

7-23-2020

Juveniles in the Interrogation Room: Defense Attorneys as a Protective Factor

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<https://doi.org/10.15760/etd.7434>

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Juveniles in the Interrogation Room: Defense Attorneys as a Protective Factor

by

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A thesis submitted in partial fulfillment of the
requirements for the degree of

Master of Science

in

Criminology and Criminal Justice

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2020

Abstract

Juveniles have a lower comprehension of their *Miranda* rights than adults, and in turn, are more likely to waive those rights and cooperate during an interrogation. Some states require youths to consult with their parents before/during the interrogation; however, this involvement can be detrimental to the juvenile suspect. Recently, laws in California and Illinois have mandated that juveniles consult with a defense attorney prior to the interrogation, or that the attorney is present during the interrogation.

Through semi-structured interviews with 19 juvenile defense attorneys across the state of Oregon, I explored defense attorneys' perspectives on juveniles' legal decision-making in the interrogation room. I used an inductive approach to a thematic analysis to transcribe interviews into eight themes. These final themes, which give an overview of the topics discussed, include the following: situational factors, dispositional youth susceptibility factors, parental impact, requiring attorneys, law enforcement impact, opinions on safeguards, waiver competency, and system impact.

The themes discovered in this study demonstrate that defense attorneys are rarely present when youth are being questioned, meaning that juvenile defendants are frequently waiving their rights. When questioned by police without another adult present, defense attorneys report youth being suggestible to the influence of police due to their authority figure status, for which they have been socialized to obey. If another adult is present, it is sometimes the youth's parent, which attorneys report being hurtful to their client's case, as parents tend to encourage the truth. Overall, the majority of attorneys were supportive

of a policy in Oregon to mandate consultation with a defense attorney prior to youth waiving their right to an attorney or their right to remain silent.

Acknowledgments

There are many people I would like to thank for supporting me through the completion of my thesis. The first of those are my parents, who have supported my ambitions my whole life, no questions asked. Without their continual love, support, and unwavering belief in me, I would not be the person I am today.

Next, I would like to thank my friends and cohort members. Thank you for all the heart to hearts, unmeasured enthusiasm for my ideas, and for making me laugh when I needed it most. Specifically, I want to thank Eric for being my rock throughout this process, helping me troubleshoot anything and everything, and always reminding me what I am capable of.

To my committee members, Dr. Mark Leymon and Dr. Mauri Matsuda, thank you for taking the time to review my work, for your constructive feedback and thorough critiques.

Last and absolutely not least, I want to thank my thesis chair, Dr. Kelsey Henderson. She first took me under her wing in my undergraduate years and allowed me to assist her in some of her work, giving me my first experience with research in my area of interest. From there, she supported me in my application to the Master's program, as well as in increasing my professional experience. It is very safe to say that I would not be where I am today without her. She is an outstanding professor, and a pleasure to have collaborated with on various projects throughout the past few years. I will eternally be grateful for the time and dedication she has taken to mentor me.

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Chapter 1

Introduction

In the United States, on any given day, roughly 60,000 juveniles are incarcerated in jails and prisons (ACLU, n.d.). Of particular relevance to this project, the state of Oregon incarcerates juveniles at a higher rate than most other states (Foden-Vencil, 2018). Juveniles are often thought of in terms of being a protected class; however, not all policies and procedures in the criminal justice system align with that assumption. For example, juveniles are subjected to interrogations that are no different from those of adults in the criminal justice system (Redlich, Silverman, Chen, & Steiner, 2004). These accusatorial interrogation methods (commonplace in the United States) have been documented to increase the likelihood of false confessions, particularly among susceptible populations, such as juveniles (Kassin, 2014). This project explored one of the most highly endorsed recommendations for protecting juveniles in the interrogation room—requiring defense attorney presence.

Most frequently, when the police question a juvenile, there is no other adult present. In one study of 307 youth charged with a felony, 90.2% of those interrogated were done so alone, with parents present in only 8.1% of the interrogations. If other adults were present (rarely), it was school officials or probation officers (Feld, 2012). In none of these interrogations was an attorney present. While there is value for parents to be involved in their child's legal decisions (particularly for juveniles to have multiple sources of information; Henning, 2006), evidence has shown that the presence of a parent or guardian in the interrogation room is not enough to prevent false confessions (Viljoen,

Klaver, & Roesch, 2005). For example, consider the five juveniles, aged 14-16, convicted in the 1990s after each confessed to the rape of a female jogger in Central Park (also known as the 'Central Park Five'; see Exoneration Anniversary: Central Park Five, 2012). Although there were parents and other family members present in the interrogation room, all five juveniles independently made false confessions to the crime (Burns, Burns, McMahon & Florentine Films, 2012). The confessions in these cases were the contributing causes of the juveniles' wrongful convictions; the defendants were later exonerated with the help of the Innocence Project, but only after serving 5-12 years in prison (Exoneration Anniversary: Central Park Five, 2012).

Extensive research suggests that youth do not have the same level of comprehension of their *Miranda* rights as adults (Viljoen & Roesch, 2005; Viljoen et al., 2005; Feld, 2012). Before an "interview" proceeds to an interrogation, the suspect must be read their *Miranda* rights. At that point, the individual can invoke their Fifth Amendment self-incrimination rights or waive them by cooperating and speaking with the police. Youth are particularly susceptible at this legal decision-making point, as they are predisposed to be obedient to authority, have a greater dependency on adults, and are more easily intimidated; factors which all contribute to the decision to waive one's *Miranda* rights (Robin, 1982).

Waiver of these rights, specifically the right to an attorney, puts juveniles at an increased risk for a false confession. Estimates from the National Registry of Exonerations suggest that 38% of crimes allegedly committed by juveniles involved a false confession during the interrogation (as cited in False Confessions More Prevalent

Among Teens, 2013). Given the high rate of false confessions among youth, this raises the question of whether it should be required that juveniles have an allied adult, such as an attorney, present in the interrogation room. It is possible that attorney presence during the interrogation would serve as a protective factor for the juvenile against a false confession or otherwise incriminating statement.

While states such as Illinois and California recently passed laws that require some level of attorney involvement before/during questioning (these laws are crime-type dependent; Public Act 099-0882, 2017; 395 Welfare and Institutions Code § 625.6), many states do not have such laws. The specific statutes require juveniles to contact an attorney to discuss their case prior to questioning (by telephone), or even require that the attorney be present in the room before questioning can legally begin. For example, California's Senate Bill 395 states that youth 15 years and younger must consult with an attorney in person, by telephone or video conference before an in-custody interrogation can take place and prior to the waiving of one's *Miranda* rights (395 Welfare and Institutions Code § 625.6). These types of laws enact procedures, which provide a protective factor for youth in the interrogation room.

While these types of statutory changes regarding attorney involvement in the interrogation room may be considered a step forward in protecting juveniles from making an unintelligent waiver of their rights, many other states do not have such laws on the books. In Oregon, a bill similar to California's and Illinois's was raised in 2017 (House Bill 2718), which would have required youth to speak with an attorney prior to waiving their rights. House Bill 2718 proposed prohibiting juveniles from waiving their rights

until they spoke with legal counsel in person, over the phone, or by video conference.

This consultation could not be waived and would precede any waiving of rights and a custodial interview with a peace officer. Ultimately, this bill did not pass. But, coupled with other states passing similar laws raises the question of the benefits of requiring an attorney to be present during juvenile interrogations. This project seeks to address this gap by examining how defense attorneys act as a protective factor for juvenile defendants in the interrogation room.

Chapter 2

Literature Review

Before we can delve into the topic of how defense attorney presence in the interrogation room may or may not affect juveniles' waiver decisions, we first briefly explain the typical interrogation procedure in the United States. In addition, an overview of the research on how juveniles make decisions, and how this decision making may place them in danger in the interrogation room.

Police Interrogation and Interview Tactics

Research has categorized various types of interrogation methods, including accusatorial, maximization/minimization, dominant, and control-based (Verhoeven, 2018). The Reid Technique is the most commonly used interrogation method in the United States (accusatorial); this technique involves a nine-step process, which assumes the guilt of the suspect. Steps of the Reid Technique involve confronting suspects with evidence of their guilt (true or falsified), developing themes as justifications of criminal acts, and discounting suspect denials (for other steps and more information see Inbau, Reid, Buckley, & Jayne, 2001). The Reid Technique's methods are perceived by many to be psychologically coercive (see Kassin, 2014), and the manual instructs police to use these same methods with juvenile and adult suspects (Inbau et al., 2001).

Some interrogation methods do not greatly differentiate the use of procedures and tactics between juvenile and adult suspects. Thus, it is not surprising that police officers go through training for and report using the same interrogation tactics on juveniles and adults (Cleary & Warner, 2016). Across all techniques, usage patterns were identical for

adult and juvenile suspects. One researcher attended a four-day Reid Technique training and noted that “only 10 minutes of instruction were dedicated to youth and this was to advocate the use of the same strategies with youth as with adults” (Meyer & Reppucci, 2007, p. 761). A third of police officers surveyed in one sample endorsed the need for additional training on issues related to juveniles (Meyers & Reppucci, 2007). Police officers are given little instruction about interrogating juveniles, so they often fall back on the strategies learned in training, which unfortunately were likely intended for adult suspects.

