation and attorney-client privilege. An examination of relevant bivariate associations was also undertaken to determine the correlates of zealous representation and attorney-client privilege. A series of bivariate correlation matrixes were constructed to determine which measures of demographic status, legal exposure, and beliefs regarding case/system fairness correlated with measures related to zealous representation and attorney-client privilege. Using the results of the correlation matrixes to inform variable selection, regression analysis was then performed.

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## RESULTS

As is clear from Table 1, more than half of the respondents self-identified as being African-American and close to a quarter self-identified as White. Hispanics and biracial self-identifiers were also used with some regularity. Age distribution was typical for a juvenile facility: Age ranged from 13 to 19 years with most of the respondents age 16 or 17 years (mean age of 16.21). Educational attainments were also as expected with most respondents being in ninth, 10<sup>th</sup>, or 11<sup>th</sup> grade.

Most of the respondents (N=186) reported that they lived in an urban area prior to their commitment. Less than 10% of the sample (N=22) reported living in the suburbs near a city. Thirty-nine respondents indicated they had lived in a small town while only six indicated that they had lived in a rural area. About half of the sample (N=124) reported that their family received public assistance of some kind (e.g., food stamps, TANF, or Section 8 housing), indicating that many of the juveniles were from families with lower socio-economic status.

**Table 1. Demographic and legal contact characteristics of the study sample.**

<b>Race</b>	<b>N</b>	<b>%</b>	<b>Age</b>	<b>N</b>	<b>%</b>	<b>Grade</b>	<b>N</b>	<b>%</b>
Black	131	51.8	13-14	28	11.1	7th-8th	30	11.9
White	57	22.5	15	42	16.6	9th	51	20.2
Latino/Latina	31	12.3	16	76	30.0	10th	81	32
Biracial	20	7.9	17	62	24.5	11th	58	22.9
Other	14	5.5	18-19	44	17.4	12th or Grad.	33	13.1
Missing	0	0.0	Missing	1	.4	Missing	0	0
<b>Total</b>	<b>253</b>	<b>100.0</b>	<b>Total</b>	<b>253</b>	<b>100.0</b>	<b>Total</b>	<b>253</b>	<b>100.1</b>
			<b>Age at 1st Referral to Police</b>			<b>Age at 1st referral to Juv. Court</b>		
<b>Arrests</b>	<b>N</b>	<b>%</b>	<b>Age</b>	<b>N</b>	<b>%</b>	<b>Age</b>	<b>N</b>	<b>%</b>
0	14	5.5	Under 10	17	6.7	Under 10	2	.8
1	43	17.0	10	21	8.3	10	8	3.2
2	50	19.8	11	24	9.5	11	12	4.7
3	41	16.2	12	37	14.6	12	24	9.5
4	21	8.3	13	43	17.0	13	48	19.0
5	14	5.5	14	46	18.2	14	43	17.0
6-10	33.0	13.0	15	39	15.4	15	60	23.7
11+	10	4.0	16-17	23	9.1	16	51	20.2
Missing	27	10.7	Missing	3	1.2	Missing	5	2.0
<b>Total</b>	<b>253</b>	<b>100.0</b>	<b>Total</b>	<b>253</b>	<b>100.0</b>	<b>Total</b>	<b>253</b>	<b>100.0</b>

About two-thirds of the sample (N=165) resided with their biological mother while less than 20% (N=50) reported living with their biological father prior to commitment.

A fairly large proportion of the sample had system-involved family members. This vicarious exposure to the criminal justice system may have provided juveniles with an opportunity to learn about the role of attorneys and why *Miranda* rights are important. More than half of the juveniles (N=130)<sup>3</sup> reported that their father had been incarcerated and more than a quarter (N=64) reported that their mother had been incarcerated.<sup>4</sup> About 47% of the juveniles (N=119) reported that one of more of their siblings had been incarcerated.<sup>5</sup>

<sup>3</sup> In about 21% of the cases (N=53), data was either missing or the juvenile reported that they did not know whether their father had done jail time.

<sup>4</sup> In about 15% of the cases (N=39), data was either missing or the juveniles reported that they did not know whether their mother had done jail time.

<sup>5</sup> In about 12% of the cases (N=30), data was either missing or the juveniles reported that they did not know whether their siblings had done jail time.

In terms of their own direct involvement with the system, less than 6% of the sample reported no prior arrests (see Table 1). On average, respondents had been arrested 3.68 times. Most were arrested one to three times, although one respondent claimed to have been arrested 32 times. The respondents also had contact with the system at relatively young ages (see Table 1). On average, respondents were 12 years old (mean=12.80) when they had their first contact with the police and were not quite 14 years old (mean=13.99) when they were referred to juvenile court for the first time. About a quarter (N=67) reported that they had been placed in a juvenile justice facility other than for detention prior to their current commitment. Most of the respondents were referred for violating their probation (N=115) or committing a new offense (N=66). Relatively few were there for child welfare (N=25) or other matters (e.g., status offenses, pending a transfer, etc.) (N=21).

At the most basic level, zealous representation requires that a defense attorney actually represent the client. About 80% of respondents agreed or strongly agreed that a court-appointed lawyer was there to represent them. About 10% of the respondents lacked even this rudimentary knowledge and indicated that appointed counsel did not represent them, a further 10% gave no answer or the data was missing (see Appendix A).

While most respondents appeared to know that their defense attorneys represent them, they did not necessarily perceive that representation as zealous. Only 52% of respondents agreed or strongly agreed with the statement, "Your lawyer did fight hard with you." Only about 58% of respondents disagreed or strongly disagreed with the statement, "Your lawyer did not listen to what you wanted to do." On the other hand, almost 63% of respondents agreed or strongly agreed with the statement, "Your lawyer did tell you the truth." In addition, 65% agreed or strongly agreed with the statement, "Your lawyer did give you good advice" (see Appendix A).

Less than half of the respondents agreed (N=102) or strongly agreed (N=11) that doing what the client wants is the defense attorney's most important job; this may suggest that many respondents believe attorneys act in accordance with desires other than those of their clients. A disheartening 43% of respondents agreed or strongly agreed with the statement, "Your lawyer cared more about getting your case over with quickly than about getting justice for you."

#### Attorney-client privilege

Respondents also exhibit significant confusion concerning the specifics of attorney-client privilege. Most of the respondents (N=182) knew their lawyer was not allowed to tell the police what they told them. Juveniles were somewhat less clear about whether their lawyer could make unauthorized disclosures to judges, parents, and probation officers (see Appendix A). Almost 20% of respondents thought their lawyer could reveal client confidences to their probation officers.

Slightly more than 5% of the sample thought their attorney could disclose what they told him or her to their parents, police, judges, and probation officers (Appendix A). Only about half of the respondents (N=132) knew that defense attorneys were not allowed to disclose client communications to parents or other actors within the juvenile justice system. This means that a significant portion of the respondents had a flawed understanding of attorney-client privilege and

believed that their attorney could make disclosures to at least some other people without their permission.

Given the imperfect comprehension of attorney-client privilege and zealous representation indicated by the above results, it is perhaps expected that a substantial number of respondents would conclude that it is not a good idea for defendants to confide in defense attorneys. About 76% of respondents, however, either agreed or strongly agreed that it was a good idea for people charged with a crime to tell their lawyers the whole story. One might also expect that many of the respondents, given their status as committed (i.e. incarcerated) juveniles, would express cynical or at least jaded views about the fairness of the court system and the result in their own case. The data support this expectation with close to half of the respondents (46.6%) agreeing or strongly agreeing that “Many people convicted of crimes in the courts are actually innocent” (Appendix A). When asked about their own case, fewer than 40% of respondents agreed with the statement, “The outcome of your case was fair.”

#### Bivariate correlation

Demographic variables including sex, race, age, grade, SES, and parent(s) resided with prior to commitment were correlated with dichotomous measures of zealous representation including representation, fought hard, truthful, good advice, do what want, listened, and cared more about concluding than justice. There was only one statistically significant relationship: Being male correlated with a likelihood of reporting that the attorney was truthful (.174) and the association was significant at the .01 level.