This lack of training may explain why evidence suggests police officers interrogate juveniles like adults (Meyer & Reppucci, 2007). For example, there were no significant differences in the frequency of which police reported using tactics such as deceit, presenting false evidence, and minimizing the seriousness of the crime, between adult and juvenile suspects (Meyer & Reppucci, 2007). In this sample, police reported that juveniles under the age of 14 were less able to comprehend their rights and the police officer’s intent; however, they noted that older juveniles have comprehension levels more similar to those of adults. Thus, a lack of juvenile-specific training has led police officers to interrogate juveniles similarly to adults, which is problematic, given juveniles’ susceptibilities in decision-making (more below).

Collectively, self-reports from police officers suggest juveniles are interrogated like adults, but research suggests juveniles do not respond to these tactics like adults. Research has found that the younger an individual is, the more likely they are to be compliant with an authority figure in the interrogation room (Redlich & Goodman, 2003).

For example, in one study, when presented with false evidence (a commonplace interrogation tactic), 50% of college students signed a confession statement, in comparison to 73% of those who were 12 to 13 years old, and 88% of those 15 to 16 years old (Redlich & Goodman, 2003). In addition, when shown evidence that they had committed a crime, though they had not, youth 12 to 16 years old were more likely than college students to take responsibility for the act. This research suggests juveniles, particularly younger juveniles, are more susceptible to making potentially false confessions in the interrogation room than adults.

Juvenile Legal Decision Making

One of the biggest concerns regarding juveniles in the interrogation room is whether they possess the level of comprehension and understanding to make a knowing and intelligent waiver of their rights. As stated in *Miranda v. Arizona* (1966), suspects taken into police custody must be clearly read their rights so that any waiver is made knowingly and intelligently. The language used in the *Miranda* rights warning has been shown to require at least a sixth-grade education to comprehend 75% of warnings, and around a ninth-grade education to fully understand all components of the *Miranda* warnings (Rogers, Hazelwood, Sewell, Shuman, & Blackwood, 2008). This poses an issue for all juvenile defendants, and a critical one for younger defendants who may not be at the same cognitive level as older juveniles, let alone adults. Older adolescents with lower intelligence levels might have sufficient understanding, but it is less likely for younger adolescents, regardless of intelligence, to comprehend all the legal language (Viljoen & Roesch, 2005).

In addition, officers may influence juveniles to waive their rights through emphasizing the importance of telling the truth, nodding their head while reading the *Miranda* warning, or by telling the youths that interview is their only opportunity to tell the truth (Feld, 2012). These types of behaviors are more influential for juveniles who have lower levels of psychosocial maturity (Steinberg, 2007). This makes them more persuadable to outside influence (such as an interrogator) and puts them at an increased risk to make impulsive decisions, such as disclosing information, without considering future consequences. Studies suggest that in calculating the risk-reward ratio that guides decision making, adolescents may discount risks and calculate rewards differently than adults (Gardner & Steinberg, 2005). In fact, research has found juveniles under the age of 16 are more likely than adults to make decisions that reflect a propensity to comply with authority figures, which decreases as juveniles age (Grisso et al., 2003). Given that the standard *Miranda* rights might be above the comprehension levels of many juveniles, and that juveniles are more compliant in nature, this threatens the assumption of the effectiveness of the *Miranda* safeguard for juveniles.

Youth may not yet have the cognitive abilities needed to understand and participate in legal proceedings (Viljoen & Roesch, 2005). Viljoen and Roesch (2005) found that cognitive ability was an important predictor of the legal capacities across 11 to 17-year-old defendants. In particular, cognitive ability was a strong predictor of understanding interrogation warnings and the ability to effectively communicate with their attorney (i.e., paying attention in the conversation, interpreting what they are being told, and asking questions). It is difficult for juveniles to understand and appreciate the

importance of the *Miranda* warnings, and roughly 90% of juveniles waive their right to an attorney and to remain silent (Rogers et al., 2008). Youths' cognitive susceptibilities and the high waiver rate suggest that juveniles do not possess the cognitive ability, or legal understanding, to make an intelligent and knowing waiver of rights.

Defendants who waive their rights are younger and have less understanding of their rights than those who exercised their rights (Viljoen, Klaver, & Roesch, 2005). Juveniles, because of their lower levels of understanding and willingness to comply with authority figures, are particularly susceptible. Children are taught early by their parents to be honest, and they want to appear truthful, not guilty, so they may be waiving their right to do so, to tell their side of the story, or reduce their responsibility in the crime (Feld, 2012). That is why often juveniles' waiver of their rights leads to a confession.

In one study, when 11 to 13 years olds were asked the best response to police interrogation, almost 60% responded to "confess." Defendants 15 years and younger were found to be more likely than older defendants to waive their rights to counsel and confess (Viljoen et al., 2005). In this sample, younger defendants' decisions to disclose information, confess, or plead guilty were not associated with the strength of the evidence against them. In comparison, older defendants' decisions were affected by the strength of the evidence. This suggests juveniles are not making intelligent legal decisions (i.e., decisions informed by case-related factors). It is likely that a defense attorney in the interrogation room would protect juveniles from unintelligent waivers, and help advise them on legal factors, which might affect juveniles' subsequent decisions.

Allied Adult

The Reid interrogation manual advises that parents who are present in the interrogation room should be told to sit and proceed as if the investigators were talking to the suspect alone (Inbau et al., 2001). Parents should be advised not to speak, and instead, act as an observer. Due to the instructions or possible ignorance on the parent's part, there are times that a parent's presence in the interrogation room can be detrimental to the juvenile suspect (Redlich, Silverman, Chen, & Steiner, 2004). Despite being in the room next door, only seven of the 64 juveniles asked to speak with their parents before signing a confession statement (Redlich et al., 2004).

Often, parents indicate that they want their child to confess to the crime, not knowing if they are, in fact, guilty or innocent. Viljoen et al. (2005) found that in a study of 152 juvenile defendants, none specifically said that they wanted a parent present for the questioning, yet 26.3% had one or both in the room. Of the 30 juveniles in this study who were questioned by the police with their parents present, none were advised by their parents to invoke their rights, and rather, half reported that their parents wanted them to confess (Viljoen et al., 2005).

In the previous study, no parents advised their children to remain silent, and while parental advice was not found to significantly predict what suspects said to police, this demonstrates that parents may not be an effective allied adult in the interrogation room. As many juveniles do not request their parent, nor does a parent provide a strong protective factor (Redlich et al., 2004; Viljoen et al., 2005), requiring a defense attorney to be present while the juvenile is being questioned might provide that protection.

Defense Attorney Consultation

One of the defense attorney's main responsibilities is to ensure their client's constitutional and legal rights are protected (American Bar Association, 2019). Given concerns with juveniles' levels of legal understanding, the defense attorney's role as counselor and advocate is essential. Research suggests defense attorneys have concerns about their juvenile clients' competency to waive their rights (NeMoyer, Kelley, Zelle, & Goldstein, 2018), which is concerning given that juvenile defendants do not frequently invoke their right and request an attorney in the interrogation room. In one study, of the 114 defendants who were questioned by the police, just 9.65% reported having requested an attorney (Viljoen et al., 2005). And while roughly 10% requested an attorney, only one defendant reported having their attorney present for questioning. In another sample of 307 juvenile interrogations, zero included an attorney (Feld, 2012).

Viljoen and Roesch (2005) found that juvenile defendants spending time with or meeting their attorney strongly predicted the defendant's ability legal understanding when it came to police interrogation and adjudication of their case. This is an indication that juveniles simply having contact with their attorney is helpful in their understanding of the legal process. Those juveniles who met with their attorney were better equipped to understand police interrogation procedures and the criminal justice process. In addition, the time that defendants with poor cognitive abilities spent with their attorney was an even stronger predictor of increased understanding of their rights and the legal proceedings (Viljoen & Roesch, 2005). Defendants with poor cognitive abilities, particularly those younger, needed more assistance from their attorney.

Unfortunately, defense attorneys report that they might not have the time to give their juvenile client all the information and evaluate if they sufficiently understand it (Fountain & Woolard, 2018). Most attorneys focused on disposition, charges, and evidence when describing their conversations with juvenile defendants. While the Fountain and Woolard (2018) study examined plea decision-making, defense attorneys commented that in their experience, juveniles often make decisions for short-term gains such as getting the process over or going home. There are questions regarding attorneys' abilities to devote adequate time and energy to juvenile cases given the systematic struggles of their occupation; however, a defense attorney in the interrogation room goes beyond juveniles' abilities on their own, or even with a parent in the room. In light of research highlighting juvenile susceptibility, requiring a defense attorney to be present in the interrogation room may act as a protective safeguard against false confessions, and decisions that would be outside the scope of knowing and intelligent.

The Current Study

The current body of research on protective factors for juveniles in the interrogation room focuses more on estimator variables (i.e., factors that we can only estimate the effect of) such as comprehension of *Miranda* rights, suggestibility, and lack of legal understanding. There is less information on system variables (i.e., factors the system can control such as policies and procedures), which contribute to juveniles' decisions to waive their rights and proceed with an interrogation (particularly without an attorney present). To our knowledge, this study was the first of its kind to explore the question of how defense attorneys perceive juveniles' legal decision-making in the

interrogation room, the benefits of attorney presence, and how responsive juveniles are when questioned by police.

I conducted qualitative interviews with defense attorneys to shed light on their perspectives on what happens in the interrogation room and how they can be a protective factor for juveniles, specifically in the interrogation room. As this was an exploratory study, I made no *a priori* hypotheses. However, extensive research indicates that juveniles have lower legal understanding, and are more likely to waive their *Miranda* rights and confess (Rogers et al., 2008; Redlich & Goodman, 2003; Viljoen et al., 2005; Viljoen & Roesch, 2005). Therefore, I expected to find that defense attorneys would generally be supportive of requiring an attorney in juvenile interrogations (i.e., only allowing the juvenile to waive their rights in the presence of an attorney). Furthermore, I expected to uncover themes regarding how defense attorneys believe their presence would be helpful for juveniles, specifically in terms of sharing legal knowledge.

A semi-structured interview was chosen to explore the topic of juvenile interrogations from defense attorneys' vantage point. Interviews are also a way to gather information about juveniles in the interrogation room, and the role that the attorney can and does play before and after a defendant waives their rights. The interviews were conducted to facilitate a discussion of when and how the attorney is brought in as counsel, the attorneys' experiences with juvenile clients who have been interrogated, and their experiences in the interrogation room. I chose to examine this topic through the perspective of defense attorneys as they are the adult, throughout a youth's case, whose sole purpose is to protect the rights of their client. In addition, defense attorneys may

know more about the innerworkings of a case than the juvenile defendant. Because defense attorneys have legal knowledge and experience with youth clients, their perspective on youth in the interrogation room is most ideal for this topic in comparison to other legal actors. By asking about the attorneys' experiences, including interrogation techniques used by police officers (Inbau et al., 2001), and perceived legal understanding of juveniles (Viljoen & Roesch, 2005), we can examine the attorney as a protective factor in the interrogation.

Chapter 3

Method

Participants

I used a purposeful sampling method to collect qualitative data from defense attorneys who represented juvenile defendant clients, defined as anyone under the age of 18, whether that be in adult or juvenile court. Defense attorneys who had not previously represented a juvenile client were not included in this study. Attorneys were recruited through the Oregon Criminal Defense Lawyers Association (OCDLA) membership directory, online listings, and snowball sampling by word of mouth. The sampling population was restricted to only include defense attorneys with experience practicing law in Oregon in light of the recent bill here in the state (House Bill 2718), which had the support of the OCDLA. Additionally, I did not want to introduce any confounds in the data by interviewing attorneys in different states, which likely have different waiver mechanisms, *Miranda* warning practices (e.g., juvenile reading level), and statutes guiding juvenile interrogations. A larger study may be able to flush these variables out, but that was not the purpose of this study.

Recruitment of participants was targeted at juvenile defense attorneys. In total, 119 defense attorneys were invited to participate in this study. Eligible participants were sent an email about the study's goals and procedures, asking for their involvement. Participants were reminded that their participation was voluntary, and no identifying information would be collected (i.e., names would not be connected with data). Additionally, the director of the OCDLA emailed all members of the juvenile law listserv

and committee (the email included the information listed above). I followed up with those who replied to my email solicitation or responded to the broad listserv invite.

Saturation of responses was used to guide data collection. Of those invited to participate, the majority did not respond to the invitation, while others chose not to participate, or failed to respond when scheduling the interviews. The final sample consisted of 19 defense attorneys practicing in the state of Oregon. Participants were given the option of answering three demographic questions; all agreed to respond. Of the 19 total participants, 12 identified themselves as female (63.2%). When asked about their race, all but two participants identified as white (89.5%). This is consistent with the racial/ethnic breakdown of lawyers in the U.S., where 86.6% are Caucasian, yet the prevalence of female attorneys was higher than the nationwide percentage of 36.4% (U.S. Department of Labor, 2019). Of the two defendants who did not identify as white, one identified as Asian, while the other identified as Mexican-American. Among the 19 participants, the average years of experience were 23.5 years practicing law (*min* = five years and *max* = 48 years).

While participant attorneys were not specifically asked about the jurisdiction they practiced in or the type of firm they worked (private vs. public defense services), this information was recorded in field notes. Of the 19 defense attorneys who participated, 13 were public defenders (68.4%), with the other six being private defense attorneys (31.6%). Defense attorneys were from various towns across the state of Oregon, all in jurisdictions determined to be urban (Urbanized Areas and Urban Clusters, 2010).

Procedure

Portland State University's Institutional Review Board approved all materials and procedures involved in the collection of these data. Participants took part in a roughly 30-minute, semi-structured interview, which was audio recorded for the purpose of transcribing. The interviews focused on the defense attorney's perceptions of juvenile clients' abilities and level of legal understanding in the interrogation room (i.e., ability to make an informed waiver of rights), general experiences with juvenile defendants who have been interrogated (with and without them present during the interrogation), and opinions regarding the protective factor of providing (requiring) an attorney in the interrogation room.

There was a total of nine questions, with seven of those having possible follow-up questions. The follow up questions allowed participants to elaborate on certain points, and for the interviewer to ask probing questions. Three questions about demographics and professional experience were also asked (see Appendix). Participants had the option of completing the interview in person, over the phone, or over Skype. Participants outside the Portland metro area were not given the option to complete the interview in person. Twelve participants chose to be interviewed over the phone (63.2%). Seven participants requested the interview be conducted in person at their offices (36.8%). No participants chose to be interviewed over Skype. An American Psychology-Law Society student grant-in-aid was submitted in order to fund participant payments. The grant was awarded, and participants were compensated with a \$40 Amazon gift card. Three participants requested their compensation be donated to local non-profits, and one participant declined compensation.

Dependent Variables

These data consist of responses from defense attorneys who represented juvenile clients; importantly, to ensure confidentiality, questions did not ask for any specific case information. There were nine questions with seven of those having possible follow up questions. The questions were general (e.g., “If your juvenile client was considering waiving their 5th Amendment right and confessing, how would you advise them?”). Nothing was asked that would violate defendants’ rights to attorney-client privilege.

Analytic Strategy

All audio recorded interviews were transcribed using Express Scribe Pro. Once transcribed, I used a thematic analysis with an inductive approach using ATLAS.ti software. Using this software allows for codes to be selected in participants’ responses and then compared across participants. Based on codes, themes were identified and patterns organized in participant responses using a six-phase process. To analyze these data, I used an inductive approach, which allowed the themes from the data to come together based on participant responses, rather than fitting responses into themes derived from questions participants were asked (Braun & Clarke, 2006). There is a lack of prior research specifically on defense attorneys’ perceptions of juveniles in the interrogation room, and possible legal protections, therefore, assumptions about participant responses cannot be made. As such, this study was exploratory, leading to the use of manifest coding. This is preferred for exploratory research because it takes participant responses at face value and does not leave room for interpretation (Braun & Clarke, 2006).

In the first phase of analysis, all interviews were transcribed. After the initial transcription, the second phase involved reading through each interview and taking notes about possible codes (e.g., parental influence, juvenile's competency to waive their rights, attorney's impact, and youth's ability to appreciate the long-term consequences of waiving their rights). Once codes were created, the next step in this thematic analysis was to go through each transcribed interview using the ATLAS.ti software and actually code participant responses. After coding all the interviews, a total of 115 codes were identified. From this, codes were sorted into eight different themes.

In the fourth phase, after initially establishing these themes, the codes placed into each theme were then reexamined for internal homogeneity and external heterogeneity, meaning that the data in each theme was examined to see if they fit in a meaningful way and that there were clear distinctions between each theme (Braun & Clarke, 2006). After this step, several codes were removed as they were only found to be present in two or fewer interviews, some codes were removed from participant responses as they were determined to not truly fit, and others combined with other codes. As a result, 101 final codes remained and were sorted into eight final themes. In this fifth phase, themes were named and defined as situational factors, dispositional youth susceptibility factors, parental impact, requiring attorneys, law enforcement impact, opinions on safeguards, waiver competency, and system impact. See Table 1 for final codes and their placement within themes and the Appendix Items for a list of codes identified. In the sixth phase of thematic analysis, the following report of results was produced.

Chapter 4

Results

I conducted semi-structured interviews to allow for the opportunity to thoroughly discuss this topic with defense attorneys without making any assumptions about their perceptions or opinions. The same method was carried out through the analysis of data. Due to the nature of the interviews, not all participants were asked the same questions. Lack of participant agreement or response on a question or topic does not indicate that the attorney disagreed or ignored the prompt, but rather that it did not come up organically along the course of the conversation.