Another correlation matrix was constructed to determine whether there were any associations between any of the legal exposure variables and any of the measures related to zealous representation. Vicarious measures of legal exposure were considered (prior incarceration of mom, dad, or siblings) as well as direct measures of legal exposure (age of first contact with the police and the juvenile court, number of prior arrests, prior commitment to a juvenile justice facility, and whether the referral was for a delinquent or other matter). For the most part, none of the measures of legal exposure were significantly associated with measures of zealous representation. The only exception is that having a father who had been in jail or prison is negatively associated with the respondent’s belief that counsel was more concerned with justice than getting the case resolved quickly (-.177). This association was significant at the .05 level and suggests that those who had a father with incarceration experience were more likely to report that the lawyer cared more about concluding the case than securing justice.

As is clear from Table 2, there were more statistically significant associations between demographic traits and various measures of attorney-client privilege. Age and grade had positive associations with knowing that a juvenile’s lawyer cannot tell the judge or a probation officer what the juvenile tells him/her. Grade was also positively associated with the score on the attorney-client privilege scale. These results indicate that increased age and increased educational attainments predict better comprehension of attorney-client privilege. Living in an urban area was positively associated with the knowledge that juveniles’ lawyers cannot tell the police what juveniles tell them and also with the overall attorney-client privilege scale. These

**Table 2. Bivariate correlation demographic characteristics and attorney-client privilege**

	Sex	White	Black	Age	Grade	SES	Urban Dweller	Lived w/ Mom	Lived w/ Dad	Tell Parents	Tell Judge	Tell Police	Tell P.O.
Sex	1												
White	-.063	1											
Black	.102	<i>.559**</i>	1										
Age	-.085	<i>.187**</i>	-.115	1									
Grade	<i>.238**</i>	<i>.124*</i>	-.047	<i>.706**</i>	1								
SES	-.001	-.098	.025	-.016	-.091	1							
Urban Dweller	.096	<i>.448**</i>	<i>.281**</i>	-.122	-.123	.107	1						
Lived w/ Mom	.108	.022	-.071	-.102	-.103	-.082	.030	1					
Lived w/ Dad	.069	<i>.198**</i>	-.071	<i>.169*</i>	.041	-.095	-.085	-.080	1				
Tell Parents	-.082	.105	-.036	.015	.074	.065	.053	-.027	.020	1			
Tell Judge	.006	.024	-.049	<i>.165*</i>	<i>.172**</i>	-.017	.118	.089	.017	.299**	1		
Tell Police	.037	.014	.035	-.014	.032	-.007	<i>.243**</i>	.078	-.058	.375**	.432**	1	
Tell P.O.	-.035	.105	-.094	<i>.158*</i>	<i>.171*</i>	.011	.073	.066	.029	.378**	.712**	.426**	1
Atty-Client Scale	-.028	.085	-.055	.121	<i>.158*</i>	.016	<i>.147*</i>	.067	.009	.662**	.829**	.684**	.856**

\*\* . Correlation is significant at the 0.01 level (2-tailed).

\* . Correlation is significant at the 0.05 level (2-tailed).

results suggest that urban-dwelling juveniles are more likely to have a greater understanding of the meaning of attorney-client privilege.

The only legal exposure measure that was significantly associated with any measures of attorney-client privilege was number of arrests. None of the other direct or vicarious legal exposure measures discussed above were significantly associated with any measures of attorney-client privilege. As is clear from Table 3, being arrested more frequently correlated with understanding several dimensions of attorney-client privilege. Specifically, those with more arrests were more likely to report that they knew their lawyer could not tell the judge or their probation officer what they said and they were also more likely to have a higher score on the attorney-client privilege scale.

**Table 3. Impact of arrest on attorney-client privilege**

	Number of Arrests
Tell Parents	.077
Tell Judge	.146*
Tell Police	.035
Tell P.O.	.176**
Atty-Client Scale	.151*

Another correlation matrix was constructed to determine whether general attitudes toward the fairness of the courts and the outcome of their own case tainted juveniles' responses on measures related to zealous representation and attorney-client privilege (Table 4). Responses to the question designed to get at general attitude toward the courts--"Many of the people convicted in the courts are actually innocent"--did not correlate with any of the measures associated with zealous representation except the variable measuring whether juveniles understood that appointed counsel represented them. This association suggests that respondents who thought the courts convicted lots of innocent people tended to think appointed counsel did not represent them. In terms of attorney-client privilege variables, none of the associations were significant except that those who thought the courts convicted lots of innocent people also tended to know that their attorney could not tell the judge what they told them.