Eight topics of discussion stood out. Table 2 displays the frequency of codes in each theme by the participants. From Table 2, you can also see the number of times codes within each of them were referenced in total (e.g., dispositional youth susceptibility factors and requiring attorneys in the interrogation room were the most referenced themes). In referencing Table 2, it should be noted that some themes had more codes than others. In total, the following eight themes were identified: situational factors (i.e., factors related to the interrogation context), dispositional youth susceptibility factors, parental impact, requiring attorneys (i.e., a system factor-related response), law enforcement impact, opinions on safeguards, waiver competency, and system impact (i.e., factors related to the criminal justice system). In the following sections, a description is given for each theme accompanied by a breakdown of the findings.

Factors Related to Juvenile Defendants

Defense attorneys frequently commented on juveniles' developmental and cognitive susceptibilities; they also identified factors unique to juvenile defendants, which can be different than adult defendants.

Dispositional Youth Susceptibility Factors

This theme includes factors identified by defense attorneys that have an impact on youth's ability to intelligently waive their *Miranda* rights due to individual characteristics related to the youth. Examples of factors listed by defense attorneys include youth not realizing the consequences of waiving their rights, not being confident in asserting their rights, youth being conditioned to be honest, and youth not understanding legal nuances. A common response from defense attorneys was that youth do not understand the long-term consequences of their actions ($n=12$, 63.2%), but rather just want to go and will say what they need to leave ($n=7$, 36.8%). Many of the participants referenced youth having brains that are not fully developed, which impacts their decision making ($n=13$, 68.4%). Of the 19 defense attorneys interviewed, 15 discussed youth having a lack of reasoning ability or lower mental capacity (78.9%). Another identified factor was that youth do not understand the legal nuances involved in their cases ($n=13$, 68.4%), and 73.7% of attorneys questioned stating youth do not understand the *Miranda* warnings themselves ($n=14$). Attorneys described this issue coming up not necessarily because juveniles do not understand the words in the warnings, but they do not appreciate the context and meaning behind them:

Because when you think about it in context, when kids are, how do kids learn the word silence? It's mostly in school where that's the rule. You know, a teacher says silence, you know, 'Silence, be quiet, um as long as I'm talking and when I stop talking then you can ask your questions and you can talk.' That's how they

learn the word, that's the context that they learn the word. They don't know all of the ramifications of the definition of the word so they put it into that context.

Another common statement by participants was that youth are conditioned and socialized to tell the truth, and importantly, they are never allowed to make "big" decisions like the one involved in waiving one's rights ($n=11$, 57.9%). Children are raised being told to tell the truth, and when they do not, there are consequences. Attorneys posit that the same idea applies for youth being questioned by police- juveniles think they will get in trouble if they do not talk (cooperate). It does not cross their mind that they could get in trouble by talking:

...they're kind of taught, from the school, and I think from an early age, a lot of people are taught that if you at least tell the truth you'll be fine. Um, and, albeit that's kind of a moral code, and that's something in regards to honesty and so forth. Kind of admitting your mistakes but it's different in a criminal setting in that, you sort of bypassing that fundamental principle of our democracy that the government's role or duty to prove you're guilty beyond a reasonable doubt...and so, that, and that's part of Miranda obviously. And that's really not explained to them so they don't really get that. In my opinion.

Waiver Competency

This theme encompasses defense attorney perspectives on the frequency of admissions, frequency of waiver of rights, juveniles' general competency to waive their rights, and juveniles' understanding of the right to an attorney. Defense attorneys reported that juveniles frequently waive their right to an attorney, and admissions are often made before the attorney even receives the case ($n=14$, 73.7%). Four attorneys reported that admissions are *always* made by juveniles (21.1%). Defense attorneys stated that part of what contributes to youth waiving their rights so frequently is their lack of

perspective on long-term consequences. Youth are not thinking about how speaking to the police is going to affect them later in life:

...I'm often surprised if I get a police report that says, from my teenage client, 'I don't want to talk to you, I want to see my lawyer,' and that's because they don't understand that what they're saying has long term effect (sic) on them. And I think, that's the piece. There is, a lot of people talk, adults talk, juveniles talk, like people don't, I mean they just do. But, juveniles just I think, talk more. Because they don't think about in the moment like, you know, admitting to breaking into that, you know, convenience store when it was closed and stealing money from the register or whatever, I don't think they realize that that's a felony that's gonna (sic) follow them for 'X' number of years or forever and could impact their ability to be in the military, or to access certain schools, or anything. And I just think, that's the bigger thing is; they're usually, teenagers are very shortsighted as far as what's happening is right in front of them. So they're not necessarily thinking about a decade from now when I'm going to be applying for college, I'm gonna (sic) have to check boxes that say like, 'I've been arrested for a felony.' And then they're going to have to explain it.

Based on their experience, attorneys discussed whether or not they believed juveniles were competent enough to waive their rights. Twelve attorneys stated that youth are *not* competent to waive their rights (63.2%), 5.3% said youth are competent to waive their rights ($n=1$), and 31.6% said youth are *sometimes* competent to waive their rights ($n=6$). In discussing the competency of waivers, many defense attorneys referenced juveniles' understanding and appreciation of the role of an attorney. While 26.3% stated they felt youth are familiar with attorneys ($n=5$), the majority, 57.9% ($n=11$), felt that youth are unfamiliar with the role of attorneys. They reported that sitting down and explaining to youth what their job is tends to help clear up any confusion. However, some youth still have difficulty grasping the role of the attorney (even after this conversation):

Um, some do and some do, you know, pretty quickly once it's explained. Um, and then there are some who um, even after they've been sort of oriented to what it means to have a lawyer and what a lawyer can do for them, still would struggle to really appreciate what it means or to be empowered to use that person. Um, so again, I think it's sort of multilayered, it's um, I would say though that probably,

unless they've had the opportunity to work with a lawyer before, um probably a large percentage of them don't really understand what that means.

The Interrogation Process and System

When considering how juveniles react and respond during the interrogation and questioning process, it is important to understand the context in which these interactions take place. Juveniles are in a new situation with pressure exerted from several directions. Defense attorneys pointed to parents, law enforcement, and the criminal justice system as being the cause of some of that pressure.

Situational Factors

This theme encompasses factors identified by defense attorneys that have an impact on youth's ability to waive their *Miranda* rights due to factors outside the control of the youth. These factors are more closely related to the context of the interrogation and questioning, for example, referencing the severity of charges, being pressured for time, the location of questioning, and feeling pressured by the police during the interrogation.

Many defense attorneys cited the circumstances around a case such as the case facts and evidence ($n=14$, 73.7%) and the severity of the charges ($n=6$, 31.6%), as important in considering juveniles' waiver decisions. Defense attorneys referenced that these factors not only influence juveniles' willingness to waive their rights and cooperate with the police but also affect how they advise their juvenile client:

Oh gosh, off the top of my head, I think I would want to read the police reports, I would want to know the severity of the charges. I think I would like to know a little bit about my clients functioning. I would want to know, some of it again, depends on how severe the charges are because like the juvenile system? In theory, well, it's supposed to be able to be rehabilitative and punishment, you know what I mean? So like, there are options for rehabilitation within the juvenile system that aren't in the adult system, right? So kids are gonna (sic) be charged

with a Measure 11 offense, or what would now be waived to adult court. You know I think that's a much different conversation so I guess those are some of the things I would want to think about. I also would want, I think you would wanna (sic) think about the law, whatever the case law is, may or may not apply in this situation. Oh gosh. You would want to know if there's codefendants. I guess you would want to know some of the circumstances surrounding the case.

Defense attorneys also noted that situational factors, such as how much time the youth was given to make their decision ($n=5$, 26.3%) and where they were questioned ($n=9$, 47.4%), affect how likely youth were to waive their rights. More specifically, seven attorneys stated that youth are often questioned at school (36.8%), which can be very influential for juveniles as it introduces another level of discipline and another authority figure applying pressure to the situation along with a law enforcement officer:

But I mean, there is this sense that when you're in school and the principal is asking you or your teachers are asking you or the school resource office is asking you, you are required at school to be obedient. You're required to listen to your teachers and the authority figures and that's been instilled in you since kindergarten. And so I think that the idea that the questioning is happening at school, um, is significant.

Law Enforcement Impact

This theme includes factors that defense attorneys identified regarding the effect law enforcement have on youth's ability and frequency to waive their rights. These influences include law enforcement having a different perspective than attorneys, interrogation tactics used by law enforcement, law enforcement being an authority figure, and that speaking with the police does not benefit youth. Law enforcement's goals are to solve unanswered questions about a case and to find the person responsible for a criminal act. To do so, they will utilize all the resources they have, which include interrogation tactics ($n=18$, 94.7%) such as deception, and playing 'good cop or bad cop.' A prevalent

impact identified by the majority of attorneys was the effect police have on youth, as they are perceived as an authority figure ($n=15$, 78.9%). In addition, 89.5% ($n = 17$) of defense attorneys noted that the level of pressure exerted by police impacts juveniles' willingness to waive their rights.

Youth tend to recognize that an authority figure is asking them a question, and they do not see another option but to answer. In discussing this, one attorney stated, "So I think another reason is that they say yes when an adult talks, or an adult authority talks to them, without understanding the ramifications of what is being said." This speaks to the influence a police officer, as an authority figure, has on juvenile suspects. Another attorney went on to discuss the impact of police as authority figures and how that influence can play out with parents and interrogation techniques:

You know, I've like already mentioned that kids are going to be more apt to um, bend to an adult authority. They're more patterned to do that already, school administration, vice-principal, discipline officer, parents, you know, parents standing by, by the door when the officer comes to the door of the house to talk to the kid, and the parents say, 'You're gonna (sic) talk to the officer' Kid's not gonna (sic) say, 'Oh geez, Dad's gonna (sic) be not amused if I don't do what the officer says.' They're much more apt to make statements in those circumstances. Um, let's see. What other sort of aspects...But the interrogation techniques, there's so many variations on a theme. But a lot of times with the kids, it doesn't take much more than saying, 'Well we just wanna (sic) get your side of the story' that seems to be common. 'You know, we think we know what happened already, but you know, we'd like to get your side of the story, maybe it's something different.' Yeah, so it seems very innocent but, you also have situations where officers want polygraphs, and that's generally in sex offenses where, or in more serious type cases, but especially in the sex offenses. And the result of the polygraph may not be as important as the process surrounding it that involves the pre-test interview and the post-test interview. Which is essentially a disguised interrogation, trying to get statements from the person doing the polygraph. So, there's a lot of abuses of that by police departments and how they handle that whole process. It's not a larger percentage of cases but with sex offense it's certainly something that comes up.

Due to the adversarial nature of our legal system, law enforcement have a different perspective on interrogating juveniles and reading them their *Miranda* rights ($n=16$, 84.2%) than attorneys do most times. However, defense attorneys noted that, at times, depending on the conditions, speaking with law enforcement could benefit their juvenile client ($n=11$, 57.9%). They may use it as an opportunity to find out the intentions of the police, and how much they know about the case ($n=6$, 31.6%). In discussing the different perspectives that law enforcement has when questioning youth, some defense attorneys described the role of time and using the power dynamic between police and youth in their favor. By placing a defense attorney into the interrogation, it favors the youth, which may not be something that law enforcement is focused on:

The question, what's the emergent, imminent situation that would require questioning on the spot at that point in time. Obviously, somebody is, there's a health and safety issue, that's something, versus we discovered fingerprints near broken window and a stereo gone, that's a different situation. So, um, but, I think it's a potential. I think law enforcement is not likely to want that, simply because the lawyer could shut it down, and say, 'We're making no statements tonight officers, write your report and we'll set up an interview once we have the information.' And that takes away the power imbalance that's there. And it would potentially put the child in a better negotiating position or in a position where, what the police really needed to make the case was some type of admission and they're not going to get it that night or that day.

Parental Impact

This theme highlights the role parents have on youths' willingness to waive their rights and, ultimately, their cases. Examples include how parents have their own interests in mind, the frequency of parental presence during questioning, and that attorneys and parents have different roles. Of the 14 attorneys who referenced parental presence in the interrogation room, six attorneys, or 42.9%, stated that parents are *not often* present, four

stated that parents are *sometimes* present (28.6%), and four stated that parents are *often* present (28.6%). Fourteen attorneys also discussed whether parents tend to be more helpful or hurtful to their child's case. While five responded that parents could be helpful (35.7%), nine responded that parents hurt their child's case (64.3%). This indicates that parents are more often than not present when their child is questioned, but when they are present, they may be more harmful than helpful:

And I've even had cases where I have parents or I've heard parents tell young people 'Oh you don't need an attorney, this is gonna (sic) be fine' or whatever. Or parents who maybe even motivated to have their child taken into detention or whatever or don't think that they want to apply to potentially have to be on the financial hook to reimburse the costs of a court-appointed attorney. Um, so I've even seen parents kind of act in a way that can be hindering.

Of the defense attorneys interviewed, 78.9% stated that parents encourage their child to tell the truth to law enforcement ($n=15$). Attorneys also said that parents have their own interests in mind ($n=10$, 52.6%), which can involve parents being more concerned with how their child's behavior will make them or the family look. This could be attributed to the parent sometimes being the victim of the accused crime, feeling that they must discipline their child, or a lack of understanding of the legal nuances:

So I think that you have at least some parents who A, might be the victim of whatever the kid is accused of doing or B, might be so fed up with the situation of the kid not listening or not doing what the parent wants them to do that the idea that law enforcement is enticing to the parent because they're wanting that help and assistance in managing their child's behavior. Um and so I think some amount of parents would maybe be motivated to have the kid get in trouble or to be caught up in the system. So that's some, probably not all of them. I think you have some well-intentioned parents who also don't really fully appreciate the meaning of Miranda and the protections that our Constitution provides and so you get these parents that are like 'Oh Johnny just tell them what happened and this will all blow over,' and they don't understand, perhaps, the serious of what it means for a youth to talk to law enforcement and um, I think those are probably the two major risks.

System Impact

This theme includes factors about the criminal justice system that have an impact on juvenile defendants and their ability to waive their rights. Examples include juveniles and false confessions, issues with how the *Miranda* warnings are written, differences between juvenile and adult court with youth, and perceptions that the system is stacked against youth. In this sample, 15.8% ($n = 3$) of defense attorneys raised the issue of false confessions as a concern with juvenile clients ($n=3$). A handful of attorneys discussed the differences youth experience when going through the juvenile court system, rather than the adult court system ($n=7$, 36.8%). Attorneys referenced the differences in the severity of consequences (being more severe in the adult system), and the ability to work with counselors in the juvenile court system (but not in the adult). Several attorneys referenced issues with how the *Miranda* warnings are written ($n=11$, 57.9%) and how that contributes to juveniles' lack of understanding of its content, but also allows attorneys to dissect the case law around it. Attorneys additionally talked about how the system is stacked against youth as they have a unique position as defendants ($n=6$, 31.6%). Juveniles, unlike adult defendants, likely receive punishment not only from the justice system but also from school, as well as their parents:

So anyway, so I think it would change the dynamic, I think it would help level the playing field. The system is really, really stacked against our clients. By the time they get to us, I mean, they have been failed by a ton of people on a ton of different levels. And I think it's one place where it could restore some balance.

Safeguards in the System

After considering what takes place during interrogations and what impact this may have on youth, it is then important to discuss what steps can be taken to protect the

rights of juvenile defendants. Defense attorneys shared their perspectives on which safeguards would be and have been beneficial, as well as their opinion on requiring defense attorneys to be present when youth are questioned.

Opinions on Safeguards

This theme generally included suggestions and opinions on safeguards for youth in the interrogation room which would help them to better understand their rights. Examples include the beneficial effect of videotaping interrogations, that youth should have more time in their decision to make a waiver, and support for defense attorney presence as a requirement (this was more specifically teased out in the ‘requiring attorneys’ theme). In discussing various safeguards that may be helpful, attorneys listed body cams ($n=4$, 21.1%), creating a statute to make juvenile statements inadmissible ($n=2$, 10.5%), providing more support for defense attorneys ($n=2$, 10.5%), giving youth more time to decide on waiving their rights ($n=4$, 21.1%), going into school and providing students education on the criminal justice system and *Miranda* rights ($n=3$, 15.8%), videotaping interrogations ($n=15$, 78.9%), and specialized youth training for attorneys ($n=1$, 5.3%). The majority of attorneys discussed the benefits of requiring videotaping such as how this allows attorneys to review the questioning after the fact, and compare the video footage to their client’s and the police officer’s account:

Sometimes recording and video are some safeguards for more information so that if an officer on a stand is making one representation how the child was or looked or whatnot, um, as a defense attorney I would absolutely want to listen to the conversations and see the video because showing that to my client would often give me or help that child refresh you know, ‘I had peed my pants, I was sitting here and they wouldn’t let me use the restroom until I had finished talking.’ You know, stuff that you wouldn’t necessarily know but the video might give you information about. So I think; generally, recording and video can be good. And

then the question again is, do they have the full conversation before the waiver on recording or are they just, 'You just waived, I'm turning on the recording.' So it's really, do they have the full context which would be helpful, not just the confession that's being recorded.

Seventeen of the 19 attorneys interviewed discussed their support for requiring defense attorneys to be present while youth are questioned (89.5%). Upon giving their thoughts on requiring a neutral adult to be present such as a community member (with or without legal training), or a youth advocate similar to those assigned in dependency cases, as other states have done, 42.1% of defense attorneys said they were uncertain about how helpful a neutral adult may be ($n=8$). Some expressed concerns that a neutral adult may encourage the truth, as parents sometimes do ($n=3$, 15.8%). Yet, 26.3% were hopeful that a neutral adult might benefit youth when being questioned by adding an adult in the room to assist youth in making decisions ($n=5$). Overall, attorneys were the most supportive altogether of requiring the presence of a defense attorney. They articulated that no other adult could provide the level of protection that a defense attorney can, and there is no figure better able to assist:

You know, if that were, imagine in a world where that were standard practice. Even telling a juvenile you have the right to an attorney, one will....I think that they're not paying attention, that they don't see that as a real option, they're not paying attention to the words, to the meaning, they don't feel empowered to use that as a legit option. Like wait, stop everything, find me an attorney. I mean I've just never, as a public defender, heard of that happening, right? They just, those are just words that are said maybe or maybe not. And when they are said, they're said in an intense moment where someone is already feeling completely powerless and they become sort of meaningless, really. They're sort of rendered meaningless by the entire situation; I've never as a public defender, seen a juvenile assert that right. So if it were actually, common, required practice that okay, you sit here and we're going to go get an attorney for you and you can't talk to us until an attorney is present. Yeah, that takes all the onus of the young person to try in this situation that's chock-full of imbalance of power, and threat and fear, it would take all the burden off them. I mean, that would be pretty incredible!