While attitudes toward the fairness of the courts in general seemed to have limited impact, the respondents' perception of the fairness of their specific case--measured by response to the statement, "The outcome of your case was fair"--was significantly correlated with several measures of zealous representation. Those who felt that the outcome of their case was fair perceived their lawyer as being truthful, giving them good advice, and fighting hard for them. They also tended to think their lawyer cared about getting justice and listened to them (Table 4). Respondents' attitudes regarding the fairness of their own case did not seem to affect understanding of attorney-client privilege as none of those associations were significant.

A final correlation matrix was constructed to determine whether any of the other variables under examination--including measures of demographic status, legal exposure, belief in the fairness of the court system and outcome in the particular case, zealous representation, and attorney-client

privilege--correlated with the conclusion, "It is a good idea for people charged with a crime to tell their lawyer the whole story." Most of the variables under study did not correlate with this conclusion. The results, however, did indicate that urban dwellers are less likely to think confiding in an attorney is a good idea (.207, significance .01). Moreover, both knowing that a defense attorney represents the person they are appointed to serve (-.181, significance .01) and thinking the outcome of their own case was fair (-.157, significance .05) predicted greater agreement with the statement that it is in defendants' best interests to confide in their attorney (strongly agree=1).

**Table 4. The impact of perceptions of fairness**

<i>Zealous Representation and Attorney-Client Privilege Variables Dichotomized</i>	Many Innocents Convicted (1=Strongly Disagree)	Outcome of your case was fair (1=Strongly Agree)
Fought Hard	.048	<b>-.133*</b>
Truthful	-.045	<b>-.166*</b>
Good Advice	-.010	<b>-.262**</b>
Represents You	<b>-.134*</b>	-.120
Do What Want	.098	.051
Get It Over	-.037	<b>-.205**</b>
Didn't Listen	-.038	<b>-.172*</b>
Tell Parents	.067	.100
Tell Judge	<b>.156*</b>	.004
Tell Police	.040	.084
Tell P.O.	.099	.017
Atty-Client Scale	.125	.061

### Regression

Given the limited number of significant correlations between the independent and control variables, and measures of zealous representation, further analyses were unnecessary. There were, however, quite a few significant correlations between the independent and control variables and measures related to attorney-client privilege. Based upon the correlation matrixes, a regression equation using age, grade, urban dweller, number of arrests, and whether the juvenile thought a lot of convicted people were innocent were used to predict understanding of attorney-client privilege. Since the scale measuring attorney-client privilege was used as the dependent variables, OLS regression was used.

The only variables that remain significant in the regression equation are number of arrests and urban dwelling (Table 5). These results indicate that those who have more arrests and those who live in urban areas are still more likely to correctly understand attorney-client privilege, even after accounting for the impact of the other variables included in the model. The model,

however, has limited explanatory power with an  $R^2$  of only .075 suggesting the model explains about 7.5% of the observed variance.

**Table 5. Regression Predicting Understanding of Attorney-Client Privilege**

	<b>B</b>	<b>SE B</b>	<b>Beta</b>
<b>Age</b>	.007	.088	.007
<b>Grade</b>	.142	.090	.144
<b>Urban Dweller</b>	.422*	.184	.153*
<b>Arrests</b>	.045*	.020	.147*
<b>Many Convicts Innocent</b>	.122	.086	.094
<b>Constant</b>	.804	1.047	

Notes  $R^2 = .075$

## DISCUSSION

It is clear from these data that a significant proportion of juveniles, even juveniles with prior experience with the system, have difficulty understanding what an attorney is supposed to do. Close to 10% of respondents did not even realize that appointed counsel represented them (see Appendix A). Only about half of the respondents thought their lawyer fought hard for them and more than 40% thought their lawyer cared more about concluding the case than securing justice. More than a third of respondents were not convinced their lawyer was truthful or gave good advice.

Interpreting these results is difficult because respondents were asked questions related to zealous representation after they had been through the system. Thus, it is impossible to determine whether these results reflect deficient performance by defense counsel, a lack of understanding about the role of defense counsel, or juveniles' dissatisfaction with the end result of their own cases. The latter conclusion is somewhat bolstered by the findings that a juvenile's subjective assessment of the fairness of their case outcome affected several measures related to zealous representation. It is also possible that juveniles' lack of comprehension about what their lawyer was doing may have caused them to reach erroneous conclusions about the lawyers' actual performance.