Requiring Attorneys

This theme highlights defense attorneys' thoughts on the role that a defense attorney can play in the interrogation room, their unique experience and position (i.e., being able to bring something to the situation that others cannot or do not know how to), and how defense attorneys can protect juveniles and help their cases at this stage of the proceedings. Some examples include telling clients not to speak with police, empowering youth to make informed decisions, having youth evaluated by an expert, and building a relationship with juvenile clients. Many of the attorneys emphasized that they are there to help their clients (juveniles) make an informed decision ($n=13$, 68.4%). Similar to the findings of Fountain and Woolard (2018), which stated that attorneys wanted more time with their client, 31.6% of attorneys in this study reported time with youth being necessary ($n=6$). Attorneys also noted that an additional consideration with juvenile clients is working to suppress statements given to the police during questioning ($n=17$, 89.5%). Filing Motions to Suppress statements are a common practice among those defending juvenile clients:

So in private work people can contact an attorney and they can generally speaking, get involved sooner and maybe try to be present during an interrogation or to negotiate before even charges are filed. In public defender work, those lawyers, we don't come on board until charges are filed so it kind of cuts off, there are options that aren't available anymore. So once a statement has been made, there's you know, there's always a look at whether those statements can be suppressed, were they made legally, what was the situation, was there custody, what was the level of interrogation? All that kind of thing, what's the mental status of the person who made the statement. So there's angles to look at, just trying to suppress that statement and not have it be considered evidence.

In this sample, 42.1% reported that they were rarely present while their juvenile client was questioned or interrogated ($n=8$), and 57.9% reported that they had *never* been

present for a juvenile interrogation ($n=11$). Importantly, the majority of defense attorneys stated that they first meet their juvenile client after charges had been filed against them ($n=18$, 94.7%). If the juvenile hires a private criminal defense lawyer to represent them, they likely have earlier initial contact, and there is a stronger likelihood of the attorney being present for questioning. Whereas if the defense attorney is appointed by the court, the initial point of contact is later (after a court appearance), and it is highly unlikely that the defense attorney would be present for questioning. This scenario is further described in the above quote.

When considering how defense attorneys would advise their juvenile clients, 94.7% said that they would tell their clients not to speak with police ($n=18$). Nine attorneys said that they would want to wait to speak to law enforcement until they had more information about the case and had spoken with their client (47.4%). Eight attorneys noted that they would allow their juvenile client to talk with law enforcement in a structured interview ($n=8$, 42.1%). This structured setting would allow the defense attorney to be there to supervise questioning, guide the conversation, and gather information from the officers about the evidence they have. With the attorney being present, they could not only witness what the police officer says but watch their client's reaction and hear their responses. This structured setting would give the attorney the opportunity to speak with their client beforehand, advise them about their options, and how to proceed if they are willing to speak with the police. This puts the attorney in a better position to monitor the situation and ensure that it is in the best interests of their client to work with the police:

It keeps them honest, it keeps it a conversation and not you know, where they're trying to intimidate or threaten or trick them into saying things that they don't want to say. And also, before we sat down with the police officer, I informed my client of what he was about to do and what those consequences would be, you know. And then knowing that and if you don't talk to the police, here's what they have. You know, so and then he also hears my opinion about whether he should talk to the police or not. And plus, um, before they talk to the police, now it depends on the circumstances, if it's that they've just been arrested and they've called me and I won't have as much time, but I will certainly talk to my client about how to answer, how to conduct himself during the interview, don't try and pull one over, if you're gonna (sic) talk to the police then you tell the truth but you tell the truth only to this crime.

The themes discovered in this study demonstrate that defense attorneys are rarely present when youth are being questioned, highlighting that juvenile defendants frequently waive their rights. When questioned by police without another adult present, defense attorneys report youth being suggestible to the influence of police due to their authority figure status, for which they have been taught throughout their lives to obey. If another adult is present, it is sometimes the youth's parent which attorneys report being hurtful to their client's case, as parents tend to encourage the truth. Overall, the majority of attorneys were supportive of a policy to mandate consultation with a defense attorney prior to youth waiving their right to an attorney or their right to remain silence.

Chapter 5**Discussion**

Extant research has demonstrated that juveniles are at an increased risk of waiving their rights (Rogers et al., 2008), and generally are more susceptible to police interrogation tactics (Redlich & Goodman, 2003), external pressures from police and parents, and have poorer legal understanding and comprehension (Viljoen & Roesch, 2005). One recommendation to protect juveniles in the interrogation room (a key stage of a criminal case) is to require a defense attorney's presence before or during questioning (Alberts, 2020). Some states (e.g., California and Illinois) have passed laws that put this practice into place, and other states are watching closely in consideration of passing similar bills (e.g., Oregon). This was the first study to our knowledge that explored the topic of defense attorneys in the interrogation room; I did this by conducting interviews with defense attorneys to better understand their experiences working with juvenile clients, and how defense attorney presence could protect juveniles during questioning.

Juvenile Decision-making and *Miranda* Waivers

This study demonstrates that among juvenile defense attorneys, youths' susceptibility during the interrogation and their increased risk of waiving their rights, is an issue. The majority of defense attorneys in this sample stated that youth are not competent to waive their rights; this is understandable given that *Miranda* warnings are written in a higher reading level and are heavy in legal jargon (Rogers et al., 2008). Defense attorneys are cognizant that juvenile defendants struggle to comprehend the substance of *Miranda*, which makes it easier to waive those rights when you do not

appreciate their meaning. For example, in this study, 57.9% of defense attorneys reported that juveniles are not familiar with the role of an attorney. The waiver rate for juveniles is high; in some jurisdictions, 80-90% of juveniles waive their right to an attorney because they do not understand the meaning of the word “waive” (OJJDP, 2004). Other research has found that 90% of youth waive their right to remain silent (Rogers et al., 2008), and 69% went on to falsely confess (Redlich & Goodman, 2003). In this study, 73.7% of defense attorneys reported that by the time they receive the case, the juvenile client has frequently waived their rights and offered an admission or incriminating statement to the police.

All attorneys in this sample gave several reasons as to what makes youth more susceptible to waiving their rights. The reasoning that stood out the most was that youth are only concerned with short term goals; 63.2% of defense attorneys in this sample said juveniles are short-term oriented, and 36.8% said that they would say whatever they need to leave the interrogation. This is supportive of prior research noting that juveniles have a more difficult time with long-term decisions because they do not consider the future like adults do and instead focus more on the short-term consequences or reward of decisions (Steinberg, 2007). Juveniles’ decision-making is characterized by an ‘immaturity of judgment’ that leads them to be impulsive, focused on the present, and diminished in their capacity to perceive risk (Owen-Kostelnick, Reppucci, & Meyer, 2006). This puts juveniles at heightened risk in the interrogation room to be persuaded by authority figures and make impulsive decisions (Grisso et al., 2003). Defense attorneys were aware of the risk juveniles’ impulsive decision-making poses to their case; most often, this was

referenced in conjunction with juveniles' willingness to comply with their parents and law enforcement officers (perceived as authority figures).

Interrogation Setting

The Role of Law Enforcement and Interrogation Tactics

An important theme that emerged from defense attorneys is the different perspective and influence law enforcement has (e.g., to resolve the case). Attorneys discussed how in the interrogation room, police officers have a different goal than that of the youth, and that is not something that juveniles understand. And because juveniles do not comprehend this, the tactics used by law enforcement, along with the impact of their authority figure status, make juveniles more likely to cooperate and offer an admission (against their best interests). Additionally, defense attorneys referenced situational factors that can affect juveniles' waiver decisions, such as the amount of time they are given and the location of the interrogation.

Officers are trained in a variety of different techniques ranging from comparatively benign pre-interrogation strategies (e.g., building rapport, observing body language or speech patterns) to more psychologically coercive techniques (e.g., blaming the victim, discouraging denials) (Clearly & Warner, 2016). Many of these techniques, while considered benign, do not operate the same for juveniles as adults. Therefore, these techniques might not be as mild considering what we know about juveniles' developmental differences from adults and susceptibilities in situations such as an interrogation. The vast majority of defense attorneys in this sample (89.5%) referenced the level of pressure police officers exert on juveniles as being a factor to consider. This

is the type of technique that might not have an effect on an adult, but given juveniles' willingness to comply with authority figures might influence their waiver decisions.