While more research is clearly necessary to determine what factors affect juveniles' understanding of zealous representation, these results are nonetheless important because they indicate that a significant number of juveniles who have been through the system do not believe that a defense lawyer will help them. Whether the source of this belief lies in deficient understanding or adverse experience is in some respects irrelevant. If a juvenile believes defense counsel will not help them, they are likely to devalue the right to counsel, irrespective of the origin of the belief. Such devaluation has implications for knowing and intelligent waiver.

Fortunately, the findings concerning attorney-client privilege are more straightforward. It is clear from these results that just over half of the respondents displayed a correct understanding of what attorney-client privilege meant by indicating that their attorney could not tell their parents, their probation officer, the police, or the judge what they said. These results indicate that even after being through the system, quite a few juveniles still do not understand what attorney-client privilege means.

Unlike with the results concerning zealous representation, where deficient performance by defense counsel could have influenced the results, it is extremely unlikely that juveniles encountered defense counsel who violated attorney-client privilege. There is no evidence in the literature that violation of attorney-client privilege occurs with any regularity. Moreover, such behavior is a clear and serious violation of the ethical rules and is likely to result in disbarment or other disciplinary action, making lawyers unlikely to engage in such behavior (Cantrell, 1984). Thus, there is no reason to suspect that respondents' answers were tainted by exposure to lawyers who violated attorney-client privilege and revealed their confidences to outsiders.

Lack of understanding of attorney-client privilege and zealous representation are important. If juveniles do not understand that defense attorneys are on their side and can be trusted with their secrets, they are unlikely to properly value an attorney or appreciate why having one might be in their best interest. Juveniles who do not comprehend that a lawyer is their advocate, and that the lawyer will act in their interest and not as an informant for a third party can be expected to throw away the right to a lawyer without proper consideration. Such a waiver can hardly be considered knowing, voluntary, and intelligent.

This deficit in comprehension provides a constitutional basis for requiring that all juveniles receive the assistance of counsel before they waive their *Miranda* rights to ensure that all juveniles understand their rights and are making knowing, voluntary, and intelligent choices about waiver. A number of experts have previously suggested such an approach, arguing that juveniles should automatically receive counsel prior to making any decision about whether to exercise or waive their *Miranda* rights (see e.g., Marrus, 2006; Viljoen et al., 2007; Wrightsman and Pitman, 2010). Evidence that children may be particularly likely to falsely implicate themselves due to the pressures of a custodial interrogation provides further support for banning uncounseled interrogations of children (Boyd, 2004; Kassin et al., 2010; LaMontagne, 2013; Meyer and Reppucci, 2007; Scott-Hayward, 2007).

Mandating that juveniles receive the assistance of counsel in making decisions about *Miranda* is also in keeping with the best interest of the child. It is almost never in the accused's best interest to waive *Miranda* rights and submit to interrogation, and this is true for adults as well as children. Interrogation is not a neutral fact-finding process. Once the police have decided to interrogate a suspect, they have already concluded that the person is probably guilty and are assiduously trying to get incriminating information from the accused (Inbau et al., 2005). Indeed, in order to secure a confession, interrogators are trained to ignore protestations of innocence, to engage in deception, and to employ a variety of psychologically coercive techniques like good cop/bad cop designed to reward admissions and punish denials (Feld, 2013; Inbau et al., 2005; Kassin and Gudjonsson, 2004; LaMontagne, 2013; McMullen, 2005).

Children are seldom a match for the psychologically sophisticated techniques in the arsenal of a well-trained interrogator; at best, a child will be able to maintain his or her denials.

A child is extremely unlikely to improve his or her position in any material respect by “co-operating” with the police. Thus, the child’s best interest seems to demand that children not be subjected to interrogation by the police. The state’s obligation to act in the child’s best interest is even more important given that the juvenile court’s very existence is predicated upon the idea of *parens patriae*, making attempts to manipulate or trick children into confessing all the more troubling.