In this study, 78.9% of defense attorneys referenced how a law enforcement officer's authority figure status has an effect of juveniles. Due to the lower levels of psychosocial maturity that youth have, they are more likely to want to comply with authority figures (authority figure status almost operates as another tactic). Interestingly, defense attorneys stated that law enforcement are not the only source of pressure that juveniles might face while being questioned. A large percentage (36.8%) noted that juveniles are often questioned at school in the presence of a school administrator or resource officer. This was a theme that corresponds with defense attorneys' concerns that because juveniles are raised to respect authority figures and tell the truth, this puts them at a heightened risk to comply, especially if they perceive there might be consequences at school as well. Defense attorneys noted that requiring a defense attorney to be present during the interrogation could help to even out some of this imbalance, to tilt the power dynamic back in favor of the youth.

Similarly, defense attorneys referenced the role that parents play and how they might act as another source of external pressure for juveniles. Studies have shown that if parents are present when their child is questioned, they often do not help and sometimes hurt their children's chances of asserting their rights or validly waiving them (Grisso, 1981). This study is supportive of this finding as well; 47.4% ($n=9$) of defense attorneys stated that parents hurt their child's case, and 78.9% reported that parents encourage their children to tell the truth to law enforcement ($n=15$). Defense attorneys reported that

parents not only advise their children to waive their right to an attorney but encourage them to cooperate and even adopt an adversarial attitude toward their own kids.

Typically, the only adults present during juvenile interrogations are law enforcement officers. In one study, 90.2% of juveniles were questioned alone, no adult other than the interrogators were present (Feld, 2012). Other studies find that rate to be at around 73.7% (Cleary, 2014). If an individual other than the police are present, it is most likely to be a parent of the juvenile. One study reported that 17.6% of juvenile interrogations included a parent in the room (typically the mother); other studies put that rate even lower at either 8.1% (Feld, 2012) or 1.5% of juvenile interrogations (Feld, 2006). Juveniles often do not have a parent in the room (these data are supportive of that), and defense attorneys are rarely present as well. As indicated by 63.2% of defense attorneys in this study, they have never been present when a juvenile client was questioned ($n=12$). The remaining attorneys said they have rarely been present, citing either one or two cases. These data support the need for greater safeguards in the interrogation room, specifically, that a parent might not serve as an effective “allied adult.”

Safeguards in the Interrogation Room

In this study, there was strong support for both video recording of juvenile interrogations and requiring a defense attorney to be present during questioning. This is both good and bad in light of laws in the state of Oregon. That is, as of 2019, interrogations of individuals under the age of 18 must be video recorded if the crime is an offense that would be considered a misdemeanor or felony if charged as an adult,

regardless of the location of the interrogation (HB 3242; HB 3261). However, another bill, which did not pass, would have required a defense attorney to be present (HB 2718). As such, defense attorneys are rarely present for their juvenile clients' interrogations, and the majority of defense attorneys in this sample stated that they first meet their client after charges have been filed.

Many themes regarding the beneficial effects of video recording were raised by defense attorneys; defense attorneys stated that this is not only helpful during the interrogation, but that having the recording assists in suppressing evidence by checking the recording against the police report, and their client's account of what took place. This is an important tool for defense attorneys to have, as the majority (89.5%), stated that filing Motions to Suppress statements is common practice when representing juvenile clients. Having a video recording of the event can assist defense attorneys in suppression hearings when the defendant's admission might not have been a valid or intelligent waiver.

In discussing juveniles' susceptibilities in the interrogation room, defense attorneys supported having an allied adult present for questioning, which was most often referenced as an attorney (89.5% of attorney supported having a defense attorney requirement). The most common theme referenced by defense attorneys is how a defense attorney in the room, because of their training and expertise, can assist the juvenile defendant in making informed decisions (an important consideration given the high waiver rate). The vast majority of defense attorneys stated that they would advise their clients not to speak to the police, at least until after they had a chance to meet with the

client and view the case. In this study, 57.9% of defense attorneys stated that there are situations where it would be helpful to speak with the police. But importantly, the defense attorney is in a better position to weigh the circumstances than a juvenile.

Policy Implications

I heard support of a policy requiring defense attorney presence in the interrogation room, however, defense attorneys also raised some logistical challenges that are beneficial for policy and practice to consider. Some of these concerns were about the feasibility of attorneys showing up for the interrogations, and what the procedure will be when youth are questioned away from the precinct or in the middle of the night. Some suggestions were to have an attorney “on call” for a window of time to represent juveniles during questioning (similar to a warrant judge). Another suggestion that came up more than once was to require a “cool down” period, where juveniles could not be questioned for a period of time (e.g. 24 hours), which would allow them to speak to an attorney and reduce some of the situational pressures. Other suggestions included putting the burden on the prosecution to prove that statements made by the youth should be admissible and implementing specialized training for youth attorneys.

These suggestions represent fruitful areas for research to examine in the future. For example, research could address how these policies might work, how feasible they would be, and what are the benefits and fallbacks. The results of this study indicate that this is a topic of importance not only to defense attorneys, who would be greatly affected by this policy change but also to juvenile defendants. Though there are many logistical challenges that would need to be overcome in order for this type of policy to be

implemented, defense attorneys are supportive of it and recognize how this could be extremely beneficial as a protective factor for juveniles in the interrogation room.

Beyond the interrogation room, the implications of this study could be great for juvenile defendants. As this research and prior literature has demonstrated that youth are impulsive in their decision-making and often do not consider the long term consequences of waiving their rights, more efforts should be made to mitigate this. With youth being so quick to decide on waiving their rights, they are failing to consider the extralegal consequences that may fall upon them. An admission, which may lead to a guilty charge, could impact youth's ability to get financial aid, housing assistance, or a job. While youth may not be considering these seemingly far-off consequences in the heat of the moment, policy makers should take steps to address these. Whether that be a more comprehensive education of the legal system and individual rights in school, mandating defense attorney presence before or during questioning, or any of the other safeguards suggested by attorneys in this study.

Limitations

While this study advances our understanding of juvenile interrogations, it does come with its limitations. It is possible that defense attorneys might have been hesitant to speak about experiences in the interrogation room. The attorneys may have had a misconstrued idea about the intentions of this research. To mitigate this, the interviewer made clear the intentions regarding informing potential policy changes for the protection of juvenile defendants. Additionally, defense attorneys were reminded that their responses were anonymous, and interview questions were not specific to cases. Another

possible limitation is bias in the sampling method. Attorneys have large caseloads, particularly defense attorneys and those who are public defenders. While there were concerns about getting a sufficient sample size, the decision was made to use a snowball sampling strategy to obtain more participation. In the end, a sufficient sample size for the scope of this study was reached.

Conclusion

Requiring defense attorneys in the interrogation room has been touted for years as one of the best recommendations for protecting juveniles (Alberts, 2020), and some jurisdictions have implemented laws enacting this type of policy. This study sought to explore this topic further, particularly from the perspective of defense attorneys who are tasked with protecting juveniles in the state of Oregon where a similar policy failed to pass through the legislature.

Overall, defense attorneys were supportive of initiating a policy in Oregon to require attorney presence when juvenile defendants are questioned by the police. They cited juvenile suggestibility, less developed brains, and socialization to follow what an authority figure says as justifications for increased protections for youth in comparison to adults. One of the main differences illustrated by defense attorneys was that youth do not take into account the long-term consequences of waiving their rights, rather they are concerned with their present situation (being questioned by police). Of the attorneys interviewed, most reported never being present for a juvenile interrogation, while others reported rarely being present. This demonstrates that youth defendants are waiving their right to an attorney at a high rate (as happens elsewhere). Several suggestions were made

by attorneys as to what safeguards are beneficial and should be mandated. The overwhelming majority of participants stated that requiring a defense attorney to be present in the interrogation room or when youth are being questioned by police (regardless of location), would be the best protective factor.

As this study was conducted in Oregon, it is therefore a reflection of juvenile defendants and attorneys' experiences with defendants in this state. In 2017, House Bill 2718 did not pass through the legislature. If the bill had made it into law, youth would have been required to consult with an attorney prior to being given the option to waive their rights. Many of the experiences recalled by the attorneys who participated in this study demonstrate some of the key components of that bill.