While an absolutist approach appeals to constitutional purists and due process advocates alike, it presents significant problems for pragmatists. The reality is that only the most inexperienced or naïve defense attorneys would permit their clients to be interrogated by the police (McGuire, 2010). Thus, as a practical matter, requiring that juveniles receive the assistance of counsel in making the waiver decision would mean that all, or nearly all, juvenile suspects would invoke their rights and would refuse to speak to the police on Fifth Amendment grounds (McGuire, 2010).

The loss of the opportunity to obtain confessions from juveniles entails some significant societal costs. Confessions are quite persuasive to juries and are often an essential ingredient in the state’s case. While some juveniles confess falsely, it is reasonable to assume that many more give truthful confessions. Preventing the police from obtaining any juvenile confessions would make it more difficult for the state to ensure that factually guilty juveniles are held accountable for their actions. Without being adjudicated in juvenile court or convicted in adult court (i.e., juveniles tried as adults), the state cannot take custody of the child for either rehabilitative or punitive purposes. The number of cases that would result in erroneous findings of “not guilty” because the police were denied an opportunity to get a confession is speculative but clearly something more than zero (see e.g., Cassell, 1997).

One possible compromise that would not preclude all confessions by juveniles but would nonetheless increase the likelihood that juveniles would have enough knowledge and understanding to knowingly and intelligently waive their rights is to require *Miranda* warnings to be accompanied by an understandable description of what an attorney does and why an attorney may be useful to the juvenile. Rather than using language skewed toward waiver, which is apparently the usual practice (see Feld, 2013; Rogers et al., 2012), the police could be required to fairly apprise the juvenile of the downsides of agreeing to be interrogated. As the Supreme Court recently noted in *Missouri v Seibert* (2004), the police have an obligation to apprise suspects of their *Miranda* rights under circumstances which preserve for the suspect a **real choice** between talking and not talking.

Making sure this real choice is preserved for juveniles could be enhanced by requiring the police to use language like the following:

You are in custody and we want to ask you questions about your involvement in a crime. You do not have to talk to us. If you do talk to us, we will try to get you to admit that you were involved in a crime. Anything you say to us can be used

against you in court. If you are confused or uncertain about what you should do or if you want a chance to get some advice, we can get a lawyer to help you. This lawyer will be on your side and will make sure that you are treated fairly. Your lawyer will not tell us or anyone else what you say. Would you like to talk to a lawyer? [If the juvenile says s/he does not wish to speak to a lawyer s/he could then be asked]. Would you like to answer our questions now or would you rather not answer any questions?

Such language accurately apprises juveniles of the situation and makes it clear that they have a real choice between talking and not talking.

Another alternative often offered is to require juveniles to be accompanied by an interested adult when they waive their rights. While having a parent, guardian, or other adult interested in the child's best interest present when juveniles are warned and asked to waive their rights may seem like a good solution to overcome cognitive deficits known to impair juvenile decision-making, the empirical evidence suggests that such warnings fail to adequately apprise adults of their role and purpose (Rogers et al., 2012). Most adults in this situation fail to protect their children and often assist the police by instructing their children to talk to them (McMullen, 2005; Viljoen et al., 2005). Thus, simply requiring the presence of an "interested adult" is inadequate to protect juveniles' Fifth Amendment rights against self-incrimination.

Among adults, one of the best predictors of invoking *Miranda* rights is prior experience with the system (see e.g., Arenella, 1997; Leo, 1996). The data here suggests that prior experience with the system also teaches juveniles to be savvier in their dealings with the police. In this study, juveniles with more arrests displayed a better understanding of attorney-client privilege. Understanding this concept is an important ingredient in making an informed decision about whether a lawyer's assistance would be beneficial. Thus, there is reason to believe that prior experience with the system gives both kids and adults the kind of knowledge that allows them to make knowing and intelligent choices about waiving their rights.

This apparent learning-curve advantage accruing to the experienced criminal/delinquent is also borne out by other research finding that innocent people are particularly likely to waive their rights, believing that their innocence will protect them (Kassin and Gudjonsson, 2004; Kassin and Norwick, 2004). Taken together, this evidence is troubling because it suggests that the least hardened and least criminally-involved children may be the most likely to waive their *Miranda* rights and place themselves at risk through an interrogation. Once they submit to interrogation, innocent or not, self-incrimination in the form of a confession or an admission is likely (Cleary, 2013; Drizin and Leo, 2004; Feld, 2013; Kassin & Gudjonsson, 2004).

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## CONCLUSION

A knowing, voluntary, and intelligent waiver of *Miranda* warnings is not possible unless juveniles understand that lawyers are obligated to zealously represent them and protect the information they share with them. Juveniles who think their lawyers will simply function as

another agent for the state trying to punish them cannot possibly make an informed choice about whether or not to invoke their right to counsel.

This data suggests that a substantial portion of juveniles probably do not fully understand concepts related to zealous representation and attorney-client privilege. While this is a non-probability sample and generalizability cannot be presumed, there is no obvious reason to assume that these juveniles differ markedly from other committed juvenile, thus these results may signal a wider problem. Current *Miranda* warnings make no effort to inform youth about the substance of the rights they are being asked to waive. Such a state of affairs is arguably unconstitutional.

To remedy this situation, the U.S. Supreme Court could mandate warnings that give children substantive information about what a lawyer might do for them and presents them with a real and comprehensible choice. In the absence of action by the Supreme Court, state legislatures and state supreme courts could consider imposing such protections within their own state. Perhaps most important, individual practitioners within the system need to be sensitive to potential deficits in understanding when dealing with criminally-involved children and should act to ensure that the juveniles they deal with are properly informed and protected.

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- State in Interest of Dino*, 359 So 2d 586 (La 1978)
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- White v. Maryland*, 373 U S 59 (1963)

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**APPENDIX A**
**Respondents Understanding of Zealous Representation**

	Represents You		Fought Hard		Didn't Listen		Truthful	
	N	%	N	%	N	%	N	%
Strongly Agree	31	12.3	46	18.2	23	9.1	44	17.4
Agree	172	68.0	86	34.0	47	18.6	115	45.5
Neither	7	2.8	24	9.5	30	11.9	31	12.3
Disagree	12	4.7	46	18.2	106	41.9	37	14.6
Strongly Disagree	4	1.6	45	17.8	41	16.2	20	7.9
Missing	27	10.7	6	2.4	6	2.4	6	2.4
Total	253	100.0	253	100.0	253	100.0	253	100.0

	Good Advice		Do What You Want		Get it Over	
	N	%	N	%	N	%
Strongly Agree	43	17.0	11	4.3	43	17.0
Agree	121	47.8	102	40.3	66	26.1
Neither	33	13.0	40	15.8	39	15.4
Disagree	28	11.1	70	27.7	61	24.1
Strongly Disagree	22	8.7	3	1.2	38	15.0
Missing	6	2.4	27	10.7	6	2.4
Total	253	100.0	253	100.0	253	100.0

**Respondents' Understanding of Attorney-Client Privilege**

	Parents		Police		Judges		Probation Officers	
	N	%	N	%	N	%	N	%
Strongly Agree	6	2.4	2	.8	6	2.4	3	1.2
Agree	33	13.0	12	4.7	40	15.8	47	18.6
Neither	5	2.0	10	4.0	16	6.3	19	7.5
Disagree	139	54.9	137	54.2	124	49.0	112	44.3
Strongly Disagree	43	17.0	65	25.7	40	15.8	45	17.8
Missing	27	10.7	27	10.7	27	10.7	27	10.7
Total	253	100.0	253	100.0	253	100.0	253	100.0

## Scale Score Understanding Attorney-Client Privilege

Score	N	%
0	13	5.1
1	17	6.7
2	32	12.6
3	32	12.6
4	132	52.2
Missing	27	10.7
Total	253	100.0

**Telling the Defense Lawyer**

	N	%
Strongly Agree	48	19.0
Agree	145	57.3
Neither	12	4.7
Disagree	19	7.5
Strongly Disagree	2	.8
Missing	27	10.7
Total	253	100.0

**Perceptions of Courts and Their Case**

**Many people convicted in the courts are innocent.**

	N	%
Strongly Disagree	49	19.4
Somewhat Disagree	85	33.6
Somewhat Agree	84	33.2
Strongly Agree	34	13.4
Missing	1	.4
Total	253	100.0

**Outcome of Their Case was Fair**

	N	%
Strongly Agree	12	4.7
Agree	87	34.4
Neither	31	12.3
Disagree	61	24.1
Strongly Disagree	35	13.8
Missing	27	10.7
Total	253	100.0