Table 1. Final Themes with Corresponding Codes

| <i>Themes</i> | <i>Situational Factors</i> | <i>Dispositional Youth Susceptibility Factors</i> | <i>Parental Impact</i> | <i>Requiring Attorneys</i> | <i>Law Enforcement Impact</i> | <i>Opinions on Safeguards</i> | <i>Waiver Competency</i> | <i>System Impact</i> |
|---------------|----------------------------|--|--|---|--|--|--|--|
| <i>Codes</i> | Time pressure | Say what they need to leave | Parents can be helpful | Tells client not to speak with police | LE have different perspective | Videotaping beneficial/helpful after fact | Admissions often made/right to atty often waived | False confessions |
| | Severity of charges | Don't realize consequences | Parents don't understand | Require atty, less waivers | LE isolate youth from parent | Uncertain about neutral adult | Less statements the better | Treatment/process differs in juvenile vs adult court |
| | Location | Haven't received advice | Parents encourage truth | Defense attorney protect clients' rights | Speaking with LE could benefit youth | Any trusted adult present benefits | Always make admission | Issues with how Miranda is written |
| | Circumstances around case | Not confident asserting rights | Parents have own interests in mind | Empower youth to make informed decisions | Speak to police to find out their intentions | More time to decide on waiver | Youth aren't competent to waive | System stacked against youth |
| | Youth questioned at school | Hard to make informed decision | Parents hurt youths' cases | Wait to speak with LE | Speaking with police doesn't benefit | Neutral adult may be helpful | Youth competent to waive | |
| | | Power dynamic | Parents often present | More statements without attorney | Interrogation tactics | Specialized youth atty training | Youth unfamiliar with attorney | |
| | | Youth conditioned/socialized/Teach kids to be honest with LE | Parents sometimes present | Have youth evaluated/expert testimony | Authority figure/respect authority | Neutral adult may encourage truth | Youth familiar with attorney | |
| | | Youth don't understand legal nuances | Attorney and parent have different roles | First meet after fact | Police influence (authority) | Support defense attorney present | Youth sometimes competent to waive | |
| | | Youth don't understand warnings | Parents are not often present | Never been present interrogation | | Preventative talking in schools helps | Youth with legal experience still confess | |
| | | Suggestibility | | Attorney allows youth to make informed decision | | Parental consent for questioning | Youth first admit to school | |
| | | Youth feel they have to talk to LE | | Important to earn trust of youth | | Youth level warnings | | |
| | | Youth in system often had trauma | | Important to follow through with youth | | Officer explanation may be helpful | | |
| | | Youth lack maturity | | Suppress statements | | Case law issue | | |
| | | Reasoning ability/Mental capacity | | Private attorney get in contact sooner | | Body cams helpful | | |
| | | Autonomy to make decisions | | Court appointed contact later | | Have attys on call | | |
| | | Brains aren't fully developed | | Atty allow youth to speak in structured interview | | Defense attorneys need more support | | |
| | | Impulsivity | | Atty explanation helps understanding | | Create statute to make juv statements inadmissible | | |
| | | Age differences | | Atty job is best legal outcome | | Require atty is too costly | | |
| | | Less educated | | Atty needs time with youth | | | | |
| | | Racial/Ethnic differences | | Atty protects client from charges | | | | |
| | | | Atty rarely present for questioning | | | | | |
| | | | Attorney consult is helpful | | | | | |

Table 2. Presence of Codes in Themes by Participant

| Participant ID | Situational Factors | Dispositional Youth Susceptibility Factors | Parental Impact | Requiring Attorneys | Law Enforcement Impact | Opinions on Safeguards | Waiver Competency | System Impact |
|----------------|---------------------|--|-----------------|---------------------|------------------------|------------------------|-------------------|---------------|
| P1 | 1 | 6 | 2 | 13 | 5 | 4 | 3 | 1 |
| P2 | 1 | 2 | 0 | 9 | 4 | 4 | 3 | 0 |
| P3 | 3 | 12 | 3 | 9 | 5 | 5 | 2 | 2 |
| P4 | 3 | 5 | 6 | 10 | 5 | 7 | 3 | 3 |
| P5 | 1 | 1 | 0 | 9 | 5 | 6 | 1 | 2 |
| P6 | 2 | 13 | 2 | 10 | 5 | 5 | 4 | 2 |
| P7 | 0 | 8 | 3 | 8 | 4 | 3 | 3 | 2 |
| P8 | 3 | 7 | 6 | 11 | 4 | 4 | 3 | 1 |
| P9 | 3 | 10 | 4 | 7 | 5 | 3 | 2 | 2 |
| P10 | 3 | 6 | 3 | 10 | 5 | 7 | 4 | 0 |
| P11 | 2 | 10 | 5 | 12 | 6 | 3 | 4 | 2 |
| P12 | 2 | 6 | 4 | 10 | 3 | 5 | 4 | 1 |
| P13 | 3 | 9 | 6 | 11 | 5 | 6 | 5 | 1 |
| P14 | 3 | 7 | 3 | 14 | 5 | 7 | 3 | 2 |
| P15 | 3 | 7 | 4 | 11 | 3 | 5 | 5 | 0 |
| P16 | 3 | 9 | 4 | 13 | 6 | 7 | 3 | 2 |
| P17 | 1 | 6 | 4 | 8 | 2 | 5 | 4 | 0 |
| P18 | 2 | 10 | 6 | 10 | 6 | 5 | 4 | 2 |
| P19 | 2 | 9 | 3 | 14 | 5 | 6 | 3 | 2 |
| Total | 41 | 143 | 68 | 199 | 88 | 97 | 63 | 27 |

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Appendix Items

Appendix A. List of Final Codes

- | | |
|--|--|
| Admissions often made | Interrogation tactics |
| Age differences | Juvenile vs adult court |
| Always make admission | LE have different perspective |
| Any trusted adult present benefits | LE isolate youth from parent |
| Attorney allows youth to make informed decision | Less educated |
| Attorney and parent have different roles | Less statements the better |
| Attorney consult is helpful | Location |
| Atty allow youth to speak in structured interview | Miranda issues |
| Atty explanation helps understanding | More statements without attorney |
| Atty job= best legal outcome | More time to decide on waiver |
| Atty needs time with youth | Neutral adult may be helpful |
| Atty protects client from charges | Neutral adult may encourage truth |
| Atty rarely present for questioning | Never been present interrogation |
| Authority figure | Not confident asserting rights |
| Autonomy to make decisions | Officer explanation may be helpful |
| Body cams helpful | Parental consent for questioning |
| Brain's aren't fully developed | Parents are not often present |
| Case law issue | Parents can be helpful |
| Circumstances around case | Parents don't understand |
| Confessions lead to pleas | Parents encourage truth |
| Create statute to make juv statements inadmissible | Parents have own interests in mind |
| Def attys need more support | Parents hurt youths' cases |
| Defense attorney protect clients' rights | Parents often present |
| Don't realize consequences | Parents sometimes present |
| Empower youth to make informed decisions | Police influence |
| English is second language | Power dynamic |
| Experience with the system | Preventative talking in schools helps |
| Expert testimony | Private attorney get in contact sooner |
| False confessions | Racial/ethnic differences |
| First meet after fact | Reasoning ability/Mental capacity |
| Gender differences | Respect authority |
| Hard to make informed decision | Require atty is too costly |
| Have attys on call | Require atty=less waivers |
| Haven't received advice | Right to attorney often waived |
| Important to earn trust of youth | Say what they need to leave |
| Important to follow through with youth | Severity of charges |
| Impulsivity | Socioeconomic differences |
| | Speak to police to find out their intentions |
| | Speaking with LE could benefit youth |
| | Speaking with police doesn't benefit |

Juveniles in the Interrogation Room: Defense Attorneys as a Protective Factor

Specialized youth atty training
Suggestibility
Support defense attorney present
Suppress statements
System stacked against youth
Tells client not to speak with police
Time pressure
Uncertain about neutral adult
Videotaping beneficial
Videotaping helpful after fact
Wait to speak with LE
Won't get the whole truth from youth
Youth aren't competent to waive
Youth competent to waive
Youth conditioned/socialized/ Teach
kids to be honest with LE
Youth don't understand legal nuances
Youth don't understand warnings
Youth feel they have to talk to LE
Youth first admit to school
youth get punished from multiple sides
Youth in system often had trauma
Youth lack maturity
Youth level warnings
Youth questioned at school
Youth sometimes competent to waive
Youth unfamiliar with attorney
Youth familiar with attorney

1. In what percent of cases are you present in the interrogation room with a juvenile client?
2. In your experience, do juveniles make more or fewer statements to the police when you are present?
3. Based on your experience, do you think juveniles are competent enough to make an informed waiver of their rights?
 - a. Right to an attorney
 - i. In your experience, how often do they waive their right to an attorney in the interrogation room?
 - b. Right to remain silent
 - i. In your experience, how often do they waive their right to remain silent in the interrogation room?
4. Based on the experiences you've had, do you think an attorney in the interrogation room acts as a protective factor for juveniles? How?
 - a. Would requiring a defense attorney be different than the current standard of practice (where a juvenile has to request their attorney's presence)?
 - i. In terms of waiver of rights?
 - ii. In terms of juveniles' susceptibility to interrogation tactics?
5. If your juvenile client was considering waiving their 5th Amendment right and confessing, how would you advise them?
6. Parents are sometimes present during the interrogation, which may be more hurtful to the juvenile's case than helpful. How is an "allied adult" in the interrogation room different than a parent? (e.g. Advocate provided by court with legal knowledge, an attorney)

Closing: Is there anything else you'd like to share about juveniles in the interrogation room and requiring an attorney to be present during the interrogation?

If Time Permits

1. In your experience, what are some factors that might influence juveniles' waiver of rights (e.g., age, location of questioning, parents)?
2. At what point are you typically brought in to assist with a juvenile client?
 - a. Has that been at the request of the juvenile (invoking their right to an attorney)? If not, who (how did that happen)?
3. From your standpoint (as the juvenile's advocate), what concerns do you have (if any) about your client talking with the police?
 - a. Does this usually help or hurt their case?